

Case Notes

***T and X Company Pty Ltd v Chivas* [2014] NSWCA 235**

The NSW Court of Appeal considered an appeal from a trial judge's decision that a taxi driver had breached the duty of care owed to pedestrians by failing to reduce speed and the degree of contributory negligence on the part of the pedestrian.

The taxi driver had green light permitting him to cross the street and the pedestrian was fatally injured when he ran onto the street against a red pedestrian light and was hit by the taxi. The trial judge found the taxi driver negligent for driving at excessive speed but reduced damages by 40% for the pedestrian's contributory negligence.

On appeal, the court determined that the trial judge had correctly found that the driver had breached his duty of care while Section 5R of the *Civil Liability Act* reflected a view that people were to take responsibility for their own lives and safety. The court considered that the unpredictable action of the deceased by attempting to the cross road against a red pedestrian light in the face of oncoming traffic required a far higher level of contributory negligence than that found by the trial judge and increased this to 75%.

[T and X Company Pty Ltd](#)

***Ramsey Food Processing Pty Ltd v Tomlinson* [2014] NSWCA 237**

The NSW Court of Appeal considered a case where a worker sued a company for injury suffered while working at an abattoir. The company contended that the worker could not sue it for damages as it was worker's employer at time of injury.

The trial judge found that the worker was not an employee of the company at time of injury and gave judgment for worker. The question was whether the worker was estopped from denying that he was an employee of the company at the time of injury due to an earlier Federal Court decision.

The court held that because this was the principal issue determined by Federal Court proceedings even though the worker was not a party, the Fair Work Ombudsman

was his privy for the purposes of determining the issue so the trial judge had erred by striking out the paragraph of the defence which raised the issue. The court determined that the trial judge ought to have entered a verdict and judgment for the company so the appeal was allowed.

[Ramsey Food Processing Pty Ltd](#)

***Public Service Association and Professional Officers' Association Amalgamated Union of NSW (on behalf of Darren Rudd) v Corrective Services NSW* [2014] NSWIRComm 1021**

The NSW Industrial Commission has held that an injured worker can apply for reinstatement to employment relying on Section 242 of the *Workers Compensation Act 1987* ('the 1987 Act') despite having accepted a Work Injury Damages settlement.

Section 234 of the 1998 WIM Act prohibits contracting out, and the Commissioner held that a deed of settlement does not exclude the operation of Section 242 of the 1987 Act.

[Link: http://www.austlii.edu.au/au/cases/nsw/NSWIRComm/2014/1021.html](http://www.austlii.edu.au/au/cases/nsw/NSWIRComm/2014/1021.html)