

SUPREME COURT OF QUEENSLAND

CITATION: *Crowley v Suncorp Metway Insurance Ltd* [2004] QSC 279

PARTIES: **DANIEL PATRICK CROWLEY**
(plaintiff)
v
SUNCORP METWAY INSURANCE LIMITED
ACN 075 695 966
(defendant)

FILE NO/S: BS 4077/04

DIVISION: Trial Division

PROCEEDING: Trial

ORIGINATING COURT: Supreme Court

DELIVERED ON: 13 August 2004

DELIVERED AT: Brisbane

HEARING DATE: 26 July 2004

JUDGE: Muir J

ORDER: **The defendant pay the plaintiff's costs if any, of and incidental to the proceedings to be assessed on the standard basis.**

CATCHWORDS: DAMAGES – MEASURE OF DAMAGES – PERSONAL INJURIES – LOSS OF EARNINGS AND EARNING CAPACITY – whether the plaintiff's earning capacity has been impaired as a result of the accident – calculation of past and future economic loss

COUNSEL: Mr M Grant-Taylor SC with Mr SJ Given for the plaintiff
Mr SC Williams QC for the defendant

SOLICITORS: Morton & Morton for the plaintiff
Payne Butler Lang for the defendant

Introduction

- [1] **MUIR J:** The plaintiff Daniel Crowley was injured on 9 August 2000 when a bus in which he was a passenger hit bumps on a road on Fraser Island throwing him off his seat. In these proceedings the plaintiff claims damages for negligence. The defendant has admitted liability and only quantum remains in issue. In that regard, the only aspects of the plaintiff's quantum claim which remain unresolved are past and future economic loss and interest on past economic loss.

The medical evidence

- [2] In the accident the plaintiff sustained a compression fracture of his first lumbar vertebra. Dr Brian Hurston, consulting orthopaedic surgeon, in a report dated 16 September 2002, states that the plaintiff's symptoms of pain are intermittent and are aggravated by standing or sitting for periods in excess of 10 to 15 minutes. He notes that examination shows a normal range of movements but that the plaintiff is likely to have continuing symptoms of pain which "may gradually worsen with time". The future prognosis, according to Dr Hurston, "is very difficult, and mostly unpredictable as to what rate this progression will be." He expresses the view that "heavy lifting would be difficult for him" and that he is likely to develop degenerative changes "in the nearby facet joint of his lumbar spine" and it's likely to occur "over the space of the next 5-10 years."
- [3] An orthopaedic surgeon, Dr McGuinness, in a report of 6 December 2000 commented that:

"80% of people who sustain a compression fracture of the lumbar spine do very well. They have no significant long term problems and they get back to full activities. About 20% have long term intermittent pain and are not fit for full strenuous sports or working activities. Only time will tell which group he will fall into. ... Overall I expect the outcome will probably be very good."

- [4] The plaintiff's evidence as to his symptoms was limited to stating that he experienced pain after sitting or standing for prolonged periods.

The plaintiff's work history

- [5] The plaintiff, who is an Irish citizen, left school at 17. He then undertook a four year apprenticeship as a sheet metal fabricator and welder. After completing the apprenticeship successfully he remained with the company with which he had been apprenticed for about another 12 months. He continued however in the same occupation for another 12 years or so. Before taking 12 months leave of absence to come to Australia on a working holiday in mid 1999 he was employed by Alan Perrott Manufacturing for a little over a year. On returning to Ireland the plaintiff, on medical advice, decided not to continue as a sheet metal worker because of the reasonably heavy manual work involved in that occupation. He undertook a six month computer course and then another six month course in computer assisted drafting. At the conclusion of the latter course he commenced a two year architectural drafting course. After completing the first year of that course successfully, and shortly after the commencement of its second year, he took employment as a junior piping technician. After 12 months in that job he commenced employment with his present employer, ESI Technologies.
- [6] The evidence reveals that the plaintiff is competent in his field and well regarded by his employer. There is no suggestion that his position is insecure or that he would be likely to experience any difficulty in either continuing his employment or in obtaining satisfactory alternative employment as a piping design engineer should he choose to do so.

