

RECENT DECISIONS

Worker successful in proving negligence after falling from a stepladder

Warda V Specialty Fashion Group Ltd [2018] NSWDC 218 (21 August 2018)

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Summary

In a recent decision of the District Court of NSW, a worker's claim for work injury damages was successful after she established that her fall from a step ladder whilst working in a retail store was caused by the negligence of her employer.

Background

The worker sustained injuries to her left arm, elbow and shoulder when she fell from a two stepped folding ladder in a retail store on 31 March 2009. A customer had requested a garment that was on a display mannequin, located on a 'high display shelf'. The mannequin weighed approximately five kilograms.

In order to retrieve the garment, the worker placed the ladder just under the mannequin, climbed the steps of the ladder, reached above her head, took hold of the mannequin and started to descend the stairs. As she did so, the store telephone rang which momentarily distracted the worker. She had been instructed to answer the telephone promptly, and was the only staff member in the store at the time. The worker misplaced her footing on the second step, lost her balance and fell backwards.

The worker sued her employer in negligence, and claimed work injury damages for past and future economic loss. She was working part time at the time of her injury. Future economic loss was claimed on the basis that she would have obtained full time employment had she not been injured.

The employer denied that the worker's injury was caused by any negligent action on its part. It was further submitted by the employer that the worker had exaggerated the extent of her disabilities.

Decision

Judge Levy was impressed with the worker and thought she gave evidence in a straightforward manner. He was not satisfied that the worker had exaggerated her symptoms.

His Honour concluded that the risk of the worker falling was both foreseeable and significant. The narrow-based foot placement, combined with the high centre of gravity whilst supporting the mannequin, reduced the worker's stability. His Honour accepted the worker's liability evidence, and agreed that the employer should have reduced the risk of injury by providing a hooked mannequin and/or providing a proper work platform or more suitable step ladder.

Judge Levy stated the worker's conduct in becoming distracted by the telephone when it rang was 'nothing more than an incident of mere inadvertence', and this did not amount to contributory negligence. However, his Honour did not accept the worker's claim for future economic loss, and awarded future economic loss on a 'buffer' basis only.

Implications

This case reiterates the importance of developing and implementing safe systems of work to minimise the risks of foreseeable injuries. It does not matter if the task had been performed previously without incident when it is evident that there is a foreseeably dangerous situation.

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