DISTRICT COURT OF QUEENSLAND

CITATION:	*Lewis v Green Mountain Food Processing Pty Ltd* [2014] QDC 149
PARTIES:	**TYRON ALEXANDER LEWIS** **(plaintiff)** **v** **GREEN MOUNTAIN FOOD PROCESSING PTY LTD** **ABN 29 123 040 424** **(defendant)**
FILE NO/S:	2503/12
DIVISION:	Civil
PROCEEDING:	Trial
ORIGINATING COURT:	Brisbane
DELIVERED ON:	6 June 2014 (ex-tempore)
DELIVERED AT:	Brisbane
HEARING DATE:	2, 3, 4, 5 and 6 June 2014
JUDGE:	Reid DCJ
ORDER:	1. Judgment for the defendant. 2. The plaintiff pays the Defendant's standard costs from the date of the compulsory conference of 1 May 2012 until the conclusion of the matter.
CATCHWORDS:	Personal injury – alleged spinal injury –credibility *Bell v Mastermyne Pty Ltd* [2008] QSC 331 applied *Monger v Camwade* [2011] QSC 97 considered
COUNSEL:	Mr A. Stobie for the plaintiff Ms O. Perkiss for the defendant
SOLICITORS:	McNamara & Associates for the plaintiff BT Lawyers for the defendant

[1] In this matter the plaintiff claims damages for personal injuries suffered in the course of his employment with the defendant at the defendant's meat processing

plant at Coominya near Gatton. Both liability and quantum are in dispute. Indeed, the defendant disputes that the plaintiff was even injured.

[2] The incident is said to have occurred on 27 April when the plaintiff was only 18 years old having been born on 16 February 1991. The event said to give rise to the entitlement to damages pre-dates the 2010 amendments to the *Workers' Compensation and Rehabilitation Act* and so damages are to be assessed according to common law principles.

[3] The plaintiff was working in the boning room of the Coominya plant. He had been employed with the defendant only for a short period prior to 27 April. He says that on that day he was required to empty parcels of meat onto a dicing machine. To do so he said he had to lift the meat from a table to the feed in-tray at the top of the dicing machine which was at about his shoulder height. He said he was able to rest his chin on the lip of the feed in-tray. The machine was designed for larger pieces of meat to be fed into the dicer by an operator who stood on a raised platform on the opposite side of the machine from the plaintiff. When diced the cubes of meat were discharged closer to the bottom of the machine.

[4] The process is described in the report of Adam Dargusch, a consultant engineer with InterSafe who had been engaged by the plaintiff's solicitors to provide a report about the incident. It is a somewhat curious feature of the case that he was not significantly cross-examined in respect of the content of his report, and when giving the evidence the general manager of the defendant company, Mr Giddens, who was responsible for the implementation of the system of work, was not asked any questions about Mr Dargusch's opinion about alternative safe work practices.

[5] Mr Dargusch says that the plaintiff indicated to him that the machine being used at the time of his injuries was not the machine viewed at the time of inspection. That appears to be common ground. He did say, however, that the height of the machine shown in his report and that used at the time of the incident were virtually identical in height. Again that is not disputed. The lip of the tray of the machine was said by Mr Dargusch to be 1.38 metres from the floor level. The plaintiff himself was 1.7 metres tall and his shoulder height was measured by Mr Dargusch at about 1.43 metres.

[6] Furthermore, as the particular diced product was no longer available at the time of Mr Dargusch's examination, there was no boxes of meat such as the plaintiff was lifting available to be weighed and measured. Mr Dargusch used production records to calculate the weight of the bags of meat that the plaintiff was lifting.

[7] I find, consistent with the plaintiff's evidence, that the level of the machine was generally just below the height of his chin, and consistently with the contents of Mr Dargusch's report and the production yield report of 27 April 2009 (see page 71 of exhibit 3), the average weight of the bags of meat was some 12.3 kilograms. I accept that the production records both as to weight and number of boxes were accurate.

[8] The plaintiff's evidence was that he would lift the meat from the rack and throw it on the floor. He says he did this because the meat was frozen and his purpose was to break up the meat before it was placed in the tray of the dicing machine. After throwing the meat on the floor he said he would then lift the plastic liner with meat from the box and place it on a table.

[9] He would then examine the meat to ensure it was broken into individual pieces before grasping the bag and lifting it to the dicing machine. He says he did this by taking it from the table, turning clockwise until he was approximately facing the dicing machine, a turn of about 270 degrees, and as he did so he lifted the meat in a swinging motion across his body to a height above the lip of the feed-in tray to allow the bottom of the bag to clear the lip. As he did so, his arm would be extended somewhat. He then says that, with a motion of his wrist, he upended the plastic bag to discharge the meat onto the tray of the machine, trying to avoid the plastic bag, or at least the outer aspect of the bag, touching the feed-in or tray of the dicing machine.

