



HIGH COURT OF AUSTRALIA

Public Information Officer

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DARREN GIFFORD v STRANG PATRICK STEVEDORING PTY LTD
KELLY GIFFORD v STRANG PATRICK STEVEDORING PTY LTD
MATTHEW GIFFORD v STRANG PATRICK STEVEDORING PTY LTD

An employer owed a duty of care to a dead worker's children to guard against nervous shock to them as a result of their father's death, the High Court of Australia held today.

Barry Gifford, a wharf labourer and wharf clerk with Strang Patrick Stevedoring, was killed in a forklift accident at Sydney's Darling Harbour on June 14, 1990. His family was told of his death later that day and did not see his disfigured body. Strang Patrick admitted negligence causing Mr Gifford's death. The issue was whether Strang Patrick owed a duty of care to the children, who brought claims for damages for negligently inflicted psychiatric injury. The children's claim they suffered psychiatric injury has not yet been determined.

The New South Wales District Court dismissed the children's claims in 1999, holding that under section 4 of the Law Reform (Miscellaneous Provisions) Act 1944, Strang Patrick was under no liability for their alleged nervous shock because Mr Gifford had not been killed, injured or put in peril within their sight or hearing. The NSW Court of Appeal in 2001 concluded that section 4 did not exclude liability at common law, but it held that because the children did not directly perceive the event resulting in their father's death or its aftermath there was no duty of care at common law.

After the Court of Appeal decision, the High Court handed down its decision in *Annetts v Australian Stations Pty Ltd*, in which it held that the parents of a teenage jackaroo who died in the Western Australian desert, could claim for nervous shock upon hearing of their son James's death. Mr and Mrs Annetts also had no direct perception of an incident or its aftermath. The High Court held the Gifford children's claims would need to be reconsidered in light of the *Annetts* decision.

The Court held that as an employer Strang Patrick was under a duty of care to Mr Gifford. It held that Strang Patrick also owed his children a duty of care to take reasonable care to avoid causing them a psychiatric illness as a consequence of their father's death in the course of his employment. The Court held that section 4 of the Law Reform (Miscellaneous Provisions) Act did not seek to exhaustively define liability and was intended to confer rather than take away rights.

The High Court unanimously allowed each appeal and ordered that the children's claims be remitted to the District Court for determination of whether the children suffered psychiatric injury.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*