

Hyde v Hunt. (Victoria)

The plaintiff was involved in a transport accident on 19 April 2001, when he was struck from behind while stationary, suffering injury to his lower back. Obviously, liability was not an issue.

He had some weeks off work, but, to his credit, managed to return to work as a fire sprinkler fitter. TAC used this against him in all their dealings with him. He had been back at work for about one year, when he aggravated his back injury in a twisting incident at work. From that time onwards he was unable to return to his pre-accident employment, and spent a number of years looking for alternative employment.

TAC denied that he had a serious injury, on the basis that his incapacity was largely or solely caused by his employment. There was no medical support for this, even from TAC's doctors. The serious injury hearing ran for 1.5 days in the County Court, before Judge Gaynor, with counsel of Terry Forrest QC and Lawyers Alliance member Andrew Keogh. Throughout, the plaintiff's credibility remained unquestioned.

By the time of the trial the plaintiff was working 15 hours per week, wiring small electrical fans. It was agreed this was close to his limit.

The common law trial ran for 10 days in April 2007, before Judge Dove. The major issue was whether the plaintiff's incapacity was caused by the transport accident or his employment. There was no real argument that he had a serious injury which caused a significant impact on his earning capacity. Again the medical evidence indicated that his incapacity arose as a result of the transport accident. Prior to the hearing the defendant's Offer of Compromise was \$250,000 plus retention of benefits received to date plus costs. During the trial the defendant offered \$575,000 inclusive of costs. The plaintiff's Offer of Compromise was \$550,000 plus costs. The plaintiff's counsel were Paul O'Dwyer SC and Andrew Keogh. While awaiting the jury's verdict, counsel were drafting orders on the basis that the plaintiff would exceed his Offer of Compromise.

The jury awarded \$7,000 for general damages and nil for pecuniary loss.

The verdict was appealed to the Court of Appeal. The defendant was approached for a mediation. TAC refused, saying no offers would be made.

The Appeal Court consisted of Justices Forrest, Ashley and Street-Dodson. The plaintiff's counsel were David Beach QC and Andrew Keogh. The court was scathing of the manner in which TAC had conducted its case. It noted that in its closing to the jury and in its submissions to the Court of Appeal, the defendant presented a case which was not consistent with any of the evidence, especially on the issue of causation, with the focus by the defendant on irrelevant issues.

As Justice Forrest asked: 'How is the cross-examination about the wife's compensation claim relevant to any issue?'

Justice Forrest stated that 'the way in which the case was conducted might have diverted the jury from its true task.'

After the hearing of the appeal, but prior to the judgment being handed down, TAC indicated a willingness to talk.

The matter resolved for \$608,000 plus retention of benefits, plus costs.

Members should be aware of the final result of the case, should TAC quote the jury verdict (and no more) during settlement discussions.