

Workplace injuries in the mining industry: 15 years of Queensland Supreme Court decisions

| Case | Judge | Injury | Key liability issues | Liability outcome | Key quantum issues | Judgment amount | Future economic loss |
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| <i>Bell v Mastermyne Pty Ltd</i> [2008] QSC 331 | McMeekin J | The plaintiff suffered an internal derangement of the L5/S1 intervertebral disc | Liability admitted | Liability admitted | The plaintiff's credit; Where the plaintiff had a history of spinal complaints in the years prior to the injury; The plaintiff's history of poor earnings; Question as to the likelihood of the plaintiff maintaining work in mining; Whether the plaintiff taken appropriate steps to seek employment | \$597,524.93 | Plaintiff's age: 35 Allowance: \$212,000.00 Method of calculation: Weekly loss of income discounted by 70% |
| <i>Craddock v Anglo Coal (Moranbah North Management) Pty Ltd</i> [2010] QSC 133 | McMeekin J | The plaintiff suffered a left ankle injury | Liability admitted | Liability admitted | The plaintiff had returned to work, earning a lower income; The plaintiff contended he would have taken up higher paid work in the hard rock mining industry, but for his injury; Question as to whether a higher than ordinary discount for vicissitudes is warranted in the context of the mining industry; Claim for loss of work benefits, including accommodation and meals | \$884,609.80 | Plaintiff's age: 47 Allowance: \$500,000.00 Method of calculation: Weekly loss of income to age 60, discounted by 15% between age 50 and 60 |
| <i>Osborne v Downer EDI Mining Pty Ltd</i> [2010] QSC 470 | McMeekin J | The plaintiff was injured when he fell down an open hole in the mine floor at the end of a tunnel | Question as to the plaintiff's credibility; Prior to falling, the plaintiff walked past two barriers alerting him to the presence of the hole; Whether the plaintiff was injured in the course | Finding for the plaintiff, with a 35% apportionment for contributory negligence | Quantum agreed at \$1,150,000.00 inclusive of refund to WorkCover | \$1,150,000.00 (less 35% discount for contributory negligence) | N/A |

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| | | | of his duties or whilst on a frolic of his own; Whether the defendant breached its duty; Whether the plaintiff was contributorily negligent | | | | |
| <i>Hughes v Tucaby Engineering Pty Ltd</i> [2011] QSC 256 | McMeekin J | The plaintiff went to step over a low slung chain hanging across a wide doorway. A small hook on the chain he had not previously observed caught up in the spats over his boots. He tripped and fell heavily onto his left elbow, causing him to suffer an injury. | Liability admitted; Question as to whether the plaintiff should be held contributorily negligent | No reduction for contributory negligence | Future economic loss; Whether the plaintiff would pass a coal board medical the following year; Whether the plaintiff would work beyond 60 in the mining industry | \$550,128.11 | Plaintiff's age: 48 Allowance: \$351,000.00 Method of calculation: Weekly loss of income to age 60 discounted by 30% and then for a further 5 years with a 90% discount |
| <i>Koven v Hail Creek Coal Pty Ltd</i> [2011] QSC 51 | McMeekin J | The plaintiff suffered an inversion injury to his left ankle | Liability admitted | Liability admitted | General damages; Future economic loss; Future paid care; The plaintiff's potential earning capacity compared to his residual earning capacity and the likely age to which he would have continued work in mining; The Court had regard to the plaintiff's loss of savings in the Storm Financial collapse | \$919,088.61 | Plaintiff's age: 50 Allowance: \$495,000.00 Method of calculation: Weekly loss of income to age 60 discounted by 20% and weekly loss to age 65 discounted by 50% |

