IN THE COURT OF APPEAL

SUPREME COURT OF QUEENSLAND

[1993] QCA 069

Appeal No. 203 of 1992

Brisbane

[Vollmerhaus v Mackay Electricity Board and Weber]

BETWEEN:

NOEL ROBERT VOLLMERHAUS
(Plaintiff)
Appellant

- and -

MACKAY ELECTRICITY BOARD
(Defendant)
Respondent

- and -

NOEL EDWARD WEBER and F.J. WEBER
trading as 'BONA VISTA MOTEL'
(Third Parties)

THE PRESIDENT
DAVIES J.A.
DERRINGTON J.

Judgment delivered 12/03/1993

REASONS FOR JUDGMENT - THE COURT

APPEAL ALLOWED. JUDGMENT BELOW SET ASIDE AND IN LIEU JUDGMENT GIVEN FOR APPELLANT IN THE SUM OF $153,090.66. APPELLANT TO HAVE HIS COSTS OF THE APPEAL AND OF THE PROCEEDINGS BELOW.

CATCHWORDS: **NEGLIGENCE - BREACH OF STATUTORY DUTY- Appellant/workman electrocuted on contact with uninsulated metal clamp connecting electricity authority's electricity line to consumer's electricity line - whether electricity authority's failure to**

maintain insulation constituted breach of statutory duty - whether metal clamp an "electric line" or "work" of electricity authority - whether requirement to insulate service line required insulation of consumer's terminals - ELECTRICITY ACT 1976, ss. 6, 129(d), 260 - Electricity Regulations 1977, regs. 28(1)(b), 31(2)

NEGLIGENCE - APPORTIONMENT OF RESPONSIBILITY - Appellant/workman held 60% responsible for own injuries when stretched while working near electricity lines on facade of motel - electricity authority breached statutory duty in failing to maintain insulation on wires - electricity authority's breach more serious than appellant's negligence - whether court should interfere with apportionment

Counsel: P.A. Keane Q.C. with him Mr Baulch for the Appellant
S.G. Jones Q.C. with him Mr A. Mellick for the Respondent

Solicitors: Macrossan and Amiet for the Appellant
S.R. Wallace & Wallace for the Respondent

Hearing Date(s): 10 March 1993

THE COURT OF APPEAL

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Brisbane

Before The President
Mr Justice Davies
Mr Justice Derrington

[Vollmerhaus v. Mackay Electricity Board]

BETWEEN:

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(Plaintiff)

Appellant

- and -

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REASONS FOR JUDGMENT - THE COURT

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This is an appeal from a judgment of a District Court judge dismissing an action for damages for personal injuries caused when the appellant's hand came into contact with a clamp conducting low voltage electricity. The incident which caused the injuries occurred at the Bona Vista Motel at Mackay on 15 May 1986. The facts relevant to that

incident are not in dispute and on appeal only two questions were in issue; whether the appellant's injury was caused by a breach of statutory duty of the respondent and whether the appellant was guilty of contributory negligence either at all or to the extent found by his Honour.

The appellant was standing on a raised plank affixing wall cladding to the facade of the motel. Above him and within his reach four electricity lines of the respondent connected to lines running into the motel by means of metal clamps. Without adverting to the presence of those lines, though aware that they were there, the appellant stretched in order to obtain relief from a sore back. As he did so, his hands came into contact with at least one of the clamps to which we have referred. The clamp had originally been insulated by means of a pitch and bitumen insulating tape. However, that insulation had deteriorated to such an extent that the top part of the clamp at least was exposed. When the appellant touched it he was electrocuted in consequence of which he suffered the injuries in respect of which his Honour assessed damages. The connection of the respondent's line, by means of the clamp, to the motel's line had been made by the respondent's predecessor. That had included the original insulation by means of the tape and, if it matters, the supply of the clamp. The respondent was aware of the risk of deterioration of tape of this kind in situations such as this where it was exposed to the weather, to the extent that it required replacement. Its Assistant

Operations Supervisor, Mr Christensen, formerly an Inspector, had observed instances of such deterioration over a number of years.

The main question for his Honour was whether, in failing to repair the defective insulation over the clamp, the respondent was in breach of statutory duty. The relevant statutory duties, contained in the Electricity Act 1976 ("the Act") were said to be, in s. 129(d), to:

> "protect, maintain, control and manage works for the supply of electricity pursuant to this Act;"

and pursuant to s. 260, to:

> "ensure that every line or work of the Electricity Authority shall be duly and efficiently supervised and maintained in respect of both electrical and mechanical condition."

