Cameron Hall
COMPENSATION LAWYERS



Detailed case preparation sees injured worker awarded nearly $1,000,000 compensation

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In an October 2023 worker's compensation common law decision of the Supreme Court of Queensland, an employer was held legally responsible for an injury sustained by a worker. The Judge awarded the plaintiff (the injured worker) common law damages in the amount of $825,000. This was in addition to his statutory compensation from Workcover Queensland of $95,000. In total, the injured worker was awarded just shy of 1 million dollars in damages due to his employer's negligence.

Common law claims, where the injured worker is required to prove that the injuries are caused by the negligence of another person (often the employer), can often be complicated. It's crucial that claimants seek legal advice from a lawyer experienced in worker's compensation. In this article, we look at how important the experience and know-how of legal representation were to the successful outcome of the claim.

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How did the worker sustain his workplace injury?

In the matter of Welsh v Biggin Pty Ltd [2023] QSC 34, the plaintiff, Mr Welsh, worked as a general hand for the employer 'Biggin Pty Ltd' in their warehouse in Townsville, where they sold chicken feed and chicken feeders. Mr Welsh's duties included, amongst other things, managing deliveries of stock, readying and packing online orders for dispatch and other associated tasks.

On the day of the workplace accident, he was attempting to move a pallet jack loaded with feed and feeder components, which had been delivered the previous day.

The employer leased areas of the warehouse from the owner, Mr McArthur, who also ran his camper trailer business from the same premises. So, there was a constant requirement for Mr Welsh to ensure that the common areas in the warehouse were free of large items, such as pallets of delivered chicken feed, feeder components and other items related to Biggin Pty Ltd.

On the day of the workplace accident, Mr Welsh was attempting to move the pallet jack from the general access area of the warehouse to ensure that the area was free of obstacles. In doing so, he injured his knee and was ultimately diagnosed with a very significant quadricep/knee injury to his right leg.

Employer disputes worker's compensation common law claim

The defendant employer disputed Mr Welsh's common law claim, and the matter proceeded to trial, where the employer asserted that:

- the injury as claimed by the injured worker didn't, in fact, occur as alleged by him; and
- even if it did, that it didn't happen as a result of any negligence on the part of the employer.

From a review of the court's judgement, it would appear that the employer was not prepared to accept that Mr Welsh sustained his claimed injury through the action of attempting to move the loaded pallet jack. is the employer formed this view because:

- there were no witnesses to the incident; and
- Mr Welsh continued to work after the incident and only complained of increased pain in his leg sometime after the incident.

The defendant employer also tried to convince the Judge that Mr Welsh should not be believed. That if he had sustained any specific injury to his right leg, that it simply didn't happen in the way Mr Welsh described. In the law, this is called 'recent invention'- that is, the injured worker simply 'invented' the whole account of the injury.

The court's finds in favour of the injured worker

The Judge, in the end, determined that:

- the accident did happen as described by Mr Welsh (that is, that he had NOT "invented" the whole account/story);
- the expert specialist orthopaedic surgeon's evidence made sense (legally); and
- the expert engineer's evidence also made sense (legally) and provided a basis for the Judge to accept the allegation made by Mr Welsh that the accident happened and that the employer's negligence caused the injury.

The court found in favour of the injured worker and awarded $825,000 in common law damages.

What strategies did the injured worker’s lawyer use to win this claim?

There is a range of strategies that your lawyer can use, either during the negotiation stage of your claim or if your claim goes to trial.

If going to trial, it is critically important that the injured worker’s case is properly prepared from the get-go. Thorough preparation will maximise the prospect of convincing the employer that they should pay a reasonable amount to settle your claim, or, if the employer refuses to settle, then the injured worker and their legal team can present a case with better-than-reasonable prospects of succeeding if they have to proceed with a trial before a Judge.

In this particular case, fully preparing the matter for trial, with a particular emphasis on gathering and collating relevant and expert evidence, was key to the win.

The strategy to deal with no witnesses to the accident

The lack of witnesses to any workplace accident can be problematic for injured workers seeking to recover damages for their injuries. But if the worker immediately reports the accident and seeks medical attention, then most employers will usually accept the worker’s version of what occurred. This is because there will be timely records of reporting the incident (either to the employer, a work colleague, a union rep or another person) and medical records from any treating practitioners close to the time of the accident.

But sometimes, the injured worker simply ‘boxes on’ after their injury, and this is sometimes because the worker doesn’t feel the full impact of the injury until some time later. This makes it crucially important to at least report the incident as soon as practicable after it occurred.

Mr Welsh’s lawyers also sought what is called ‘expert’ evidence to provide support for his version of what he said caused his significant leg injury.

They did this by commissioning reports from:

- a specialist orthopaedic surgeon; and
- a consultant engineer.

The orthopaedic surgeon was able to give his expert opinion that, given the nature of Mr Welsh’s leg injury and the fact that he simply got on with his job that day, meant that he wasn’t able to fully appreciate the full extent of his leg injury until he ‘cooled down’ after his full day’s work. The Judge accepted the evidence of this expert witness.

The consultant engineer was able to give his expert opinion that:

given Mr Welsh's evidence of what occurred when he attempted to move the laden pallet-jack; and

the expert's review of the pallet jack (he went and inspected it for himself); and

his expert knowledge of the likely forces at play when Mr Welsh attempted to pull the loaded pallet jack,

it was likely that those forces would have resulted in the type of injury that Mr Welsh sustained to his right leg.

Again, the Judge accepted the evidence of this expert witness.

What can I do if the employer denies my common law claim?

The majority of worker's compensation claims for common law damages by injured workers resolve ("settle") before the need to have a trial. There are risks for both sides in taking a case before a Judge, and the costs and consequences of losing a case following a trial are usually much more significant for an injured worker than for an employer.

Engaging an experienced worker's compensation lawyer as soon as possible after your injury will ensure your rights and entitlements (both under the statutory scheme and with a common law claim where eligible) are protected. At Cameron Hall Compensation Lawyers, will always aim to keep your matter out of the court system and, in doing so, reduce stress, costs and time delays in finalising your matter.

But if the employer won't agree to pay a reasonable amount to settle an injured worker's compensation claim, then taking the matter to trial may be the only option. At this point, it's crucial that the worker seek experienced legal representation.

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Key takeaways for injured workers claiming worker's compensation

When you sustain an injury at work, be it a physical one or psychological one, it is always advisable to report it immediately (especially if there are no witnesses to corroborate what happened), even if you don't think you've seriously hurt yourself.

If it's not possible to report it straight away (or very soon afterwards), then you should send an email to your union rep (if you have one), a co-worker you trust, or even to yourself to briefly note what happened. Having what's called a 'contemporaneous' account of the incident (and a brief note of what injury you sustained) can be very important down the track.

Seek medical treatment, even if you don't believe the injury is serious at the time. Your treating doctor will then have timely notes about your visit and the details surrounding your injury.

Make sure you speak to a lawyer experienced in workers' compensation claims if you either have any queries about what your rights/options are following a workplace injury or you are considering your options to sue your employer due to negligence, which led to your injury.

Maximise the success of your worker's compensation claim

Contact us for an obligation-free, cost-free consultation.

It costs you nothing to find out where you stand and to ensure you get any/all the compensation you deserve after a workplace injury.

We offer no-win, no-fee options for all personal injury claims.

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.