

# PLAINTIFF'S EVIDENCE ACCEPTED DESPITE FAILURE TO REPORT

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In his first judgment pertaining to a workplace injury on a mine site, Justice Graeme Crow QC has found in favour of a 55 year old mine worker, awarding damages of over \$700,000, including an award for future economic loss of \$400,000.

## IN ISSUE

- Whether the plaintiff sustained injury in the circumstances alleged.
- The plaintiff's failure to report the injury to his employer and general practitioner in a timely manner.
- Assessment of the plaintiff's damages.

## THE BACKGROUND

The plaintiff was employed by the defendant as a haul truck operator at the Burton Downs Coal Mine in Queensland's Bowen Basin. The plaintiff alleged that on 31 October 2011 he sustained a lumbar spine injury after being tossed around in the cabin of his haul truck when an excavator deposited a heavy load of overburden including a particularly large rock in the back of his truck.

The defendant accepted that if the incident occurred as alleged, that it caused or contributed to it, but denied the incident occurred. The defendant relied on the fact that the excavator operator at the time of the incident swore he had no recollection of the event, that the plaintiff did not complain of any injury to his employer until 29 February 2012, and that in his first attendance to a general practitioner on 23 November 2011 the plaintiff's general practitioner recorded a history of back pain for the previous five months. Following surgery the plaintiff returned to mining work before later being retrenched. The extent of the plaintiff's quantum was disputed by the defendant on the basis that it was unlikely the plaintiff would have remained employed on the mines in the long term, given his short history in mining and pre-existing back disease.

## THE DECISION AT TRIAL

The Court found the plaintiff to be a credible witness and accepted his version of events. While the excavator operator did not recall any incident involving a big rock, the Court queried whether the operator had a precise memory of any one machinery movement that occurred seven years previously, and that in any event, it was likely that another operator was using the excavator at the time.

Regarding the lack of reporting of the incident, the Court held that although the plaintiff did not complain of any injury to his employer, he did complain of a "big rock drop into tray" by noting this on his tally sheet which was provided to his employer. The plaintiff's evidence that he was scared to report the incident out of fear of placing his job in jeopardy was accepted by the Court, as he was a very junior employee, who had only recently doubled his previous income.

The plaintiff's general practitioner was adamant that if her notes indicated a 5 month history of back pain, the plaintiff must have provided her with that version. The Court pointed at unrelated errors in the doctor's notes, and noted that while the doctor had no independent memory of the conversation, the plaintiff did, and found that the doctor's notes contained an error.

The incident was found to have occurred as alleged, and judgment in the sum of \$719,698.15 was awarded.

## Implications for you

This decision is in keeping with other recent North Queensland decisions, where injured mine workers have received significant awards for future economic loss.

In this case, despite the plaintiff only having completed his traineeship two months prior to the incident, being in his mid-late 50s, and having made a successful return to mining work, the Court held that he was at a disadvantage of obtaining alternative mining work. The plaintiff was awarded a sum of \$400,000 for future economic loss accordingly.

This decision acts as a warning to employers that Courts may accept the evidence of an injured worker despite seemingly contradictory contemporaneous evidence.

[\*Krobath v Thiess Pty Ltd\* \[2018\] QSC 309](#)

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