

HOUSEBOAT OPERATOR FAILS TO TAKE APPROPRIATE PRECAUTIONS, RESULTING IN DOUBLE LEG AMPUTATION

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A houseboat operator was liable for amputation injuries caused when he reversed a houseboat towards a jet ski without warning.

In Issue

- Whether or not the defendant breached his obligation to identify and warn of risk of harm.
- Whether the risk of harm was obvious.
- Whether the defendant took appropriate precautions to respond to the foreseeable risk of harm.

THE BACKGROUND

In October 2014, a group of friends, including the plaintiff and the defendant, arranged a weekend away and hired a houseboat to cruise along the Murray River. Another member of the group brought a ski boat and jet ski, which were joined to the houseboat.

The defendant had received instructions from the houseboat hire company and had driven the houseboat for about an hour into the middle of the Murray River. During this time the ski boat had come loose once and was retrieved by two group members. On the second occasion the ski boat detached from the houseboat, the plaintiff indicated his intention to retrieve the ski boat, using the jet ski. The defendant decided to reverse the houseboat closer to the ski boat to assist with the retrieval and did so without warning the plaintiff.

Unbeknown to the defendant, the plaintiff had already climbed onto the jet ski with another group member and was directly behind the houseboat as it began to reverse. The waves caused the jet ski to tip over and the plaintiff to be struck by the outside propellers of the houseboat. This resulted in the above-knee amputation of the plaintiff's left leg and below-knee amputation of his right leg.

Pursuant to sections 5F, 5G and 5H of the *Civil Liability Act 2002* (NSW) (the Act), the plaintiff alleged the defendant was negligent in reversing the houseboat without prior warning; without ensuring that the waters at the rear of the houseboat were clear, and by doing so from the upper control area where he could not see the rear of the lower deck and swim area.

THE DECISION

Following a resolution of the factual disputes between the parties, the court held that the defendant was negligent. Judgment was entered for the plaintiff and agreed damages of \$4M awarded.

The court noted that the defendant knew the plaintiff had stepped onto the lower deck of the houseboat, intending to retrieve the ski boat by entering the water and boarding the jet ski. The defendant therefore ought to have known there was a risk involved with the plaintiff being behind the houseboat and a risk that he could be injured.

The defendant's negligence was defined to comprise the acts of reversing the houseboat without warning the plaintiff he was doing so, and without checking to ensure the water behind the houseboat was clear, which he could have done if he had elected to use the lower level houseboat controls, as per the operating instructions given. Pursuant to section 5E of the Act, the plaintiff established that the defendant's actions caused his accident and his injuries.

The defendant was unsuccessful in arguing the plaintiff did not take care of his own safety by entering the swim deck whilst the houseboat was moving. However the court commented that in the event that the defendant had been successful, it would apportion 95% of liability to the defendant and 5% to the plaintiff.

IMPLICATIONS

This decision demonstrates the importance of taking all reasonable precautions to respond to a foreseeable risk of harm and providing adequate warning of an identified risk. It also shows the court's hesitancy in holding a plaintiff liable for injuries sustained in circumstances where he could not reasonably have been aware of or expected the associated risk.

Nixon v Lines [2017] VSC 723 (29 November 2017)

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