

Queensland Court of Appeal upholds that deceased driver owes duty to police officer

AAI Limited v Caffrey [2019] QCA 293

Key Points

- The Queensland Court of Appeal upholds that tortfeasors owe a duty of care to police officers or any other professional rescuers who attend an accident scene.
- There was no policy reason to depart from the ordinary principles because the rescuer was acting in the course of their employment.

Background

The respondent 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 respondent 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 respondent 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.

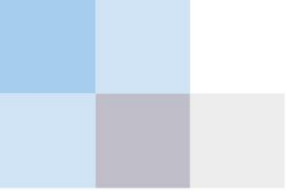
Decision at Trial

The trial judge held:

- 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.
- The presence of the driver's parents at the scene was not unexpected. Therefore, the extent that his parents contributed to the plaintiff's trauma "should not be viewed as outside the contemplation" of the driver.

Court of Appeal

On appeal, the appellant CTP insurer submitted that:

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- The trial judge erred in finding the driver owed the respondent a duty of care not to cause pure psychiatric harm to a person, who in the course of their occupation is required to attend events where such horrific and distressing injuries will be present (such as a police officer).
 - The respondent's employment as a police officer denied him a right to recover because of policy considerations.

The Court of Appeal found:

- It was not the function of an intermediate appellate court to undertake a policy analysis of the common law.
- The trial judge considered the policy considerations as submitted by the appellant.
- The trial judge did not fail or omit to consider the relationship between the respondent and the driver before deciding whether psychiatric injury was reasonably foreseeable.
- The trial judge correctly concluded that the driver owed the respondent a duty of care.

Conclusion

Under the common law, a driver who negligently causes an accident owes a duty of care to police officers (and likely any other emergency workers) who attend the accident scene.

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