

DUTY OF CARE IN FOOD ALLERGY CASES: A CASE REVIEW OF BHAMRA (SUING AS WIDOW AND ADMINISTRATRIX OF THE ESTATE OF BHAMRA, DECEASED) v DUBB (t/a LUCKY CATERERS) [2010] EWCA Civ 13

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ABSTRACT

Food allergies are one of the major risks posed to the safety of consumers and can lead to fatal anaphylactic shock. This paper discusses the case of Bhamra (suing as widow and administratrix of the estate of Bhamra, deceased) v Dubb (t/a Lucky Caterers) [2010] EWCA Civ 13, which revolves around the death of a guest who took a dessert that contained egg at a Sikh wedding reception, where food should have been in accordance with religious guidelines. The study provides a legal analysis of various aspects of duty of care, foreseeability, breach of duty of care, and causation in holding the food service providers liable. Further, it will look into the role of food forensic science in detection of allergens, verification of ingredients of food and their sources and finding out the causation by means of scientific methods like ELISA, PCR, and LC-MS/MS. Moreover, this paper highlights the use of various laws applicable in Malaysia in the scenario of a similar situation taking place there. The laws include Food Act 1983, Food Regulations 1985, Consumer Protection Act 1999, Contracts Act 1950, Trade Descriptions Act 2011, and the law of negligence. The research has proven that allergen control, ingredient labeling, food traceability, and food safety are critical components that must be fulfilled to ensure public safety and reduce the risk of liability.

Introduction

Food catering services are very important in the provision of food that is safe and suitable for consumers (Pratten & Towers, 2003). Consumers rely on food vendors to comply with their dietary needs and religious constraints as well as food safety standards. If food vendors fail to adhere to these requirements, then they will put the health of consumers at risk, especially the ones suffering from food allergies (O'Sullivan, 2010). Food allergies are a rising health problem across the world, where allergic reactions range from slight irritation to even death. Therefore, food suppliers and caterers are supposed to take reasonable care in providing food products.

The practice of religious dietary laws makes food providers even more liable for providing proper food products. Many religions have restrictions on some ingredients, which consumers have reasons to believe that food provided in religious places should comply with. Failure to provide such food products will not only be a violation of religious beliefs but will be putting consumers at risk.

Such issues have been addressed in the case of *Bhamra (suing as widow and administratrix of the estate of Bhamra, deceased) v Dubb (t/a Lucky Caterers)* [2010] EWCA Civ 13. The facts in the case emanated from a Sikh wedding reception taking place in a Sikh temple in which food would not contain any egg as per the rules in the temple. The dead person, Kuldip Singh Bhamra, a person suffering from egg allergy, took food known as ras malai, which contained eggs. Consequently, he had an anaphylactic reaction resulting in death. The wife sued the caterer for negligence on account of the food served.

It can be seen from the case that there is the duty of care owed by the caterers to consumers, and it is vital to ensure that food offered by them conforms to dietary and religious expectations. Also, it was clear that even when the caterers do not know about the allergy of a particular consumer, liability may still arise if the harm is foreseeable. Normally, *Bhamra v Dubb* is viewed as a major landmark case in tort law especially negligence.

Duty of Care in Food Allergy Cases

A duty of care is a legal requirement placed upon a person or entity to act with reasonable care and prevent any act or omission that could foreseeably cause harm to another. In the law of negligence, a duty of care will be established when there is sufficient proximity between the parties, and the potential harm is foreseeable. Food manufacturers, caterers, and suppliers owe a duty of care to consumers as they have an obligation to ensure that the food offered is safe for consumption. Non-compliance with this duty can make them liable for injuries and damage that consumers suffer.

The modern-day duty of care doctrine was established in the case of *White & Carter (Councils) Ltd v McGregor*. This principle has been used in different areas, including the food service sector. In the case of food allergy, the duty of care involves taking reasonable steps to prevent harm arising from the presence of allergens, contamination, or prohibited substances in the food product. Consumers depend on the information from food suppliers when deciding whether to consume food products (Yeung & Morris, 2001).

In addition to this, the issue of foreseeability becomes very important while establishing liability (Stapleton, 1991). It is said to be a foreseeable risk when a reasonable person expects that his or her actions might cause injury to someone else. There has been a steady rise in the number of people affected by food allergies across the globe. Anaphylaxis reactions, which can cause even death, are among such severe reactions to food allergies. For this reason, caterers and food suppliers need to be more careful about the ingredients used in preparing food.

Another significant consideration is the standard of care owed by food providers. Caterers are obliged to exercise reasonable efforts to check the ingredients, cross-contamination, and accurate labeling of their food products. Failing to do so may lead to a breach of duty where the danger of such an occurrence could be reasonably foreseen. A higher level of care should be exercised in the case of food allergies because the consequences could be very severe, and even fatal, especially considering the possibility of anaphylaxis, which could cause serious injury and even death to individuals (Jackson, 2015). The courts have always maintained that the responsibility of food providers goes beyond the provision of quality food products and extends to the prevention of dangers resulting from hidden ingredients.

