

HARD METALS PTY. LIMITED

V.

DAVIES

REASONS FOR JUDGMENT

Oral

Judgment delivered at Sydney

on Thursday 18th November 1971

HARD METALS PTY. LIMITED

v.

DAVIES

ORDER

Appeal dismissed with costs.

HARD METALS PTY. LIMITED

v.

DAVIES

JUDGMENT
(ORAL)

BARWICK C.J.

HARD METALS PTY. LIMITED

v.

DAVIES

The appellant seeks the reversal of an order of the Supreme Court, Court of Appeal Division, which dismissed an appeal against the making of an award by the Workers Compensation Commission in favour of the respondent, a worker formerly in the employ of the appellant.

The ground of appeal, both in the Supreme Court and here, is that there was no evidence to support the Commission's award and that a finding on which the award was founded was erroneous.

The relevant evidence and the judgments of the Commission and of the Supreme Court have been fully examined and discussed by counsel for the appellant, but having heard and considered all that has been said, the finding of which the appellant complains was in my opinion a finding of fact. I agree with the majority of the Supreme Court that it was not a finding of a nature which the appellate court is authorised to review.

Further, in my opinion, there was evidence before the Commission which was sufficient to support an award of compensation for the worker. The appellant sought to establish that the disease, which was the injury which resulted in the worker's incapacity, was a particular kind of pneumoconiosis and one, which having regard to the relevant statutory provisions, prevented the Commission from making any award for him under the Workers Compensation Act.

The onus of establishing that cause of the worker's incapacity, in my opinion, was upon the appellant. It failed to convince the Commission of that fact. I am of opinion, therefore, that the order of the Supreme Court was right and that this appeal should be dismissed.

HARD METALS PTY. LIMITED

v.

DAVIES

JUDGMENT
(ORAL)

MENZIES J.

HARD METALS PTY. LIMITED

v.

DAVIES

The judgment of the Chief Justice is based upon a view that the onus of proof that the worker was not suffering from a dust disease lay upon the employer. On that footing I agree entirely with the judgment that has been delivered. For my own part I have, at present, some doubt about this onus, but not sufficient to warrant dissent from the prevailing view.

HARD METALS PTY. LIMITED

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JUDGMENT
(ORAL)

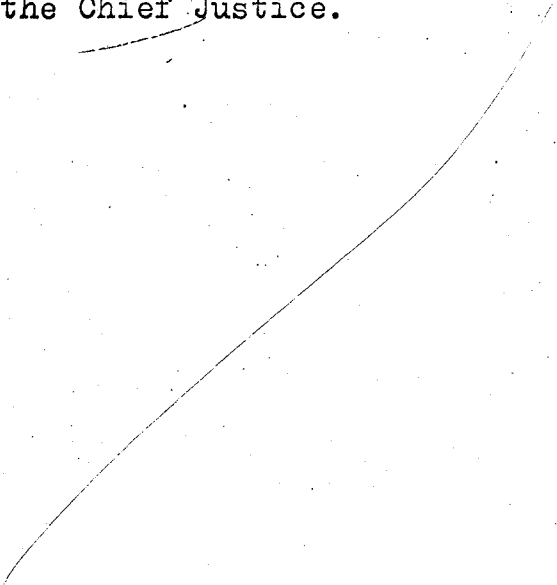
OWEN J.

HARD METALS PTY. LIMITED

v.

DAVIES

I agree with the Chief Justice.



HARD METALS PTY. LIMITED

v.

DAVIES

JUDGMENT
(ORAL)

WALSH J.

HARD METALS PTY. LIMITED

v.

DAVIES

I agree that the appeal should be dismissed.

HARD METALS PTY. LIMITED

v.

DAVIES

JUDGMENT
(ORAL)

GIBBS J.

HARD METALS PTY. LIMITED

v.

DAVIES

I agree with what the Chief Justice has
said.