



HIGH COURT OF AUSTRALIA

2 September 2015

COREY TRAVIS FULLER-LYONS BY HIS TUTOR NITA LYONS v STATE OF NEW SOUTH WALES

[2015] HCA 31

Today the High Court unanimously allowed an appeal from the Court of Appeal of the Supreme Court of New South Wales and restored the primary judge's award of damages to the appellant.

In 2001, the appellant, who was then aged eight, suffered severe injuries when he fell from a train about two minutes after it departed from Morisset Station. By his representative, the appellant brought proceedings in the Supreme Court of New South Wales, claiming damages in negligence against the State of New South Wales ("the State"), the legal entity operating the rail network.

There was no direct evidence of how the appellant fell from the train. It was common ground that the appellant must have fallen through the front doors of the carriage in which he was travelling. The doors were fitted with electro-pneumatic locking motors which were centrally operated by the guard on the train. When the doors were locked, they could not be prised open. It followed that when the appellant fell, the doors could not have been locked, despite the guard having engaged the locking system before the train left Morisset Station.

The primary judge found that the only realistic means by which the appellant could have generated sufficient force against the pneumatic power of the locking motors to open the doors far enough to fall out was if he had his back to one door and he pushed with his arms or a leg against the other. The primary judge considered the most likely explanation for how the appellant came to be in this position was that he had been caught between the doors as they closed at Morisset Station, leaving part of his torso and at least one of his arms and legs outside the train. The primary judge held the State vicariously liable for the negligent failure of a railway employee to keep a proper lookout before signalling for the train to depart. The appellant was awarded \$1,536,954.55 in damages.

The State successfully appealed against the finding of liability. The Court of Appeal accepted the primary judge's inferential finding that, immediately before the fall, the appellant must have been positioned with his back to one door such that he could push against the opposing door. However, the Court of Appeal considered there were equally probable alternative hypotheses available to explain how the appellant came to be in that position which did not entail negligence on the part of railway staff.

By grant of special leave, the appellant appealed to the High Court. The Court unanimously allowed the appeal, finding that the Court of Appeal erred in overturning the primary judge's ultimate factual finding. The Court of Appeal's acceptance of the primary judge's anterior factual findings left his Honour's ultimate finding as the most likely inference "by a large measure". It was a correct finding notwithstanding that other possible explanations could not be excluded. The Court also held that it was an error to reject the primary judge's finding on the basis that the appellant had failed to exclude one alternative hypothesis that had not been explored in evidence.

- *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.*