



HIGH COURT OF AUSTRALIA

Public Information Officer

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ANDAR TRANSPORT PTY LTD v BRAMBLES LIMITED

Brambles could not claim an indemnity against liability for negligence in the case of an injured driver, Daryl Wail, but it was entitled to a contribution towards an award of damages from Mr Wail's company, the High Court of Australia held today.

Brambles provides laundry delivery services to hospitals but since 1990 it has contracted out the work. Mr Wail had been a driver for Princes Linen Service, which was taken over by Brambles. When Brambles decided to contract out laundry deliveries, Mr Wail and Andrew Parker set up Andar Transport and bought the truck from Brambles. Mr Wail was employed as a driver. On 26 July 1993, Mr Wail, then aged 28, loaded a truck with 22 trolleys of clean linen at Brambles laundry for delivery to Cotham Private Hospital in Kew in Melbourne. While unloading, a trolley became jammed against another. Attempting to pull it free Mr Wail felt a searing pain across his lower back. His lumbosacral disc had been damaged and he could no longer work as a truck driver.

Mr Wail commenced negligence proceedings against Brambles in 1998 in the Victorian County Court, claiming Brambles failed to ensure fully laden trolleys could be manoeuvred without risk of injury. A jury found in favour of Mr Wail and he was awarded damages totalling \$415,000. After subtracting \$104,411.60 pursuant to section 135A of the Accident Compensation Act and a reduction of 35 per cent for Mr Wail's contributory negligence, the Court entered judgment for him of \$201,822.46 plus interest. This result is not the subject of the appeal to the High Court.

Brambles joined Andar as a party in the proceedings and sought an indemnity from Andar in respect of any damages Brambles might be ordered to pay or contribution due to Andar's alleged negligence as Mr Wail's employer. The County Court dismissed Brambles' third-party claims against Andar. In the Court of Appeal Brambles appealed against the outcomes of both the original proceeding and the third-party proceeding. The Court dismissed the appeal on the first but allowed the appeal on the latter. It held that the contract between Brambles and Andar indemnified Brambles against liability so did not need to consider the extent of the contribution Brambles was also entitled to under section 23B of the Wrongs Act.

Andar appealed to the High Court, arguing that the Court of Appeal erred in concluding Andar was contractually bound to indemnify Brambles and that it erred in holding that a claim for contribution against Andar was otherwise available. The High Court, by a 6-1 majority, held that Andar was not obliged to indemnify Brambles as indemnity clauses in the contract did not extend to injured drivers. However it held that a claim for contribution was available to Brambles. The Court held that an employer such as Andar owed a duty to its employees, including directors, to provide a safe system of work in the loading and unloading of trolleys. The Court allowed the appeal and remitted the case to the Court of Appeal for calculation of any contribution to which Brambles was entitled.

- *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.*