

# SUPREME COURT OF QUEENSLAND

CITATION: **Amer v Consolidated Meat Group Pty Ltd [2002]  
QSC 345**

PARTIES: **GAYNOR ANN AMER**  
(Plaintiff)  
v  
**CONSOLIDATED MEAT GROUP PTY LTD**  
(Defendant)

FILE NO: S582 of 2001

DIVISION: Trial Division

DELIVERED ON: 24 October 2002

DELIVERED AT: Rockhampton

HEARING DATE: 5 and 6 August 2002

JUDGE: Dutney J

ORDERS: **Judgment for the plaintiff against the defendant  
for the sum of \$87,791.13**

CATCHWORDS: DAMAGES – ASSESSMENT OF DAMAGES –  
where whiteboards fell on plaintiff in 1998 – where  
plaintiff fell on backside and injured hand when she  
tried to cushion the fall – where pre-existing  
degeneration in hand/thumb and lower back – where  
condition asymptomatic – where condition would  
have become symptomatic in plaintiff's mid-late 50's

PERSONAL INJURIES – LIABILITY – QUANTUM  
– where plaintiff slipped on a piece of fat or gristle in  
1999 – whether system of cleaning adequate – where  
back injury aggravated and nerve pinched - where  
further temporary aggravation of injury

*Griffin v Coles Myer Ltd* [1992] 2 Qd R 478, cited

COUNSEL: Mr R Lynch for the plaintiff  
Mr D McMeekin SC for the defendant

SOLICITORS: Sciacca's Lawyers for the Plaintiff  
Swanwick Murray Roche for the Defendant

- [1] Gaynor Amer worked in the Lakes Creek meatworks in Rockhampton for most of her adult life. She began in 1967. She has done a variety of jobs from packing to general labouring to quality assurance officer. Ms Amer was working in this latter position when she was injured on 1 June 1998. She was near a trolley of white boards which collapsed. The boards fell against Ms Amer's leg causing her to fall on her backside. She put out her hand to cushion the fall and also suffered an injury to her left hand and thumb as a result.
- [2] Liability for this injury is admitted.
- [3] Following the 1998 injury Ms Amer suffered a sore lower back, hand and thumb. Following insignificant incidents of pushing a box and flushing a toilet the hand swelled and she experienced shooting pains her arm. Ms Amer tested negative for carpal tunnel syndrome. The injury affected Ms Amer's work as a quality assurance officer because the drill used to take core samples from the meat caused pain in the hand and she had trouble lifting boxes of meat. She also had trouble replacing boxes of meat in cryovac bags.
- [4] On 9 December 1998 Dr Boland performed an operation on Ms Amer's left hand. Following the operation Ms Amer was off work on compensation for about 3 months, of which 7 to 8 weeks were spent in plaster. Ms Amer returned to work on "suitable duties" in May 1999 and full duties in August 1999. On her return to normal duties, Ms Amer was given the job of leading hand at the lazy susan. When there was a downturn in the business Ms Amer lost the leading hand position and was required to do normal process work on the lazy susan. Ms Amer says that her back and hand continued to trouble her making it difficult to maintain her employment. She took Panadeine Forte and Panadol and consulted a chiropractor.
- [5] Ms Amer suffered a further injury on 30 November 1999. Liability for this injury is contested.

- [6] On 30 November 1999, Ms Amer was carrying a pile of empty boxes from the lazy susan area to another part of the boning room. The pile of boxes obstructed her view. One of Ms Amer's feet (She doesn't recall which one) slipped on a piece of fat or gristle on the boning room floor. She started to fall backwards. To regain her equilibrium Ms Amer grabbed the "horse". The "horse" is a metal construction with spikes coming out of it to hold rolls of plastic for wrapping meat.
- [7] The floor of the boning room is bare concrete. Meat and fat fall on it regularly. Two labourers are employed to continually remove this debris. The contest between the parties largely revolved around the adequacy of the system for cleaning the boning room floor.
- [8] As a consequence of this near fall, Ms Amer aggravated her back injury and pinched a nerve in her neck. Ms Amer says that she was not coping with the work in any event. She worked two days after the 30 November 1999 incident and has not worked since.
- [9] Currently Ms Amer complains of constant and daily aching pain in her neck with related headaches and dizziness. She complains of limited head movement which, inter alia, inhibits driving. Her sleep is disturbed and in consequence she takes sleeping tablets.
- [10] Ms Amer experiences a loss of sensation, strength and dexterity in her left hand. The pain in her thumb area is said to be constant.
- [11] Ms Amer says she avoids activity for fear of further injury. Her weight has increased and her self esteem lowered. She says she no longer mows or goes to the movies. She does not go fishing or horse riding. She no longer enjoys gardening. Currently, Ms Amer takes 4 Panadeine Forte per day. She also takes Arapax to control her depression.

