

SUPREME COURT OF QUEENSLAND

CITATION: *Tanner v Byrncut Mining P/L & Anor* [2002] QSC
060

PARTIES: **SHAUN BENJAMIN TANNER**
(Plaintiff)
v
**BYRNECUT MINING PTY LTD AND
RUC (AUSTRALIA) PTY LTD**
(First Defendants)
and
BARKLY WELDERS PTY LTD
(Second Defendant)

FILE NO: S309 of 2001

DIVISION: Trial Division

DELIVERED ON: 20 March 2002

DELIVERED AT: Rockhampton

HEARING DATE: 19th and 20th December 2001

JUDGE: Dutney J

ORDERS: **Judgement for the plaintiff against the defendants
in the sum of four hundred and fifty-one thousand
and twelve dollars and fourteen cents
(\$451,012.14).**

CATCHWORDS: DAMAGES - Measure of damages – Personal injuries
– Pl injured when 30-tone crane ran over his right
foot while working in underground mine.

COUNSEL: J Curran for the Plaintiff.
G Crow for the 1st and 2nd Defendants.

SOLICITORS: Robert Harris & Co for the Plaintiff.
Swanwick Murray Roche for the 1st and 2nd Defendants.

- [1] **Dutney J:** This case involves a claim by Mr Tanner for damages for injuries sustained when a mobile crane drove onto his right foot while working underground at Mt Isa.
- [2] Liability is not in issue.
- [3] Mr Tanner was born on 5 November 1965. The injury was inflicted on 11 June 1999. He was then 33 years of age. Mr Tanner is now 36.
- [4] Mr Tanner left school in 1991 after completing grade 11 in South Australia. He was a moderate student. In January 1982 he took up an apprenticeship as a boilermaker with BHP shipyards at Whyalla. Mr Tanner completed this apprenticeship in 1985. After spending a year or two in Whyalla as a tradesman Mr Tanner went to the Northern Territory to work in the mining industry. From then until the injury he worked at a series of remote mining locations in the construction area. The attraction of these jobs was the high pay, additional expenses and free accommodation.
- [5] At the time of the injury the plaintiff was working underground. He was kneeling down welding with a face mask on. The 30 tonne crane near which he was working simply drove over his foot.
- [6] The plaintiff felt a sharp pain. He flicked up his helmet and screamed for the crane to stop which it did – on his foot. The plaintiff asked the crane to move forward and it moved off his foot. The pain was said by the plaintiff to be indescribable. Because of the logistics of working a kilometre under ground it took about 45 minutes to an hour for the ambulance to arrive. The paramedics were unable to administer pain killing drugs and instead provided “laughing gas”.
- [7] The plaintiff was taken to the Mt Isa hospital where pain-killing drugs were administered. A cast was put on his right foot and ankle which he wore for about two weeks. He was on crutches for a further three and a half weeks.

- [8] After four weeks out of the work force the plaintiff returned on light duties for five months which was the remainder of his contractual period. The plaintiff experienced pain in his foot throughout this period even though he wore work boots.
- [9] Shortly afterwards, in December 1999, the plaintiff obtained work as a boilermaker in Rockhampton. He experienced ongoing problems in his right foot in the area of the foot and ankle particularly after prolonged standing.
- [10] The plaintiff attended his general practitioner who referred him to an orthopaedic surgeon. X-rays were taken and the plaintiff underwent physiotherapy over the next three months which improved the pain somewhat although Mr Tanner continued to complain of sensory alteration in the forefoot.
- [11] The plaintiff continues to suffer right foot pain for which he takes anti-inflammatory medication. Occasionally he is kept awake at night. He has a slight limp and an unsteadiness going up stairs which was apparent in the video (exhibit 18). He also has difficulty carrying weights, working on ladders, cranes and rigging or indeed wherever he is required to work on an uneven surface.
- [12] There is some indication of a need for future surgery at a cost of \$3,000.00. Percentage disabilities varied from 7% of the whole person assessed by Dr Williams to 15% of the lower limb assessed by Dr Saxby.
- [13] I assess the plaintiff's damages for pain and suffering and loss of amenity at \$45,000.
- [14] Exhibit 3 sets out Mr Tanner's earnings for the four years preceding the injury. It shows that in 1995/96 he earned \$38,867.49 net or an average of \$747.45 per week. In 1996/97 he earned \$36,947.00 net or \$710.52 per week. In

1997/98 Mr Tanner earned \$40,144.09 net or \$772.00 per week and in 1998/99 he earned \$39,882.82 net or \$766.98 per week. During these periods it is well known that inflation and wage rises were relatively low. The figures thus show a consistent work pattern over a number of years.

