July 2022

Insurance Insights

Gravel is slippery- isn't that obvious?

Gladstone v Public Transport Authority of Western Australia [2022] WADC 6

Key takeaways

- **A reasonable person in the position of an occupier is only required to take action that is proportional to the risk.**
- **A rolled ankle, with minimal loss of function alone is not sufficient for an award of compensation for non-pecuniary loss once the *Civil Liability Act 2002* (WA) thresholds are considered.**

Background

On 26 May 2014, James William Gladstone (**plaintiff**) arrived at the Bassendean Train Station in Perth. His usual routine would involve him driving from his home to the station, parking and taking the train to work.

On this particular day there was construction work taking place, and the Public Transport Authority of Western Australia (**defendant**) had constructed a temporary car park for passengers to use. The plaintiff parked in the temporary car park, which was unmarked with a blue metal gravel surface, unlike the main car park which was bituminized with marked parking spaces.

After parking, the plaintiff exited the temporary car park surface on foot to step onto the road, where he rolled, twisted and strained his right ankle due to slipping on a gravel stone or stones underfoot.

The plaintiff partially collapsed and once he composed himself, noticed blue metal gravel spread across the roadside edge of the kerb which extended 20 or 30cm into the road.

He later received medical treatment including an MRI and three sessions with a physiotherapist. He was prescribed anti-inflammatory and pain medication by his general practitioner.

The plaintiff claimed he had to avoid any physical activity where he may roll his ankle and described himself as overly cautious when it came to areas where there was rubble, which he actively avoided.

The plaintiff also had a phobia of needles and his experience from a previous surgery, meant he avoided seeking a review from an orthopaedic surgeon.

The plaintiff's claim against the defendant in negligence and under the common law and for a breach of the *Occupiers Liability Act 1985* (WA) (**OLA**). The way the case was presented, the parties agreed that the outcome would not be different whether the claim was in negligence or under the OLA.

July 2022

Decision

The plaintiff's claim was dismissed.

The Court found the plaintiff and a reasonable person in his position, exercising ordinary perception, intelligence and judgment, would have known that construction was taking place, that the car park was temporary, that he was walking across a temporary car park which had a blue metal gravel surface, and that blue metal gravel moves.

The Court found these observations were matters of common knowledge and patently obvious to any adult with experience of walking outdoors. The risk was obvious pursuant to section 5O of the *Civil Liability Act 2002* (WA) and the defendant did not owe a duty of care to the plaintiff to warn him of the obvious risk.

The Court also found that although the defendant did owe the plaintiff a duty of care, the defendant did not breach its common law or statutory duty of care. It was not accepted that a person in the position of the defendant would have created a safe walkway from the temporary car park to the train station. The works in place were considered temporary and not exceptional or unusual. It would have been unreasonable to expect the defendant to have performed daily sweeps having regarding to the risk posed by the blue metal gravel on the road surface.

Also of note, the Court assessed general damages as $20,000 which is below the minimum threshold of $23,000 in place and therefore even if the plaintiff was successful, he would have received no award for this head of damage.

Implications

Liability cases each turn on their own facts. In this instance, it is a reminder that for occupiers and their insurers that their response to a risk only needs to be reasonable.

This article was written by Principal Mark Birbeck and Solicitor Jack Davies. Please contact Mark if you have any questions or would like more information.

Mark Birbeck

Principal

+61 8 6319 0471

mbirbeck@meridianlawyers.com.au

Jack Davies

Solicitor

+61 8 6319 0477

jdavies@meridianlawyers.com.au