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Law Update

Wurth v Sampco Pty Ltd t/as the Knickerbocker Hotel [2013] NSWDC 173

Key Points

- Law update for recent slip and trip case – NSW
- The District Court of New South Wales has awarded a plaintiff damages of $456,000.00 for injuries sustained when she twisted her foot inside a broken drainage grate in a hotel carpark driveway.

Background

The plaintiff, Ms Wurth, a 52 year old administrative assistant, gave evidence that she was talking to a friend as she walked down the driveway. The conditions were bright and glary. At the moment when she fell, she was not looking at the ground where she was walking. Her right foot fell down into an uncovered portion of the drain.

The Law

The Trial Judge's Findings on Liability

The hotel argued that the broken grate was an obvious risk as defined in sections 5F and 5G of the Civil Liability Act and an inherent risk as defined in s5I.

The trial judge found that the condition of the grate and risk of injury would have been obvious to persons standing and walking in the immediate vicinity and looking at the grate. However, Ms Wurth had commenced her walk down the driveway at some distance away. The conditions were glary and Ms Wurth was not required to keep the grate under constant observation. When Ms Wurth had commenced walking down the driveway she had looked ahead and saw a smooth concrete driveway without apparent defects. The trial judge held that it was reasonable for Ms Wurth to continue walking along the driveway without specifically checking the grate.

The trial judge concluded that the broken grate with gaps in it represented a foreseeable risk of injury. The hotel was aware of the broken grate prior to the accident: s 5B(1)(a) of the CL Act. The hotel ought to have taken additional interim steps such as covering the broken grate with a board, or a warning sign or barricade. The trial judge concluded that the hotel was negligent in failing to take such measures and that the hotel's negligence had caused the plaintiffs injuries.

The trial judge made no deduction for contributory negligence. Ms Wurth's actions amounted to no more than mere inadvertence and accordingly, there should be no deduction: Czatyrko v Edith Cowan University [2005] HCA 14.

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Assessment of Damages

The trial judge found Ms Wurth to be a very credible witness and he attached no weight to the surveillance evidence showing Ms Wurth playing backyard cricket the day before trial. Ms Wurth's injuries included a slightly displaced fracture of the base of the 5th metatarsal bone, a proximal fracture of the 4th metatarsal bone, a Grade sprain of her anterior talofibular ligament and a sprained talonavicular joint. Ms Wurth also had a torn meniscus of the left knee, which the trial judge found to be caused by the accident.

The trial judge assessed damages in the sum of $456,551.70, including $75,000.00 for non-pecuniary loss (28% of a worst case), $130,000.00 for future loss of earning capacity and approximately $220,000.00 for past and future domestic services.

A significant award was made for future economic loss considering that the plaintiff lost very little time from work after the date of the accident. The trial judge found that Ms Wurth had a number of disabilities, which affected her ability to seek alternative employment, and made a global award of $130.000.00.

With respect to the significant award for domestic assistance, the trial judge observed that the plaintiff's evidence was that she lived on a property of 25 acres where, before the accident, she did the housework plus farming and outdoor jobs including lawn mowing, fencing, and caring for the horses.

Conclusion

This decision may cause some concerns for hotels and operators of commercial premises and their insurers. The trial judge expressly observed that the defendant was not a local authority (with significant resources burdens) but the occupier of commercial hotel premises, suggesting that a higher standard of care applies to such defendants.

Another noteworthy aspect of the decision is the trial judge's finding that the grate was not an "obvious risk" to the plaintiff, despite the condition of the grate being obvious to people walking and standing in the immediate vicinity. It is well established that local authorities are not responsible for the absolute safety of users of footpaths and walkways and that pedestrians are expected to keep an appropriate lookout and take reasonable care of their own safety: Brodie v Singleton Shire Council; Ghantous v Hawkesbury City Council [2001] HCA 29; (2001) 206 CLR 512.

However, the distinguishing feature of this case from Brodie and other similar decisions, was the fact that the hotel had knowledge of the defect in the grate. The knowledge of the hotel manager of the problem, and his failure to take simple remedial action such as a barricade or board covering the grate, put this case into a different category.