

CIVIL JURISDICTION

BEFORE MR. JUSTICE ANDREWS

BRISBANE, 30 APRIL 1979

BETWEEN:

DONALD MENZIES

Plaintiff

- and -

THE RIVERSIDE COAL TRANSPORT COMPANY PTY. Defendant  
LTD.

JUDGMENT

HIS HONOUR: I find that at about 7 o'clock in the meaning of 12 September 1973 the plaintiff, going about his duties in the course of his employment, entered a locker room at the premises of the defendant and struck his head on a template which is used in the painting decoration of vessels, which protruded into a passageway within the locker room at the plaintiff's head height above the floor of the passageway. The template, as I find, was a scroll-type template of plywood 3/16ths of an inch thick. I find that the template was hung on wire hooks so that the lowest part of it would have been about level with the forehead of the plaintiff who was a little over 6 feet in height. I find that it was not unusual for templates to be left in that position.

I find that this particular one on the occasion in question was protruding beyond some shelving more or less in the middle of the room by somewhere between 6 and 10 inches. I find that the template was not left there by

the plaintiff. I find that, generally speaking, templates left more or less in that position would have been placed there by the plaintiff, but this was not invariably so, and to leave one protruding into the passageway in the position which I have described, in my view, was negligent.

It has been suggested that the plaintiff was guilty of contributory negligence in failing to keep a proper lookout to protect his safety, but in my view he behaved reasonably in the circumstances and could not be said not to have been keeping a proper lookout. There were alight in the room fluorescent lighting tubes or Neon lighting tubes which were quite bright and would have had a distracting effect and tended, to cause one proceeding along the passageway where the plaintiff was struck to look down rather than up. In the result, he suffered a slight injury which had rather dramatic consequences for him for a time, and which affected his health materially for a time causing him loss and pain and suffering, and interference with his capacity to enjoy life. I find that the only injury sustained by the plaintiff directly was a slight abrasion above the eyebrow on his forehead.

The reaction of the plaintiff to the injury was most unusual. He has for most of the time since, except during a period of about seven months to which I will refer, suffered pains in his head, neck, arms, legs and, indeed, in numerous parts of his body, complained of by him in great detail, but which in my view have no physical connection with the slight bump on the head suffered by him in September 1973.

He was predisposed to neurotic and obsessional reaction to an injury of this kind. This is a major contributing factor to the condition in which he finds himself now. I find also as a matter of probability that during the short period after he sustained this injury, and possibly even at the time that he suffered it, he was exhibiting symptoms of a condition known as thyrotoxicosis. This is a condition which has added to and prolonged his symptoms and, in my view, is contributing to them now in a most material way.

Between September 1973 and May 1974 - about 15 May, I think it was - he was mostly off work. During this time his actual loss in terms of pay was something of the order of \$1,400 or \$1,500, but I am not satisfied that the accident was the sole contributing factor in the cause of this loss, I think that in the early period it was the major factor, and for that reason I think that, doing the best I can, an amount of about \$1,000 is a reasonable sum to compensate him for interference with his capacity to earn at that time.

In addition, I find also that up until that time his pain and suffering and the clear interference with his capacity to enjoy life was in a substantial way attributable to the injury and the response to it. However, he was able to return to work in May 1974, and he remained at work until December 1974. He was complaining of symptoms similar to those which beset him now, and was discovered to be suffering from the condition of thyrotoxicosis and was treated for it. Subject to the need, after reasonable treatment, for his being sustained with dosages of medicaments, he has recovered from the condition of thyrotoxicosis. Now, it seems to me that the persistence of symptoms, except in quite a minor way, has not been shown to be attributable to his original injury rather than to the thyrotoxicosis which continued in him to produce the symptoms, initially triggered off by the injury sustained on 12 September 1973. A good deal of what I find depends upon the interpretation of medical opinion. It may be indeed thought to be presumptuous of a person trained in the law to be interpreting the medical opinions of respected doctors, but of course, that is the duty that is thrown upon us, and I have to do the best that I can with their evidence. Interpreting it as I can, I find that there is not a great deal of effective difference of opinion among the doctors. There may be some slight variations in emphasis, but generally speaking it is my view that the opinions that I have expressed and the findings which I have indicated represent a fair interpretation of the evidence.

Now, he has said that during that seven-month period between May 1974 and December 1974 his symptoms continued, but he was taking pain-relieving medicaments and there didn't seem to be much doctors could do for him. So far as his credibility is concerned, I take two views of him; as a man who records events, I regard him as basically a truthful person. I regard him also as basically a decent and honest man, but he has had an obsessional reaction to his injuries, and as to his description of them and the continuance of his symptoms I find I have less confidence in him as a witness. This is not a reflection on his truthfulness but a view I have of the symptoms which he manifests of hysteria, hypochondriasis or obsessional anxiety, and depression. In my view on the whole of the evidence, it seems likely that what was occurring to him between May 1974 and December 1974 was predominantly to be ascribed to the condition of thyrotoxicosis. I think that his symptoms since then can predominantly be ascribed to his response to the illness of which he then suffered and the symptoms from which he then suffered. I have been persuaded also by the evidence, common as I recall it to all the doctors - or if not, then to most of them - that the finalisation of this litigation will improve his condition. I am satisfied on the medical evidence that when this case has been completed and the issues have been wrapped up so to speak, he will begin to feel better.

Now, in all those circumstances it seems to me that the claim becomes a modest one. It is a case which naturally occasions a judge a deal of difficulty and not a little frustration to see a man, with no immediate physical cause of his injuries, suffering so much because he has had a thoroughly miserable time and has a thoroughly miserable time at the moment. However, doing the best I can for him and bearing in mind the need to be just to the defence in a case of this kind, I think overall that a sum of \$5,000 would be adequate to compensate him for the injury sustained by him in September 1973 and for the consequences as they continue to the present time, as referred to by me in a quite minor way.

There were special damages agreed in the sum of \$70,  
as I recall.

There will be judgment for the plaintiff in the sum  
of \$5,070, I direct that the defendant pay the said sum  
to the Workers' Compensation Board, and in all the  
circumstances I think that it is more than fair, having  
regard to what was paid into court, to make no order as  
to costs. So be it.

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