

**TAYLOR v THE OWNERS – STRATA PLAN NO. 11564 & ORS
(S179/2013)**

Court appealed from: New South Wales Court of Appeal
[2013] NSWCA 55

Date of judgment: 18 March 2013

Special leave granted: 6 September 2013

On 7 December 2007 Mr Craig Taylor was killed when a shop awning collapsed on him. His widow (Mrs Susan Taylor) then brought a claim under the *Compensation to Relatives Act* 1897 (NSW) ("the Compensation Act"). That claim included an amount for lost expectation of financial support. Section 12(2) of the *Civil Liability Act* 2002 (NSW) ("the Liability Act") relevantly provides:

"In the case of any such award, the court is to disregard the amount (if any) by which the claimant's gross weekly earnings would (but for the injury or death) have exceeded an amount that is 3 times the amount of average weekly earnings at the date of the award."

On 27 July 2012 Justice Garling determined the following separate question in the affirmative:

"Insofar as the plaintiffs claim damages pursuant to ss 3 and 4 of the Compensation Act, is any award of damages limited by the operation of s 12(2) of the Liability Act?"

In particular, his Honour construed the word "claimant" in s 12(2) as including a deceased person, the injury to whom gives rise to a claim under the Compensation Act.

Upon appeal to the Court of Appeal, the issues for determination were:

- (i) whether Part 2 of the Liability Act applies to Compensation Act claims; and
- (ii) if so, whether s 12(2) of the Liability Act limits damages payable under the Compensation Act.

On 18 March 2013 the Court of Appeal dismissed Mrs Taylor's appeal. In relation to (i), Justices McColl and Hoeben held that Part 2 applies "to and in respect of an award of [damages that relate to the death of or injury to a person]". Their Honours found that there was a sufficient connection between a Compensation Act claim and the "death of... a person" to satisfy the term "relate to". Justice Basten noted that Justice Garling had resolved (in the affirmative) the question of whether damages available under the Compensation Act were damages that "relate to" the death of the deceased. As that dispute had not been reopened on appeal, his Honour accepted that the relevant connection had been established.

In relation to (ii) Justices McColl and Hoeben held that the Court is required to prefer a construction of the Liability Act that promotes that Act's purpose. They noted that the purpose of s 12 was to limit the amount of damages that may be awarded in personal injury claims. Their Honours further found that the Court can depart from the literal interpretation of a legislative provision when such an interpretation does not conform to the legislative intent. They went on to hold that, properly construed, s 12(2) limited an award based on "the claimant's *or deceased person's* gross weekly earnings". Justice Basten however held that it was unclear what answer Parliament would have given had it considered the operation of s 12 in relation to a claim under the Compensation Act. He further noted that the Court should be cautious in imputing a general legislative intention to override the ordinary meaning of a statutory text.

The grounds of appeal include:

- The Court of Appeal failed to have regard to Mrs Taylor's arguments made before it that the words of s 12(2) as legislated were capable of a construction which accorded with the apparent intention of the provision and which provided a reasonable result.