HIGH COURT OF AUSTRALIA

Public Information Officer

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INSURANCE COMMISSION OF WESTERN AUSTRALIA v CONTAINER HANDLERS PTY LTD, UNION DES ASSURANCES DE PARIS AND ASHLEY ROBERT SUTTON

The High Court of Australia today held that a third-party vehicle insurance policy issued under West Australian law did not cover injuries caused while undertaking urgent roadside repairs.

In March 1998 Mr Sutton, then aged 23, was travelling in a prime mover driven by Jason Reibel. He was a crane operator for Brambles Australia Ltd. After leaving a crane at the Nifty Strikes copper mine Mr Sutton was being transported back to Port Hedland when the injury occurred. During the journey, smoke was seen coming from a rear wheel hub of the prime mover's low loader. Mr Reibel set out to remove both wheels on that axle and to chain it up. While Mr Sutton was assisting, the axle slipped and jammed his left hand against the chassis, injuring it badly.

Mr Sutton sued Container Handlers, Mr Reibel's employer and owner of the prime mover, in the WA District Court which awarded him $926,043.36 and found that the company should have equipped its vehicles to carry out emergency roadside repairs to wheels and axles. Container Handlers also brought third-party claims against the Insurance Commission and Union des Assurances de Paris (UAP) under policies issued by those entities. Both claims failed at first instance but the Full Court of the WA Supreme Court upheld the claim against the Insurance Commission. The Insurance Commission appealed to the High Court against the Full Court's orders to indemnify Container Handlers for the damages payable to Mr Sutton. It joined UAP and Mr Sutton as the second and third respondents but at the conclusion of argument in the High Court it discontinued its appeal against Mr Sutton.

The issue in the appeal was the extent to which the Insurance Commission's insurance policies for the prime mover and low loader applied to Mr Sutton's injury. Under the *Motor Vehicle (Third Party) Insurance Act*, the policies would only apply if the injury was "directly caused by, or by the driving of, the motor vehicle".

The High Court held that the policies did not apply in the circumstances in which Mr Sutton received his injury. Mr Sutton's injury was not *directly* caused by the driving of the prime mover and low loader and was not caused by the vehicles running out of control. Mr Reibel was not driving the prime mover and low loader but was preparing them for driving. A mere connection between the injury and the vehicles was insufficient for a successful claim against the Insurance Commission. To come within the indemnity given by a policy, a causal connection between the injury and the driving of a motor vehicle was required.

The Court unanimously allowed the Commission's 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.*

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