



HIGH COURT OF AUSTRALIA

Public Information Officer

30 September, 2003

VICTIMS COMPENSATION FUND CORPORATION v SCOTT BROWN, SHARON LEWIS AND THE DISTRICT COURT OF NEW SOUTH WALES

The High Court of Australia today unanimously held that “and” meant “and”, not “or”, in New South Wales victims’ compensation legislation.

Mr Brown was stabbed, punched and kicked after answering the door at his Wollongong home in March 1998. His partner, Ms Lewis, witnessed the attack. Both applied for compensation from the Victims Compensation Tribunal. Mr Brown received compensation for physical injuries, but his and Ms Lewis’s claims for shock were dismissed.

Clause 5(a) in Schedule 1 of the Victims Support and Rehabilitation Act provided that compensation for shock was only payable if the symptoms and the disability persisted for more than six weeks. The couple had symptoms persisting for six weeks but neither had a disability. Clause 5 listed typical psychological and physical symptoms and typical disabilities.

District Court Judge Joseph Phelan held that the “and” in Clause 5(a) meant “or” and allowed Mr Brown’s and Ms Lewis’s appeal. That decision was upheld by a majority of the Court of Appeal. The Victims Compensation Fund Corporation appealed to the High Court, which upheld the approach of the dissenting Court of Appeal judge, NSW Chief Justice James Spigelman.

The High Court held “and” should be given its ordinary meaning as a conjunction. It held that in the context of the Act there was no reason to give “and” the meaning “or”, especially when “or” was used elsewhere in Schedule 1 to convey a disjunctive meaning. Neither earlier Acts covering victims’ compensation nor the Act’s second reading speech indicated an intention that “and” mean “or”. Before the Act was introduced, the NSW Auditor-General had warned about the financial viability of the earlier scheme, and the Brahe Review of that scheme suggested a sliding scale of payments for different injuries. Therefore, the Act as a whole and its background pointed to “and” being a conjunction, which had the effect of limiting eligibility. The Court held that the Act endeavoured to define the circumstances for paying compensation in precise language which did not permit universal recovery, and allowed the corporation’s appeal.

- *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.*