



## HIGH COURT OF AUSTRALIA

**Manager, Public Information**

10 November 2009

CAL NO 14 PTY LTD t/as TANDARA MOTOR INN & ANOR v MOTOR ACCIDENTS INSURANCE BOARD  
CAL NO 14 PTY LTD t/as TANDARA MOTOR INN & ANOR v SANDRA SCOTT  
[2009] HCA 47

A hotel licensee and a customer made an informal arrangement to avoid the potential consequences of the customer being breathalysed. The customer handed over his motorcycle and its keys to the licensee. Later, having consumed a considerable quantity of alcohol, he required their return. On the way home, riding the motorcycle, the customer had an accident and was killed. The High Court today held that neither the proprietor of the hotel nor the licensee had a legal duty to refuse the customer access to the motorcycle and the keys to prevent him suffering an injury which might result from his consumption of alcohol.

On 24 January 2002 Shane Scott met a friend at the Tandara Motor Inn at about 5.15pm for a drink. A rumour circulated through the hotel that a police breathalyser was operating near Mr Scott's home. At the urging of his friend Mr Scott made an informal arrangement with the licensee to hand over the keys of his wife's motorcycle (which he was driving) and have the motorcycle secured in a storeroom, in order to avoid the police breathalyser. The licensee understood, when the arrangement was made, that Mrs Scott would be called to collect her husband when he wanted to leave.

At about 8.15pm Mr Scott decided to go home but emphatically refused the licensee's offer that his wife be called. He requested the keys to the bike and, to three separate enquiries as to whether he was "right to ride" replied, "Yes, I'm fine". The licensee retrieved the motorcycle from the storeroom and handed the keys over to Mr Scott. He then rode off. Seven hundred metres from his home, which was about seven kilometres from the hotel, he ran off the road and suffered fatal injuries. At the time of the accident his blood alcohol content was 0.253.

In proceedings in the Supreme Court of Tasmania Mrs Scott and the Motor Accidents Insurance Board of Tasmania (MAIB) (which, pursuant to applicable Tasmanian legislation, had paid sums to or on behalf of Mrs Scott) alleged that CAL No 14 Pty Ltd (the proprietor of the Tandara Motor Inn) and the licensee both owed duties of care to Mr Scott, which they had breached. The trial judge held that neither owed any relevant duty of care to Mr Scott. However the Full Court of the Supreme Court of Tasmania, by a majority, held that each of the proprietor and the licensee owed a duty of care to Mr Scott and that their breach of that duty had caused his death. The High Court granted special leave to appeal the Full Court's decision.

In the High Court the MAIB and Mrs Scott (the respondents) argued that the licensee had a duty to comply with the agreement reached between him and Mr Scott to ring Mrs Scott when Mr Scott decided he wanted to go home. In failing to make the call the licensee breached that duty of care, thereby causing Mr Scott's death. The High Court rejected this argument. Even if the licensee had owed such a duty to Mr Scott it was impossible to conclude on the basis of the evidence either that he could have made such a call or, if he had made such a call, that it would have prevented Mr Scott's death. The Court also considered that, if the licensee had owed such a duty to Mr Scott, he had complied with the duty when he offered to call Mrs Scott at around 8.15pm - an offer which was rejected.

The High Court held that the licensee owed no relevant duty of care to Mr Scott. The informal arrangement for the storage of the motorcycle was made for Mr Scott's convenience, and did not empower the licensee to deny Mr Scott's right to recover the keys and the motorcycle, should he request them. The Court also held that the duty argued for by the respondents would have conflicted with Mr Scott's right and capacity to act in accordance with his own wishes, and would also have been incompatible with other legal duties which bound the licensee. The High Court allowed each appeal and ordered judgment in favour of the proprietor and the licensee.

- *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.*