

High Court reaffirms *Griffiths v Kerkemeyer* principle

Grincelis v House (2000) HCA 42

On 3 August 2000, the High Court by majority allowed an appeal from the Federal Court of Australia on the issue of the rate at which interest should be calculated on the past *Griffiths v Kerkemeyer* component of an award of damages.

The Federal Court had, by a 3:2 majority, favoured the notional interest rate which is applied to general damages for pain and suffering following the 1991 High Court decision in *MBP (SA) Pty Ltd v Gogic* of 4%. The minority had opted for a commercial rate of interest.

In the High Court, only Justices Kirby and Callinan thought that the notional rate should be used. Both judges referred to the artificiality of allowing a commercial rate of interest on an amount which had not been and would not be paid by the plaintiff.

However, the majority (Gleeson CJ, Gaudron, McHugh, Gummow and Hayne JJ) said that the Gogic argument

really amounted to an attempt to undermine the principle in *Griffiths v Kerkemeyer* itself, which they said was so firmly entrenched in Australian law that it could now be removed only by legislation. Consistently with that principle, interest should be calculated at commercial rates.

For the purposes of the case, the applicable commercial rate was 12%, by virtue of a practice direction of the ACT Supreme Court, in which the case had originally been heard by Master Hogan in 1995.

Comment

There had been some speculation within the legal profession and by legal commentators that the Court, following the appointment of three new judges since *Kars v Kars* was decided in 1996, might be persuaded to review the principle adopted in *Griffiths v Kerkemeyer* and refined in later decisions. *Grincelis* is such a strong majority decision that it can reasonably be said that it will be

many years before the High Court will reconsider the *Griffiths v Kerkemeyer* principle. The principle is entrenched in the common law and in practical terms can be modified only by legislation.

In most personal injury actions, interest on the past *Griffiths v Kerkemeyer* component will be a modest amount. The decision will, however, have a significant effect where catastrophic injuries are concerned, particularly as such actions generally await stabilisation of the plaintiff's condition and are often not disposed of for a number of years after the injury.

The decision will rarely have any application in NSW motor accident claims, because of the statutory modifications to the entitlement to *Griffiths v Kerkemeyer* damages and to interest. ■

David Harper is a Partner at Abbott Tout in Canberra **PHONE** 02 6248 4208
FAX 02 6249 1196
EMAIL Canberra@abotttout.com.au

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