



HIGH COURT OF AUSTRALIA

Public Information Officer

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ROADS AND TRAFFIC AUTHORITY OF NEW SOUTH WALES v PHILIP JAMES DEDERER AND GREAT LAKES SHIRE COUNCIL

The Roads and Traffic Authority did not breach its duty of care to a teenager who became a partial paraplegic by diving off a bridge, the High Court of Australia held today.

On 31 December 1998, Mr Dederer, then aged 14, dived from the bridge across the Wollamba River, struck a submerged sandbank and suffered a severe spinal injury. Pictorial signs prohibited diving and written signs prohibited climbing on the bridge. Mr Dederer spent family holidays in the area so he knew of the sandbar from boating and that the water varied in depth, but he had not jumped or dived from the bridge until jumping twice the day before the accident. Both times he was totally submerged in the water and his feet did not touch bottom. Mr Dederer had frequently seen people jumping and occasionally diving off the bridge. He had seen a “no diving” sign but did not think the activity was dangerous. Council officers and police had been unable to stop other people diving. Mr Dederer’s dive was the first reported accident since the bridge was built in 1959.

Mr Dederer sued the RTA and the Council in the NSW Supreme Court for negligence. Justice John Dunford found for Mr Dederer against both defendants but reduced damages by 25 per cent for Mr Dederer’s contributory negligence. Mr Dederer was awarded \$840,000, with RTA ordered to pay 80 per cent of the damages and the Council 20 per cent. Justice Dunford found that the RTA was negligent in failing to erect signs warning of the danger of shifting sands and variable depth, in failing to replace horizontal railings with vertical pool-style fencing, and in failing to change the flat top of the handrail to a triangular shape that would be difficult to stand on.

The Court of Appeal held that the NSW *Civil Liability Act* meant that the Council was not liable but that the Act did not apply to the action against the RTA. The Court of Appeal, by majority, dismissed the appeal by the RTA apart from increasing the proportion of Mr Dederer’s contributory negligence from 25 per cent to 50 cent. The RTA appealed to the High Court and Mr Dederer cross-appealed against the increase in his contributory negligence. The Council was joined as a second respondent but played no active part in the appeal.

The High Court, by a 3-2 majority, allowed the appeal and dismissed the cross-appeal. It held that a duty of care imposes an obligation to exercise reasonable care, not a duty to prevent potentially harmful conduct. The extent of the obligation owed by the RTA is that of a roads authority exercising reasonable care to see that the road is safe for users exercising reasonable care for their own safety. The Court held that the risk arose not from the state of the bridge but from the risk of jumping into shallow water and shifting sands, which were not under the RTA’s control. The magnitude of the risk and the probability of injury had to be balanced against the expense, difficulty and inconvenience of any alleviating action. New fencing was estimated to cost \$150,000 and a triangular handrail \$108,072 and would not necessarily stop people jumping from bridges. The Court held that the existing “no diving” signs were a reasonable response to the risk and the RTA did not breach its duty of care.

- *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.*