

## RECENT DECISIONS

## Defendants fails to satisfy evidentiary onus - Police Officer entitled to CTP damages

*Parrish v Olympic Roadways Pty Ltd and Broome*

[Link to decision](#)

The plaintiff was a police officer who suffered physical and psychological injuries on 24 May 2006 in the course of his employment on attending the scene of a single vehicle incident on the Hume Highway near Bargo.

After inspecting the scene, the plaintiff was standing on the road near a truck driver whose vehicle had become jammed against a safety rail. The plaintiff directed the truck driver to move off the road where he was standing being in a position of danger.

At that time, two trucks approaching the accident scene collided causing one of them (the defendant's truck) to hit the rear of a stationary police wagon which became airborne landing on top of the truck driver who died as a result. The defendant's truck continued moving forward and collided with another semi-trailer before then crashing into bushes at the road side.

The plaintiff was able to avoid being struck by the defendant's truck by diving a number of metres to the side avoiding death by a matter of centimetres.

The plaintiff landed forcefully face down on the road on both knees with his chest striking the gravel and rocky road surface.

The plaintiff suffered a hernia, knee injuries and psychological trauma. He underwent surgery in June 2006 and remained off work until November 2006. He had further surgery on his knees in 2008, 2009 and 2011 and had other operations in 2010 and 2012. He was diagnosed as suffering PTSD before being medically retired from the Police Force in February 2011.

The defendants challenged the plaintiff's evidence asserting that despite him being medically discharged he was nonetheless capable of doing other work such as a toll collector (noted by the plaintiff as being a position that was now obsolete) and that he was physically capable of carrying out household chores (denied by the plaintiff).

His Honour found the plaintiff and his wife to be credible and reliable witnesses and accepted their evidence entirely.

His Honour was required to consider the worker's history of injuries sustained as a serving police officer and to review a significant volume of medical records and opinion.

His Honour observed that the medical evidence was to the effect that the plaintiff's past trauma exposures had primed him and predisposed him to developing PTSD in the circumstances of the motor vehicle accident.

The defendants argued that there was a delay in the diagnosis and treatment of PTSD and that this condition was not due to the motor vehicle accident.

His Honour expressed the view that notwithstanding that the plaintiff's prior work and injury history may have rendered him vulnerable to further injury by the occurrence of supervening events, the defendant's must take him as they find him including any underlying predisposition to incur further or aggravating injuries.

After reviewing all of the evidence, His Honour concluded that the defendants had not discharged the evidentiary onus to show that the plaintiff's disabilities were due to underlying causes and not related to the subject injury, taking account of the principles of causation in terms of material contribution as contained in section 5D of the *Civil Liability Act 2002*.

Judgment was provisionally entered in favour of the plaintiff for a sum of damages in excess of \$3 million subject to the application of section 151Z(2) of the *Workers Compensation Act 1987*. Having regard to His Honour's findings on causation and the circumstances of the accident, it is difficult to envisage how any employer negligence might then be brought into account.

Decision number: [2018] NSWDC 258

Decision date: 20 September 2018

Decision maker: Levy DCJ District Court of NSW

### For more information, please contact:



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