



HIGH COURT OF AUSTRALIA

Manager, Public Information

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ACQ PTY LTD v GREGORY MICHAEL COOK & ANOR
AIRCAIR MOREE PTY LTD V GREGORY MICHAEL COOK & ANOR

[2009] HCA 28

Today the High Court dismissed appeals by ACQ Pty Ltd and Aircair Moree Pty Ltd, the owner and operator of a crop-dusting aircraft. They had appealed against findings that they were liable for damages to Gregory Cook for serious injuries he suffered when he received an electric shock from a power line knocked down by the aircraft.

On 28 December 2000 the aircraft was crop dusting a cotton field over which a high voltage conductor hung at a height of at least 6.2 metres. During the flight the aircraft struck the conductor. It was dislodged from its supporting pole and left hanging about 1.5 metres above the ground. The responsible energy company (at the time – NorthPower; now known as Country Energy) sent two employees – Mr Cook and Mr Buddee – to deal with the dislodged conductor. The two men agreed that Mr Buddee would drive to a links site about seven kilometres away and isolate the conductor, after which Mr Cook would commence an assessment of the situation in the cotton field. Despite this Mr Cook entered the field before the conductor had been isolated. The ground in the field was uneven and very boggy. Mr Cook stumbled in the muddy conditions. He fell close to the conductor, received an electric shock and was badly injured.

Section 10 of the *Damage by Aircraft Act 1999* (Cth) (DAA) provides that both the operator and the owner of an aircraft are liable if a person suffers an injury caused by, amongst other things, something that is the result of an impact with an aircraft that was in flight immediately before the impact happened. The effect of section 11 of the DAA is that damages are recoverable from both the owner and the operator of the aircraft in respect of an injury to which section 10 applies without the injured person having to prove that the injury had been caused by the owner's and the operator's wilful actions, negligence or default.

Mr Cook sued both ACQ and Aircair for damages pursuant sections 10 and 11 of the DAA. He was successful before the primary judge in the District Court of New South Wales, who awarded him damages of \$953,141.00. The Court of Appeal of the Supreme Court of New South Wales dismissed ACQ's and Aircair's appeals. The High Court granted both ACQ and Aircair special leave to appeal.

The appeals raised the issue of what had "caused" Mr Cook to suffer injury. ACQ and Aircair acknowledged that Mr Cook would not have been in the field except for the fact that the aircraft impacted the conductor and dislodged it. However they argued that, even though the dislodged conductor was potentially unsafe, there would have been no danger to Mr Cook if he had not voluntarily departed from his agreement with Mr Buddee to do nothing until the conductor had been isolated. While they did not argue contributory negligence, ACQ and Aircair submitted that there was not a close enough temporal, geographical and relational connection between the dislodgement of the conductor and the injuries Mr Cook suffered.

In a unanimous decision the High Court rejected these arguments. The Court considered it did not strain the language of the DAA to characterise the events following the impact of the aircraft with the conductor as having "caused" Mr Cook's injuries. The Court concluded that Mr Cook's injuries were caused by the dangerous position of the conductor. The conductor was in a dangerous position because the aircraft had struck it. The High Court dismissed both appeals and ordered ACQ and Aircair to pay Mr Cook's costs of the appeals.

- *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.*