



HIGH COURT OF AUSTRALIA

24 August 2016

DEAL v FATHER PIUS KODAKKATHANATH

[2016] HCA 31

Today the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of Victoria. The High Court held that the majority of the Court of Appeal erred in finding that the primary judge was correct to remove from the jury's consideration allegations that the respondent had breached its statutory duties under the Occupational Health and Safety Regulations 2007 (Vic) ("the Regulations").

The appellant ("Ms Deal") was employed by the respondent as a primary school teacher. In 2007, Ms Deal injured her knee in the course of using a step ladder to remove papier mâché displays from a pin-board on a classroom wall. She was descending backwards down the step ladder, carrying multiple displays with both hands, as they were prone to buckle if not supported. Her view of the step ladder was obscured by the displays. She missed a step and fell to the floor, injuring her knee.

Ms Deal brought proceedings in the County Court of Victoria alleging that her injury was caused by the respondent's negligence or breach of statutory duty. The Regulations required employers, so far as reasonably practicable, to identify tasks involving hazardous manual handling (reg 3.1.1); control the risk of a musculoskeletal disorder associated with a hazardous manual handling task (reg 3.1.2); and review any risk control measures (reg 3.1.3). Relevantly, hazardous manual handling tasks included the manual handling of unstable loads, or loads that are difficult to hold.

The primary judge determined that Ms Deal was not engaged in hazardous manual handling. Consequently, Ms Deal's reliance on the Regulations could not be put to the jury and the trial proceeded on the question of negligence only. The jury returned a verdict for the respondent. Ms Deal appealed. The majority of the Court of Appeal found that, although Ms Deal was engaged in hazardous manual handling, there was no "close connection" between the risk of harm and the injury such that the injury could be said to be "associated with a hazardous manual handling task". Their Honours also held it was not reasonably practicable for an employer considering the generic task of removing the displays to identify the task as one involving hazardous manual handling.

By grant of special leave, Ms Deal appealed to the High Court. The High Court allowed the appeal, holding that the Court of Appeal misconstrued the phrase "associated with a hazardous manual handling task" in reg 3.1.2. That regulation extends to the risk of a musculoskeletal disorder caused, in whole or part, by a task meeting the description of hazardous manual handling. On that basis, the High Court held it would have been open to the jury to conclude that the risk of Ms Deal falling from the step ladder, while carrying displays that were unstable or difficult to hold, was a risk "associated with a hazardous manual handling task". The High Court further held that there was evidence from which the jury could have inferred that it was reasonably practicable for the respondent to identify the task as involving hazardous manual handling, and to take steps to eliminate or control the kind of risk which eventuated. The High Court remitted the matter to the Court of Appeal to be dealt with according to law.

- *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.*