



HIGH COURT OF AUSTRALIA

Public Information Officer

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MATINA LUJANS v YARRABEE COAL COMPANY PTY LTD AND JALGRID PTY LTD

The High Court of Australia today allowed an appeal against a decision of the New South Wales Court of Appeal which had overturned a decision of the NSW Supreme Court awarding damages to the victim of a road accident. The High Court held that the Court of Appeal had not discharged its legal duty on the appeal, which required it to review the evidence before the trial judge.

At 6.20am on Friday 18 September 1998 Matina Lujans, then aged 28, was driving to work at a central Queensland coal mine when she had an accident that left her a quadriplegic. She turned off the Capricorn Highway on to a mining road controlled by Yarrabee Coal. Almost 6km along the road where Ms Lujans was out of sight of two drivers behind her, the left wheels of her Toyota HiLux gradually went on to the shoulder of the road at the start of a sweeping right-hand bend. The vehicle swung sharply right, travelled across the road and rolled over. Ms Lujans said she had slowed from 100km per hour to between 80 and 90km per hour before the accident because for a reason she could not identify she felt unsafe. The edge of the road was a ridge of soil left after grading operations, known as a rill. The 35km clay and gravel road was graded every week to remove a build-up of coal dust from 500 loads carried on large road trains, each hauling 400 tons of coal. The road was graded in 7km sections from Sunday to Thursday nights. The section where Ms Lujans had her accident on a Friday had not been graded since the previous Sunday night. The road was also watered each night to reduce dust and there was evidence that it was still wet or moist at the time of the accident.

Ms Lujans sued Yarrabee Coal and its road maintenance contractor, Jalgrid, in the NSW Supreme Court. Acting Justice Harvey Cooper found that, due to coal and dust being spread over the road from rill to rill, drivers had difficulty distinguishing between the hard roadway surface and the softer shoulder. Ms Lujans was awarded \$10,802,980.43 in damages against Yarrabee and Jalgrid, which was reduced by 20 per cent for contributory negligence to \$8,759,510.55 by her failure to stay on the hard compacted centre of the road.

The Court of Appeal allowed an appeal by Yarrabee and Jalgrid. It held that the sole cause of the accident was driver error because Ms Lujans had not kept a proper lookout. The Court of Appeal noted that the road's appearance was not deceptive and the shoulder was not so soft as to contribute to the accident. Ms Lujans sought special leave to appeal to the High Court. She complained that although the appeal rehearing lasted more than two days the Court of Appeal failed to conduct the rehearing required by law as it did not consider a substantial body of evidence, it did not refer to Acting Justice Cooper's assimilation of that evidence into his judgment, it misunderstood evidence and proceeded on wrong factual bases, and it wrongly relied on its own interpretations of photographs over those of Justice Cooper.

The application for special leave to appeal to the High Court was referred to a five-member Bench and argued as if on an appeal. The Court unanimously granted special leave to appeal, allowed the appeal and remitted the proceedings to the Court of Appeal for rehearing. It held that the Court of Appeal had wrongly relied on copies of photographs in appeal books while the originals – to which the Court of Appeal had access – arguably showed a layer of black coal dust all the way across the road. Acting Justice Cooper and witnesses at the trial had used originals, not copies. The High Court held that the Court of Appeal overlooked the cross-examination of experts about speed and the condition of the road at the time of the accident. It made errors in its analysis of evidence about the vehicle's speed and did not explain why it had not taken account of evidence about the trajectory of the vehicle and how Ms Lujans lost control of it. The High Court held that the Court of Appeal's conclusions were not necessarily wrong but that important steps in its reasoning were shown not to be valid, which meant that it had not reheard the matter as it should.

- *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.*