

WALSH HALLIGAN DOUGLAS

CASE UPDATE - 3

WALSH HALLIGAN DOUGLAS
LAWYERS



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High Court of Australia Tabet v Gett [2010] HCA 12

The claim involved an alleged delay in diagnosis of a brain tumour in a six year old child.

The claimant was admitted to hospital on 11 January 1991 suffering from headaches and vomiting.

On 13 January 1991 the claimant was noted to be unresponsive.

On 14 January 1991 the claimant's condition deteriorated and an urgent CT scan was arranged which revealed the claimant had a brain tumour.

The claimant brought an action in negligence. There was no claim in contract.

The claimant alleged that a CT scan should have been performed on either 11 or 13 January 1991, which would have revealed the brain tumour, leading to a better outcome.

The claimant alleged the delay in diagnosis either caused or contributed to the seizure and deterioration on 14 January 1991, thereby contributing to her brain damage, or that she lost the chance of a better medical outcome.

The trial judge found that the claimant had lost a 40% chance of being treated so as to avoid 25% of the claimant's overall brain damage. The claimant was awarded 10% of her total claim on the basis that due to the respondent's breach of duty, she had lost the chance of a better medical outcome.

The respondent successfully appealed to the Court of Appeal which held that the claimant had failed to prove, on the balance of probabilities, that the harm suffered was caused or contributed to by the negligence of the respondent. The Court of Appeal found that the claimant may have lost a 15% chance of avoiding her overall brain damage.

The claimant's appeal to the High Court failed.

It now seems clear that, in Australia, damages will not be awarded in medical negligence claims for the loss of a chance where that chance is less than 50%.

**Supreme Court of Queensland
Waller v Suncorp Metway Insurance Limited
[2010] QCA 17**

At first instance, judgment was given for the appellant in the sum of \$5,785,612.

An appeal was lodged on the basis that the award was inadequate.

It was held that the appellant had shown that an inadequate allowance was made for case management and therefore the award was increased by \$110,000 to \$5,895,612.

**Supreme Court of Queensland
Noonan v MacLellan & Anor
[2010] QCA 50**

The plaintiff brought an action for damages in defamation arising out of the publication of an article in a newspaper on 11 April 2007.

The defendants were staff members at a University.

The plaintiff alleged criticisms made by the defendants, detailed in the publication, were defamatory.

The action was commenced on 17 June 2009.

The defendants argued the action was barred pursuant to section 10AA of the *Limitations of Actions Act* 1974 because the action was brought more than one year after the date of the publication.

At first instance the plaintiff successfully applied for an extension of the limitation period.

The defendants' appeal was allowed and the decision granting the extension was set aside and judgment was given for the defendants.

**District Court of Queensland
Scarr v Australian Sugar Cane Feeds P/L
[2010] QDC 8**

The plaintiff claimed damages from his employer.

Prior to the incident, the plaintiff gave evidence that he had noticed a significant infestation of spiders and that he had asked his employer on two occasions for a contractor to be brought in to deal with the issue.

The plaintiff claimed that soon after feeling a bite he felt unwell. His condition deteriorated and the following day, he was admitted to the Nambour General Hospital at which time he was diagnosed as suffering cellulitis in the right lower limb. He was treated with antibiotics.

The plaintiff claimed that the cellulitis was caused by the spider bite.

Relevantly, there was no direct evidence that a spider had in fact bitten the plaintiff.

The Court concluded that the plaintiff had failed to prove on the balance of probabilities that the cellulitis was caused by a spider bite and therefore the claim was dismissed.

**District Court of Queensland
Nichols v Curtis & QBE Insurance
(Australia) Limited
[2010] QDC 34**

The plaintiff claimed damages for personal injuries arising out of a motor vehicle accident on 11 June 2004.

Liability was not in issue and the parties had agreed that damages would be reduced by 40%.

At the time of the accident the plaintiff was a back seat passenger in a vehicle which collided with a fence and shed. She sustained a puncture laceration on the left side of her face and the Court accepted she had also suffered an injury to her neck.

Damages were assessed in the vicinity of \$79,000 with an allowance of \$60,000 for future economic impairment and after reducing the assessment by 40%, the Court awarded damages in the vicinity of \$47,000.

Costs on the standard basis to a maximum of \$2,500 were awarded.

**District Court of Queensland
Engstrand v Brisbane City Council
[2010] QDC 35**

The plaintiff alleged that on 22 August 2007 he was injured while riding a bicycle along a bicycle path built, maintained and occupied by the defendant.

The pre-litigation procedures under the *Personal Injuries Proceedings Act 2002* had been completed and proceedings issued.

The plaintiff was residing in Sweden and working as a salesman.

The respondent's application for security for costs failed.

**District Court of Queensland
McAlister v Nominal Defendant
[2010] QDC 36**

The applicant sought leave under section 57(2)(b) of the *Motor Accident Insurance Act 1994* (the "Act") to commence proceedings within 60 days of the compulsory conference and the exchange of mandatory final offers. The applicant also sought an order fixing a time and place for the compulsory conference.

The respondent submitted that the compulsory conference should be dispensed with and that the proceedings commenced should not proceed to trial until criminal proceedings relating to the incident had been determined.

An issue before the Court was whether the District Court had jurisdiction to hear the claim. The applicant had not claimed a particular amount, however filed affidavit material

indicating a claim for damages in the vicinity of \$198,000. The Court determined that it did have jurisdiction to hear the claim and hence the application.

The Court made orders dispensing with the compulsory conference and exchange of mandatory final offers.

**District Court of Queensland
Wade v Gargett & Anor
[2010] QDC 27**

The plaintiff applied for an order that the parties' participate in mediation. The respondent opposed the application.

The plaintiff sought damages for personal injuries arising out of a motor vehicle accident that occurred on 6 July 2007.

The pre-court procedures had been completed, including the parties' participation in a compulsory conference on 23 March 2009.

Proceedings were issued on 15 April 2009.

Of note, no new material had been obtained by either party since the conference.

The application was dismissed with costs.

**WALSH HALLIGAN DOUGLAS
LAWYERS**

**LEVEL 12, 145 EAGLE STREET
BRISBANE QUEENSLAND 4000
GPO BOX 2474 BRISBANE 4001**

**PHONE: 61 7 3232 5700
FAX: 61 7 3232 5777**

**EMAIL: INFO@WHD.COM.AU
VISIT US ON THE WEB:
WWW.WHD.COM.AU**

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