



HIGH COURT OF AUSTRALIA

Public Information Officer

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HELEN MARGARET SWEEDMAN v TRANSPORT ACCIDENT COMMISSION

Victoria's Transport Accident Commission (TAC) could pursue an indemnity claim against a New South Wales resident to recover compensation it paid to two Victorian accident victims, the High Court of Australia held today.

Mrs Sweedman was driving her son's NSW-registered car when it collided with a Victorian-registered car carrying John and Helen Sutton on a NSW road in July 1996. The Suttons were both injured and the TAC paid them \$35,310.29 compensation in accordance with Victoria's *Transport Accident Act*. Victoria's compensation scheme is funded by a transport accident charge paid by owners of registered vehicles. For the purposes of the litigation it was assumed that the accident was caused by Mrs Sweedman's negligent driving, but the Suttons did not sue her in tort, the alternative remedy open to them under the NSW *Motor Accidents Act*. The TAC sued Mrs Sweedman for indemnity for that proportion of the compensation paid to the Suttons which was attributable to her negligence, pursuant to section 104(1) of the Victorian Act. The TAC claimed that her third-party insurance, which was compulsory under the NSW Act, extended to cover her for any liability to indemnify the TAC under the Victorian Act. Mrs Sweedman claimed that section 104 of the Victorian Act was inoperative or inapplicable because the Constitution prevented a court from applying it to the exclusion of the NSW Act.

The Victorian County Court, in which the TAC initiated action, referred questions to the Court of Appeal, which answered the questions in favour of the TAC. Mrs Sweedman appealed to the High Court, which, by a 5-1 majority, today dismissed the appeal.

The Court held that there was no constitutional impediment to applying the usual rule that the law of Victoria should apply to the case. Victorian law applied because the obligation to indemnify is sourced in section 104(1), the recovered money will go into the TAC's Transport Accident Fund, and the indemnity obligation only arose after payments had been made from the Fund to the Suttons as Victorian residents. The Court held there was no relevant inconsistency between the Victorian and NSW Acts, because the NSW Act was not directed to blocking claims of the kind created by section 104 of the Victorian Act and also because the compulsory third-party insurance policy does not in any way hinder the ability of the TAC to pursue its indemnity claim.

A majority of the Court also rejected Mrs Sweedman's argument that she suffered discrimination contrary to section 117 of the Constitution because if she lived in Victoria she would not have been subjected to the indemnity claim under section 104(1). It held that there was no differential treatment in the Victorian Act attributable to residence that would enliven section 117.

- *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.*