



HIGH COURT OF AUSTRALIA

8 May 2013

WALLACE v KAM
[2013] HCA 19

Today the High Court unanimously dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of New South Wales, which held that even if the respondent, Dr Kam, had failed to warn the appellant, his patient Mr Wallace, of all the material risks inherent in a surgical procedure, that failure did not cause the injury suffered by Mr Wallace as a result of one of those risks eventuating.

Dr Kam performed a surgical procedure on Mr Wallace in an effort to relieve him of a condition of his lumbar spine. The surgical procedure had inherent risks, one of which was of temporary damage to Mr Wallace's thighs, or "neurapraxia". Another was a one-in-twenty chance of permanent and catastrophic paralysis. The first risk materialised. The second risk did not.

At trial, the Supreme Court of New South Wales found that while Dr Kam negligently failed to warn Mr Wallace of the risk of neurapraxia, Mr Wallace would have chosen to undergo the surgical procedure even if warned of that risk. The Supreme Court also concluded that the legal cause of the neurapraxia could not be the failure to warn of some other risk that did not materialise.

On appeal to the Court of Appeal, Mr Wallace argued that the Supreme Court erred in holding that the legal cause of the neurapraxia could not be the failure to warn of the risk of paralysis. The Court of Appeal assumed that Dr Kam negligently failed to warn Mr Wallace of the risk of paralysis and that, if warned of that risk, Mr Wallace would not have undergone the surgical procedure. On that assumption, a majority of the Court of Appeal found that Dr Kam was not liable for the neurapraxia. Mr Wallace appealed by special leave to the High Court.

The High Court held that it was not appropriate for Dr Kam's liability to extend to the physical injury in fact sustained by Mr Wallace, in circumstances where Mr Wallace would not have chosen to undergo the surgical procedure had he been properly warned of all material risks, but where he would have chosen to undergo the surgical procedure even if he had been warned of the risk that in fact materialised. The policy underlying the requirement that a medical practitioner exercise reasonable care and skill in warning a patient of material risks inherent in proposed treatment is to protect the patient from the occurrence of physical injury the risk of which is unacceptable to the patient. The High Court held that Mr Wallace was not to be compensated for the occurrence of physical injury, the risk of which he was willing to accept.

- *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.*