



HIGH COURT OF AUSTRALIA

Public Information Officer

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BRADLEY JOHN DOSSETT v TKJ NOMINEES PTY LTD

The High Court of Australia today allowed an appeal by an injured worker after courts in Western Australia held he could not take action against his employer because of a change in the law.

Mr Dossett suffered back and shoulder injuries in 1996 while operating a front-end loader at the Moore River limestone quarry. At that time, he required the leave of the WA District Court to commence proceedings at common law to recover damages for personal injury if there was a serious disability. On 1 July 1998, by originating summons filed in the Court, Mr Dossett sought such leave under section 93D of the Workers' Compensation and Rehabilitation Act 1981. The application was listed for hearing on 8 October 1999, but on 5 October the Workers' Compensation and Rehabilitation Amendment Act received royal assent and came into effect. The amendment Act replaced several sections including section 93D.

A transitional provision, section 32, said the new Act did not apply to proceedings commenced before 5 October, or to proceedings where the District Court had already given leave. Mr Dossett said he was entitled to proceed under the earlier regime even though his application did not fall within section 32, because his application was saved by section 37 of the Interpretation Act. This provides that a repeal does not affect any legal proceeding in respect of a right created under an earlier proceeding so that the proceeding may be continued as if the repeal had not happened.

The District Court held that it lacked power to grant leave to commence proceedings because his injury did not meet criteria under the new Act. The Full Court of the WA Supreme Court dismissed Mr Dossett's appeal, holding that because his application for leave had not been determined before 5 October 1999 the transitional provision did not save his application.

The High Court overturned the Full Court's decision. It rejected the employer's submission that there was no repeal in the sense required by the Interpretation Act because new provisions were substituted for the old ones. The High Court held that section 32 of the amendment Act contained no intention to oust section 37 of the Interpretation Act.

The Court unanimously allowed the appeal, holding that section 93D of the 1981 Act continued to apply to Mr Dossett's pending application and that the District Court erred in dismissing the application. It remitted the application for leave to the District Court for determination.

- *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.*