

ASSESSMENT OF DAMAGES - GRATUITOUS ASSISTANCE AND *SULLIVAN v GORDON* DAMAGES: *CSR LTD v EDDY* [2005] HCA 64

Judges

Gleeson CJ, McHugh, Gummow, Callinan and Heydon JJ

Date of Decision

21 October 2005

Key Issues Arising

Assessment of damages - gratuitous assistance and *Sullivan v Gordon* damages

Key Facts

This was an appeal from the New South Wales Court of Appeal, which had heard an appeal from the Dust Diseases Tribunal of New South Wales.

At the time of the trial in 2003, the plaintiff was a 61-year-old male who had developed mesothelioma as a result of exposure to asbestos during his employment by the defendant, CSR Limited.

The trial judge had awarded \$165,480.00 in *Sullivan v Gordon* damages. These damages were said to compensate the plaintiff's inability to continue to provide domestic assistance to his wife, who suffered from osteoarthritis.

The defendant appealed the award of *Sullivan v Gordon* damages, however the Court of Appeal upheld that award. The defendant then appealed to the High Court.

Decision

Sullivan v Gordon (1999) 47 NSWLR 319 has been used as authority for the principal that an injured plaintiff who loses the ability to care for a disabled relative loses something of real value and that loss ought to be compensated.

Gleeson CJ, Gummow and Heydon JJ delivered the majority decision in *CSR Ltd v Eddy*. McHugh and Callinan JJ agreed with the majority decision, but delivered separate judgements. The Court held that a plaintiff can not recover damages relating to an inability to perform tasks for the benefit of a third party, such as a child or a spouse.

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In overruling *Sullivan v Gordon*, McHugh J noted that for a plaintiff to qualify for an award of damages for gratuitous assistance, any assistance must have been provided *in response to an injury-caused need of the plaintiff* (paragraph 113).

The plaintiff's wife's need for assistance did not arise because of the plaintiff's mesothelioma. That need existed independently of the plaintiff's condition and although the High Court accepted that he was no longer able to provide assistance to his wife, the plaintiff was not entitled to damages calculated by reference to the amount of assistance to be provided to the plaintiff's wife.

The only basis on which the plaintiff could recover damages resulting from the loss of the ability to provide assistance to his wife was a component of general damages, which would compensate him for loss of any amenity and enjoyment of life he had derived from providing that assistance.

Practical Application

Sullivan v Gordon damages are no longer available to plaintiffs. Therefore, any claim for gratuitous assistance can be discounted to the extent that it comprises a claim for assistance provided to a third party, such as the plaintiff's spouse, parent or child. The loss of ability to provide assistance to third parties should only be compensated by general damages.