



HIGH COURT OF AUSTRALIA  
Manager, Public Information

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WICKS v STATE RAIL AUTHORITY OF NEW SOUTH WALES KNOWN AS STATE RAIL;  
SHEEHAN v STATE RAIL AUTHORITY OF NEW SOUTH WALES KNOWN AS STATE RAIL  
[2010] HCA 22

The High Court today held that two policemen, who, in 2003, attended the scene of the Waterfall train crash after the derailment had occurred, were not barred from claiming damages for psychiatric injury on the basis that they had not "witnessed, at the scene, victims being killed, injured or put in peril" within the meaning of s 30(2)(a) of the *Civil Liability Act 2002* (NSW).

On 31 January 2003 the appellants, who were serving members of the New South Wales Police Force, attended the scene of the Waterfall train crash. They were among the first to arrive at the scene, soon after the accident had happened, and were directly involved in the rescue operation. They saw injured and deceased passengers. The appellants each brought a claim in the Supreme Court of New South Wales for damages for resulting psychiatric injury against the State Rail Authority of New South Wales ("State Rail"). They alleged that they had suffered psychiatric injuries due to State Rail's negligence. That negligence was said to be State Rail's failure to ensure that the train's "deadman's" safety device was operating, or was designed to operate, in the event of a driver's incapacitation.

Section 30(2)(a) of the *Civil Liability Act* provides that a plaintiff is not entitled to recover damages for pure mental harm unless "the plaintiff witnessed, at the scene, the victim being killed, injured or put in peril". Both the trial judge and the Court of Appeal concluded that neither appellant had witnessed a victim or victims of the derailment "being killed, injured or put in peril".

The appellants were granted special leave to appeal to the High Court on 12 February 2010. The Court held that the trial judge should have begun his consideration by asking whether State Rail owed a duty to each appellant to take reasonable care not to cause him psychiatric injury. Assuming, without deciding, that State Rail owed the appellants a relevant duty of care, the Court went on to consider whether the condition in s 30(2)(a) of the *Civil Liability Act* was satisfied.

The Court held that it would not be right to read s 30(2)(a) as though it were based on the assumption that all cases of death, injury or being put in peril are events that begin and end in an instant. There are cases where death, or injury, or being put in peril takes place over an extended period, and this was such a case. Two inferences could reasonably be drawn from the given facts: the first was that some who suffered physical trauma in the derailment suffered further injury as they were removed from the wrecked carriages; the second was that many who were on the train suffered psychiatric injuries as a result of what happened to them in the derailment and at the scene. They continued to suffer such injuries after the appellants arrived. The Court held that if either of those inferences was drawn, the appellants witnessed, at the scene, victims of the accident "being injured". Even if neither of those inferences could be drawn, the appellants nevertheless arrived at the scene of the accident when those who had survived the derailment remained in peril.

The plaintiffs therefore witnessed, at the scene, victims being "injured" or "put in peril". The Court allowed each appeal and remitted each matter to the Court of Appeal for consideration of whether State

Rail owed the appellants a relevant duty of care and whether the appellants suffered a recognised psychiatric injury of which the negligence of State Rail was a cause.

- *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.*