

# SUPREME COURT OF QUEENSLAND

CITATION: *Morrison v Hudson & Anor* [2005] QSC 290

PARTIES: **SCOTT ANDREW MORRISON**  
(plaintiff)  
**v**  
**JAMEY WAATA HUDSON**  
(first defendant)  
**and**  
**ALLIANZ AUSTRALIA INSURANCE LIMITED**  
(second defendant)

FILE NO/S: SC No 319 of 2005

DIVISION: Trial

PROCEEDING: Claim

ORIGINATING COURT: Supreme Court at Townsville

DELIVERED ON: 14 October 2005

DELIVERED AT: Townsville

HEARING DATE: 10 October 2005; 11 October 2005

JUDGE: Cullinane J

ORDER: **Judgment for the plaintiff against the defendants in the sum of \$159,775**

CATCHWORDS: NEGLIGENCE – ROAD ACCIDENT CASES – LIABILITY OF DRIVERS OF VEHICLES – where the plaintiff was injured in a motor vehicle accident – where liability was admitted

DAMAGES – MEASURE OF DAMAGES – PERSONAL INJURIES – ASSESSMENT OF DAMAGES – where plaintiff engaged in kangaroo shooting and trapping pigs – whether injuries resulted in an impairment of the plaintiff’s earning capacity – whether specific loss identifiable

*Civil Liability Act* 2003 (Qld)  
*Civil Liability Regulation* 2003 (Qld)

COUNSEL: K Fleming QC, with A Collins, for the plaintiff  
M Glen for the defendants

SOLICITORS: Dempseys Solicitors for the plaintiff  
McInnes Wilson for the defendants

[1] The plaintiff was injured in a motor vehicle accident which occurred on 10 December 2002. His cause of action is admitted.

- [2] He was born on 28 December 1973 and is married with three children aged three, two and a little under six months.
- [3] He was educated to a Grade 10 standard at Townsville. Since entering the workforce he has been in employment in manual tasks such as labouring and boning at a meatworks.
- [4] For a number of years prior to the accident he had been engaged in kangaroo shooting and trapping pigs.
- [5] The evidence is a little unsatisfactory on the subject but it would seem that at some time prior to the collision he had commenced sub-contracting with a contractor to the Australian Defence Forces to control animals at Dotswood Station. This required him to trap pigs and to destroy them. He was able to take any pigs of a sufficient size as to be capable of being used for meat and to keep the proceeds. This required the carcasses to be brought to a chilling unit in Townsville.
- [6] This contract was a yearly contract and he has continued to obtain it, year by year, since the accident. In addition he obtained income from shooting kangaroos. He also had a permit with the Queensland Parks and Wildlife Service to trap pigs on the Townsville Common and engaged in some pig shooting on his own where the pigs were hunted by dogs. He had not long prior to the accident obtained a casual part time position at the Rowes Bay Golf Club which involved heavy work involving the spreading of sand physically on the greens. He had done this for a couple of weeks or so prior to the accident and the lost the position following the accident when he was unable to continue doing it.
- [7] In the accident he suffered an injury to his right leg. This would seem to have been a serious soft tissue injury to the calf. He did not sustain a fracture. He also sustained significant facial lacerations which are shown in photographs which form part of exhibit 1.
- [8] His case is that he has three sequelae of the accident. One is the scarring to the face. This is dealt with in a report of Dr Tassan, a plastic surgeon. The scarring is primarily in the central forehead and nasal bridge. Dr Tassan thought that some of the scarring might be improved but would still be visible even following revision. He thought that it would be preferable if only the longest and most visible scar were to be surgically manipulated. There is a loss of feeling in the upper lip about which nothing can be done. One of the consequences of this is that the plaintiff finds it very difficult to drink from a cup without dribbling. He also complains of some hypersensitivity with hot liquids.
- [9] It is also the plaintiff's case that he has suffered a significant disability of his right lower leg. This was as I have indicated, injured in the accident. There is some swelling of the right leg. He complains of pain and occasional giving way in this leg and says that on one occasion this resulted in an injury to his hand which has left him with a disability. Just whether the plaintiff has a disability of the right lower leg and if so the nature of it has been the subject of contention before me. It seems plain from the evidence of two vascular surgeons that he does not have any major vascular defect but each accept there is some localised lymphatic damage and, in Dr Quigley's case, some venous insufficiency. Dr Boys, an orthopaedic surgeon, thought that the plaintiff had no identifiable disability. He was not prepared to

exclude the possibility that he had some difficulty but he did not see it as creating any functional loss. He rejected the suggestion that the plaintiff's injury to his hand, which the plaintiff says was the consequence of his leg giving way, could be explained by any disability of the leg. There is a report from Dr Gillett, an orthopaedic surgeon, who thought that the plaintiff had some ongoing symptomatology as a result of an injury to his leg.

