

RECENT DECISIONS

Beyond employment - when an injury is not foreseeable

Sandro Puleio v Olam Orchards Australia Pty Ltd [2018] VSC 109 (21 March 2018)

[Link to decision](#)

Summary

The Supreme Court of Victoria recently considered whether an employer was negligent in circumstances where its employee died after operating a tractor (which was not part of his normal role) while under the influence of alcohol.

In finding that the employer was not negligent, the Court noted that the deceased did not have a history of consuming alcohol at work, working while intoxicated or undertaking another employee's work. Accordingly, it was held that the employer could not reasonably have foreseen the event occurring. As the event was not foreseeable, it followed that the defendant did not breach the duty it owed to the deceased to take reasonable care for his safety.

Background

The deceased was employed as an Orchard Technician at the 'Annuello' orchard. On 28 August 2013, after working a full day, he went home to collect his dinner from his wife. He returned to the orchard where he sometimes slept at about 5:30pm. His body was then found the next morning near a tractor on the property.

Tests reported that he had a blood alcohol reading of 0.18. The evidence established that the deceased had been performing a task that was not assigned to him, outside of work hours while he was intoxicated. He had failed to apply the handbrake on the tractor while it was on a slope which led to him sustaining fatal crush injuries.

The deceased's wife made a claim against the employer claiming damages for nervous shock. In order for her claim to succeed, she needed to establish that her husband's death was caused by the negligence of his employer.

Decision

The Court held that the deceased's intoxication and failure to apply the handbrake could not be attributed to any negligence on the part of the employer and dismissed the claim.

The Court noted that an employer has a duty to take reasonable care for the safety of its employees. This does not mean that an employer must safeguard its employees from every danger imaginable.

The accident occurred outside normal work hours and while the deceased was performing a task outside of his employment duties. The Court held that the duty owed by the employer does not and should not extend to outside of work hours or outside of the worker's employment duties. The Court observed that to extend the employer's duty in such a way would 'erode the deceased's and other employees' personal autonomy' and 'interfere with their private lives in a way unacceptable in a liberal democracy'.

Further, as the deceased did not have a history of consuming alcohol at work, working while intoxicated or undertaking another employee's work, the defendant

could not reasonably have foreseen the injury occurring. It followed that as the injury was not foreseeable, there was nothing that a reasonable person in the employer's position would have done to prevent or minimise the risk of injury to the deceased.

Implications

While the duty of care owed by an employer to its employees is significant, it is not all-encompassing.

In determining whether an employer is negligent, it must be considered whether the actions of the employee were reasonably foreseeable. In situations where an employee chooses to pursue a 'frolic of their own' that is outside the scope of their employment, the foreseeability test may not be met and the employer will not have breached their duty of care.

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