



HIGH COURT OF AUSTRALIA

Public Information Officer

21 April 2005

THELMA JEAN THOMPSON v WOOLWORTHS (QUEENSLAND) PTY LIMITED

The High Court of Australia today upheld a judgment in favour of an injured delivery driver but ordered that her award of damages be reduced by a third on account of her contributory negligence.

In August 1999, Ms Thompson injured her back while moving industrial waste bins to deliver bread to the Woolworths supermarket in Stanthorpe. She had already hurt her back in a work-related incident a week or two earlier. Ms Thompson and her husband conducted a bread delivery service around Stanthorpe under a contract with Cobbity Farm Bakeries. She made daily early-morning deliveries to Woolworths, at a loading dock where a storeman checked goods in. Sometimes the storeman was away from the dock and had to be summoned by a buzzer, but drivers at times had to wait for up to 15 minutes for him to return. Industrial waste bins were frequently left in front of the loading dock by garbage collectors rather than returned to their designated space. Instead of waiting for supermarket employees to shift them, drivers, including Ms Thompson, a small woman, moved them themselves. Her husband often deviated from his own rounds to help her unload and he would shift the bins if they were still in the way. Ms Thompson was moving the bins herself on the day in question when she hurt her back. Her husband arrived and moved the bins and they unloaded the bread on to the dock.

In the Queensland District Court, Ms Thompson sued Woolworths for damages for negligence, arguing that Woolworths exhibited a systemic failure to exercise reasonable care for her safety. An expert witness suggested Woolworths should either have eliminated the problem by providing alternative truck access through a car park or introduced procedural controls to ensure that its employees relocated the empty bins. Judge Nicholas Samios held that moving the bins was the responsibility of Woolworths rather than the drivers and that employees were aware that moving the bins was risky for someone of Ms Thompson's size and strength. She was awarded damages of \$157,991.89. The Queensland Court of Appeal, by majority, allowed an appeal. The dissenting judge, Justice Philip McMurdo, would have upheld the finding of negligence but reduced the damages by one-third for contributory negligence. Ms Thompson appealed to the High Court.

The Court unanimously allowed the appeal, upheld Justice McMurdo's judgment, and ordered that damages be reduced to \$105,327.92. The Court held that since Ms Thompson was required to conform to a delivery system established by Woolworths, Woolworths' obligation to exercise reasonable care for the safety of people who came on to its premises extended to ensuring that its system did not expose people making deliveries to unreasonable risk of injury. Contributory negligence arose through Ms Thompson's awareness of the risk of moving the bins herself, especially when she knew that she had already injured her back.

- *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.*