- [10] Dr Wallace, an orthopaedic surgeon who was called, expressed the view that the plaintiff had suffered a chronic soft tissue injury in the leg which is the cause of the ongoing swelling and which has left him with muscular tenderness. He thinks that the giving way of the leg which the plaintiff suffers from is the result of this injury and that the occasion upon which his leg gave way and he injured his hand was a consequence of this. It is not possible, according to Dr Wallace, to conclusively identify the nature of the disability but it is a consequence of the plaintiff's injury.
- [11] Dr Olsen, who is described as a consultant physician in occupational and environmental medicine, made an assessment of the plaintiff's work capacity. He thought that the plaintiff had been left with persistent oedema in the leg.
- [12] Various medical practitioners expressed different views as to the functional loss associated with the injury to the right calf. In some cases it was not thought that the AMA guides were of assistance because of the rather special nature of the disability while some attempted to assess it by reference to the guides. I accept the evidence of Dr Wallace that the plaintiff has a chronic soft tissue injury and that one of its consequences is that he is unlikely to return to manual labouring work. Dr Olsen, who assessed the plaintiff from the perspective of his earning capacity, thought that the leg created difficulty for him in his pig hunting activities notwithstanding that he was continuing this work. Dr Tomlinson, a neurosurgeon, also thought the plaintiff had a soft tissue injury. This is consistent with the report of Dr Gillett.
- [13] The plaintiff gave evidence that about six or eight months after the accident he was working on a vehicle using a grinder on the rack of the vehicle and grinding a piece of steel. As he did so his right leg gave way and he fell onto the grinder putting his right hand out to save himself. The result was that the top of his thumb was cut off. This is the third sequela of the accident alleged.
- [14] He said that his leg at this time was painful and swollen and would tend to give way. He said "generally it hurt like anything".
- [15] He also described a feeling of weakness and said that it felt like he had no calf in the back of his leg. This was a reference to the occasion when he injured his thumb.
- [16] I accept the plaintiff's account of this. I thought that generally he was an honest witness.
- [17] I also accept Dr Wallace's explanation that the most likely cause of this is a reflex inhibition of muscle action associated with pain. I should add that Dr Wallace thought that there was probably continued swelling because of some problem with venous or lymphatic return in the lower limb consequent upon his injury.
- [18] It follows in my view that the plaintiff's hand disability is a consequence of the injury sustained in the accident and is compensable in these proceedings.

- [19] There is a photograph of his thumb in exhibit 1.
- [20] He has a shorter and squarer end to his right thumb. Most of the nail has been lost and there are small nail spurs on each side of the nail bed. He tends to use his index and middle fingers to grip objects and not to use his thumb. There is tenderness on the pulp of the thumb and when attempting to move the tip of the thumb.
- [21] There is a loss of pain free movement.
- [22] Dr Coleman, a specialist in this area, says the plaintiff has lost 15 per cent of function of the thumb due to the lack of sensation in the distal third of it and he has lost a further eight per cent of function due to a lack of sensation in the distal third due to the lack of flexion of the interphalangeal joint. This constitutes 23 percent loss of function of the thumb equivalent to a loss of nine percent loss of function of the hand and eight percent loss of function of the arm. He is right handed.
- [23] At the time of his report he thought there would be some improvement in the pain.
- [24] Dr Olsen thought that the plaintiff would not be capable of performing the tasks required for a boner and slicer because he could not adequately hold the knife. He has lost both power and precision in his knife grip.
- [25] The plaintiff as I have said has returned to the work of pig trapping for the Department of Defence and has also continued kangaroo shooting. He explains however the difficulty associated with shooting a kangaroo because of the disability with his thumb. He does not have the same control over the rifle now because he is unable to encircle the trigger with his thumb and hold it as he used to. The result of this is that he frequently misses with his shots. Kangaroos have to be killed cleanly through the head and the chilling unit will not take kangaroos where the body has been penetrated by a projectile. Dr Olsen thinks that the plaintiff is not fit for work as a shooter at a professional level because of the loss of thumb function.
- [26] So far as the work for the Department of Defence is concerned the plaintiff receives a monthly sum for this. There is no suggestion that he is unable to perform this work which involves trapping pigs. However he says that it is now difficult for him to obtain the benefit of his entitlement to take the larger pigs for the purposes of meat to the chilling unit near Townsville. The difficulty is that these have to be man-handled and this creates problems for him. The carcasses have to be at the unit within a certain time.
- [27] He has done some pig hunting using dogs since the accident but if I understand his evidence correctly he no longer does this because of his disabilities. He continues to hold a permit with the Queensland Parks and Wildlife Service. This involves him trapping pigs on the Town Common with a ranger. The plaintiff says that he now takes a friend who derives the benefit from the pigs large enough to be removed to take to the chilling unit. He continues to do this so as to maintain the permit and also to "keep his finger on the pulse". This activity would seem to me to be similar to the activity associated with the Defence sub-contract. As I understand it he manages in that case to move the pigs but is not able to move all of them.

