



HIGH COURT OF AUSTRALIA

15 October 2014

RHIANNON GRAY BY HER TUTOR KATHLEEN ANNE GRAY v RICHARDS

[2014] HCA 40

Today the High Court unanimously allowed, in part, an appeal from the Court of Appeal of the Supreme Court of New South Wales, which had held that Ms Gray was not entitled to recover, as a component of a damages award, an amount in respect of the costs associated with managing a lump sum damages award.

In 2003, Ms Gray sustained a traumatic brain injury as a result of a collision with a motor vehicle driven by Mr Richards, causing a need for constant care and an incapacity to manage her own affairs. Through her tutor, she commenced proceedings against Mr Richards claiming he was liable in negligence for her loss. Those proceedings were compromised on terms that obliged Mr Richards to pay Ms Gray \$10 million ("the compromise monies"), plus an amount of damages, to be assessed at a later date, to cover expenses associated with managing the compromise monies ("the fund management damages"). Subsequently, Ms Gray was declared incapable of managing her own affairs, and a private trustee was appointed to manage her estate. That private trustee charged management fees on the whole of the funds under management, comprising the compromise monies and the fund management damages. There was no suggestion that that arrangement was atypical.

In 2011, the Supreme Court of New South Wales determined that the fund management damages should include an amount to offset the cost of managing the fund management damages, and a further amount to offset the cost of managing the fund's predicted future income. Those amounts were awarded on the basis that the fund management damages and the fund's predicted future income would need to be managed, and would therefore attract their own management charges. The Court of Appeal reversed the decision of the primary judge in relevant respects, holding that an amount of damages for the cost of managing the fund management damages and the fund's predicted future income should not be awarded.

By special leave, Ms Gray appealed to the High Court. Allowing the appeal in part, the Court held that the Court of Appeal had erred in deciding that no allowance should be made for the cost of managing the fund management damages, but was correct in deciding that no allowance should be made for the cost of managing the fund's predicted future income.

- *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.*