



HIGH COURT OF AUSTRALIA

Public Information Officer

10 August 2005

AIR LINK PTY LIMITED v MALCOLM IAN PATERSON
MALCOLM IAN PATERSON v AIR LINK PTY LIMITED
AGTRACK (NT) PTY LTD (trading as Spring Air) v ANN CHRISTINE HATFIELD

The two-year time limit on claims for compensation in airline accidents under the Commonwealth *Civil Aviation (Carriers' Liability) Act* was the subject of these matters which were decided by the High Court of Australia today.

In a statement of claim issued out of the District Court of New South Wales on 22 September 2000, Mr Paterson claimed damages from Air Link for personal injuries caused on 25 September 1998 when a mobile stair was not properly attached to an aircraft from which he was alighting in Dubbo and he fell to the ground. Mrs Hatfield's husband, Stephen, died on 14 August 1997 when a chartered plane on a sightseeing trip crashed in the Northern Territory. By writ and attached statement of claim filed on 22 January 1999 in the Victorian Supreme Court, Mrs Hatfield sought damages against Spring Air. Mr Paterson was changing planes en route to the Gold Coast and Mr Hatfield's tourist flight from the Kimberleys in Western Australia. Interstate flights or flights between a state and a territory or within a territory come within the *Carriers' Liability Act*. The Act displaced operation of NT law, state legislation was rendered invalid to the extent of inconsistency with the Act, and no action could be founded in tort or contract, with liability under Part IV of the Act substituting for any other civil liability. Rights to compensation for death or injury under Part IV are treated as extinguished under section 34 if no action had been brought within two years. Section 34 implemented an international convention.

Neither Mr Paterson's nor Mrs Hatfield's statements of claim referred to the *Carriers' Liability Act*. The NSW District Court rejected Air Link's motion to dismiss Mr Paterson's action and the airline's submission that the statement of claim could not be regarded as an action brought under Part IV. The Court of Appeal allowed an appeal from Air Link. Mr Paterson then successfully applied to the District Court for leave to amend his statement of claim to expressly rely on Part IV. An appeal from Air Link was dismissed and it appealed to the High Court. In the first matter, an application for special leave to appeal from Mr Paterson was argued as an appeal and was heard with the appeal from Air Link. The Court today unanimously granted special leave and decided both appeals in Mr Paterson's favour, holding that an action had been instituted by Mr Paterson under Part IV by his statement of claim, thus was within the two-year period fixed by section 34.

The Victorian Supreme Court granted Mrs Hatfield leave to file an amended statement of claim grounding her action within the Act. The Court of Appeal dismissed an appeal by Agrack. The High Court held that if Mrs Hatfield's claim had indeed been extinguished it could not be revived, but the Court found that sufficient facts had been pleaded to raise a claim so that she had properly brought an action within two years of 14 August 1997 and there was no extinguishment under section 34. The facts alleged in the pleadings were sufficient to show that Part IV applied. The Court unanimously dismissed the appeal by Agrack.

- *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.*