- [28] The plaintiff's taxation returns and records relating to the kangaroos and pigs that he has sent to the chilling unit are all in evidence. These are summarised in an exhibit which was handed to the Court in the course of addresses.
- [29] There is some reduction of income derived from the sale of the meat of pigs and kangaroos in the years following the accident compared to the year of the accident. However, it is impossible to identify any specific loss which the plaintiff may have suffered because of the variables involved. It can I think be readily concluded that the plaintiff has suffered a reduction in income from the killing of kangaroos given the problems that he now has in controlling a rifle. His father-in-law gave evidence of observing his reduced proficiency with a rifle in killing kangaroos. It might also be accepted that some income would have been lost from his reduced capacity to participate in the removal of larger pigs for sale from Dotswood the army property and also from the Town Common. As I have indicated he has lost the position at Rowes Bay because of his inability to work following the accident. It would also seem that this work is not suitable work for him now given its heavy nature. Nonetheless it must be doubted whether he would have been able to continue each of the activities he was then undertaking on an indefinite basis. In any case there is a broad range of employment that the plaintiff can engage in. Some of these are referred to by Dr Olsen in his report.
- [30] Mr Walkley, a psychologist, makes the point that the plaintiff has virtually no transferable skills and would be adversely placed in terms of the workforce in the event of his having to cease his current activities.
- [31] The plaintiff continues to perform these but is presumably vulnerable to the loss of the sub-contract which is renewed yearly. There would also it seems to me on the evidence be some risk to him in performing activities around animals like pigs in the event it was necessary for him to run or to otherwise get out of the way quickly. As I have already said Dr Olsen does not think he is capable of maintaining the role professionally of a kangaroo shooter because of the disability of his hand.
- [32] I should add that there is no evidence that the plaintiff suffers from any psychiatric condition but there is some evidence from Dr Nothling, a psychiatrist, which suggests that following the accident the plaintiff suffered some of the features of a post-traumatic stress disorder and when he saw him for the purposes of producing the report of 14 September 2004, the plaintiff had some residual symptoms of a post-traumatic stress disorder but these did not amount to a psychiatric condition. His problems are associated with nightmares and reliving of the accident as well as avoiding discussion of it and the site of it.
- [33] Assessing damages in a case of this kind is fraught with considerable difficulty.
- [34] The plaintiff had worked at the Rowes Bay Golf Club for only a couple of weeks or so and received a net income of \$630. It is accepted that some allowance should be made for the loss of income from this source until at least he had recovered sufficiently to have obtained other work if he wished to do so.
- [35] The plaintiff has had an impairment of his earning capacity up until the present and this is acknowledged. It is not easy to quantify this.

