



HIGH COURT OF AUSTRALIA

Manager, Public Information

12 March 2009

GLEN ANDREW JOSEPH HICKSON v GOODMAN FIELDER PTY LTD

Today the High Court decided that Glen Hickson may apportion the amount of workers' compensation payments he must repay to Goodman Fielder to the same extent that damages he recovered through settling a negligence claim may have been reduced because he contributed to the cause of his injury.

In 2003 Mr Hickson suffered serious injury after colliding with a car while riding his push bike from work. He settled a claim for damages against the driver of the car for an amount of \$2.8 million on 6 June 2006. As the collision happened on Mr Hickson's way from work he was also entitled to receive workers' compensation payments from his employer, Goodman Fielder. Prior to settling his damages claim, Mr Hickson received \$607,315.43 from Goodman Fielder in workers' compensation.

The law in New South Wales provides that a person who first receives workers' compensation payments and then damages for the same injury must repay the workers' compensation payments to his or her employer. It also provides that if the amount of damages received by the injured person has been reduced to take account of that person's contributory negligence, then the amount repayable to the employer should be reduced to the same extent that the damages had been reduced.

On 7 June 2006 Goodman Fielder filed a claim in the NSW District Court for repayment of the \$607,315.43 it had paid to Mr Hickson in workers' compensation. Mr Hickson responded that the amount he had received in settlement of his damages claim had been reduced because his actions had contributed to his injury. He argued that the amount he should repay to Goodman Fielder ought to be reduced to the same extent as his damages had been reduced. Goodman Fielder in turn argued that as Mr Hickson's damages claim had been settled there was no court record to establish how the damages of \$2.8 million had been calculated.

The parties asked a District Court judge to decide whether the law concerning the reduction of workers' compensation payments to be repaid to an employer applies when a damages claim is settled and there is no court determination about contributory negligence or the calculation of the damages. If the judge answered "yes" to that question the parties also wanted the judge to decide whether the District Court could hear evidence concerning the extent to which the amount recovered by Mr Hickson when his damages claim was settled had been reduced because of his contributory negligence, the degree of his contributory negligence and the calculation of the damages he would have been likely to recover if there had been no reduction for contributory negligence. The District Court judge answered "yes" to all of those questions. Goodman Fielder appealed to the NSW Court of Appeal which held, by majority, that the answer to the first question ought to have been "no", in which case the following questions did not need to be answered.

Mr Hickson appealed to the High Court and today the High Court unanimously held that the District Court judge's answers to the questions raised by the parties should be reinstated and that Goodman Fielder's appeal to the NSW Court of Appeal should be dismissed. The fact that there may have to be "a trial within a trial" - to determine what damages were recoverable by Mr Hickson, whether his actions had contributed to causing his injury and the extent of the reduction of any damages because of his contributory negligence - was not a reason to prevent Mr Hickson from being able to reduce the amount he must repay to Goodman Fielder to the same extent that the damages he recovered had been reduced because of his contributory negligence.

- *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.*