



Do you care?

Percy Raines was married to Robin Raines and had two adult children, Stephen and Richard Raines. The family met with a series of unfortunate occurrences. In 1981, Robin was injured and had to undergo two back operations. She continued to experience health problems. In 1996, Richard suffered a severe traumatic brain injury in a motor vehicle accident during the course of his employment. He was entitled to compensation under the Workers Compensation Act 1987 (NSW) but required around-the-clock care from his parents. Then, in 2016, Percy was diagnosed with mesothelioma arising from asbestos exposure in the 1960s and 1970s.

Percy brought proceedings in the Dust Diseases Tribunal against Amaca and Seltsam for damages arising from his asbestos exposure. Amaca (James Hardie) and Seltsam (Wunderlich) were manufacturers, suppliers and distributors of the products to which Percy was exposed. It was agreed Percy should receive \$470,000 in damages but an amount could not be agreed for the loss of his capacity to provide gratuitous domestic care services to both his wife and his son under section 15B of the Civil Liability Act 2005 (NSW). Section 15B states that damages can be awarded for the loss of capacity to provide domestic services to dependents including, among others, a spouse and a child, if, that gratuitous domestic care equates to at least six hours per week for a period of at least six consecutive months.

Ultimately, Justice Kearns of the Dust Diseases Tribunal awarded Percy almost \$1.5 million for lost capacity to provide gratuitous care following his being diagnosed with mesothelioma.

Amaca and Seltsam appealed to the NSW Court of Appeal. The Appeal was dismissed. The Court of Appeal found that while gratuitous care is often thought of as active care, such as running errands, preparing meals and attending to housework, it can also extend to passive care. In this case, Percy would often keep an eye and ear out for Richard during the day. He would check that Richard didn't leave taps running, he would listen out for Richard while he was in the shower and keep Richard company while he was watching television. The Court deemed this "*constant supervision and availability to step in, in case of emergency*" a type of gratuitous care. It was likened to a live-in housekeeper who would be considered to be rendering a service at all times, not just when he or she is actively caring for a person.

Sadly, Percy died after the hearing of the appeal and prior to the Court of Appeal's decision. The executor of his estate, his son Stephen, represented him in the appeal proceedings. The appeal was dismissed and Amaca and Seltsam were ordered to pay the legal costs of Percy's estate.

This case has confirmed that the definition of gratuitous domestic care under section 15B of the Civil Liability Act encompasses both active and passive care, and that damages can be awarded to compensate an individual's loss of capacity to provide traditional, active care, as well as more novel, passive care, to their dependents.