



HIGH COURT OF AUSTRALIA

Public Information Officer

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LEICHHARDT MUNICIPAL COUNCIL v LESLIE MONTGOMERY

Roads authorities, such as councils, do not have an automatic liability for the negligent behaviour of employees of independent roadworks contractors, the High Court of Australia held today.

Leichhardt Council engaged Roan Constructions to upgrade a footpath on Parramatta Road in Sydney. Work was carried out between 7.30pm and 5.30am. Carpet was placed over a Telstra pit with a broken lid. As Mr Montgomery walked with two others on their way to his birthday celebration on 7 April 2001 the lid gave way and he fell into the pit, seriously injuring one knee. He sued both Roan and the Council. The claim against Roan was settled for \$50,000. After a trial in the New South Wales District Court, Mr Montgomery was awarded damages of \$264,450.75 in damages against the Council, minus the \$50,000 already received. Both the District Court and the NSW Court of Appeal accepted that the Council owed Mr Montgomery a non-delegable duty of care and that that duty had been breached. The Court of Appeal agreed with the primary judge that, there having been negligence on the part of Roan's employees, the Council was liable without any need for Mr Montgomery to show fault on the part of Council officers. The Council was granted leave to appeal to the High Court on condition that it paid the costs of the appeal.

The Court unanimously allowed the appeal. It held that the Council did not owe Mr Montgomery a non-delegable duty of care. A non-delegable duty of care when an independent contractor was engaged was not supported by statute, policy or recent High Court cases. Instead, the Council's duty was the ordinary duty to take reasonable care to prevent injury. The NSW *Roads Act* did not contain any express or implied requirement that roads authorities undertake road construction and maintenance only through their own employees, and use of contractors was common.

The Court held that a special responsibility or duty to ensure reasonable care was taken by an independent contractor and the contractor's employees went beyond the general duty to act reasonably in exercising prudent oversight of what the contractor does. It was implausible to impose a duty on the Council to ensure that such carelessness as placing carpet over the broken pit lid did not occur, regardless of whether the Council's own employees were at fault. The Council had a duty to exercise reasonable care in supervising a contractor or in approving a contractor's plans and system of work, but it was not automatically liable for the negligence of an independent contractor's employees. The Court held that a line of Court of Appeal decisions to the contrary should be overruled.

As the appeal was confined to the issue of whether the Council owed a non-delegable duty of care, and there was an unresolved allegation of lack of care on the part of Council officers, the Court remitted the case to the Court of Appeal to resolve outstanding negligence issues.

- *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.*