

Dead driver owes police officer duty

Caffrey v AAI Limited [2019] QSC 7

Key Point

- Negligent drivers who cause an accident owe a duty of care to police officers who attend the accident scene.

Background

The plaintiff was a police officer who developed Post Traumatic Stress Disorder (PTSD) after attending the scene of a single vehicle motor vehicle accident. The driver had suffered eventually fatal injuries but was still alive when the plaintiff attended. He took steps to maximise the driver's chances of survival by:

- Placing his hand under the driver's chin and supporting his head to clear his airway.
- Reassuring the driver's parents and telling the driver that he shouldn't give up because his parents had arrived.
- Instructing the fire brigade to wait for the paramedics prior to cutting the driver from the vehicle as the driver could suffer a heart attack or go into shock.

After the paramedics arrived, the plaintiff was informed that the driver was going to pass away. He informed the driver's parents and took the driver's parents to say goodbye.

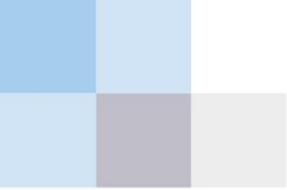
Duty of Care

The *Civil Liability Act 2003* (Qld) did not apply because the incident occurred in the course of the plaintiff's employment. Common law principles therefore applied to determine all issues including if the driver owed the plaintiff a duty of care.

The Court accepted the defendant's submission that the determination of whether there was a duty of care must extend "beyond a question as to whether or not there was a foreseeable risk of injury."

The Court applied the principles from the leading High Court case of *Wicks v State Rail Authority (NSW)*¹ where several police officers attended the scene of a deadly train derailment near Waterfall Station and suffered from psychiatric injuries. In that case, the High Court found that depending on the sights a police officer might see, sounds they might hear, tasks they might have to undertake, in combination, cause them to develop a psychiatric illness, a duty may be owed.

¹ [2010] HCA 22.



The Court found:

- It was reasonably foreseeable if someone were to discover a motor vehicle accident, emergency services and police officers would be called to attend the scene.
- It was uncommon for a police officer to arrive at the scene before other emergency services, but this would be no impediment to a successful claim if it was reasonably foreseeable that this would occur
- The presence of the driver's parents at the scene was not unexpected and therefore, the extent that his parents contributed to the plaintiff's trauma "should not be viewed as outside the contemplation" of the driver.

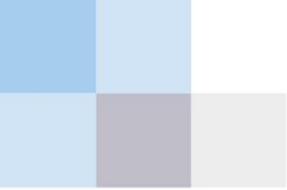
The defendant made submissions to distinguish this case from *Jausnik v Nominal Defendant (No 5)*² which held that a defendant driver who hit another vehicle and caused casualties should have foreseen a police officer attending the scene might suffer a psychiatric injury as a result. However, the Court rejected these submissions and found:

- The plaintiff met the requirement for 'direct perception' as what he saw at the scene would be part of the 'aftermath' of the incident.
- Even though the driver was the defendant and the sole victim, it did not bar the plaintiff's claim.
- The plaintiff was part of the 'rescuer' class, but even if he was a 'mere bystander' this would not bar him from bringing a claim.

The Court found with respect to the defendant's submissions that the claim should be denied on policy considerations:

- There would be no deterrent effect if civilians can be liable for psychiatric injuries suffered by police officers because they can already be liable for physical injuries.
- A finding of duty being owed to the plaintiff would not unacceptably expand the categories of potential defendants and claimants as claimants still need to reach the threshold of suffering a 'recognisable psychiatric illness' and courts are equipped to control any increase in claims.
- Although, police officers are better equipped to "handle" distressing scenes, the incident "exposed the plaintiff to deeply distressing and personalised circumstances".
- Members of the public are not entitled to drive in any manner without regards to police officers who may attend accident scenes.
- The fact police officers are legally obliged to respond to emergencies places them in a situation of 'elevated risk' with respect to psychiatric injuries.

² [2016] ACTSC 306.



The Court found the driver owed the plaintiff a duty of care.

Damages

The plaintiff was involved in a second incident, in which he attended another single vehicle motor vehicle accident with multiple fatalities. The plaintiff gave evidence that the first incident was worse than the second. Based on the expert evidence, the Court found that the second incident simply was an aggravation of the plaintiff's pre-existing PTSD.

The Court also found that the plaintiff had a pre-existing vulnerability to developing symptoms of PTSD because of "the typical stressors involved in attending to the usual duties of a police officer" and applied a 30% discount on damages. The Court awarded the plaintiff \$1,092,947.88.

Conclusion

Under the common law a negligent driver who causes an accident owes a duty of care to police officers who attend the accident scene for pure psychiatric injury.

Police officers place themselves in situations of 'elevated risk' with respect to psychiatric injuries because they are legally obliged to respond to emergencies.

In our view, the result of this case is not entirely surprising. It represents yet another incremental easing of the difficulties historically faced by claimant's suffering from pure psychiatric injuries.

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