



HIGH COURT OF AUSTRALIA

Public Information Officer

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BARBARA MARY JOSEPHINE NEILSON v OVERSEAS PROJECTS CORPORATION OF VICTORIA AND MERCANTILE INSURANCE (AUSTRALIA) LTD

The High Court of Australia today held that a personal injury claim by an Australian individual against an Australian company arising from an accident in China could be determined in Australia by reference to Australian law, by reason of the relevant provisions of the Chinese civil code.

Mrs Neilson, now 71, was injured in 1991 when she fell down stairs in an apartment in which she and her husband were living in the Chinese city of Wuhan. Her husband, George Neilson, worked for the Overseas Projects Corporation (OPC), a company owned by the State of Victoria and involved in a joint venture with the Chinese government by which it provided experts to conduct training courses at the China Iron and Steel Training Centre at the Wuhan Iron and Steel University. Mr Neilson taught organisational behaviour and Mrs Neilson was a part-time personal assistant to the Australian director of the training centre. The accident occurred when Mrs Neilson got up during the night to get a glass of water from the kitchen downstairs. The stairwell lacked a balustrade, about which the Neilsons had complained to OPC. As Mrs Neilson reached for the light switch she miscalculated and fell heavily down the stairs, suffering head and back injuries.

In 1997, after the Neilsons returned home to Western Australia, Mrs Neilson instituted proceedings in the WA Supreme Court. She sued OPC for damages for injuries suffered as a result of the company's negligence. Mrs Neilson claimed that the stairs were dangerous and that OPC had breached its duty to take reasonable care for her safety. At the 2002 trial, OPC sought to rely on Chinese law which had a one-year limitation period for personal injury claims. Justice John McKechnie invoked Article 146 of China's General Principles of Civil Law which provides that in compensation cases, if both parties are foreign nationals from the same country, the law of their own country may be applied. He held that Mrs Neilson's claim was not statute-barred by Chinese law and held OPC liable and gave judgment for \$300,000, a sum agreed by the parties.

OPC appealed to the Full Court of the Supreme Court which held that Justice McKechnie was wrong to invoke Article 146 and to apply Australian law. Mrs Neilson appealed to the High Court. Questions of duty, breach and damages are not in issue.

The High Court, by a 5-2 majority, allowed the appeal. It held that the Australian rule which directed Justice McKechnie to apply the law of the place where the harm happened did not require him to ignore the fact that Chinese law made special provision for claims for damages where both parties to the claim were nationals of the same foreign country.

- *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.*