



## HIGH COURT OF AUSTRALIA

**Manager, Public Information**

9 December 2009

### TIAN ZHEN ZHENG v DEJU CAI [2009] HCA 52

The High Court today held that the payments received by a person from a church for which she undertook voluntary work should not be deducted from damages recoverable for injuries she suffered as the result of a car accident.

Ms Zheng was a passenger in a car which collided with a taxi in May 2000. As a result she suffered significant injuries to her back and neck, and she experienced chronic depression. Ms Zheng sued the driver of the car, Mr Cai, who admitted a breach of his duty of care. The primary judge entered a verdict for Ms Zheng and awarded damages of \$300,681. The New South Wales Court of Appeal reduced the damages to \$17,447.91 taking account of, among other things, voluntary payments she had received from her church. Ms Zheng accepted that, for reasons unrelated to the appeal, damages should have been reduced to \$144,886 plus interest. Her appeal to the High Court concerned the difference between the amounts \$144,886 and \$17,447.19. Two justices of the High Court referred Ms Zheng's application for special leave to appeal to a bench of five justices for consideration. In a unanimous decision the Court decided to grant special leave to appeal and to allow Ms Zheng's appeal.

Ms Zheng was born in China and arrived in Australia in 1990. Her accountancy qualifications were not recognised in Australia and she worked in Sydney as a sewing machine operator for a cushion manufacturer. Following the accident she obtained the degree of Bachelor of Theology in Singapore and returned to Australia in 2005. Thereafter Ms Zheng performed voluntary work for about 20 hours per week for her church, the Christian Assembly of Sydney, which included answering telephones, speaking to people interested in the Assembly and occasionally preaching. The disabilities arising from the accident limit her ability to do this work. Between June 2005 and up until at least August 2007 the Assembly was making fortnightly payments to Ms Zheng of amounts that averaged slightly more than \$580 per week. The primary judge found that the payments were made from donations to the Assembly, to assist Ms Zheng with her rent and living expenses, and, contrary to submissions put on Mr Cai's behalf, held that Ms Zheng was not an employee of the Assembly.

On appeal to that Court, the NSW Court of Appeal had regard to a letter from the Assembly which stated that it had "provided financial support to [Ms Zheng] for her daily living and accommodation expenses to allow her to function more effectively as a volunteer worker". The Court of Appeal allowed the appeal on the basis that the real intent of the payments was to enable the applicant to perform her volunteer work more effectively, which, in its view, rendered them analogous to payments for services. The payments were therefore taken into account to reduce the assessed damages from \$144,886 to \$17,447.19.

In her application for special leave to appeal against the decision of the Court of Appeal Ms Zheng argued that the benevolent nature of the payments meant they should not diminish the damages payable by Mr Cai. She further argued that the determination of the appeal on an issue which had not been argued at trial and which she had not had the opportunity to answer during the trial was so prejudicial to her that the High Court should provide a remedy.

The High Court unanimously determined that special leave should be granted and that the appeal should succeed. It held that Mr Cai should have been bound by the presentation of his case at trial and that the departure from that course in the Court of Appeal had prejudiced Ms Zheng. Further, it held that even if the benevolent nature of the payments had been an issue at trial, Ms Zheng should have succeeded on that issue.

The High Court noted that the Court of Appeal had concluded that in making the payments to Ms Zheng, the Assembly's intention was not simply to benefit Ms Zheng in relation to her daily living and accommodation expenses but also to enable her to function more effectively as a volunteer church worker. Previous High Court decisions had established that voluntary gifts given for the benefit of an injured person and not for the benefit of the person who caused the injury should not diminish damages payable by the wrongdoer. In this case the fact that the payments also had the collateral effect of benefiting the Assembly did not diminish the reality that they were made for the benefit of Ms Zheng and not for the benefit of Mr Cai, to reduce his liability for damages. The payments did not justify any reduction in the damages payable by Mr Cai to Ms Zheng.

- *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.*