



HIGH COURT OF AUSTRALIA

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BRETT DWYER v CALCO TIMBERS PTY LTD

The Victorian Court of Appeal failed to exercise its jurisdiction under section 134AD of the Victorian *Accident Compensation Act* to decide for itself whether an injured worker met the definition of “serious injury”, the High Court of Australia held today.

Mr Dwyer was injured on 27 March 2000 by a crane mounted on the back of a semitrailer with which he delivered timber products. One arm of the crane became disengaged and fell on Mr Dwyer’s right arm. The rights he had against his employer, Calco Timbers, were limited by the *Accident Compensation Act* which provided that a worker in Mr Dwyer’s position may recover damages for a serious injury. “Serious injury” was defined as including “permanent serious disfigurement” and “permanent serious impairment or loss of body function”. If the degree of impairment was assessed as less than 30 per cent, as was the case with Mr Dwyer, the worker could not bring legal proceedings for damages unless the County Court had given leave under section 134AB(16) of the Act to bring the proceedings. The Court was obliged not to give leave unless satisfied on the balance of probabilities that the injury was a “serious injury”.

In the County Court, Judge Frances Millane held that the impairment and loss of function in Mr Dwyer’s right arm and his disfigurement were not a “serious injury” within the meaning of the Act. Accordingly on 1 December 2005 she refused him leave to bring proceedings to recover damages. Section 134AD of the Act stated that on applications made under section 134AB(16) the Court of Appeal shall decide for itself whether the injury is a serious injury on the evidence before the judge who heard the application and on any other evidence which the Court of Appeal may receive. On 8 September 2006, the Court of Appeal dismissed Mr Dwyer’s appeal. Mr Dwyer appealed to the High Court on the ground that the Court of Appeal had erred in its approach to the nature of the appeal provided under the Act and consequently failed to exercise its jurisdiction.

The High Court unanimously allowed the appeal and held that the Court of Appeal erred in its construction of the provisions providing for the appeal from the County Court. The Court of Appeal’s emphasis on the importance of demonstration by Mr Dwyer of specific error by Judge Millane when deciding whether there was “serious injury” distracted attention from the terms of section 134AD, which required the Court of Appeal to decide for itself whether an injury was a “serious injury”. The High Court ordered that the appeal to the Court of Appeal be reheard.

- *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.*