The areas of dispute

- [7] The plaintiff's contention is that his actual earnings and his future earning capacity has been and will be reduced considerably as a result of his inability to continue in his employment as a sheet metal worker. The defendant's contention is that the plaintiff substantially overstates the difference in actual and potential earnings between the plaintiff's past and present occupations.
- [8] The plaintiff's case, as presented initially, is heavily reliant on the evidence of Mr Alan Perrott. Mr Perrott is one of the two directors of Alan Perrott Manufacturing. His wife is the other director. The company carries on business as a stainless steel fabricator specialising in home heating. Mr Perrott swears, and I accept, that his company's business has been buoyant over the last few years. I also accept his evidence that the plaintiff was a valued employee and that his position was being kept open for him.
- [9] When the plaintiff failed to return to Mr Perrott's company another person, Mr Cousins, was employed in his stead. Mr Cousins is a qualified sheet metal worker who has significantly less experience than the plaintiff. Mr Perrott regards him as a rather less valuable employee than the plaintiff because he lacks the plaintiff's initiative and skills in dealing with customers. The reason for the evidence, elicited in cross-examination, concerning Mr Cousins was that Mr Williams QC, who appears for the defendant, sought to cast doubt on Mr Perrott's evidence about the plaintiff's earning capacity by reference to the remuneration actually being paid to Mr Cousins.
- [10] Mr Grant-Taylor SC, who led Mr Given for the plaintiff, tendered through Mr Perrott a schedule which set out Mr Perrott's calculation of the net income the plaintiff would have received had he remained in the employ of Alan Perrott Manufacturing. The schedule records:

**NETT RATES OF PAY WHICH WOULD HAVE BEEN
PAYABLE BY ALAN PERROTT MANUFACTURING
TO DAN CROWLEY**

October 2000	€480.71 nett per week	[24,996.92]
October 2001	€486.21 nett per week	[25,282.92]
October 2002	€619.15 nett per week	[32,195.80]
October 2003	€637.40 nett per week	[33,144.80]
October 2004	€662.18 nett per week	[34,433.36]

The right hand column has been added to show an annual nett wage.

- [11] In cross-examination Mr Perrott gave evidence of the existence of a pay scale for sheet metal workers which sets minimum rates of pay and which has provision increments in the minimum rates of pay after each year of employment up to the fifth.
- [12] He agreed that Mr Cousins, who had about five years experience, was being paid €7.86 per hour resulting in a gross income of €30,052 in 2003. In addition to this, according to Mr Perrott, he was paid for an average of six hours overtime a week at the set rate (four hours at time and a half).

- [13] Whilst having some reservations about Mr Perrott's evidence of overtime payments, which I consider likely to err on the side of generosity, I accept that there would have been a material difference between the wage paid to Mr Cousins and that which would have been paid to the plaintiff. The plaintiff was much more experienced as well as being generally more valuable to Mr Perrott's business.
- [14] It is not necessary to make detailed findings about the assumptions underlying Mr Perrott's schedule as it appears from calculations made by Mr Grant-Taylor on the basis of matters in evidence that income stated in the schedule does not materially exceed the nett income of an employee with the plaintiff's experience calculated at the prescribed rates. I accept that Mr Perrott's calculations err on the side of conservatism and I accept them. I therefore find the plaintiff's past economic loss to be €74,035 being lost earnings in accordance with exhibit 4 of €107,194 less actual earnings of €33,159.
- [15] Mr Williams argued that within four years the plaintiff's income would equal the income he would have received as a metal worker. He submitted that the current economic loss was €13,491 gross or €8,275 nett and that the future loss was 2.5 times €8,275, namely €20,687.
- [16] The evidence of Mr Field the general manager of ESI Technologies, the plaintiff's current employer, which I accept, is that the plaintiff can expect a wage increase this year in the range of 8 to 10% and that in about 3 to 4 years he is likely to have the status of a senior piping design engineer with a wage in the range of €33,000 to €35,000. Performance and market conditions would warrant payment of a bonus in the order of 10 to 15%.
- [17] The plaintiff's present gross wage is €23,000. In October 2004 it will increase to approximately €25,000. The following increased incomes, including bonuses at a rate of about 10 per cent of salary, can then be expected:

October 2005	€30,000
October 2006	€34,000
October 2007	€37,500

Any further increases would depend on improved market conditions and the assumption of additional or different responsibilities.

- [18] I find that by October 2007 the applicant's income from his present employment would have equalised, approximately, with the income a sheet metal worker with six years experience would have earned under the award (€18.98 per hour for 39 hours per week over 52 weeks).
- [19] After that time, in my view, it becomes impossible on the evidence to conclude that the applicant would have continued to earn more as a sheet metal worker than a piping design engineer, except possibly to a small extent for a year or two. In reaching this conclusion I take into account the heavier, more physically demanding nature of a sheet metal worker's work.
- [20] I also consider it appropriate, looking at the matter broadly, to allow a sum of €10,000 to compensate the plaintiff for the small differential to which I have referred and for the loss of a likely but rapidly diminishing premium above award rates resulting from his skills and experience.

- [21] I invite the parties to agree a schedule of damages based on these findings, applying in respect of the calculation of future economic loss the methodology used by Mr Grant-Taylor in address. Interest on past economic loss will be awarded at 5% on €28,228.00 for 1,364 days between 1 November 2000 and 26 July 2004.
- [22] Unless either party wishes to make submissions to the contrary the order for costs will be that the defendant pay the plaintiff's costs if any, of and incidental to the proceedings to be assessed on the standard basis.