

A SHOCKING \$1.8 MILLION FOR A PSYCHIATRIC INJURY

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Traditionally claims for nervous shock tended to be at the lower end of the damages scale. However, there is a more recent trend involving higher damages awards in claims for psychiatric injury. The recent decision of the NSW Supreme Court in *McManus v Murrumbidgee Local Area Health Network* [2016] NSWSC 1347 is a continuation of that upward trend.

IN ISSUE

Ms McManus tragically lost her first baby, a son, soon after birth. The hospital admitted liability because of a failure to properly monitor her labour which would have led to earlier intervention and delivery by caesarean section. The Hospital did not dispute the fact that the plaintiff was extremely unwell, nor that her injury had been caused by the hospital's mismanagement of the delivery of her son. The focus of the trial was the prospect that, with further treatment, her condition would improve enabling her to become more independent with self-care and return to work at some future time. The hospital placed heavy reliance on the resolution of the litigation as being a catalyst for the improvement of her symptoms.

THE EVIDENCE

The plaintiff lost her son in May 2010. As a consequence of her injuries she began abusing alcohol, and by October 2012 had to be admitted to hospital for treatment and rehabilitation. She was also admitted to hospital on a number of subsequent occasions when the symptoms of her PTSD overwhelmed her.

The plaintiff's husband gave evidence that the medication she required caused her to appear constantly dazed, and this meant he had to assume all domestic tasks such as vacuuming, cleaning, cooking and washing up.

Whilst the plaintiff had made a number of attempts to return to work at a local take-away store, a florist and a bakery, each attempt was short lived, allegedly due to her symptoms being exacerbated by her interactions with the public. She was working approximately 8 hours per week at the date of the trial.

FINDINGS

The plaintiff's medical experts (Dr G Jovanova, Dr R Gertler, Professor A MacFarlane, Dr P Langeluddecke) considered that the unremitting PTSD, anxiety and depression would require long term treatment and that the plaintiff would never be cured. They predicted that further

periods of inpatient treatment were likely to be necessary in the future and that she would not return to full time work.

The Court accepted the evidence of the plaintiff and her experts and held that she had suffered a significant impairment of her ability to generate an income and look after herself.

The judgment discussed in some detail the likely effect that the cessation of the litigation would have on the plaintiff's condition. Ultimately, the experts agreed that whilst it would remove one significant stressor, her PTSD and depression was such that she was prone to periodic exacerbations by any external stressors in her life and that overall, it was unlikely to have a significant effect.

The court assessed the plaintiff as having an ongoing care requirement of 7 hours per week (at a mixed gratuitous and commercial rate of \$28/hr). It accepted that the plaintiff would require biannual inpatient admissions for treatment at a lifetime cost of just under \$200,000. In addition the plaintiff was awarded almost \$225,000 for medication and psychological/psychiatric care. A modest figure of \$503 net per week was adopted for future economic loss. Overall the plaintiff was awarded damages of \$1,785,498 plus costs.

AUTHORS