IN THE SUPREME COURT OF QUEENSLAND Writ No. 19 of 1985

MOUNT ISA DISTRICT REGISTRY

Before Mr Justice Moynihan

BETWEEN:

MARK PAUL KUIVALAINEN Plaintiff

AND:

MOUNT ISA MINES LIMITED Defendant

JUDGMENT - MOYNIHAN J.

Delivered the 26th day of February, 1987.

CATCHWORDS:

Personal injuries. Negligence. Safe system of work. Mining industry. Loss of efficient use. Lower Limb.

Counsel: Mr. K.D. Dorney for plaintiff
Mr. B. Hoare for defendant
Solicitors: V.R. Moffatt & Associates for plaintiff
Thynne & Macartney for defendant (L.A. Evans - Town Agents in Mt. Isa)
Hearing dates: 9th and 10th February, 1987.

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The plaintiff is a married man born on 5 January, 1954. On 16 April, 1985 he was employed by the defendant on contract underground in its mine at Mt. Isa as a first machine man. He was an experienced miner. On the day I mentioned the plaintiff was injured in the course of his employment. I turn now to the circumstances giving rise to his injury.

In the early hours of the night-shift on the day I have mentioned the plaintiff was working with a man named Zahner. They were engaged in using a large drilling machine known as a Tamrock S Class Hydraulic dual Drilling Jumbo and engaged in development work. While the machine was engaged in drilling to one side of a particular face, either the plaintiff or his workmate noticed that they had missed washing out one of the drill holes in which explosives had been previously set. The washing out was to ensure that there was no residue of explosive which might be set off by subsequent work. In its untreated state the hole was a misfire and in its treated state a butt. I accept that the plaintiff was aware if not concerned that if the untreated hole was noticed by a supervisor there may, but not. necessarily, have been consequences adverse to the plaintiff and his workmate. I also accept that the plaintiff and his workmate were contract workers paid according to their rate of performance and hence desirous of minimum delay.

In order to gain access to the hole in question the plaintiff walked along one of the booms (there were two) of the drill rig I have mentioned. The rig or variations of it are depicted in photographs and a brochure which were admitted into evidence. It is not necessary that I essay an elaborate description. In essence it is a large machine which consists of a platform or carrier upon which various components are mounted and from which the rig is operated by an operator - on the occasion in question the plaintiff's workmate. Access to the platform is gained by a

set of steps. Projecting from the front (the end nearest the work face) of the platform are two booms each of which can be extended or retracted and the position of each of which can be varied in the vertical and the horizontal plane by controls operated from the platform. Attached to each boom at the end furthest from the machine is a beam which carries the actual drill and associated equipment. Hydraulic lines and other items are carried along the boom which is not flat but U shaped reflecting the fact that it can be extended or retracted. Notably among these devices is a feeder motor towards the extremity of the boom furthest from the platform or carrier, under but projecting outside the boom.

The hole which I have mentioned having been identified the plaintiff proceeded to wash it. out. To do this he walked along one of the booms which was of the order of one metre or slightly more off the ground and parallel to it and hosed out the hole. He had no trouble progressing along the beam but had to be careful because there was lubricating oil or fluid and spoil from the operation on it. It is to be remembered that the area in which the plaintiff was working was dark, apart from illumination provided by the machine which, although bright, was limited in the area to which it was directed. There was water about and the machine itself generated a considerable amount of noise. The floor under the boom was rough but apparently trafficable.

The plaintiff having completed his task, determined to get down from the boom straight to the floor, rather than walk back along it and get down by the access steps provided on the operating carriage. Apart from anything else to reach these involved him passing along the whole length of the boom and getting past the bank of lights and other impediments at the front of the carriage, a task not without difficulty and relatively time-consuming. The plaintiff threw the hose down and then knelt down steadying himself with his left hand on the wall of the workings or tunnel which was in his immediate proximity and his right

hand on the boom. He said he was “square on” to the wall. As he was going to throw his right leg down his trousers got caught on the feed motor I earlier mentioned and he landed on an angle with his left leg taking the force with his right leg still being in the air when he bit the ground. I should say that I do not think it right to describe the plaintiff as having jumped. As a consequence he suffered injuries to which I will later turn.

I am satisfied that it was entirely foreseeable that in the course of his employment an employee such as the plaintiff might need to gain occasional access to some part of the workings by some artificial means. I say occasional to distinguish the occasional from where a board was slung across the booms for the purpose of putting explosive in the drill holes. I do not think that was an appropriate consideration in the events in issue here. It was also foreseeable that a ladder might be useful for the purpose of what I call occasional access and that if one was not available or even in any event a drill boom might be used. In so far as there were dangers in the latter course they might in any event be reduced by the use of a ladder, either for the task or to and in mounting or dismounting from the boom. Indeed one of the plaintiff's supervisors, called by the defendant, apparently considered a ladder an essential piece of equipment for the general task the plaintiff and his workmate were engaged in. No ladder was available at the site. There was evidence that ladders became lost or damaged fairly easily. There was some controversy as to how long it might take to procure a ladder. It is fair to say that the plaintiff's witnesses, essentially miners, were more optimistic than the defendants, essentially supervisors, as to the time and effort involved in having a ladder brought to the site. In any event since the occasion calling for use of a ladder might arise unpredictably (as it did here) the answer was to have one with the machine on the site.

