



HIGH COURT OF AUSTRALIA

13 June 2018

AMACA PTY LIMITED v LATZ; LATZ v AMACA PTY LIMITED
[2018] HCA 22

Today, the High Court published its reasons for orders it made on 11 May 2018, allowing in part, an appeal brought by Amaca Pty Limited ("Amaca") from a decision of the Full Court of the Supreme Court of South Australia, and dismissing an appeal brought by Mr Anthony Latz from that decision.

Mr Latz is 71 years old and has been diagnosed with terminal malignant mesothelioma. At the time of his diagnosis, in October 2016, Mr Latz had retired from the public service and was receiving both a superannuation pension under Pt 5 of the *Superannuation Act* 1988 (SA) ("the superannuation pension") and an age pension under Pt 2.2 of the *Social Security Act* 1991 (Cth) ("the age pension"). Mr Latz commenced proceedings against Amaca, the manufacturer of asbestos fencing he had cut and installed some 40 years earlier. Mr Latz contended that, but for the negligence of Amaca, he would have continued to receive both the superannuation pension and the age pension for the remainder of his pre-illness life expectancy – around a further 16 years. The Full Court held, by majority, that the value of the superannuation pension and the age pension were compensable losses but reduced the damages award to take into account a reversionary pension payable to Mr Latz's partner on his death under s 38(1)(a) of the *Superannuation Act*.

By grants of special leave, Amaca appealed the holdings of compensable loss in relation to both the superannuation pension and the age pension, and Mr Latz appealed the deduction of the reversionary pension. A majority of the High Court held that the Full Court was correct to include in Mr Latz's damages award an allowance for the superannuation pension that he would have received for the remainder of his pre-illness life expectancy, less the reversionary pension. The majority held that superannuation benefits are intrinsically linked to earning capacity and, like wages, are the product of exploitation of a claimant's "capital asset". On his retirement, Mr Latz had, as a result of the exploitation of his capital asset, a superannuation pension under the *Superannuation Act*. The value of the capital asset constituted by Mr Latz's rights under the *Superannuation Act* was diminished by the injury caused by Amaca. Had Mr Latz's illness presented itself before he retired, he would have been awarded the value of those rights. The majority held that there was no principled basis for denying Mr Latz that compensation just because the illness which occasioned his loss became apparent only after he commenced retirement. In valuing Mr Latz's loss, credit should be given for the reversionary pension as it is an offsetting or collateral benefit. The Court unanimously dismissed Mr Latz's appeal regarding the reversionary pension.

The Court unanimously held that the loss of expectation of receiving the age pension is not compensable loss. The majority considered that, unlike the superannuation pension, it is not a capital asset. It is not a result of, or intrinsically connected to, a person's capacity to earn. It is also not a form of property. An allowance for the loss of expectation of receiving the age pension should not have been included in Mr Latz's damages award.

- *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.*