HIGH COURT OF AUSTRALIA

Public Information Officer

26 September 2008

PAUL ANTHONY IMBREE v JESSIE McNEILLY AND QANTAS AIRWAYS LIMITED
JESSIE McNEILLY AND QANTAS AIRWAYS LIMITED v PAUL ANTHONY IMBREE
[NO 2]

The High Court of Australia today increased the damages awarded to a passenger left a tetraplegic in an accident when a 16-year-old learner driver was driving.

Mr Imbree's four-wheel-drive crashed while his son's friend, 16-year-old Jesse McNeilly (spelled "Jessie" in the title of the appeal), was driving on a gravel road in the Northern Territory in April 2002. Both boys were sometimes allowed to drive on the trip from New South Wales to the NT.

Mr Imbree, a Qantas employee, brought proceedings in the NSW Supreme Court against Mr McNeilly as driver and Qantas as owner of the vehicle. Justice Timothy Studdert gave judgment for Mr Imbree. He found Mr McNeilly had been careless, but that Mr Imbree had been contributorily negligent. His damages, assessed at more than $9.5 million, were therefore reduced by 30 per cent. Mr McNeilly and Qantas appealed to the Court of Appeal, which held that the damages should be reduced by two-thirds for contributory negligence. Mr Imbree appealed to the High Court, which on 28 August 2008 allowed the appeal and restored the 30 per cent reduction to the damages award. The Court overturned its 1986 decision in *Cook v Cook*, in which it held that the standard of care owed was what was reasonably expected of an unqualified and inexperienced driver. Instead, the Court held that a learner driver was subject to the same objective standard of care as any other driver rather than to a lesser standard based on experience.

Mr Imbree made three offers of compromise ahead of the trial, the appeal to the Court of Appeal and the appeal to the High Court. All were refused. The first offer to settle was for $7.1 million plus costs, the second $7.55 million plus costs, and the third was to settle for a little less than $7.225 million. The third offer was based on damages of $11,115,290, reduced by 35 per cent for contributory negligence, together with interest and the costs of the trial and High Court proceedings, with each party bearing its own costs in the Court of Appeal. The parties have since agreed on the quantum of damages, the amount of interest, the amount for which Mr McNeilly and Qantas should have credit for the amount already paid to Mr Imbree, and that Mr Imbree should have his costs in the Supreme Court on an ordinary basis up to 22 March 2006 and then on an indemnity basis. Mr McNeilly and Qantas accepted that Mr Imbree should have his costs of the Court of Appeal and High Court proceedings but that they should be on an ordinary basis and not on an indemnity basis.

The High Court held that the consequential orders upon which the parties were now agreed meant that Mr Imbree would have judgment of $7,926,535.72, which was more than his three offers. It held that in these circumstances he should have his costs of the trial after the first offer of compromise and the appeals to the Court of Appeal and the High Court on an indemnity basis. The Court set aside Justice Studdert's judgment and ordered that Mr Imbree's damages be assessed at $11,323,622.46, reduced by 30 per cent for contributory negligence to $7,926,535.72, plus interest calculated up to 12 September 2008 of $875,000 and then $1,100 a day until payment, and that Mr McNeilly and Qantas have credit of $3,744,060.84 for amounts already paid.

- *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.*

Address: PO Box 6309, Kingston ACT 2604 Telephone: (02) 6270 6998 Fax: (02) 6270 6909
Email: fhamilton@hcourt.gov.au