

March 2007

In 2007 we have decided to provide a regular INJURY BRIEFING highlighting issues that will be of interest to those who work in the field. We trust that you find it informative and useful.

If there are any specific matters that you would like us to comment on please do not hesitate to email us. Similarly, if you have any colleagues who would like to receive the INJURY BRIEFING they should contact us with their details.

Tim Adam
Personal Injury Group
Moores Legal Pty Ltd
Email: tadam@mooreslegal.com.au

RECENT SUPREME COURT OF APPEAL DECISION

On 8 February 2007 the Court delivered an important judgment in the matter of *Hynes v Hynes*.

The Facts

Mr Hynes released the motor radiator cap of his vehicle resulting in Mrs Hynes being scalded and burnt by the boiling water. This was not a transport accident because the injury was not directly caused by the driving of the car.

The Law

Under the **Transport Accident Act 1986** the TAC must indemnify the owner/user for any negligence that arises out of the use of the vehicle. These claims have always been unrestricted at common law without any serious injury or damages thresholds to meet.

The Argument

The TAC argued that Mrs Hynes now had to meet the thresholds imposed by the amended **Wrongs Act** (greater than 5% whole person impairment for non-psychiatric injury and greater than 10% whole person impairment for psychiatric injury).

The Decision

The Court of Appeal disagreed and confirmed that no thresholds or restrictions should apply.

Mrs Hynes and others in her or similar situations continue to have unrestricted common law rights for incidents arising out of the use of a motor vehicle.

WHAT CONSTITUTES SERIOUS INJURY?

This question is often asked by advisors and clients. The statutory definition in the **Transport Accident Act 1986** includes a whole person impairment of 30% or greater and the narrative definition includes:

- serious long term impairment and loss of body function;
- severe psychological/psychiatric disturbance;
- serious scarring; and
- loss of a foetus.

Recent Case Studies

In most circumstances the TAC will not grant a Serious Injury Certificate unless a person's employment capacity is significantly curtailed.

As our client had made a successful return to full time employment the TAC initially denied our request for a Serious Injury Certificate. She had immigrated to Australia to pursue post-graduate studies after a highly successful career overseas. She sustained multiple injuries, including an acquired brain injury (ABI) in a transport accident. After intensive rehabilitation her physical injuries improved and she was able to return to her studies. She completed her PhD based on preparatory work she had undertaken prior to the accident.

It wasn't until she obtained employment as a senior manager that the full impact of the ABI manifested itself, impairing her ability to multi-task, concentrate for extended periods and perform at the capacity of a person with her high level of education and experience.

With the assistance of neurological, neuropsychiatric evidence and substantial affidavit material we were able to establish that the injury was serious given her individual circumstances. Although she will be able to continue in the work force she will be unable to pursue, to its full extent, her employment and earning potential.

Once the Serious Injury Certificate was granted, a very satisfactory settlement was negotiated on her behalf to finalise her common law claim for damages.

In another recently concluded case, our client's brain injury prevented him from successfully completing his first year of medical studies. He is now in the third year of an Arts degree.

We successfully argued that our client's future loss of income was substantial due to the differences between the income he would have earned as a doctor compared to the options now available to him.

His potential loss of income enabled us to settle his claim for the maximum economic loss amount of \$900,000. With the addition of pain and suffering damages his claim resolved for a sum well in excess of \$1,000,000.

As we have seen on many occasions, even subtle brain injuries can have an enormous impact on an individual's circumstances and in our view will often constitute a serious injury and lead to substantial compensation payment for the loss sustained.

The Moores Legal Personal Injuries Team:

For further advice and guidance in this area, contact the Personal Injuries team at Moores Legal.

Tim Adam
Principal
Tel: (03) 9843 2105
Email: tadam@mooreslegal.com.au

Tim Connor
Consultant
Accredited Specialist – Personal Injury
Tel: (03) 9843 2184
Email: tconnor@mooreslegal.com.au

Carolyn Ford
Lawyer
Tel: (03) 9843 2121
Email: cford@mooreslegal.com.au

Narelle Mollet
Lawyer
Tel: (03) 9843 2105
Email: nmollet@mooreslegal.com.au

Catrina Boemo
Lawyer
Tel: (03) 9843 2184
Email: cboemo@mooreslegal.com.au

DISCLAIMER: *This Injury Briefing is of a general nature only. Specific legal advice should be sought rather than relying on this Briefing.*

MOORESLEGAL

9 Prospect St, Box Hill Vic 3128
Lvl 10, 350 Queen St, Melbourne Vic 3000
Telephone: (03) 9898 0000 Facsimile: (03) 9898 0333
info@mooreslegal.com.au www.mooreslegal.com.au