



HIGH COURT OF AUSTRALIA

8 May 2019

PARKES SHIRE COUNCIL v SOUTH WEST HELICOPTERS PTY LIMITED
[2019] HCA 14

Today the High Court unanimously dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of New South Wales. The issue in the appeal was whether a claim under the general law of tort for damages for negligently inflicted psychiatric harm consequent upon the death of a passenger during air carriage to which Pt IV of the *Civil Aviation (Carriers' Liability) Act 1959* (Cth) ("the Act") applies was precluded by the Act.

Section 28 of the Act relevantly provides that, where Pt IV of the Act applies to the carriage of a passenger, the carrier is "liable for damage sustained by reason of the death of the passenger ... resulting from an accident which took place on board the aircraft or in the course of any of the operations of embarking or disembarking". Section 35(2) provides that that liability is "in substitution for any civil liability of the carrier under any other law in respect of the death of the passenger or in respect of the injury that has resulted in the death of the passenger". Section 34 imposes a time limit on the availability of the right of action created by s 28.

The appellant, a regional local authority, engaged the respondent to assist it to carry out by helicopter a low level aerial noxious weed survey. On 2 February 2006, a helicopter operated for that purpose by the respondent was carrying two of the appellant's officers, Mr Buerckner and Mr Stephenson. The helicopter struck power lines and crashed, killing all three occupants. Amongst a number of other claims made as a result of the accident, Mr Stephenson's widow, daughter and son ("the Stephensons") brought claims against both the appellant and respondent for damages for negligently inflicted psychiatric harm resulting from the death of Mr Stephenson.

The claims brought by the Stephensons were commenced outside the time fixed by s 34 of the Act. The Supreme Court of New South Wales held that the Stephensons' claims did not fall within the ambit of s 35(2), with the result that they were not extinguished by the operation of s 34. Each of the Stephensons was successful in his or her claim against the appellant. The appellant, in turn, obtained judgment for contribution against the respondent as co-tortfeasor under the Act. The respondent appealed to the Court of Appeal, which allowed the appeal by majority. The majority held that the Stephensons' claims were excluded by s 35(2), and should have been dismissed.

By grant of special leave, the appellant appealed to the High Court. The Court unanimously held that the Stephensons were entitled to claim against the respondent for damages for loss suffered by them by reason of Mr Stephenson's death pursuant to s 28 of the Act. The Court held that s 35(2) substituted that entitlement for any claim that might otherwise have been brought under the general law of tort. As the Stephensons' entitlement to claim under s 28 was extinguished by s 34 before their proceedings were commenced, the Court of Appeal rightly held that their claims should have been dismissed.

- *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.*