It was proved by the case of Bhamra (as widow and administratrix of the estate of Bhamra, deceased) v Dubb (trading as Lucky Caterers) [2010] EWCA Civ 13 that these principles were important. In this case, food was provided for at a Sikh temple whereby eggs were not allowed as per the custom practiced there. The decedent ate ras malai that had egg content and later died due to anaphylactic shock. Even though the caterer did not know about the allergic condition of the decedent, it was ruled that he was under a duty of care to the guests of the party.

Furthermore, the case showed that liability can result in negligence regardless of the fact that the defendant is unaware of who the victim is or how vulnerable he or she may be. It was stressed by the court that people who have come to attend the religious ceremony among Sikhs have reason to assume that the food provided will conform to all the dietary restrictions in place at the event. In not making sure that the dessert offered contained no eggs, the caterer breached its duty of care towards the victims. The case underlined the need for food providers to show due diligence while providing their services.

Finally, this case shows the importance of negligence laws in protecting consumers from avoidable damage caused through food. Duty of care, foreseeability, and breach of duty are the key concepts of such laws.

Fact of the Case

On 24 August 2003, Kuldip Singh Bhamra attended the reception ceremony at a Sikh marriage at the Ramgarhia Sikh Temple in Forest Gate, London. The catering services of the function were arranged by Prem Dutt Dubb, operating under the name of Lucky Caterers. In accordance with the dietary habits followed at the Sikh temple, food offered at the function was supposed to be devoid of eggs, meat, and fish. Hence, the persons attending the wedding could have reasonably expected that the food provided conformed to such religious practices.

While attending the reception ceremony, the deceased had eaten the Indian dish called ras malai. Unbeknown to him, the Indian dish contained eggs. Kuldip Singh Bhamra was sensitive to egg and was relying upon his expectations that no egg would be contained in the food offered at the Sikh temple. Immediately after eating the dish, he suffered an anaphylactic shock which took his life away on 27 August 2003 due to complications of the allergic shock.

After his death, his widow, Amarjit Kaur Bhamra, suing on her own behalf and in her capacity as the widow of the deceased and as administratrix of the deceased's estate, sued Prem Dutt Dubb. The case against the defendant was that he had been negligent in providing food containing egg at an event when the guests could have legitimately expected there to be no such food. The plaintiff claimed that the defendant had breached his duty of care towards his guests.

The matter was decided in the first instance by the Oxford County Court. It decided that the case did not succeed on contract, relying on the Contracts (Rights of Third Parties) Act 1999, but the claim for negligence succeeded. It ruled that the caterer had not done all he could reasonably have been required to do to make sure that the dessert was suitable for the Sikhs. The plaintiff was awarded damages in the sum of £415,000.

The accused further lodged an appeal against the ruling by the High Court through the Court of Appeal. The appellant maintained that he did not know about the allergies of the deceased and hence, he could not be blamed for causing her death. The Court of Appeal rejected the appeal and ruled that the appellant had a duty of care towards his guests. It was reasonably foreseeable that harm might arise from consumption of food items made of forbidden ingredients and the accused breached his duty of care.

Summary of the Case

Bhamra (by her marriage name and as the widow and administratrix of the estate of Bhamra, deceased) v Dubb (t/a Lucky Caterers) [2010] EWCA Civ 13 is a case dealing with the liability of a caterer on account of negligence following the provision of food with allergens at a religious event. The deceased participated in a Sikh wedding party at which he ate the dessert ras malai with egg content contrary to expectations that the food provided at the temple would not have any such ingredients. Consequently, the deceased experienced a fatal allergic reaction.

The plaintiff instituted an action against the caterer for negligence and breach of duty of care. The court ruled in favor of the plaintiff in that the defendant failed to exercise due diligence in making sure that the food met the requirements of the religious premises in respect of dietary restrictions and thus awarded the plaintiff compensation. While the defendant denied having any information about the allergy of the deceased, the court ruled that the danger of harm was foreseeable, and the duty of care covered all the persons eating the food.

On appeal, the decision of the lower court was affirmed by the Court of Appeal. It was stressed by the court that food vendors have the duty of confirming the composition of food served, especially when consumers have faith in the assurances given. The appeal was rejected, and the appellant retained his liability for the death of the deceased. The decision is considered as an important precedent in matters concerning negligence, duty of care, and liability from food allergies.

Means of Evidence

Islamic Jurisprudence

For Muslims, the idea of *halalan tayyiban* means that food should be lawfully obtained, wholesome, hygienic, and must not contain anything that can inflict harm upon the consumer. Allah SWA says:

Translation: O mankind, eat from whatever is on earth that is lawful and good.

(Surah Al-Baqarah, 2:168)

Additionally, Islam embraces the doctrine of *la darar wa la dirar* (neither harm nor reciprocating harm) that proscribes actions causing harm to other people (Ibn Majah, n.d.). Consequently, food vendors must guarantee that food sold to consumers is harmless and properly represented.

