



HIGH COURT OF AUSTRALIA

Public Information Officer

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GRAHAM COOTE v FORESTRY TASMANIA

The High Court of Australia today upheld a tree feller's claim that he had suffered injury as a result of negligent instructions given to him by Forestry Tasmania.

In September 1998, Mr Coote, who had 20 years' experience as a tree feller, was working for AG & GR Padgett Pty Ltd in a logging coupe in a State forest in northern Tasmania. Two sawlog trees he felled brushed a third tree as they fell. Mr Coote later walked under that tree. A branch fell and hit him, leaving him a paraplegic. Mr Coote contended that he would have felled the brushed tree, a pulpwood tree, before felling the two sawlog trees but he had been directed not to fell pulp trees unless they posed a real danger. Ordinarily, felling operations permitted removal of both sawlogs and pulpwood, but the timber harvesting plan for the coupe required mainly sawlogs. Forestry Tasmania's officer, Peter Johnstone, Padgett's former logging foreman, allegedly told Mr Coote to cut sawlogs and only to remove pulpwood trees if they would be directly struck, rather than merely brushed, by another falling tree.

Mr Coote brought an action in the Tasmanian Supreme Court for damages for breach of statutory duty and negligence against four defendants. Claims against Padgett and Wesley Vale Engineering Pty Ltd, which had engaged Padgett to harvest timber from the coupe, were settled and the action against the State of Tasmania was discontinued early. Justice Alan Blow found Mr Coote had been injured as a result of Forestry Tasmania's negligence as it failed to instruct him to fell first any trees that "potentially posed a danger" when the risk of injury from falling trees was reasonably foreseeable. Instead, Mr Coote was only told to remove trees he considered "too much of a danger to leave standing". Justice Blow reduced the recoverable damages by one-sixth for Mr Coote's contributory negligence of walking under the pulp tree shortly after it was brushed. Damages and questions of contribution to those damages between the defendants have yet to be assessed.

The Full Court of the Supreme Court allowed an appeal by Forestry Tasmania. It held that Mr Coote's failure to fell the pulp tree first was an error of judgment by him and that he understood he had the right to fell any trees that potentially posed a danger.

He appealed to the High Court, which unanimously allowed the appeal. It held that the Full Court fell into factual error by holding that Mr Coote was free to fell any tree that posed a potential danger, rather than any tree that posed too much of a danger, during the harvest of this particular coupe. The Full Court erred in failing to treat the unusual requirements of this harvest, with Mr Johnstone's particular instructions about not felling pulp trees as Mr Coote normally would, as significant. The High Court held that there was no error in Justice Blow's reasoning. It ordered that, because Forestry Tasmania's Full Court appeal against Justice Blow's findings about contributory negligence and contribution between defendants remains undetermined, the matter be remitted to the Full Court for consideration of the remainder of that appeal.

- *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.*