HIGH COURT OF AUSTRALIA

Public Information Officer

28 August 2008

PAUL ANTHONY IMBREE v JESSIE McNEILLY AND QANTAS AIRWAYS LIMITED

A 16-year-old without a driver's licence or learner's permit who had taken a turn at driving in central Australia had the same duty as any other driver to take reasonable care to avoid injury to others, including a passenger supervising him, the High Court of Australia held today.

The Court overturned its 1986 decision in *Cook v Cook*, in which the Court held that the standard of care owed was what was reasonably expected of an unqualified and inexperienced driver.

Mr Imbree was left a tetraplegic when his four-wheel-drive crashed while Jesse McNeilly (spelled "Jessie" in the title of the appeal) was driving on Larapinta Drive, a gravel road between Kings Canyon and Hermannsburg in the Northern Territory in April 2002. Mr Imbree was accompanied by his friend Ben Watson, his sons Paul and Reece, and Paul's friend Jesse. Paul and Jesse were both 16. Paul had a learner's permit but Jesse did not. On the trip from New South Wales to the NT, Mr Imbree allowed Paul and Jesse to drive from time to time. After visiting Ayers Rock and Kings Canyon, the group headed towards Hermannsburg and Alice Springs on Larapinta Drive. At first the road was hilly and corrugated and Mr Imbree and Mr Watson drove. When the road became wider and smoother Mr Imbree allowed Paul then Jesse to drive. When they came across tyre debris, instead of straddling and driving over it, Jesse veered to the right. Mr Imbree yelled at him to brake but he did not. When the vehicle was on the far right-hand side of the road, Jesse turned sharply to the left and accelerated, causing the vehicle to overturn.

Mr Imbree brought proceedings in the NSW Supreme Court against Mr McNeilly as driver and Qantas as owner of the vehicle. He worked for Qantas and had a company vehicle. Justice Timothy Studdert gave judgment for Mr Imbree. He found that Mr McNeilly had behaved with carelessness beyond mere inexperience and rejected the argument that Mr Imbree had assumed the risk of injury, but found that he had been contributorily negligent. Mr Imbree's damages, assessed at more than $9.5 million, were therefore reduced by 30 per cent. Mr McNeilly and Qantas appealed to the Court of Appeal, which held that the damages should be reduced by two-thirds for contributory negligence. The Court of Appeal treated *Cook v Cook* as establishing that actions resulting from inexperience, rather than carelessness, did not constitute a breach of the duty of care which a learner driver owed to a supervising licensed driver, but the majority found that Mr McNeilly had been careless by swerving off the road. Mr Imbree appealed to the High Court.

The Court unanimously allowed the appeal and restored the 30 per cent reduction to the damages award in place of the two-thirds reduction. By a 6-1 majority, the Court held that *Cook v Cook* should no longer be followed. It held that there should not be different standards of care, depending on whether a plaintiff was supervising the defendant's driving or not, and such a distinction in *Cook v Cook* was unwarranted. If a supervising passenger failed to take reasonable care for their own safety, for example in failing to exercise reasonable supervision, principles of contributory negligence would apply, but the learner driver was still subject to the same objective standard of care as any other driver rather than a lesser standard which varied according to experience and perhaps a variety of other factors personal to the driver. The Court dismissed an application by Mr McNeilly and Qantas for special leave to appeal against the Court of Appeal's finding that Mr McNeilly had driven carelessly.

- *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.*

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