



HIGH COURT OF AUSTRALIA

Public Information Officer

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BRIAN WILLIAM POVEY v QANTAS AIRWAYS LIMITED AND BRITISH AIRWAYS PLC

Mr Povey, who suffered from deep-vein thrombosis after an international flight, would not be able to establish a cause of action against the airlines, the High Court of Australia held today.

Mr Povey, now 63, left Sydney for London on a Qantas flight on 15 February 2000 and arrived back on 20 February 2000 on a British Airways flight. Both seats were in economy class. Mr Povey alleged that during or immediately after these flights he suffered from DVT and consequently suffered a stroke, pulmonary embolism, chronic chest, lung and leg pain, breathing difficulties, impaired mobility, thrombosis of the right leg, and shock, anxiety and depression. He alleged the DVT was caused by the conditions of travel, including cramped seating from which it was not easy to move, discouragement of movement around the cabin, the serving of alcohol, tea and coffee, and the lack of warning about the risk of DVT and information on reducing that risk.

Mr Povey commenced proceedings in the Victorian Supreme Court against Qantas and BA, claiming damages for personal injury pursuant to the *Civil Aviation (Carriers' Liability) Act* and Article 17 of the Warsaw Convention on international air carriage. He also claimed damages for negligence from the Civil Aviation Safety Authority, but those proceedings are in abeyance, pending the outcome of the High Court appeal. Qantas and BA each sought summary judgment, alleging the claims made against them were bound to fail. The applications failed, and the airlines appealed to the Court of Appeal. By majority, it allowed the appeal and struck out Mr Povey's pleading against the carriers and permanently stayed the action. He appealed to the High Court.

Article 17 provides that a carrier is liable for the death, wounding or bodily injury suffered by a passenger, if the accident which caused the damage took place on board the aircraft or while embarking or disembarking. Mr Povey submitted that "accident" should be interpreted broadly to include omissions as well as acts occurring on an aircraft, and that it covered a failure to warn of the known dangers of DVT, possibly combined with the flight conditions. Both sides endorsed a formulation from the United States Supreme Court in *Air France v Saks*, that a passenger's injury is caused by an accident only if caused by an unexpected or unusual event or happening that is external to the passenger.

The High Court held that, on the facts alleged, Mr Povey's condition was not caused by an accident. It held that Mr Povey's allegations, if proved, would not establish a cause of action against the carriers. The Court, by a 6-1 majority, dismissed the appeal. One Justice would have allowed the appeal in part.

- *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.*