



HIGH COURT OF AUSTRALIA

16 May 2014

ADCO CONSTRUCTIONS PTY LTD v GOUDAPPEL & ANOR

[2014] HCA 18

Today the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of New South Wales. The High Court held that a regulation was validly made under a power to make savings and transitional regulations having the effect of amending the *Workers Compensation Act 1987* (NSW) ("the WCA") and that the regulation extinguished Ronald Goudappel's entitlement to permanent impairment compensation under the WCA.

On 17 April 2010, Mr Goudappel, an employee of ADCO Constructions Pty Ltd ("ADCO"), was injured at work and became entitled under the WCA to receive compensation from ADCO. He made a claim for compensation on 19 April 2010 ("the initial claim"). He was later assessed as having a six percent permanent impairment with respect to the injuries he sustained. On 20 June 2012, he made a specific claim for permanent impairment compensation.

ADCO's workers compensation insurer declined liability for permanent impairment compensation, on the basis that amendments to the WCA, introduced by the *Workers Compensation Legislation Amendment Act 2012* (NSW) ("the Amendment Act"), applied to Mr Goudappel's claim. The amendments limited the entitlement to permanent impairment compensation to workers who had suffered injury resulting in permanent impairment exceeding ten percent. If applicable to Mr Goudappel's claim, the amendments would have had the effect that he had no entitlement to permanent impairment compensation. However, the Amendment Act's savings and transitional provisions protected the entitlements of workers who had claimed permanent impairment compensation before 19 June 2012 from the disentitling effect of the amendments. It was accepted in the High Court that Mr Goudappel's initial claim covered any entitlement to permanent impairment compensation. Notwithstanding that, ADCO argued that the protection conferred by the Amendment Act's savings and transitional provisions was displaced by a transitional regulation made pursuant to those provisions. The transitional regulation was said to extend the disentitling operation of the amendments to claims for compensation made before 19 June 2012, except for claims which "specifically sought" permanent impairment compensation.

The Court of Appeal held that the transitional regulation did not apply to extinguish Mr Goudappel's entitlement to permanent impairment compensation. By special leave, ADCO appealed to the High Court.

Allowing the appeal, the High Court held that the transitional regulation was valid and applied to extinguish Mr Goudappel's entitlement to permanent impairment compensation. Mr Goudappel's initial claim was not a claim which "specifically sought" permanent impairment compensation. The regulation could not be interpreted so as to avoid its application to his entitlement.

- *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.*