

**COREY FULLER-LYONS BY HIS TUTOR NITA LYONS v STATE OF NEW SOUTH WALES (S81/2015)**

Court appealed from: New South Wales Court of Appeal  
[2014] NSWCA 424

Date of judgment: 9 December 2014

Special leave granted: 17 April 2015

On 29 January 2001 Corey Fuller-Lyons, aged eight at the time, and his two brothers (aged 11 and 15) boarded an intercity train in Sydney that was bound for Newcastle. They travelled in the front carriage. A few minutes after the train had left Morisset station, and while it was travelling at approximately 100 km/h, Corey fell from it and was severely injured. Corey's brothers later noticed that Corey was missing but they did not see his accident.

When such trains were stationary at a platform, any open doors were normally closed and locked by a mechanism activated by a guard travelling in the rear carriage. At Morisset station, the curvature of the platform was such that a train guard could not see the front carriage. The guard however would rely upon a station assistant's "all clear" signal to activate the door-closing mechanism before the train departed. The forward doors of the carriage on which Corey travelled were later found to have been interfered with during the journey to Newcastle but they were nevertheless able to close and lock sufficiently.

Corey sued the Respondent ("the State") in negligence. At the trial, there was evidence that if a pair of train doors was not fully closed, an eight-year-old boy with his back to one of the doors might be able to push the other door far enough for him to pass through the gap. (Due to Corey's cognitive impairment, his evidence was given no weight in respect of his fall from the train.)

On 11 April 2014 Justice Beech-Jones awarded Corey more than \$1.5 million in damages. His Honour found that when the train left Morisset station, Corey's torso was probably between the front left doors (perhaps because Corey had interfered with them). Corey would then have forced the doors a little further apart before falling out of the train as it rounded a bend to the right. Justice Beech-Jones found that the station attendant at Morisset had negligently failed to see Corey's arm and/or leg protruding from the train when it departed. His Honour also found no contributory negligence on the part of Corey.

An appeal by the State was unanimously allowed by the Court of Appeal (McColl & Macfarlan JJA, Sackville AJA). Their Honours held that the finding of negligence could not stand, as other possible scenarios (involving no failure on the part of the station attendant) were not less likely than the one found by Justice Beech-Jones. Those scenarios included Corey's torso being between the doors with no protruding limb visible to the station attendant. They also included the doors having been wedged apart by an object such as a bag, a bottle or a large ball. The Court of Appeal found no reason to suppose that such an object was not available to Corey, who bore the onus of proving that the scenario favourable to his claim was the most probable one.

The grounds of appeal include:

- There was no basis upon which the Court of Appeal could set aside the trial judge's finding of fact.
- The Court of Appeal erred in treating the trial judge's findings of fact as "impermissible conjecture or speculation".
- The reasoning of the Court of Appeal contrasted facts actually found on the evidence with possibilities for which there was no evidence and reasoned by that means that the Appellant had failed to prove his case.