The definition of "works" in the Act means, amongst other things, electric lines and apparatus required to transmit electricity; and "electric line" is defined to mean:

> "any wire or wires, conductor or other means used for the purpose of conveying, transmitting, transforming or distributing electricity, together with any casing, coating, covering, tube, pipe, pillar, pole or tower, post, frame, bracket or insulator enclosing, surrounding or supporting the same or any part thereof, or any apparatus connected therewith for the purpose of conveying, transmitting, transforming or distributing electricity."

The clamp which the appellant touched was the means by which electricity was transmitted from the electric line of the respondent to the electric line of the motel. It did this by clamping those two lines together so that they were in

contact with one another at a number of points. It seems plainly to have been, at least, an apparatus connected to the respondent's electric line for the purpose of transmitting electricity and consequently to have been part of the respondent's electric line.

His Honour dismissed the claim because he thought that the clamp was an "electrical installation" a term which, it may be assumed, is defined widely enough to include the clamp, but which is defined expressly not to include "an electric line of an Electricity Authority or the holder of a licence under this Act to supply electricity". His Honour thought that, because the clamp came within the definition of "electrical installation" it could not be an electric line of an Electricity Authority. We think the converse is the case; that, by reason of the above exclusion, because the clamp was an electric line of an Electricity Authority it could not be an electrical installation.

Because the clamp was a line, and for that matter a work, of the respondent, it had a statutory obligation to maintain it. Consequently it was liable to the appellant for its failure to do so.

There was, we think, an additional reason, upon the construction of the regulations under the Act, why the respondent was liable for failure to maintain the clamp. Regulation 28 provides:

> "(1) An Electricity Authority shall ensure that -
> ...
> (b) low voltage overhead service lines are effectively and continuously insulated from the consumer's terminals to a point on the service line which is at least 1.5m away from the outer extremity of the building or structure."

The term "consumer's terminals" is defined to mean "the point at which a consumer's electrical installation is connected to service lines" and "service line" is defined to mean "an electric line, including a connection to a service fuse, servicing a consumer's premises from the point of supply on the Electricity Authority's undertaking to the consumer's terminals". It may be assumed that the line which was connected by the clamp to the respondent's service line was an electrical installation and that the point of connection at the clamp was therefore the "consumer's terminals". If his Honour's decision was correct, then the obligation of the electricity authority was to commence the effective and continuous insulation from but not including the clamp to a point on the service line at least 1.5m away, leaving the point of connection exposed. That cannot be a sensible construction of regulation 28(b). Properly construed, it requires the effective and continuous insulation from and including the consumer's terminals to a point 1.5m away from the outer extremity of the building or structure.

The respondent, as well as relying upon his Honour's construction, also relied on regulation 31(2) which, amongst

other things, provided that a consumer shall provide suitable means for the connection of his electrical installation to the service line. Even if it is assumed that this requires a consumer such as the motel owner to supply the clamp which provides the means of connection, this regulation can have no bearing upon the obligation of maintenance which is imposed by ss. 129(d) and 260, and regulation 28(1)(b). It follows from what we have said that the respondent's breach of statutory duty caused the appellant's injuries. We turn now to the question of contributory negligence.

Although his Honour found against the appellant for reasons which we have stated, he nevertheless, quite properly, proceeded to consider the questions of contributory negligence and damages. He apportioned contribution against the appellant to the extent of 60 per cent, apparently because he thought that the appellant was reckless in the action of stretching up when he knew of, but did not advert to, the presence of the wires. Neither party contested his Honour's findings of fact on this question. However, the appellant said that nevertheless what he did resulted from mere inadvertence, rather than negligence, while the respondent sought to uphold his Honour's apportionment.

Whilst we think that what the appellant did constituted more than mere inadvertence, we think that the respondent should bear by far the greater share of responsibility. It was its

breach of statutory duty which created a situation of peril which could have been remedied by timely maintenance. On the other hand, the appellant's negligence in failing to advert to the presence of the electricity lines when he decided to ease his sore back was substantially less serious. We would apportion negligence 80 per cent against the respondent and 20 per cent against the appellant.

We would therefore allow the appeal, set aside the judgment below and in lieu give judgment for the appellant in the sum of $153,090.66, being the total of 80 per cent of $182,488.32 together with $7,100 interest from 15 September 1992 at 10 per cent. The appellant should have his costs of the appeal and of the proceedings below.