

# SUPREME COURT OF QUEENSLAND

CITATION: *Castro v Hillery & Ors* [2002] QCA 428

PARTIES: **LOLINY CASTRO (BY HER LITIGATION  
GUARDIAN ANTONIO CASTRO)**  
(plaintiff/respondent)

v

**BRIAN ERNEST HILLERY**  
(first defendant)

**SUNCORP METWAY INSURANCE LIMITED  
(formerly SUNCORP GENERAL INSURANCE  
LIMITED) ACN 075 695 966**  
(second defendant/first appellant)

**NORTH QUEENSLAND ELECTRICITY  
CORPORATION LIMITED ACN 078 848 978**  
(third defendant/second appellant)

**COUNCIL OF THE CITY OF MOUNT ISA**  
(fourth defendant)

FILE NO/S: Appeal No 590 of 2002  
SC No 11 of 1998

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Order

ORIGINATING COURT: Supreme Court at Mt Isa

DELIVERED ON: Judgment delivered on 20 September 2002  
Further Order delivered 18 October 2002

DELIVERED AT: Brisbane

HEARING DATE: 1 August 2002

JUDGES: McMurdo P, Williams JA and Wilson J

Judgment of the Court

FURTHER ORDER: **1. That the order for costs made on 20 September 2002 be vacated;**

**2. That the respondent pay the appellants' costs of and incidental to the appeal, other than the costs relating to grounds 2.2, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 2.12 and 2.13 in the notice of appeal, such costs to be assessed on the**

**standard basis;**

- 3. That the appellants pay the respondent's costs thrown away by the abandonment of grounds 2.2, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 2.12 and 2.13 in the notice of appeal, such costs to be assessed on the standard basis.**

**CATCHWORDS:** PROCEDURE – COSTS – DEPARTING FROM THE GENERAL RULE – OTHER CASES – discontinuance or abandonment – where notice of appeal contained 14 grounds of appeal, nine of which were abandoned the evening before the appeal – where appellants successful on appeal on the issues of future economic loss and costs – whether appellants should pay the respondent's costs thrown away by the abandonment of the nine grounds of appeal and, if so, on what basis

**COUNSEL:** M Grant-Taylor SC for the appellants  
J D Griffin QC, with A J Williams, for the respondent

**SOLICITORS:** Quinlan Miller & Treston for the appellants  
Conroy & Conroy for the respondent

- [1] **THE COURT:** When judgment on the appeal was delivered on 20 September 2002, the Court allowed the parties time within which to make written submissions with respect to costs thrown away by the late abandonment of a number of grounds of appeal.
- [2] The notice of appeal contained 14 grounds of appeal. The evening before the hearing of the appeal the appellants informed the respondent that they would abandon nine of them. The abandoned grounds related to general damages, past gratuitous care, the charge out rate for past gratuitous care, future gratuitous care, the charge out rate for future gratuitous care, the commercial cost of future care, the failure to apply "future possibility/probability" principles to the future care award, past and future care for the respondent's daughter and future speech therapy expenses. The remaining five grounds related in substance to three issues only - contributory negligence, future economic loss and costs (whether the trial judge erred in awarding the respondent costs on the indemnity basis).
- [3] The appellants succeeded on the issues of future economic loss and costs.
- [4] The costs of the abandoned issues should be paid by the appellants, but the circumstances do not warrant an order that they be assessed on the indemnity basis.

[5] We would make the following orders:

- (i) that the order for costs made on 20 September 2002 be vacated;
- (ii) that the respondent pay the appellants' costs of and incidental to the appeal, other than the costs relating to grounds 2.2, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 2.12 and 2.13 in the notice of appeal, such costs to be assessed on the standard basis;
- (iii) that the appellants pay the respondent's costs thrown away by the abandonment of grounds 2.2, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 2.12 and 2.13 in the notice of appeal, such costs to be assessed on the standard basis.