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Smokers forfeit legal rights

By LEWIS SMITH AND SAM LISTER

SMOKERS are legally responsible for their own ill-health because of their negligence in failing to give up, the High Court ruled yesterday.

In a groundbreaking decision, a judge said that those who had smoked since 1971 were guilty of risking their own health because of the clear evidence that had emerged since then about the dangers posed by tobacco.

Lawyers gave warning last night that the decision could also hit compensation claims for ill-health made by other groups, such as heavy drinkers and obese people.

The court's ruling came as a study published yesterday showed that, for the first time, more women now smoke than men. The Health Survey for England disclosed that 22 per cent of men smoke compared with 23 per cent of women.

Overall numbers for both genders fell but the proportion of men giving up was twice as high as that for women.

Smoking was declared a form of negligence by Mr Justice Stanley Burnton as he ruled on a claim for asbestos-related lung cancer made against the Ministry of Defence. The judge concluded that while Reginald Badger's widow, Beryl, was entitled to compensation for his death the award should be cut by 20 per cent because as a heavy smoker he was guilty of contributory negligence.

Mr Badger had been exposed to asbestos while working as a boilermaker in Gibraltar and at Devonport dockyard from 1954 to 1987. He had been a smoker since the age of 16.

Mr Justice Burnton said that no one could blame Mr Badger, who died aged 63, for starting to smoke in 1955 because at the time the risks were not widely known. From 1971, however, he said that the introduction of health warnings on cigarette packets enabled him to infer that the public were aware of the hazards of smoking. Lawyers, including the judge, said that the ruling was the first in the High Court to consider the contributory effect of tobacco in negligence claims and would affect similar cases.

The ruling has been seen as a victory for insurance companies that have fought to try to reduce the cash payouts they have to make to victims of negligence.

But Adrian Budgen, a personal injury specialist at the solicitors Irwin Mitchell, said: "It's an unhelpful precedent. It will result in greatly reduced damages in a lot of cases. That's very sad and unfortunate."

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