

Compensation halted for pleural plaques

Court of Appeal, London: 26th January 2005

In a split 2 to 1 decision, the Court of Appeal has abolished the long standing entitlement of asbestos workers to compensation for pleural plaques. The background to this is dealt with in detail in the earlier news item on this site.

Permission has been given to the men whose cases were heard to take it further to the Law Lords. A hearing before the Law Lords will be 6 -12 months away. Meanwhile, thousands of these cases will be halted until the Law Lords reconsider the situation.

There was a strong minority dissenting Judgment by Lady Justice Smith. She wrote:-

“I accept that the law should not recognize trivial injuries. But I do not accept that these claimants have trivial injuries. In my view, the risks of malignant disease and attendant worry constitute present harm which should sound in damages. I think that a man in the position under discussion deserves compensation. It is interesting that all the four High Court judges who have been required to consider whether to award damages in these circumstances ... have found a way of making an award. The intellectual processes by which they have arrived at their conclusions have differed, but each has arrived at the same result. I venture to suggest that that is because, having seen the claimants and heard their evidence, they felt it would be just to award damages and unjust not to. I also venture to suggest that most people on the Clapham omnibus would consider that workmen who have been put in the position of these claimants have suffered real harm. I do not think that they would regard these consequences of asbestos exposure as trivial and undeserving of compensation.”

This is strong language for a Court of Appeal Judge disagreeing with two more senior colleagues, including the Lord Chief Justice, Lord Phillips. It is to be hoped that the Law Lords' sympathies lie with the affected workers. At this level, it is about policy and the distribution of wealth, whether or not it is admitted to be so.

The spectre of an avalanche of claims as experienced in the United States and the depressing picture of claims farmers with their scan vans were put to good use by insurers. They fed the perception, held in some very respectable circles, that we have a compensation culture in this country. The statistics suggest otherwise. Surely the way to deal with claims handlers is to regulate and restrict their activities, rather than hit former asbestos workers.

Anthony Coombs, 27th January 2006