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| <i>Phillips v MCG Group Pty Ltd</i> [2012] QSC 149 | Mullins J | The plaintiff was driving a scraper at a mine site when he injured his back | Liability admitted | Liability admitted | General damages; Past economic loss; Future economic loss; The plaintiff had previously suffered a spinal injury requiring a fusion surgery 17 years before the subject injury; Where the plaintiff had only commenced work in mining 11 days prior to the subject injury; The defendant had ceased operations at the mine site in December 2009 | \$486,719.44 | Plaintiff's age: 55 Allowance: \$215,276.00 Method of calculation: Weekly loss of income to age 65, discounted by 25% |
| <i>Phillips v MCG Group Pty Ltd</i> [2013] QCA 083 | Fraser, White JJA and Daubney J | As per QSC decision. | N/A | N/A | The appellant contended that the trial allowance for general damages, past economic loss and future economic loss was manifestly inadequate | Trial allowance upheld | As per QSC decision. |
| <i>Klein v SBD Services Pty Ltd</i> [2013] QSC 134 | McMeekin J | The plaintiff alleged that he suffered an injury to his lumbar spine when lifting a heavy metal object weighing in excess of 180 kg | Whether the incident occurred; No witnesses to the incident; The defendant had lost all relevant records; Various inconsistencies in the plaintiff's version of events; Contributory negligence | Finding for the plaintiff, with a 25% apportionment for contributory negligence accounting for the plaintiff's actions in moving an object that he knew to be extremely heavy | The genuine impact of the subject injury; Past and future economic loss; Whether an additional allowance was warranted for loss of work benefits | \$387,521.51 | Plaintiff's age: 37 Allowance: \$150,000.00 Method of calculation: Global (this relatively low award accounted for the evidence that the plaintiff's spine would have deteriorated and prevented him from working in mining irrespective of the subject injury) |
| <i>Pollock v Thiess Pty Ltd & Ors (No 2)</i> [2014] QSC 95 | McMeekin J | The plaintiff was injured when a tub plate weighing approximately 150kg fell crushing his right | Liability admitted | Liability admitted | Post injury, the plaintiff had returned to work for 12 months as a supervisor, earning a wage higher than his pre injury average, but was made redundant. At the time of the trial, he | \$865,158.88 | Plaintiff's age: 30 Allowance: \$455,000.00 Method of calculation: |

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| | | foot | | | was working as a salesman earning a significantly lower income | | Weekly loss of income to age 65 discounted by 20% |
| <u>Martin v Golding Contractors Pty Ltd [2014] QSC 053</u> | North J | The plaintiff suffered an injury to her spine when the dump truck that she was operating was subjected to a significant impact | Liability admitted | Liability admitted | General damages; Past economic loss; Future economic loss; Whether the plaintiff would qualify to work as a teacher; Whether she would have worked in mining to retirement age, but for the injury. | \$1,466,078.93 | Plaintiff's age: 28 Allowance: \$700,000.00 Method of calculation: The difference between the plaintiff's mining income and her likely income as a teacher, discounted by 25% |
| <u>Kennedy v Queensland Alumina Limited [2015] QSC 317</u> | McMeekin J | The plaintiff suffered an injury at his workplace when caustic solution came into contact with his left heel and ankle | Liability admitted; Contributory negligence in dispute, on the basis that the plaintiff failed to comply with his training and instruction | The Court accepted that the plaintiff failed to comply with his training and held that this went beyond mere inadvertence, inattention or misjudgement. There was a 50% apportionment for contributory negligence | General damages; Past economic loss; Future economic loss; Where the plaintiff had returned to work fulltime with QAL; Whether the plaintiff would have engaged in higher paid work in Western Australia, but for the injury | \$486,613.40 (less 50% discount for contributory negligence) | Plaintiff's age: 29 Allowance: \$250,000.00 Method of calculation: Global |
| <u>Kerle v BM Alliance Coal Operations Pty Ltd [2016] QSC 304</u> | McMeekin J | The plaintiff suffered significant injuries in a car accident while driving home from a mine site, after | Whether fatigue was a significant contributing cause of the accident; Private right of action under | Finding for the plaintiff; Liability apportioned 90/10 between BMA and the host employer, | Quantum was agreed prior to trial at \$1,250,000 inclusive of refund to WorkCover | \$1,250,000.00 | N/A |

