



HIGH COURT OF AUSTRALIA

19 April 2007

Public Information Officer

GOLDEN EAGLE INTERNATIONAL TRADING PTY LTD AND CHEN GUANG v YU ZHANG by his tutor the Protective Commissioner AND RUI MANUEL SOUSA MENONGA AND JOSE ALCIVO DE FREITAS trading as DMP AUTOMOTIVE REPAIRS

Third-party insurance pay-outs should be taken into account when reducing damages when a claimant's own fault such as failing to wear a seatbelt has contributed to their injuries, the High Court of Australia held today.

Mr Zhang, 33, suffered serious injuries as a passenger in a traffic accident on 24 December 1997 on the F6 freeway between Sydney and Wollongong. The driver, Mr Guang, lost control when the tread came off a tyre. Mr Zhang was thrown from the van. The accident occurred in his employment by Golden Eagle International Trading. In the New South Wales District Court, Mr Zhang sued Golden Eagle, Mr Guang and DMP, which had serviced the vehicle and certified it as roadworthy less than a month before. The action against DMP failed and DMP entered a submitting appearance in the appeal to the High Court. Golden Eagle and Mr Guang admitted liability but alleged that Mr Zhang was contributorily negligent because he did not wear a seatbelt.

Section 45 of the NSW *Motor Accidents Act* imposes a duty on third-party insurers to make certain payments once liability for an accident has been admitted by a person against whom a damages claim is made. Section 45(4) provides that payments made before a claimant obtains a damages judgment is a defence, to the extent of the amount paid, against a damages claim. At trial, Judge Audrey Balla assessed Mr Zhang's damages at \$2,791,761, reduced that by 30 per cent for contributory negligence, allowed an amount for funds management, then deducted the third-party insurance payment of \$409,906, leaving \$1,768,362.

The Court of Appeal held that the \$409,906 should have been deducted first from the total damages before the reduction of 30 per cent for contributory negligence. This left Mr Zhang better off. The Court of Appeal also ordered that the recalculation should use prospective life expectancy tables, not historical tables, both from the Australian Bureau of Statistics.

Golden Eagle and Mr Guang appealed to the High Court, seeking reinstatement of Judge Balla's decision. They submitted that the whole of the damages assessment, including the section 45 payment, is apportioned for contributory negligence, and only then are the section 45 payments deducted from the balance to reach the final amount. Mr Zhang submitted that effect would not then be given to the defence stipulated in section 45(4) if the insurer's payments were treated as part of the total assessment.

The High Court, by a 3-2 majority, allowed the appeal and upheld Judge Balla's method of calculating damages. It held that Mr Zhang's argument would mean that section 45 payments are immunised from the effects of reducing damages for contributory negligence, which would mean an unjust result for the insurer and a windfall to Mr Zhang. The Court unanimously rejected a ground of appeal relating to life expectancy tables and held that the Court of Appeal was correct to use prospective rather than historic tables to get a more accurate assessment of life expectancy.

- *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.*