

AUSTRALIA / JUDGMENT

Warren v Maclean-Lower Clarence Services Club Ltd

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Supreme Court New South Wales Medium Neutral Citation: Warren v Maclean-Lower Clarence Services Club Ltd

[2014] NSWSC 1374 Hearing dates: 24 September 2014 Decision date: 09 October 2014
Jurisdiction: Common Law Before: Schmidt J Decision: The defendants ordered to pay Mr Warren damages in the sum of \$1,708,309. Catchwords: CIVIL LAW - damages - substantial damages to be made - defendants not in any financial position to pay any order - orders made Legislation Cited: Civil Liability Act 2002 (NSW) Category: Principal judgment Parties: Luke Graham Warren (Plaintiff) Maclean-Lower Clarence Services Club Ltd (First Defendant) Andrew Wayne Hall (Second Defendant) Brendan Mark Hall (Third Defendant) Representation: Counsel: Mr R Goodridge (Plaintiff) Solicitors: Monaco Solicitors (Plaintiff) Hall & Wilcox Lawyers (First Defendant) File Number(s): 2012/255813
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Judgment

1The plaintiff, Mr Warren, was assaulted by the second and third defendants, Mr Andrew Hall and Mr Brendan Hall, while at the Maclean-Lower Clarence Services Club in August 2009. He suffered a very serious brain injury as a result, when aged only 32 years. Both defendants were later charged and convicted of the assault. The proceedings against the Club were finally not pursued and the claim brought against the other two defendants was not defended. 2A default judgment for unliquidated damages was entered in Mr Warren's favour on 15 November 2013 against the two remaining defendants. He now seeks an order for damages in circumstances where it appears that neither defendant is in a financial position which will enable any orders made in Mr Warren's favour to be satisfied. 3I am satisfied on the evidence that an order for substantial damages must be made in Mr Warren's favour. 4Mr Warren's case rested on evidence which he gave in support of an evidentiary statement which he made in February 2013; the police report in relation to the assault, which described the assault; the state he was found to be in, when police attended; admissions made by the two defendants as to the assault; and various medical reports. 5Mr Warren was working as a head chef at the time of the assault. He was then a carer for his partner, who suffers from a psychological condition. He has not worked since the assault and since 2009 has been in receipt of a disability support pension. He and his partner have one child. 6As the result of his injuries, Mr Warren has limited recall of the assault or his

subsequent treatment in August at Maclean District Hospital or of later treatment at Grafton and Lismore Base hospitals in 2012. 7Mr Warren has viewed CCTV footage which recorded the assault. He had never met the two defendants beforehand. He described having seen on the footage being punched a number of times in the back of the head by the man who he now knows to be the second defendant, Peter Hall, and then being struck over the head with a bar stool by the first defendant, Andrew Hall. 8Mr Warren was taken to hospital on several occasions after the assault for treatment for headache, confusion and passing out. He has since received ongoing treatment from his GPs, Dr Pye, Dr Hope and Dr O'Reilly. He has been treated by psychiatrists, Dr O'Brien and Dr Freeman; by a neuropsychologist, Ms Hendy; and by a neurosurgeon, Dr Poulgrain. He has been prescribed various medication over time. Mr Warren continues to receive ongoing treatment from Dr Freeman and Dr Hope. He has been diagnosed as suffering both a brain injury and post-traumatic stress disorder. 9Mr Warren experienced hallucinations and a heightened sense of paranoia after the assault. While that had reduced over time, he was readmitted to hospital for further treatment in 2012. He also suffered from ongoing fatigue, resulting in sleep of up to 14-15 hours per day. That symptom has also improved, although he continues to suffer severe fatigue, especially when engaging in physical activities. 10Mr Warren's motivation, concentration and attention span have also been adversely affected, as has his short and long term memory. He suffers headaches which are aggravated by exposure to sunlight, as well as anxiety, frustration and anger at his inability to function normally. He remembers little of the period shortly before and after the assault and has to rely on his partner and mother to remind him to keep appointments and complete tasks. 11Mr Warren also now has to rely heavily on his mother and partner for domestic assistance. He is rarely able to drive and when he has in more recent times been able to drive, he remains in the car as he cannot tolerate crowded places. He is also no longer able to cook or contribute to other domestic duties, such as cleaning, laundry and caring for his daughter, which he engaged in before the assault. 12Mr Warren also described the difficulty he faced in completing tasks requiring physical exertion, the consequences for his partner and the steps required to remind him to undertake things which he was physically capable of performing. 13Mr Warren explained his inability to return to work as the result of the consequences of the assault. He now confuses letters and numbers and is easily confused and distracted when reading or having conversations. He finds that his mind wanders and he forgets what he is doing. He also described the anger and frustration which he felt as a result. 14The medical reports in evidence described the fractures and other injuries Mr Warren sustained in the assault; the personality changes he subsequently experienced; treatment he has received for physical and psychiatric injuries, including for depression, delusions and paranoia, as well as the treatment he has received for management of the ongoing symptoms which he described. 15On the medical evidence there does not appear to be any basis for confidence that Mr Warren's situation will improve substantially in future, with further treatment. 16On that evidence an order of some \$1,708,309 was pressed. The schedule of damages relied on provided: General Damages \$300,000 Past Economic Loss 264 weeks at \$700 \$184,800 Loss of Earning Capacity \$877 x 1038 less 15% \$773,777 Loss of Past Superannuation Total net loss \$184,800 x .09 \$16,632 Loss of Future Superannuation Total net loss \$773,777 x .09 \$69,640 Past Out of Pocket Expenses \$2,200 Future Out of Pocket Expenses Ongoing expenses including medical, counselling and medication

At say \$20 pw (life expectancy 48 years) \$20x1338 \$26,760 Domestic Assistance Commencing at 10 hours per week at \$25 ph. \$250x1338 \$334,500 Total damages \$1,708,309 17Mr Goodridge submitted for Mr Warren that the orders sought were conservative given his circumstances. 18This application is not governed by the provisions of the Civil Liability Act 2002 (NSW) because s 3B excludes application of the Act to intentional acts done with intent to cause death or injury, apart, relevantly from s 18 interest on damages. I am satisfied that the evidence well establishes that this assault falls within that exception. Mr Warren seeks no order as to interest. 19The evidence establishes what is claimed in relation to past economic loss, superannuation and out of pocket expenses. The loss of earning capacity and future superannuation are also established on the evidence, the calculations made by reference to wages of some \$877 per week and a 3% discount. Future out of pocket expenses are, I accept on the evidence, conservative at \$20 per week, with a life expectancy of some 48 years. 20On the evidence, I also accept the claim for domestic assistance calculated at only 10 hours per week. I accept that is also a conservative approach to calculation of this head of damages. 21As to general damages claimed of \$300,000, Mr Goodridge submitted that the order sought was also conservative, given that for the most tragic of cases in this State, a figure of more than \$600,000 would generally not be awarded, given the provisions of the Civil Liability Act. 22In my assessment an order for general damages in an amount of \$300,000 sought must be made. As I have explained the evidence establishes the serious brain injury which Mr Warren sustained while a relatively young man and the ongoing, wide-ranging detrimental effects of that injury with which he will have to contend for the rest of his life. This award must compensate Mr Warren on a once and forever basis for the defendants' unquestionably wrongful conduct towards him. I am satisfied that this sum is a conservative basis upon which to compensate Mr Warren for his extreme pain and suffering and the considerable loss of amenity which he has suffered and will continue to suffer, for many years ahead. Order 23I accordingly order the defendants pay Mr Warren damages in the sum of \$1,708,309

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