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| | | working four consecutive night shifts in a row. He alleged that the accident was caused by his fatigue. | the CMSHA; Breach of duty; Break in the chain of causation; Contributory negligence | then 60/40 between the host employer and the labour hire employer; Obiter indicating that a breach of the CMSHA does not convey a private cause of action; The Court did not make an apportionment for contributory negligence, though not without hesitation | | | |
| Mills v BHP Coal Pty Ltd [2017] QSC 184 | McMeekin J | The plaintiff suffered an injury to his cervical spine and right rotator cuff when opening a stuck butterfly valve on a vac pump | Liability admitted | Liability admitted | General damages; Future economic loss; Future expenses; Where the plaintiff had returned to his pre-injury role with the employer and there was no ongoing loss of income; Question as to how long the plaintiff would have worked if uninjured; Where the Court accepted that the plaintiff was struggling with pain and would retire soon | \$1,013,131.89 | Plaintiff's age: 58 Allowance: \$650,000.00 Method of calculation: Global, but also justified with reference to likely weekly loss of income |
| Paskins v Hail Creek Coal Pty Ltd & Anor [2017] QSC 190 | McMeekin J | The plaintiff suffered an injury to his spine when the tray of the truck he was operating collided with the bucket of | Whether the incident was caused by operator error or an unsafe system of work; If the operator error was the cause, | The Court held that the incident was caused by operator error; The labour hire employer of the | The plaintiff's reliability; Whether the plaintiff would have continued work in the mining industry; General damages; Past and future economic loss; Loss of employment benefits; Future paid assistance; | \$966,991.38 | Plaintiff's age: 35 Allowance: \$350,000.00 Method of calculation: Global allowance, based |

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| | | the excavator that was loading it | which party (labour hire employer or host employer) was vicariously liable for the operator's casual act of negligence; Contributory negligence | operator was found vicariously liable for his actions; Finding for the plaintiff; 100% apportionment against the labour hire defendant, as the mine was not at fault; No reduction for contributory negligence | Special damages; Gratuitous care and assistance; Special damages | | on full loss of earnings to age 60 discounted heavily accounting for the low likelihood of the plaintiff remaining employed in mining and a significant unexercised capacity for work |
| <u>Love v North Goonyella Coal Mines Pty Ltd [2017] QSC 140</u> | McMeekin J | The plaintiff alleged that he suffered a neck injury when a roof bolting machine weighing between 40 and 48 kgs fell from above and struck him on the back of his head | The extent of the duty owed by the mine operator to employees of a contractor engaged by the mine operator; Whether the incident was caused by operator error or an unauthorised intervention by an unidentified person; Vicarious liability for negligent acts of third party employees; Contributory negligence | The Court held that the mine operator was not only required to act reasonably, but also to ensure that others exercised reasonable care; The Court observed that it was strongly arguable that the mine operator should be vicariously liable for negligent acts of third party employees; Finding for the | Whether future surgery would restore the plaintiff to his pre-injury state; General damages; Past and future economic loss; Loss of subsidised meals; Future paid assistance; Special damages | \$1,356,976.87 | Plaintiff's age: 37 Allowance: \$750,000.00 Method of calculation: Loss of earnings to age 62 discounted by 20% and thereafter reduced loss of earnings to age 67 on the basis the plaintiff would have needed to seek lighter work irrespective of the injury. |

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| | | | | plaintiff with no reduction for contributory negligence | | | |
| <p>Clarricoats v JJ Richards & Sons Pty Ltd [2017] QSC 214</p> <p><i>Note: The plaintiff in this matter was not injured while working at a mine. However, the issues considered are highly relevant to many mining claims.</i></p> | McMeekin J | The plaintiff alleged that he suffered an injury to his spine when required to drive a truck 120 kms after the shock absorber in the driver's seat broke away from its mounting bracket | The plaintiff's credibility; When the plaintiff first developed back pain; Breach of duty | The Court favoured an earlier version of events given by the plaintiff rather than the evidence he gave at trial. The Court found that the defendant did not breach its duty of care and judgment was entered for the defendant | Alleged exaggeration of pain based on surveillance footage; General damages; Past and future economic loss; Special damages | \$366,586.82 | <p>Plaintiff's age: 28</p> <p>Allowance: \$150,000.00</p> <p>Method of calculation: Global allowance, reflecting approximately loss of \$300 per week over 40 years discounted for contingencies</p> |
| <p>Souz v CC Pty Ltd [2018] QSC 036</p> | McMeekin J | The plaintiff alleged that he was injured when the canopy of the loader that he was operating collided with a steel beam erected across the roof of an underground mine | Breach of duty and causation with respect to an alleged cervical spine injury | The Court found that it was beyond argument that the defendant breached its duty to the plaintiff; After exhaustive analysis, the Court found that causation was established with respect to the cervical spine injury | General damages; Past and future economic loss; Past and future paid care; Past and future special damages; Where the plaintiff had no residual earning capacity; Argument as to whether the plaintiff would have continued working in underground coal mining | \$1,278,026.50 | <p>Plaintiff's age: 55</p> <p>Allowance: \$410,000.00</p> <p>Method of calculation: Loss of income to age 61 discounted by 20% and thereafter loss discounted by 70% for a further 5 years</p> |

