HIGH COURT OF AUSTRALIA

Public Information Officer

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ALLIANZ AUSTRALIA INSURANCE LIMITED v GSF AUSTRALIA PTY LIMITED AND GARRY DAVID OLIVER

An employer's directive to use crowbars to unload heavy transport containers after a mechanical breakdown was the predominant cause of a worker's injury, rather than the breakdown itself, the High Court of Australia held today. This determined which particular legislation would apply for deciding liability for compensation to Mr Oliver.

GSF, which packed food in containers for airline transport, employed Mr Oliver as a maintenance technician. A truck used to carry the containers was fitted with a set of rollers and a motorised T-bar for loading and unloading. In February 1998, the gearbox broke down and the T-bar mechanism became inoperative. GSF sent Mr Oliver and another employee to Sydney Airport to unload the truck by using crowbars to lever the containers, each weighing about a tonne, along the rollers. Mr Oliver suffered an injury to his lower back.

Mr Oliver sued GSF for damages in the New South Wales District Court. The action was referred to arbitration and in November 2001 an award was made in his favour. GSF then applied to the District Court for a limited rehearing to determine whether the case gave rise to an indemnity under either or both of the *Workers Compensation Act* and the *Motor Accidents Act*. If damages were assessed under the former there would be a verdict of $450,000 for Mr Oliver and insurer QBE would be liable to indemnify GSF; if assessed under the latter the award would be $460,000 and Allianz, the compulsory third party insurer of the vehicle, would be liable. The District Court held that the *Motor Accidents Act* was attracted so entered a judgment for Mr Oliver against GSF for $460,000. The Court also ordered Allianz, which has been joined as a party to the proceedings, to pay GSF $230,000 by way of indemnification on the basis that it was a case of dual insurance. Allianz appealed to the NSW Court of Appeal on the ground that the injury was not an "injury" as defined by the *Motor Accidents Act.* The appeal was dismissed, by majority.

Allianz appealed to the High Court, arguing that Mr Oliver's injury was not a result of the use or operation of the vehicle but was caused by the unsafe system of work. GSF contended that the defective mechanism was a cause of his injury and occurred in the course of the vehicle's use or operation for unloading, so the requirements under the *Motor Accidents Act* that the injury be a result of the defect and caused during such use or operation by a vehicle defect were satisfied.

The Court unanimously allowed the appeal, holding that Mr Oliver's back injury was not an injury for the purposes of the Act. It held that there is an "injury" within the meaning of the Act "if, and only if" the injury was the result of a defect in the vehicle. The unsafe system of the employer, in particular the direction to use crowbars to lever the containers, not the defective unloading mechanism, was the predominant and more immediate cause of the back 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.*

Address: PO Box 6309, Kingston ACT 2604 Telephone: (02) 6270 6998 Facsimile: (02) 6273 3025
e-mail: fhamilton@hcourt.gov.au