



HIGH COURT OF AUSTRALIA  
Manager, Public Information

21 April 2010

REEMA TABET (BY HER TUTOR GHASSAN SHEIBAN) v MAURICE GETT  
[2010] HCA 12

The law of negligence does not provide for compensation where negligence causes a plaintiff to lose only a less than 50 per cent chance of a better medical outcome, the High Court held today.

At six years old the appellant was suffering from headaches, nausea and vomiting and was admitted to hospital under the care of the respondent. At trial, the respondent was found negligent in not ordering a CT scan after a particular incident. The day after the incident, the appellant suffered a seizure. A CT scan on that day revealed that the appellant had a brain tumour. The appellant suffered irreversible brain damage, 25 per cent of which was caused by the increased intracranial pressure between the time the scan should have been ordered and it being undertaken. Due to the appellant's age, she brought an action in negligence against the respondent through her tutor, her uncle, in the Supreme Court of New South Wales.

The trial judge was not satisfied that the respondent's negligence caused, on the balance of probabilities, any part of the appellant's brain damage; rather, if a scan had been administered when it should have been, there was only a 40 per cent chance that she would have avoided some of the brain damage she suffered. Finding that such a loss of chance constituted "damage" for the purposes of the law of negligence, the trial judge awarded the appellant compensation proportional to that lost chance.

The Court of Appeal of the Supreme Court of New South Wales upheld the respondent's appeal, finding that the loss of a 40 per cent chance of a better medical outcome did not constitute the required "damage" for a cause of action in negligence. Accordingly, the appellant had not proved on the balance of probabilities that the negligence of the respondent caused her damage and the respondent, therefore, was not liable.

On appeal to the High Court, the appellant argued that a loss of a chance of a better medical outcome should be considered as "damage" giving rise to a cause of action in negligence. The High Court held that to allow a plaintiff to recover compensation in negligence actions for only the loss of a chance of a better medical outcome would diminish the requirement for a plaintiff to prove on the balance of probabilities that his or her damage was caused by the negligence of the defendant and extend liability too far in medical negligence cases. The appeal was dismissed with costs.

- *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.*