



HIGH COURT OF AUSTRALIA

Manager, Public Information

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SYDNEY WATER CORPORATION v MARIA TURANO & ANOR

[2009] HCA 42

When the Sydney Water Corporation (then known as the Metropolitan Water Sewerage and Drainage Board) laid a water main in 1981 which ultimately affected the root system of a tree on the side of a road near where the water main was laid, it could not reasonably be expected to have foreseen a risk that the tree might fall on users of the road in 2001, the High Court held today.

On 18 November 2001 Maria Turano's husband, Napoleone, died after a eucalyptus tree fell on his car while he was driving along Edmondson Ave, near Liverpool in New South Wales. Mrs Turano and her two children were also in the car and were injured. Mrs Turano issued proceedings in the New South Wales District Court, claiming from City of Liverpool Council and Sydney Water Corporation damages for her injuries, on behalf of her children for their injuries, and for the death of her husband. In the District Court Mrs Turano was successful against Liverpool Council but failed to establish Sydney Water's liability. The Court of Appeal of the Supreme Court of New South Wales upheld both Liverpool Council's appeal and Mrs Turano's appeal against Sydney Water, determining that Sydney Water owed Mrs Turano a duty of care which it had breached. Sydney Water sought and was granted special leave to appeal.

In the 1960s a culvert was built under Edmondson Ave, Austral, a semi-rural area near Liverpool. Water drained from the culvert into an outlet pit and from there into pasture land lying beyond the pit. The tree which killed Mr Turano stood about four metres from the outlet of the culvert on the western shoulder of Edmondson Ave. In about 1981 Sydney Water laid a water main under the western shoulder of Edmondson Ave, which cut across the culvert's outlet pit. The way in which it was laid caused it to obstruct the free flow of water from the culvert. The water main was laid on a bed of sand 300mm deep, which was much more permeable than the clay of the outlet pit. Water periodically collected in the outlet pit and drained along the sand bed in which the water main was laid. Excess water probably travelled along the sand bed to reach the roots of the tree in question. This intermittent water-logging of the tree's root system had facilitated the infection of the root system with the phytophthora pathogen. The tree fell in a wind storm. The infection of its root system was an underlying cause of that fall.

The Court of Appeal concluded that Sydney Water had a duty to install the water main in such a way that the integrity of the culvert drainage system was not compromised. The Court of Appeal found Sydney Water had breached that duty in two ways – it had laid the water main so that it caused periodic damming of the drain; and, by laying the water main in sand, it had caused the dammed water to drain towards the tree roots, thus undermining the root system.

The High Court found that the Court of Appeal had wrongly imposed a strict duty on Sydney Water requiring that it preserve the existing drainage in the vicinity of its water main as distinct from a duty to take reasonable care to avoid foreseeable injury to road users. In the view of the High Court, the laying of the water main had not created an immediate risk of harm to road users. In considering whether Sydney Water owed a duty of care to Mrs Turano it was relevant to consider the interval between the installation of the water main and the accident. A related factor was that in the intervening 20 years the tree was growing on land owned by Liverpool Council and the risk of its failure was one over which the Council and not Sydney Water had control. The Court found that the trial judge had been correct to conclude that Sydney Water did not in the circumstances owe a duty of care to Mrs Turano. It reinstated the trial judge's verdict in Sydney Water's favour.

- *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.*