



Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Writ No 3 of 1997

REBECCA JANE LOVISOTTO by her next friend
TRACEY LEIGH HALLIDAY

First Plaintiff

and

SOPHIE LEIGH LOVISOTTO by her next friend
TRACEY LEIGH HALLIDAY

Second Plaintiff

and

PETER SCOTT HADLEY

Defendant

CAIRNS

..DATE 11/06/2002

JUDGMENT

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: This is an application by infant plaintiffs for the sanction of settlement of their claims for damages which have been reached between the parties.

The plaintiffs were the lawful children of Sergio Lovisotto who died as a result of injuries received in a motor vehicle collision on 12th June 1994. The defendant has admitted responsibility for the deceased's death and consequently its liability to pay damages to the two infant plaintiffs.

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The first plaintiff, Rebecca, was born on the 14th of July 1990 and is therefore now almost 12 years of age. The second plaintiff, Sophie, was born on the 8th of November 1994 and is now seven and a-half years of age.

The assessment of their damages was marked by two difficulties. Firstly, by determining what was the earning capacity of the deceased and, as a consequence, the financial benefit of which the two plaintiffs have been deprived and the second complication was the fact that each of the plaintiffs were entitled to and did receive workers' compensation payments which were at a level which may well have exceeded the amount of financial dependancy which they could prove.

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That is largely brought about by the fact that this incident occurred at a date prior to the amendment to the Common Law Practice Act which allowed de facto spouses to make a claim. Consequently the level of workers' compensation entitlement to the two infant plaintiffs was higher than perhaps would have

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been the case thereafter, and moreover the amount of their damages too would have perhaps been higher by reason of that fact.

In the end result an agreement has been negotiated with WorkCover Queensland which has resulted in a reduction of the refund payable to WorkCover and that has had the effect of making the settlement amounts of significant financial benefit to each of the claimants.

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Now, I have had the advantage of reading a detailed advice by Mr Philp of counsel which sets out the resolution of those issues to which I have just made reference. In the end result I am satisfied that the proposed settlement figures for each of the plaintiffs is at an appropriate level and that the settlement of their respective claims is in the interests of each of the plaintiffs. The mother and litigation guardian of each of the plaintiffs, Tracey Halliday whose affidavit I have read, agrees with that course.

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The defendant has indicated by letter of its solicitors, Exhibit 1, that they agree with the course which has been suggested.

I make orders in terms of the draft initialled by me and placed with the papers. I direct that the opinion of Mr Philp of counsel be placed in a sealed envelope marked "Not to be opened except for the Court".