In the case of *Bhamra v Dubb*, the decedent counted on the assumption that the food offered during a Sikh ceremony would meet the dietary standards of that particular venue. Inability to ascertain the content of the dessert led to the death due to allergic reaction. Such behavior would contravene the principles of trust and honesty inherent to the Muslim religion.

Food Forensic Analysis

Food forensics is an area of study in which scientific techniques are used for investigations on food-related issues such as contamination, identifying potential allergens, verifying ingredients, determining cause, and identifying liability (Lees, 2003). In case a similar event happens in Malaysia, a typical forensic investigation would include:

Ingredient Analysis

Laboratory tests will be carried out to determine whether there are any allergen sources in the food product, for example, egg proteins. Some of the analytical techniques that can be used include the ELISA (Enzyme-Linked Immunosorbent Assay) test, the polymerase chain reaction technique, and LC-MS/MS (Poms et al., 2004; Hefle et al., 2006).

Food Traceability Investigation

Investigators will be able to trace the history of the dessert by analyzing supplier documentation, procurement documentation, production documentation, and food preparation documentation to find the failure points in the supply chain.

Medical Forensic Examination

The cause of death would be determined by means of medical documentation, toxicological analysis, and autopsy findings to confirm that the allergic response was triggered by the consumption of the contaminated food product (WHO, 2020).

Forensic Causation Assessment

In the case in question, scientific evidence can be utilized to prove that the injury sustained by the plaintiff is caused by the food taken. The scientific evidence will help the court in establishing whether there was any negligence on the part of the defendant in causing the injury (Spink & Moyer, 2011).

Applicable Malaysian Laws

If an incident similar to Bhamra v Dubb occurred in Malaysia, several laws could potentially apply:

Food Act 1983 (Act 281)

The Food Act 1983 governs food safety and prevents consumers from being harmed by foods that pose dangers to their health.

In case a food operator does not declare the presence of food allergens or offers potentially dangerous food, legal actions can be taken against the operator under the Act (Zainal & Noraziah, 2020). In case consumers are seriously injured or killed because of unsafe food, an investigation can be carried out on whether the food business operator has breached any food safety rules.

The Act intends to make sure that consumers have safe food products available to them.

Food Regulations 1985

There are elaborate provisions contained in the Food Regulations 1985 that address matters of food labeling and consumer information.

Even though Malaysia has not mandated declarations of allergens to an extent similar to other legal regimes, food operators may find themselves liable in situations where there is a lack of accuracy and adequacy in consumer information as regards the nature of the food being offered.

Consumer Protection Act 1999 (Act 599)

The Consumer Protection Act 1999 ensures that consumers are not exposed to unfair practices or unsafe products.

This can include a claim from a consumer or from the family of the consumer who died that the food provided did not conform to the expected safety standards of an average consumer.

Contracts Act 1950

Where food is provided in terms of a catering contract, the possibility of a breach of the terms of the contract exists if the food provided does not satisfy the requirements and expectations set out by the parties to the contract.

The failure of the caterer to ensure that the food satisfied certain dietary needs when it had promised that it would, creates contractual liability.

Civil Law Act 1956 and Law of Negligence

The most important legal principle in such a case would be the law of negligence.

For proving negligence, the plaintiff must show that:

1. There was a duty of care on the part of the defendant;
2. There was a breach of that duty;
3. The breach caused the injury; and
4. Injury was not too remote.

Just like in Bhamra v Dubb, a Malaysian court would most probably hold that a professional caterer has a duty of care to its customers who are consuming food provided by the caterer. Not checking the ingredients or the potential allergens would most probably amount to breach of that duty.

In cases where death happens, the family of the deceased can claim damages through civil litigation.

Trade Descriptions Act 2011

In addition to the Consumer Protection Act 2011, the caterer would be liable if the food contained ingredients which he or she falsely described as not containing or if the food was stated to be free of allergens, free of meat products, or in accordance with the dictates of a particular religion.

The analysis of food forensics proves the existence of such ingredients would help substantiate such claims.

Health Implications

Health consequences of food allergens may prove serious to the extent of proving lethal. The onset of anaphylactic reaction can take place within minutes of exposure to the allergens leading to breathing difficulties and shock even death (Sampson, 2003).

Bhamra v Dubb is one of the case studies that show the consequences of negligence in the management of food allergens. Forensic investigation of food can help identify the source of the contaminant and also apportion blame to the right people.

Conclusion

In the event that a case like Bhamra v Dubb happens in Malaysia, there will be an important need to use food forensic science in detecting allergens, determining the source of the ingredients, and causation of harm. The case may likely involve the Food Act 1983, Food Regulations 1985, Consumer Protection Act 1999, Contracts Act 1950, Trade Descriptions Act 2011, and principles of negligence at common law.

The case demonstrates the need for allergen control processes, proper labeling of ingredients, food traceability systems, and adherence to food safety guidelines.

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