



Cameron Hall
COMPENSATION LAWYERS



Failed worker's compensation common law claim alleging aggravation of schizophrenia

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We review a Queensland case where an injured worker sought worker's compensation common law damages. The worker alleges an injury to his head aggravated his pre-existing condition of schizophrenia. The common law claim ultimately failed as the worker had not undertaken initial steps before taking action in the Supreme Court to include his schizophrenia as a possible 'injury' in his claim.

Worker lodges a worker's compensation claim after head injury at work

The worker, Mr Apelu, was working as a boilermaker when he struck the back of his head by a lifting-lug which was attached to a 'come-along chain', whilst he was in the process of assembling a 'bowl tipper trailer'. He has brought a claim out of the Supreme Court in Queensland for worker's compensation common law damages due to how his injuries have impacted his ability to work and life generally.

He initially applied for statutory worker's compensation benefits under [Queensland's worker's compensation no-fault scheme](#), and that claim was accepted. He then sought common law damages through the common law court.

Injured worker seeks common law damages due to negligence

A common law claim is in addition to the statutory benefits claim and is available where your injury is due to the negligence of another person or entity, such as a failure to provide you with safe work conditions.

Whilst the defendant (the employer) has admitted in its defence that it had breached its duty of care owed to Mr Apelu, it is not prepared to admit the nature and extent of Mr Apelu's personal injuries, which he says arose as a result of his head injury at work.

The law relating to recovery of common law damages for work-related injury in Queensland is, unfortunately, quite complex and often, the courts are called upon to decide various 'preliminary issues' before the case goes to trial. This is an example of an instance where the court has been asked by the parties to decide such a preliminary point.

The worker had alleged that the workplace injury to his head aggravated a pre-existing condition; schizophrenia. In its defence of the claim, the defendant employer asserted that the worker not be entitled to include the aggravation of his schizophrenia in his claim.

Judge's decision and reasons behind it

The Judge decided to dismiss the application brought by the worker, Mr Apelu, noting:

'the Defendant can continue to resist the injured worker's claim for damages for work related schizophrenia condition'

But why can't the worker at least ask the trial court to consider whether or not his schizophrenia condition was aggravated by the work incident, particularly if he has a psychiatrist supporting him?

The short answer is that his schizophrenia hadn't been accepted as a specific 'injury' during the course of his previous statutory (no-fault) claim for worker's compensation benefits. His condition was also specifically noted as not being work-related by the Medical Assessment Tribunal (MAT).

To be able to include any particular type of 'injury' in a worker's compensation common law damages claim, very strict and complicated rules must be met by the claimant/plaintiff. The Judge, in this case, was not convinced that he had properly observed those rules.

The reasons for the Judge deciding that Mr Apelu was not able to include the allegation that the work incident had aggravated his pre-existing schizophrenia are indeed very complicated. In a nutshell, the Judge was not convinced that he/ his lawyers had taken the necessary steps to be able to include it as a possible 'injury' in the claim **BEFORE** he filed his common law claim in the Supreme Court.

Why is this case of interest to injured workers?

This is probably one of the more complex aspects of bringing a claim for common law damages for injuries sustained at work in Queensland.

Ensuring that all aspects of your potential claim for damages are able to be brought properly before a trial Judge involves careful consideration of whether all necessary steps have been taken before you head into the court system.

The Judge did note that Mr Apelu still might have avenues to 'claw-back' inclusion of the schizophrenia condition into his common law claim, which, given the totality of the medical evidence to hand, it would appear he needs to try to do.

However, this case certainly highlights the need to be extra vigilant in the first instance, in giving full consideration of whether appropriate steps have been taken to ensure that relevant potential injuries have been approved to be considered as part of the common law action to be decided by the trial Judge.

Get help from a worker's compensation lawyer

Worker's compensation common law claims are complex and complicated. Unlike statutory benefits claims, which operate under a scheme, a common law claim requires significant experience, expertise and legal strategy to be successful and maximise the compensation payable.

At Cameron Hall Compensation Lawyers, we have decades of experience running and winning common law claims. We offer free initial advice and run claims on a "no win no fee" basis.

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.