British American Tobacco Australia Services Limited v Laurie
[2011] HCA 2

Country: Australia
Region: Oceania
Year: 2011
Court: High Court of Australia
Health Topics: Chronic and noncommunicable diseases, Tobacco
Human Rights: Right to health

Facts

The respondent plaintiff (continuing proceedings on behalf of her late husband) sued the appellant for negligently manufacturing and supplying tobacco products, which her husband smoked. She was also suing as a dependent widow. She further contended in support of her aggravated damages claim that the appellant company had a policy of destroying documents, which might evidence its negligence. She stated that an inference must be drawn that the appellant company knew that usage of its products could cause lung cancer.

The judge assigned to hear this case had previously passed an order against the appellant in a similar case-Brambles Australia Ltd v British American Tobacco Australia Services Ltd (hereinafter referred to as the Bramble case). In this case- Mr. Mowbray died from cancer allegedly from asbestos poisoning while working at the Brambles Company. Brambles alleged that the cancer was caused due to Mr. Mowbray's smoking of the appellant company's tobacco products. The Brambles company had further applied for discovery of documents. The judge ruled against the appellant company stating that their document retention policy was adopted for the purposes of fraud.

The appellant company therefore sought for the judge to recuse himself for the matter. The judge refused to recuse himself and further the appellate court upheld his order.

Decision and Reasoning

The High Court reversed the judgment of the Court of Appeal and ordered that the judge should be prohibited from hearing or deciding the present matter. In the Brambles Company case, the judge had ruled the nature of fraud was extremely serious. The judge's opinion casted a doubt whether the judge would be impartial in the present proceedings.

Decision Excerpts

"It is fundamental to the administration of justice that the judge be neutral. It is for this reason that the appearance of departure from neutrality is a ground of disqualification[179]. Because the rule is concerned with the appearance of bias, and not the actuality, it is the perception of the hypothetical observer that provides the yardstick. It is the public's perception of neutrality with which the rule is concerned." (Para 139)

"Whenever a judge is asked to try an issue which he or she has previously determined, whether in the same proceedings or in different proceedings, and whether between the same parties or different parties, the judge will be aware that different evidence may be led at the later trial. Judge Curtis's express acknowledgment of that circumstance does not remove the impression created by reading the judgment that the clear views there stated might influence his determination of the same issue in the Laurie proceedings. Allsop P's conclusion was correct. In addition to the possibility of the evidentiary position changing, a reasonable observer would note that the trial judge's finding of fraud was otherwise expressed without qualification or doubt, that it was based on actual persuasion of the correctness of that conclusion, that while the judge did not use violent language, he did express himself in terms indicating extreme scepticism about BATAS's denials and strong doubt about the possibility of different materials explaining the difficulties experienced by the judge, and that the nature of the fraud about which the judge had been persuaded was extremely serious. In the circumstances of this unusual case, a reasonable observer might possibly apprehend that at the trial the court might not move its mind from the position reached on one set of materials even if different materials

were presented at the trial – that is, bring an impartial mind to the issues relating to the fraud finding." (Para 145)