- [12] The medical evidence supports the conclusion that Ms Amer suffered aggravation of pre-existing degeneration in both her hand/thumb and lower back in the incident in 1998. These degenerative conditions were largely asymptomatic before the incident. The later incident in 1999 caused some further temporary aggravation. This conclusion is supported by both Drs Gillett and Macfarlane and I accept it. Ms Amer is now unsuited for work in a meatworks although there is no medical reason why she could not do light sedentary or semi-sedentary work not involving heavy lifting, twisting her back or neck in confined spaces or repetitive movements of her left hand or wrist. Suggestions included factory work as a packer or assembler, a messenger, a sales person, shop assistant or parking attendant. Despite her residual earning capacity Mrs Amer appears to have made little effort to seek other work. She worked briefly in a butchery and obtained an application for employment at the Capricorn Resort but did not complete it.
- [13] Ms Amer is now 52 years of age having been born on 29 March 1950. She was 48 when injured in 1998. Without the aggravation in 1998 her prognosis was that her degenerative condition may have become symptomatic in her mid to late fifties. Although I do not accept the inevitability of this it seems likely, particularly when it is noted that the medical records of the defendant's meatworks reveal a complaint by Ms Amer about pain in both thumbs after filleting on 12 May 1998. This may well have been a one off incident after heavier than usual work but it is suggestive of a likelihood of the condition eventually developing symptoms. There is other evidence in the medical records suggesting that Mrs Amer's hands were progressively becoming problematic.
- [15] Before assessing quantum I should deal with the contest concerning the system employed to clean the floor.
- [16] Mr Drochmann, a boning room supervisor, gave evidence that the system adopted at the meatworks was that two labourers were employed to patrol the floor with shovel and broom to pick up spillages. They worked progressively up and down the lines picking up everything that fell and would cover the

whole floor every 5 to 10 minutes. It is apparently impossible to prevent meat products falling on the floor. The labourers worked until the night shift ceased at midnight and then cleaners would come in and clean the floor with high pressure hoses. This system was admitted by Ms Amer. She suggested, however, that the fat could have come off the boots of a worker leaving after the shift. The fall was after the shift had actually finished for the night and before the cleaners had arrived.

[17] The plaintiff must show that some omission or act of the defendant contributed to the near fall in 1999. In other words that the system of cleaning employed by the defendant was inadequate and that if an adequate system had been in place the incident would in all probability not have happened.<sup>1</sup>

[18] I am not persuaded that the plaintiff has established any breach of the required standard by the defendant in relation to the second incident. The cleaning system is prima facie a proper one and I am not persuaded that it was inappropriately implemented. There is always a possibility of substances on the floor between each cleaning round and between the labourers and the contract cleaners after the last shift. The frequency of cleaning is in my view as much as could reasonably be expected. It follows that the defendant is not liable for the second incident.

[19] On the basis of the matters set out above I consider that the second incident contributed little to Ms Amer's present condition. Even had it not occurred the probability is she would have had to cease work because of the difficulties she was experiencing.

[20] At the outset I indicated that Ms Amer had spent most of her working life at the Lakes Creek Meatworks. She had, however, spent 3 seasons at Anglis Meatworks in Melbourne from 1970 to 1973 and 1 at Seigal's Meatworks in Melbourne also in the early seventies. In the early 1980's Ms Amer had worked for a few months in Biloela. This evidence is of relevance because the

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<sup>1</sup> *Griffin v Coles Myer Ltd* [1992] 2 Qd R 478.

Lakes Creek Meatworks closed, apparently permanently, on 28 July 2002. Ms Amer says that if she had not been injured she would have left Rockhampton looking for work in another meatworks. I am not convinced this is so. But for the periods I have mentioned Ms Amer has lived in Rockhampton since at least 1965. Her daughter and grand-daughter live in Rockhampton. She has property in Rockhampton. On the balance of probabilities I find that even had the first incident not occurred Ms Amer would probably have remained in Rockhampton and as a result of the meatworks closure would probably now have or be looking for other work.

[21] I accept however that Ms Amer is now placed in a more difficult position in seeking alternative work than she would otherwise have been.

[22] In the light of all of the above I assess damages for the 1998 injury as follows:

Pain & Suffering	20,000.00
Past loss of earnings <sup>2</sup>	50,193.00
Interest @ 5% on \$51486.23 for 4 years	10,297.25
Future economic loss <sup>3</sup>	11,524.00
Lost superannuation @ 7%	4547.34
Future superannuation @ 9%	1037.16
Expenses paid by WorkCover	8,600.39
Expenses not paid by WorkCover <sup>4</sup>	2,500.00
Interest @ 5%	668.15
Future medical expenses	500.00
<i>Fox v Wood</i>	3,156.15
 Subtotal	 113,023.44
<b>Less WorkCover refund</b>	<b>25,232.31</b>
 <b>TOTAL</b>	 <b>87,791.13</b>

<sup>2</sup> I have allowed the amount of \$525.00 per week for 38.2 weeks from 9.12.98 to 17.3.99 and 3.12.99 to 30.6.00 and \$547 per week less 50% for residual work capacity and meatworks closures from 1.7.00 until the meatworks closed plus \$50 per week from 29.7.02 until judgment. The weekly amounts are based upon gross earnings in the 1998 financial year less applicable tax. The 50% discount allows a progressive return to alternative employment.

<sup>3</sup> \$50 per week for diminished capacity for 8 years discounted by 33% to allow for, inter alia, the risk the symptoms would have appeared before age 60.

<sup>4</sup> As agreed.

- [23] Had I found the defendant liable for the second injury I would have allowed an additional \$7,500.00 for pain and suffering. This would allow for some additional pain and the difficulty with driving and some other activities. Because I consider that Ms Amer could not continue at the meatworks in any event because of the earlier injuries the other figures are not affected.
- [24] I give judgement for the plaintiff against the defendant for the sum of \$87,791.13.