I am also satisfied that it was entirely foreseeable that a miner may wish to use a boom for a work platform to

engage in a task of the kind engaged in by the plaintiff and that when he was mounting and dismounting from the boom as well as when using it he was at risk of injury. Walking along the boom to gain access to the carrier platform and hence the steps provided was not without danger or difficulty and required concentration since the boom was not designed for walking on, was slippery and dirty. In some models, steps or cleats had been welded to the stabilizer legs which were forward of the main carriage and hence more accessable than the steps to which I have earlier referred. There were no such steps or cleats on the machine in issue here. The steps or cleats were welded, apparently at the request of the men, after a safety meeting albeit ostensibly to give access for a purpose not directly in issue here. Nevertheless their provision was a recognition of the risks associated with mounting and dismounting and a way of alleviating those risks. The point is once it was foreseeable that workmen would use the boom as a work platform there was in my mind an obligation on the defendant to provide, among other things, appropriate means for their mounting and dismounting and this was not done. There was some debate that the plaintiff should have had the operator raise and lower the boom while he was on it but there are dangers associated with that and I do not think it was appropriate. There was also a suggestion that the plaintiff should have arranged for the one boom to be at a position to provide him with a handhold while he was on the second but that would not have obviated the risks involved in mounting and dismounting. An alternative might have been to prohibit the use of a beam as a work platform. That was not done and does not seem to have been a realistic consideration.

In summary then, in my view, the system of work provided by the defendant was fraught with a degree of risk of injury of which the employer was aware or ought to have been aware in circumstances when employees mounted or dismounted from the boom. Moreover the employer failed in its obligation to take reasonable care to obviate the risk

by providing a safe system of mounting or dismounting or providing an alternative “work platform”.

On balance, I am not prepared to find that the plaintiff's conduct amounted to contributory negligence as distinct from being pure accident or a consequence of foreseeable in advertance in either case obviated by the provision of an appropriate system of work. I turn now to the question of damages.

There was considerable pain associated with the plaintiff's initial injury. An arthroscopy performed on 22 May, 1985 showed that he had damaged the medial femoral condyle and that the anterior cruciate ligament was totally ruptured. There was a tear in the posterior horn of the lateral meniscus. The horn was removed. There is no real issue about the plaintiff's injury or its implications. Medical reports were admitted into evidence without the doctors being called and they described the injuries, their treatment and course. In the opinion of Dr. Fergus Wilson the plaintiff has a 25 per cent permanent loss of function in terms of efficient use of the left lower limb. This diminishes both his enjoyment of the amenities of life and his earning capacity.

The plaintiff returned to work on 18 January, 1987 where he was engaged in light duties. It is most unlikely that he will ever be able to work in his pre-accident occupation and earn at that rate. It was, in any event, unlikely that the plaintiff would have continued to follow that occupation beyond the age of 40 to 45. That consideration is to be reflected in the calculation of his future economic loss although I accept, as was submitted, that he may possibly have been one of the exceptions in that his education standard, lack of any formal technical qualifications and his previous work experience are such that the plaintiff's employment opportunities are further restricted and he is at more risk on the labour market, than would be the case had he not been injured.

Upon his resuming work the plaintiff earned less than he would have done had he resumed in his pre-accident occupation as appears from exhibits 6, 13 and 14. The figure is of the order of $140.00 to $150.00 per week nett after tax. The plaintiff's future loss falls for calculation at a lesser rate because I am satisfied he will soon be able to take up more lucrative underground work if he chooses.

It remains to reflect the considerations I have been canvassing in terms of money. The figures of course reflect that some of the considerations are not capable of being reflected in any precise calculation.

Pain, suffering and loss of amenities Past	$15,000.00
By way of interest on this component from 16.4.1985 to February, 1987 at 6%	$ 1,650.00
Future	$10,000.00
Economic loss to trial	$33,000.00
By way of interest on $21,000.00 (i.e. after allowing for weekly compensation payments) at 6%	$2,300.00
Future economic loss	$30,000.00
Special damages (agreed)	$ 3,771.40
"Fox v. Wood" component (agreed)	$ 1,642.80
Total damages	$97,364.20

From this must be subtracted the statutory refund of compensation payments of $17,308.56.

I therefore give judgment for the plaintiff against the defendant for $80,055.64 and costs to be taxed.