



## HIGH COURT OF AUSTRALIA

Public Information Officer

6 August, 2003

### ANTHONY PETER SUVAAL v CESSNOCK CITY COUNCIL

Mr Suvaal, 35 and a former professional cyclist at the time of his accident, became a quadriplegic when he fell from his bicycle on the edge of Quorrobolong Road near Cessnock on February 2, 1993. He was travelling at 40km an hour and was training with the intention of returning to professional racing. He had ridden along the road hundreds of times before. Although he did not mention it at the accident scene, Mr Suvaal claimed he was brushed by an unidentified motor vehicle and pushed into potholes on the left shoulder of the road. The handlebars then collapsed, causing him to lose control of his bicycle and to crash into a ditch on the opposite side of the road.

Mr Suvaal sued the Nominal Defendant, in place of the unidentified driver, for negligent driving and Cessnock City Council for negligent road construction and maintenance. A hearing before Master Joanne Harrison in the New South Wales Supreme Court only concerned liability, as damages had been agreed at \$2.35 million against the Nominal Defendant and \$2.8 million against the City Council. Master Harrison found in favour of the Nominal Defendant, rejecting Mr Suvaal's claim that a car was involved, but found against the City Council. She held that the accident occurred because Mr Suvaal briefly lost concentration, struck potholes and rough road edges on the left side, the handlebars then fractured and turned anti-clockwise, careering the bike to the other side of the road. Master Harrison found him guilty of contributory negligence and discounted the city council's damages by 20 per cent to \$2.24 million.

The City Council appealed. The NSW Court of Appeal allowed the appeal, holding that Master Harrison had no proper basis for finding in favour of Mr Suvaal when she had rejected his evidence that an unidentified car caused the sudden deviation into the potholes, the fractured steering mechanism and the fall.

The High Court of Australia, by a 3-2 majority, upheld the decision of the Court of Appeal, holding that Master Harrison had erred in finding facts and matters not alleged or put in issue by Mr Suvaal.

- *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.*