



HIGH COURT OF AUSTRALIA

12 December 2012

STATE OF NEW SOUTH WALES v JAYSON WILLIAMSON

[2012] HCA 57

The High Court today held that a claim for personal injury damages based on an intentional tort was a claim for personal injury damages within the meaning of s 338(1) the *Legal Profession Act* 2004 (NSW) ("Legal Profession Act") and that a claim for personal injury damages under s 338(1) of the Legal Profession Act did not include a claim for damages for false imprisonment.

The respondent sued the State of New South Wales ("State") in the District Court of New South Wales for damages for trespass to the person and false imprisonment. The respondent alleged that the State was vicariously liable for the actions of police officers who had thrown him to the ground, restrained him, and confined him in a police wagon and then released him without charge. The action in the District Court of New South Wales was settled and orders were made by consent to dispose of the proceedings. The damages awarded were for \$80,000, with costs to be assessed or agreed.

As no agreement could be reached about the costs that were to be allowed, the respondent applied for an order transferring the proceedings to the Supreme Court of New South Wales and for a declaration that costs in the proceedings were not regulated by s 338 of the Legal Profession Act. Section 338(1) of the Legal Profession Act provided that where the amount recovered on a claim for personal injury damages did not exceed \$100,000, the maximum costs for legal services provided to a plaintiff were fixed at 20% of the amount recovered or \$10,000, whichever is greater.

Section 337(1) of the Legal Profession Act provided that "personal injury damages" had the same meaning as in Part 2 of the *Civil Liability Act 2002* (NSW) ("Liability Act"). The Liability Act limited awards for personal injury damages. The awards limited by the Liability Act were subject to specific exceptions contained within the Liability Act. The central points of difference between the parties were, first, whether the definition of "personal injury damages" was to be construed by reference only to the words of the definition in the Liability Act or by reference to both the words of the definition and the limited operation which the Liability Act had in respect of awards of personal injury damages as a result of the relevant exclusions contained within the Liability Act and, secondly, whether a claim for personal injury damages extended to a claim for false imprisonment.

In the Supreme Court of New South Wales, it was ruled that the respondent's claim for costs was not regulated by s 338(1) of the Legal Profession Act. An appeal to the Court of Appeal of the Supreme Court of New South Wales was dismissed. By special leave, the State appealed to the High Court.

The High Court dismissed the appeal. A majority of the Court held that s 338(1) of the Legal Profession Act applied if the amount recovered on a claim for personal injury damages did not exceed \$100,000, whether the claim is framed in negligence or as an intentional tort. The majority also held that a claim for personal injury damages does not include a claim for damages for false imprisonment, which would commonly include damages for deprivation of liberty. As the settlement was a lump sum settlement and the agreed settlement amount could not be attributed between the claim for trespass and the claim for false imprisonment, it was not possible to say whether the settlement sum was for damages for personal injury.

- *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.*