[15] There was evidence that boilermakers could earn up to around \$1900 per week. This came from Mr Dundas-Taylor who although not himself a boilermaker seemed to have a good knowledge of pay rates at least in Gladstone. A Mr Talora also gave evidence. He said the rate of pay for boilermakers in Mt Isa was between \$22.00 and \$33.00 per hour. For a standard working week this represents an income of \$880 to \$1320.00 per week. Having regard to what Mr Tanner in fact earned in the years preceding the accident and the consistency of those earnings it is obvious that his work pattern was to work for a period and have a period off. Because the evidence is that the work Mr Tanner was doing was the best paid, I propose to take as his pre-accident potential a figure of \$770.00 net per week.

[16] After the accident Mr Tanner returned to work for the defendant for a period. Since then he has worked as a boilermaker for companies in a warehouse or factory situation where he does not have the problem of uneven ground. Even so this has caused difficulties wearing industrial boots, climbing steps or ladders, squatting or heavy lifting. All of these are requirements of a boilermaker's trade. Mr Tanner gave up work altogether in November 2001. I accept that Mr Tanner is now unsuited for work in the mines and will have difficulty getting even the type of jobs he has held since leaving Mt Isa. His educational standard and experience are limiting factors in other jobs but I am not persuaded he cannot work in a job not involving uneven ground or excessive standing. The Queensland award for a store person by way of example is \$369.32 net. While not restricting Mr Tanner to this type of work I consider this to be indicative of the general type and remuneration of the jobs he could now handle. He is at a disadvantage because of his injury but it is not so obvious to a potential employer that he would automatically be refused employment on that score. Allowing for some workplace disadvantage I propose to compensate Mr Tanner on the basis of a loss of future income on

the basis of the difference between \$770 pre accident capacity and \$300 being a store person's award wage discounted by approximately 20% to allow for the marketplace disadvantage. The net loss is thus \$470.00 per week which I allow for 29 years to age 65 and discount by 20% for contingencies. Using a multiplier of 810 the net result is a loss of \$304,560.

[17] If I apply a similar rate of loss to pre-trial earnings from February 2000 as I allow for post trial earnings to allow for time off between contracts I arrive at 25 months at \$770.00 per week less actual earnings of \$8457.00 making \$74,703.00 plus a further \$500.00 loss during the contract with the defendant which I accept. The plaintiff is entitled to lost superannuation for the past at the rate of 7% and for the future at the rate of 9%.

[18] I accept the need for the plaintiff to have the assistance of an occupation rehabilitation provider to get him back into the workforce. I accept the estimated cost of this service at \$2,000.00. I accept some need for future physiotherapy and allow it at \$500.00.

[19] In the result I assess damages as follows:

| | | |
|--------------------------------------|--------|--------------------------|
| Pain and suffering | | 45,000.00 |
| Past Economic Loss | | 75,203.00 |
| Interest on 75,203 less 14,000 @5% | | 6,365.11 |
| Loss of past superannuation | | 5,264.21 |
| Future economic loss | | 304,560.00 |
| Future superannuation | | 27,410.40 |
| <i>Fox v Wood</i> | | 8,848.60 |
| Special damages paid by WorkCover | | 3,427.97 |
| Other specials – pharmacy | 60.40 | |
| - travel | 100.44 | 160.74 |
| Interest @ 5% for 2.75 years | | 22.10 |
| HIC refund | | 167.40 |
| Future surgery | | 3,000.00 |
| Future physio | | 500.00 |
| Occupational Rehabilitation Provider | | 2,000.00 |
| TOTAL | | <u>481,929.53</u> |
| Less refund | | <u>30,917.39</u> |
| Judgement Amount | | <u>451,012.14</u> |

[20] I give judgement for the plaintiff against the defendants in the sum of four hundred and fifty-one thousand and twelve dollars and fourteen cents (\$451,012.14).