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| <i>Krobath v Thiess Pty Ltd</i> [2018] QSC 309 | Crow J | The plaintiff alleged that he sustained a lumbar spine injury when the haul truck he was operating was loaded with a “particularly large rock”. | The single liability in issue was whether the injury was sustained in the manner alleged. Liability was otherwise admitted. | After a significant analysis of the plaintiff’s credibility and the relevant evidence, the Court found that it was likely that the incident did occur as alleged by the plaintiff; Judgment entered for the plaintiff | General damages; Past and future economic loss; Special damages; Paid services; Loss of subsidised meals; Where the plaintiff had a 28% whole person impairment; Question as to whether the plaintiff would have worked to age 70 due to pre-existing degeneration in the lumbar spine | \$815,306.61 | Plaintiff’s age: 55 Allowance: \$400,000.00 Method of calculation: Global allowance after considering different methodologies, including: (a) Full loss of earnings to age 70, discounted by 35%; (b) Full loss of earnings to age 65, discounted by 20% |
| <i>Walker v Newlands Northern Underground Pty Ltd</i> [2019] QSC 096 | Crow J | The plaintiff alleged that he suffered a laceration injury to his hand while installing a bolt in an underground mine with a roof bolter. The plaintiff also alleged he sustained a secondary psychological injury | Liability admitted, apart from causation | The Court found that the defendant’s breach of duty was a necessary condition of the occurrence of the physical and psychological injuries | Past and future economic loss; Where the plaintiff was made redundant shortly after the injury as a result of the mine closing; The impact of the plaintiff having suffered a non-compensable neck injury while on holidays in Bali, subsequent to the date of the work injury | \$1,108,896.00 | Plaintiff’s age: 32 Allowance: \$541,424.00 Method of calculation: Consistent with the approach in <i>Koven</i> , i.e. weekly loss of income to age 60 discounted by 20% and weekly loss to age 65 discounted by 50%. The consequent sum was discounted by a further 33% for a number of reasons, including the non-compensable neck injury. |

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| <u>Thiess Pty Ltd v Kroboth [2019] QCA 151</u> | Fraser JA and Applegarth and Bradley JJ | As per QSC decision | N/A – Appeal on quantum only | N/A – Appeal on quantum only | The appellant (Thiess) appealed against the trial judge’s allowances for past and future economic loss and subsidised meals | Trial allowance upheld | As per QSC decision. |
| <u>Tyndall v Kestrel Coal Pty Ltd (No 3) [2021] QSC 119</u> | Crow J | The plaintiff allegedly suffered vibration induced 'white finger syndrome' as a result of operating loaders over a period of time | The primary issue was whether the plaintiff's employment had exposed him to enough vibration to cause 'white finger syndrome'. The defendant argued that the plaintiff had not been exposed to excessive vibration and a that his condition was caused by a number of co-morbidities (including a long history of heavy smoking) | Finding for the plaintiff | Past and future economic loss; Argument that the plaintiff had failed to mitigate his loss, where the plaintiff's evidence was that he had not attempted to find light work. | \$1,556,712.20 | Plaintiff's age: 50 Allowance: \$875,000.00 Method of calculation: Approximate midpoint between two methodologies: (a) Loss of earnings (less assumed residual earning capacity of \$750/week) to age 67 discounted by 15%; and (b) Full loss of earnings to age 67 discounted by 35% |

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