



HIGH COURT OF AUSTRALIA

2 April 2014

TAYLOR v THE OWNERS – STRATA PLAN NO 11564 & ORS

[2014] HCA 9

Today the High Court, by majority, allowed an appeal brought by Susan Joy Taylor from a decision of the Court of Appeal of the Supreme Court of New South Wales. The Court of Appeal had found, by majority, that section 12(2) of the *Civil Liability Act 2002* (NSW) ("the CLA") applied to and limited awards of damages under sections 3 and 4 of the *Compensation to Relatives Act 1897* (NSW) ("the CRA").

Mrs Taylor is the widow of the late Mr Taylor. Mr Taylor died when an awning outside a shop collapsed on him in 2007. Mrs Taylor commenced proceedings in the Supreme Court of New South Wales claiming damages pursuant to sections 3 and 4 of the CRA against some of the respondents. The proceedings were brought for the benefit of Mrs Taylor and children of the late Mr Taylor. A preliminary question arose before the primary judge for separate determination as to whether any award of damages claimed by the plaintiffs pursuant to sections 3 and 4 of the CRA would be limited by the operation of section 12(2) of the CLA.

Section 12(2) of the CLA directs a court when awarding damages to disregard the amount (if any) by which a claimant's gross weekly earnings would, but for the injury or death, have exceeded three times the average weekly earnings at the date of the award. The limitation invoked by section 12(2) applies to specified heads of damages, including, relevantly, for the loss of expectation of financial support.

The primary judge held that insofar as the damages claimed included damages for the loss of expectation of financial support, the court is to disregard the amount (if any) by which the deceased's gross weekly earnings would (but for his death) have exceeded three times the average weekly earnings at the date of the award. An appeal to the Court of Appeal of the Supreme Court of New South Wales was dismissed by majority.

By special leave, Mrs Taylor appealed to the High Court. The issue on appeal was whether in the case of an award of damages for the loss of expectation of financial support, the limitation in section 12(2) ought to be construed as applying to the deceased's gross weekly earnings. The High Court, allowing Mrs Taylor's appeal by majority, held that on no view could the word "claimant" as it is used in section 12(2) of the CLA be read as referring to the gross weekly earnings of the deceased. That construction, which was adopted by the primary judge and the majority of the Court of Appeal, could not be reconciled with the language of the statute as enacted by Parliament. The High Court held that the court is not required to disregard the amount by which the gross weekly earnings of Mr Taylor, but for his death, would have exceeded three times the average weekly earnings.

- *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.*