

# SUPREME COURT OF QUEENSLAND

CITATION: *Heywood v Commercial Electrical Pty Ltd* [2013] QCA 307

PARTIES: **MITCHELL DWIGHT HEYWOOD**  
(appellant)  
v  
**COMMERCIAL ELECTRICAL PTY LTD**  
ACN 124 997 771  
(respondent)

FILE NO/S: Appeal No 2958 of 2013  
SC No 5102 of 2011

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Orders

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 11 October 2013

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Muir and Morrison JJA and Margaret Wilson J  
Judgment of the Court

ORDERS:

- 1. The appeal be allowed.**
- 2. The order of Martin J of 11 March 2013 be set aside.**
- 3. There be judgment for the appellant against the respondent in the sum of \$156,650.**
- 4. With respect to the claim:**
  - (a) WorkCover Queensland pay the appellant’s costs calculated on the standard basis on the District Court scale up to 1 June 2011.**
  - (b) The appellant pay WorkCover Queensland’s costs calculated on the standard basis on and from 2 June 2011.**
- 5. The respondent pay the appellant’s costs of the appeal to be assessed on the standard basis.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – POWERS OF COURT – COSTS – where the parties were directed to make submissions on costs and as to the content of an order to reflect the reasons – where the parties agreed on all aspects of the proposed orders except in relation to the costs of the appeal – where, on appeal, the appellant succeeded on the

issue of liability; however, failed to persuade the Court that damages should be increased – where the appellant contends that he should have his costs of appeal on the standard basis – where the respondent contends that the appellant should only have two thirds of his costs of the appeal as he was only partially successful – whether the general rule that costs follow the event should be departed from

**COUNSEL:** No appearance by the appellant, the appellant’s submissions were heard on the papers  
No appearance by the respondent, the respondent’s submissions were heard on the papers

**SOLICITORS:** Collas Moro Ross for the appellant  
MVM Legal for the respondent

- [1] **THE COURT:** In reasons delivered in this matter on 20 September 2013 the parties were invited to make submissions on costs and as to the content of an order to reflect the reasons. The parties are agreed on all aspects of the proposed orders except in relation to the costs of the appeal. The appellant contends that he should have his costs of the appeal on the standard basis. The respondent contends that the appellant should have only two thirds of his costs of the appeal because he was only partially successful. At first instance the primary judge found that the appellant had failed to establish breach by the respondent of any of the duties of care alleged by the appellant. The primary judge, appropriately, went on to assess the damages he would have awarded had the appellant succeeded. He assessed general damages at \$50,000 and future loss of earning capacity at \$150,000. The appellant argued on appeal that the award of damages should be:
1. General damages – \$75,000;
  2. Future loss of earning capacity – \$400,000.
- [2] The appellant failed to persuade this Court that the damages should be increased as claimed by him except to a relatively minor extent, irrelevant for present purposes, in relation to future loss of superannuation.
- [3] The respondent submitted that the appellant’s costs of the appeal should be limited to two thirds “recognising his failure on the two quantum issues.”
- [4] The appellant’s success in the appeal was very substantial. He succeeded in establishing liability on the part of the respondent thus moving from a position in which he recovered nothing and was liable to pay the respondent’s costs at first instance to one in which he had an order for payment of \$156,650 together with good prospects of a favourable costs order. In the circumstances, it would not be appropriate to penalise the appellant for not being wholly successful on the appeal. The general rule that costs follow the event should be applied.
- [5] Accordingly, it is ordered that:
1. The appeal be allowed;
  2. The order of Martin J of 11 March 2013 be set aside;

3. There be judgment for the appellant against the respondent in the sum of \$156,650;
4. With respect to the claim:
  - (a) WorkCover Queensland pay the appellant's costs calculated on the standard basis on the District Court scale up to 1 June 2011;
  - (b) The appellant pay WorkCover Queensland's costs calculated on the standard basis on and from 2 June 2011;
5. The respondent pay the appellant's costs of the appeal to be assessed on the standard basis.