

MINE OPERATOR NEGLIGENT FOR LAMINATION IN THE ROAD

6 APRIL 2020 | EMPLOYER'S LIABILITY

The plaintiff sued her employer for injuries sustained in the course of her employment as a machinery operator in an underground mine when she allegedly drove her grader over a defect in the road.

IN ISSUE

- Whether the plaintiff struck a lamination or a windrow.
- The mine operator employer's obligations in relation to maintaining the surface, and the safety, of the road

THE BACKGROUND

The plaintiff alleged that she sustained injuries to her spine on 6 March 2013 when a grader which she was driving in an underground mine struck a lamination in the road, causing her to be thrown around in her seat. There had recently been a rain event and some roads in the mine had been affected.

A 'lamination' is a breakdown of any road surface and can include a pothole, pile of dirt or rock. A lamination occurs where a road has gradually built up with sheeted gravel and clay materials. As laden trucks traverse these roads, particularly in wet weather, the material lifts and layers of material tend to delaminate. This delamination can cause holes to form in the haul roads.

It was the defendant's case that the plaintiff struck a 'windrow'. A windrow is an earthen embankment, half the height of the wheel of the largest truck on site, and exists to prevent vehicles from going over the side of a road.

An investigation into the incident confirmed the plaintiff's version and noted that a grader had been sent to repair the lamination.

The plaintiff's psychologist recorded in his handwritten clinical records dated 19 July 2015 'Travelling grader, twisted in seat, hit hard edge of windrow (Mt Arthur Coal). Jolt caused constant back pain'.

THE DECISION AT TRIAL

The trial judge accepted the more contemporaneous investigation report and rejected the defendant's argument that the investigation just represented what the plaintiff had reported.

The court held that the defendant breached its duty of care to the plaintiff because there were reasonable means that the defendant could, and should, have taken to avoid the risk of injury to the plaintiff. Relevant considerations were that defendant was clearly aware of the damage to haul roads in the pit due to recent wet weather. Secondly, although a reasonable inspection would have identified the damage encountered by the plaintiff, no such inspection was carried out. Thirdly, the area was not barricaded in accordance with mine policy. Finally, the plaintiff was not informed about the damaged area in accordance with mine policy.

The defendant's failures in these respects were found to have caused the plaintiff to injure her back and right hip. The court therefore found the defendant was negligent.

The court refused to make a finding of contributory negligence on the basis that the plaintiff was driving slowly as she approached the intersection. She followed company procedures. At the time of the accident, the road was wet and its surface had been affected by rain in the proceeding several days. It was dark, as there was no illumination except for the headlights on the CAT 24. Because of the poor visibility, both she and other plant operators using the area had failed to notice the hole in the road. In those circumstances, she bore no culpability for her injuries.

IMPLICATIONS FOR YOU

This decision highlights the obligations of an employer in regard to the maintenance and upkeep of sites and roads, and the requirement to ensure that any areas of danger are not only barricaded appropriately but also notified to relevant employees.

A clear understanding of the investigation undertaken at the time of the incident might have clarified the issue of liability in this matter for the defendant.

Duffin v Mount Arthur Coal Pty Ltd [2020] NSWSC 229

AUTHORS



JIM TEALBY
SPECIAL COUNSEL

+61 7 3231 6300
jim.tealby@bnlaw.com.au