- [36] The only heads of damages which fall for assessment are general damages, past economic loss and future economic loss.
- [37] So far as past and future economic loss are concerned it seems to me that the most sensible approach is to assess a global sum to cover both past and future and to make an allowance for interest in respect of a past component. Loss of superannuation should be included in the global assessment bearing in mind that some of the losses to be allowed for would have been on his own account and some as an employee.
- [38] As to the future, the plaintiff strikes me as a man who is at home in the world of trapping and killing pigs and shooting kangaroos and I think it likely that he will continue doing this at least in the mid term. He runs the risk however that he will lose the contract he currently has or that his reduced capacity to shoot kangaroos will render this activity uneconomic. There are some restrictions on his activities in relation to pigs. There is always I assume the risk that technological changes in such areas might also leave him behind.
- [39] If he is forced to seek other employment he is at a significant disadvantage in the market place. I have already referred to his inability to perform certain of the tasks of a meatworker, something which he has had experience in. He would have difficulty with heavy labouring work. My assessment of him would suggest that he would not be a good candidate for clerical or managerial work. He gave evidence that he initially held a contract with the Defence Department but because of the problems associated with paperwork things were arranged in such a way that he became a subcontractor with a contractor presumably having the obligation to perform the paperwork.
- [40] There are however many jobs that he could perform of an unskilled or semi-skilled nature and some of these were referred to in Dr Olsen's report.
- [41] The plaintiff is a young man with a young family and any allowance for reduced earning capacity must reflect the fact that it will extend over many years.
- [42] I make a global allowance in respect of past and future economic loss in the sum of \$125,000. For the purposes of making an allowance of interest, I allow 2.5 percent on \$20,000 for 2.8 years producing a figure of \$1,400.
- [43] The assessment of general damages is subject to the terms of the *Civil Liability Act* 2003 (Qld) as amended.
- [44] Pursuant to the *Civil Liability Regulation* 2003 (Qld), it is necessary to identify the dominant injury and to consider the injury scale value ("ISV") provided for in the regulations of that.
- [45] Sections 3 and 4 of schedule 3 of the *Civil Liability Regulation* 2003 provide as follows:

**“ 3 Multiple injuries**

- (1) Subject to section 4, in assessing the ISV for multiple injuries, a court must consider the range of ISVs for the dominant injury of the multiple injuries.

- (2) To reflect the level of adverse impact of multiple injuries on an injured person, the court may assess the ISV for the multiple injuries as being higher in the range of ISVs for the dominant injury of the multiple injuries than the ISV the court would assess for the dominant injury only.

*Note—*

This section acknowledges that—

- the effects of multiple injuries commonly overlap, with each injury contributing to the overall level of adverse impact on the injured person; and
- if each of the multiple injuries were assigned an individual ISV and these ISVs were added together, the total ISV would generally be too high

#### **4 Multiple injuries and maximum dominant ISV inadequate**

- (1) This section applies if a court considers the level of adverse impact of multiple injuries on an injured person is so severe that the maximum dominant ISV is inadequate to reflect the level of impact.
- (2) To reflect the level of impact, the court may make an assessment of the ISV for the multiple injuries that is higher than the maximum dominant ISV.
- (3) However, the ISV for the multiple injuries—
- (a) must not be more than 100; and

*Note—*

Under the Act, section 61(1)(a), an ISV is assessed on a scale running from 0 to 100.

- (b) should rarely be more than 25% higher than the maximum dominant ISV.
- (4) If the increase is more than 25% of the maximum dominant ISV, the court must give detailed written reasons for the increase.
- (5) In this section—

***maximum dominant ISV***, in relation to multiple injuries, means the maximum ISV in the range for the dominant injury of the multiple injuries. ”

[46] Although they differed as to which of the items in the schedule the scarring fell into each counsel expressed the view that the dominant injury in the present case was the scarring. Counsel for the plaintiff contended for item 19 and counsel for the defendant, item 20.

[47] Each were presumably driven to make these submissions because of the relatively minor nature of each of the other individual injuries. Together however, the three injuries constitute significant injuries and the impairment of the thumb and the injury to the lower leg have significant consequences to the plaintiff’s earning capacity.

[48] I accept the submission of counsel for the defendant that so far as the scarring is concerned the appropriate item in the schedule is item 19. I adopt the scarring and associated sensory difficulties as the dominant injury. However I think that it would be appropriate to allow an additional 25 percent for the impact of the other injuries given their significance. I allow then by way of general damages the sum of \$32,500.

- [49] It is accepted that the restriction on allowing interest on past general damages contained in the *Civil Liability Act* is not applicable in this case since the injury occurred prior to s 60 of the *Civil Liability Act* coming into effect. I allow in respect of \$12,500, interest at the rate of 2.5 percent for 2.8 years producing a sum of \$875.
- [50] The total of the damages is \$159,775.
- [51] I give judgment for the plaintiff against the defendants in the sum of \$159,775.