

IN THE COURT OF APPEAL (CIVIL DIVISION)

Sybil v Fawlty Fireworks Limited

Basil and Sybil were a married couple, but were unfortunately having difficulties with their relationship. After months of disagreement, Basil moved out of the family home in September 2006 and moved into rented accommodation whilst working as a foreman at Fawlty Fireworks Limited.

On the early morning of 8 November 2006, Basil was working a night-shift in a bunker at Fawlty Fireworks factory in Torquay. Unfortunately, at 2.30am, due to an electrical short-circuit, a number of fireworks containers exploded, resulting in the ignition of the bunker. The site manager, Manuel, raised the alarm, and contacted the emergency services. Basil was trapped in the bunker and had to be rescued by the fire brigade.

Manuel used the personnel records to find the details of Basil's emergency contact, who was still recorded as being Sybil. He rang Sybil at 3.15am, saying "*there's been a bit of an accident, can you pop down to the factory?*" Sybil's first reaction to the news was to presume the accident was not very serious. Knowing that Basil had worked within the fireworks industry for some considerable time, she had become used to him suffering minor burns on a fairly regular basis.

Sybil arrived at the factory at 5am. She was horrified to be faced with numerous fire engines and ambulances. She was directed towards a mess room, where emergency treatment had been administered to Basil. Most of his body was covered by a blanket, but his blackened face, singed hair and burnt hand were visible. A tube had been inserted into his throat to assist his breathing. At the sight of her husband in this state, Sybil broke down, and started weeping and shaking uncontrollably. It was explained to Sybil by the attending doctor that he had suffered a degree of smoke and soot inhalation but his injuries comprised burns which affected his right hand, his legs and his face. Basil's burns had been treated to a degree, and he had been given a high dose of morphine to try and control the pain.

At 7am, Basil was transferred to Torbay Hospital where he was stabilised. Sybil remained with Basil, keeping an almost constant vigil, for over a week, before he returned to the family home. She subsequently displayed symptoms of PTSD, suffering frequent flashbacks of the scene.

Sybil brought a claim as a secondary victim for nervous shock against Fawlty Fireworks Limited, who accepted liability for Basil's injuries. At first instance, Cleese J found the following facts:

1. On the basis of the medical evidence before him, it was accepted that Sybil had suffered nervous shock in the form of a recognised psychiatric disorder.
2. When first seen by Sybil, Basil was in a controlled state and was not being treated.
3. Basil and Sybil had subsequently divorced.

Cleese J found that Sybil could recover as a secondary victim on the grounds that:

1. As a spouse, it was clear that she had had a close tie of love and affection with the person injured.
2. Arriving at the factory, Sybil had witnessed the immediate aftermath of the explosion, and was therefore proximate to the accident in time and place

Fawlty Fireworks Limited appeal on the following grounds:

1. Whether Sybil had previously had a close tie of love and affection with Basil was irrelevant, as at the time of the accident they were at the early stages of divorce proceedings, and so the spousal presumption of relationship could be rebutted.
2. As there was a two and a half hour time delay between the time of the accident and Sybil seeing Basil, having been treated and in a controlled state, it cannot be said that Sybil had witnessed the immediate aftermath of the accident.