Win for Melbourne wharfie

Crimmins v Stevedoring Industry Finance Committee, 9 April 1998, Victorian Supreme Court, Eames J.

Peter Gordon, Melbourne

Peter Gordon

A Melbourne wharfie has won a significant victory in the Victorian Supreme Court. Mr Crimmins, aged 61, was working at the time he was diagnosed with mesothelioma in June 1997. After a 16 day trial a jury found that the Stevedoring Industry Finance Committee was liable in damages to Mr Crimmins, a wharfie at the Port of Melbourne in the 1960s.

Cases on behalf of waterside workers exposed to asbestos prior to the 1970s are difficult because of the casual labour system that was in place up until that time. The constant rotation of workers between stevedores has made it difficult to identify a defendant whose negligence could be said to have caused a dust related disease suffered by a waterside worker.

Mr Crimmins' case is a landmark decision for a number of reasons:

- for the first time, it was successfully argued that the predecessor of the Committee, a statutory body responsible for overseeing work on the waterfront, owed a duty of care to waterside workers. Previous attempts to establish liability on behalf of waterside workers in similar cases have failed (*Nelson v Stevedoring Industry Finance Committee* and *Wintle v Stevedoring Industry Finance Committee*).
- the case was the first to test the liability of the Finance Committee for its predecessor in law, the Australian Stevedoring Industry Authority. The Committee argued that the transfer of accrued liabilities under *Stevedoring Industry Acts (Terminations) Act 1977* did not extend to liability for torts occurring prior to the transfer where the injury did not manifest itself until a date after the transfer. Justice Eames ruled that the Committee was liable.
- the jury awarded Mr Crimmins $833,622, reflecting the highest general damages award in a mesothelioma case seen to date in Australia. The assessment of the jury contrasts with more conservative assessments in other cases - see for example the recent NSW Court of Appeal decision of *James Hardie & Coy Pty Limited v Newton (December 1997)* where one member of the Court would have reduced general damages of $130,000 awarded by the Dust Diseases Tribunal in a mesothelioma case. The majority held that $130,000 was at the upper end of the permissible range.

The Committee has appealed to the Court of Appeal. ■

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Ballooning verdicts

Inwood v Balloon Adventures of Australia, Parramatta District Court (Unreported)

J D Watts, Sydney

John Watts

The plaintiff in this case was given a birthday present by her husband of a ballooning trip. She expected a day of chicken and champagne, of fair winds and no doubt a happy time. What she got was a time in hospital with a crushed hand and significant pain and discomfort.

Ballooning is often perceived as a very safe and predictable pastime, but as Richard Branson has found on two occasions things do not always go to plan.

On the day of Mrs Inwood's ballooning adventure the weather was somewhat doubtful, but a decision was made to take off. One of the fun things which the balloon pilot decided to do was to dip, or nearly dip the bottom of the basket in the Prospect Reservoir in order to give the passengers a thrill. After so doing he attempted to gain height, but managed to crash the side of the basket into a retaining wall causing it to tip and crash. Mrs Inwood's hand became crushed between the basket and the ground. The injury was not insignificant and resulted in some permanent fine motor problems.

Proceedings were taken in the District Court at Parramatta. Liability was determined by *the New South Wales Civil Aviation (Carriers Liability) Act* which incorporates the provisions of similar Federal Legislation and therefore imposes strict liability upon the operators of aircraft (hot air balloons are aircraft). Under the relevant legislation the carrier is liable for damage sustained in the event of bodily injury suffered by a passenger if an accident takes place on board an aircraft or in the course of any of the operations of embarking or disembarking.

The matter proceeded to Arbitration and the Arbitrator Awarded the Plaintiff $179,000 plus costs. A re-hearing application was made, but the matter did not proceed to a final trial as it was settled shortly prior the re-hearing. ■

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