

Insurance law update

24 March 2014

CASE NOTE

Recent case law re-interprets the phrase “arising out of the use of a vehicle” under the Victorian Transport Accident Act: ***Gurski v NMHG Distributions Pty Ltd & Ors* [2014] VCC 112**

The recent County Court of Victoria decision in *Gurski v NMHG Distributions Pty Ltd & Ors* [2014] VCC 112 has expanded the availability of the indemnity from the Transport Accident Commission (**TAC**) under section 94 of the *Transport Accident Act 1986* (Vic) (**Act**). It now includes circumstances where a person is injured in the course of unloading items from an unregistered trailer attached to a registered prime mover, provided the injury occurs in the course of the completion of the delivery of those items via the prime mover.

FACTS

The plaintiff was injured in the course of his employment with Waverley Forklifts Pty Ltd (**Waverley Forklifts**). He was struck by a forklift which was being unloaded from an unregistered trailer that was attached to a registered prime mover. The forklift had been transported to Waverley Forklifts’ premises via the trailer driven by the prime mover for the purpose of undergoing repairs. The forklift was being driven along the trailer to facilitate its offloading when the forklift struck the plaintiff.

ISSUES FOR DETERMINATION

The Court was required to determine whether the TAC was liable to indemnify Waverley Forklifts in respect of the plaintiff’s claim for damages. Accordingly, the issue before the Court was whether the plaintiff’s injuries were “caused by or arising out of the use of a motor vehicle”, namely, the prime mover.

THE TAC’S CASE

The TAC argued that the indemnity provided in section 94 of the Act is not intended to extend to an injury arising out of the use of a trailer, even if the trailer is attached to a prime mover. The TAC contended that the indemnity provided for by section 94 of the Act is narrower than the indemnity offered under the preceding *Motor Car Act 1958* (Vic). Consequently, the case law interpreting the phrase “arising out of the use of a vehicle”¹ is redundant, as the Court is required to apply a heightened emphasis on the issue of causation when determining whether a person’s injuries are “arising out of the use of a vehicle”.

¹ [2014] VCC 112 at paragraph 14.

DECISION

Judge Saccardo rejected the arguments advanced by the TAC. Employing the principles of statutory interpretation, he held that there is nothing in the Act or the Explanatory Memorandum to the Act which "suggests an intention by Parliament to alter the settled jurisprudence of the phrase 'arising out of the use of a vehicle'". Therefore, Judge Saccardo determined this case based on the approach established in the settled case law in Victoria relating to the interpretation of the phrase "arising out of the use of a vehicle".

Judge Saccardo found that the prime mover was a substantial contributing factor to the plaintiff's injury, in that the transportation and delivery of the forklift could not be regarded as having been completed until the forklift had been unloaded from the unregistered trailer. He contrasted this with a situation where a primer mover is employed merely to connect to an already loaded trailer to deliver the trailer and its load to another site. Accordingly, Judge Saccardo held that the plaintiff's injury arose out of the use of the prime mover and consequently, Waverley Forklifts was entitled to an indemnity from the TAC under section 94 of the Act.

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IMPACT OF THE DECISION

The TAC may now be required to indemnify an owner or driver in circumstances where a person sustains an injury in the course of unloading items from an unregistered trailer that is attached to a registered prime mover, provided the following conditions are met:

1. The prime mover and unregistered trailer were employed to transfer and/or deliver the items that were being unloaded.
2. The transportation of the items via the prime mover commenced with the loading of the items into the trailer.
3. The unloading of the items from the trailer was incidental to the use of the prime mover to transport and/or deliver the items.
4. The use of the prime mover to transport and/or deliver the items was not completed until the items had been unloaded from the trailer.

If you have any questions, please contact one of our team members below.