[10] Mr Dargusch measured the height of the plaintiff's hands at that point of discharge at about 1.7 metres above the floor, about the height of his head and about 0.32 metres above what was said to be the height of the lip of the dicing machine. In addition he says his hands would have been extended about 550 to 600 millimetres horizontally away from the centre of gravity of the plaintiff at the time the bag was overturned and the meat discharged.

[11] It can be seen that the way the plaintiff says he performed the task meant the height of his hands at the point of discharge was dictated not only to the height of the feed-in tray of the dicing machine, but also by the dimensions of the plastic liner itself and the need to lift the package to a height sufficient to allow it to clear the lip and to discharge the contents of the bag without placing the bag on the tray of the dicing machine. Whether he was in fact required to ensure that the outside of the plastic bag did not touch the tray was a matter that was in some dispute.

[12] An assistant shift supervisor Mr Norm Watson worked in the boning room at the time the defendant says he was injured. He said he did not recall the defendant. Mr Watson gave evidence, consistent with the plaintiff's evidence, that he thought the bag could not touch the dicer so as to avoid the risk of contamination. It is ultimately not necessary to resolve whether or not that was in fact a requirement, but in view of the plaintiff's evidence and that of Mr Watson, I find that the plaintiff at least believed that that was the requirement of the task he was undertaking.

[13] The plaintiff said the task was performed repeatedly over a shift. He estimated doing so every three minutes over an entire shift. He says he started work at about 5 am on the day of his alleged injury and says that the incident happened at about 8 am. He said he worked steadily, emptying bags as I have described. That would suggest that up to the point of the incident he in fact lifted up to about 60 bags in the way I have described.

[14] I reject the plaintiff's evidence about the number of bags he lifted on 27 April, or that he did so repetitively on that day beyond lifting the 15 bags referred to in the production record, and of those 15 bags, two were only part-filled bags. The production yield report that I have referred to clearly shows there were 13 full bags, at an average weight of 12.3 kilograms being a total weight of 160.3 kilograms. I accept the evidence Mr Giddins about the content and accuracy of the production yield report.

[15] The plaintiff also said, as I have previously indicated that in order to break up the frozen meat he would throw it on the floor in the way one might break up a frozen bag of ice. Mr Giddins specifically said this was prohibited because of food

hygiene issues. That evidence seemed to me consistent with logic and was also consistent with the evidence of Mr Watson, although his evidence was much more general and less specific than that of Mr Giddins, whose evidence I generally accept, subject to the one qualification I have mentioned about whether the bag could touch the lip of the dicer.

[16] I accept that it was prohibited, because of food hygiene issues and the risk of contamination, for the bags to be placed or, as the plaintiff said, thrown on the floor. In my view it is inherently unlikely that the system of work would involve throwing boxes of meat onto a floor to break them up. In any case, I accept the evidence of the Mr Giddins that the meat was not frozen in such a way as to make the separation of the pieces of meat difficult. In my view it is inherently improbable that frozen meat would have been diced and then sold and I accept the evidence of the general manager about that process.

[17] The plaintiff said at the time of the onset of his symptoms he was engaged in the process of lifting and emptying a bag of meat. He said he felt a sharp pain in his back as he moved in a clockwise direction, swinging the bag upwards. He said he felt immediate numbness in his legs. He said he kept working for a period of about 15 to 30 minutes, but then stopped due to pain. He says he reported his injury to the front office and perhaps also to a supervisor. He says he then left the premises, and immediately attended upon his general practitioner.

[18] The evidence of the plaintiff that he left work as he said is not supported by the wage records. In my view they strongly support the view that he worked a normal eight-hour day. I accept the evidence of the Mr Giddins and of Shiralee Fuller, the

pay clerk at the defendant's Coominya plant that if he had ceased work and left that this fact would have been noted on both the wage records and also by a representative of the company at head office in a sick book that had been kept.

[19] Although there had initially been objection to the introduction of the sick book record on the basis that it had not been disclosed, it was tendered through Ms Fuller without objection. In my view the absence of any record in that book of the fact that the plaintiff had been injured and left work early strongly contradicts his evidence that he left the premises early, as he said.

[20] The fact that he completed a full work day is also supported by the fact that the medical records of Dr Singh show that the plaintiff consulted him on that day at 3.57 pm, almost two hours after the completion of the normal shift at 2 pm. In my view his evidence that immediately after finishing work he went to a doctor is consistent with him completing the normal shift and is not consistent with his leaving work at about 8.30 am or thereabouts as he said.

[21] At that consultation Dr Singh records the following history:

> "Sore back X few days (last Thursday at work) today bent/kneeled down at work and felt sharp sudden pain R leg and feels pins and needles."

[22] That history is, of course, inconsistent with the plaintiff's evidence that he did not have a sore back prior to the event of 27 April and did not injure it at work on Thursday 23 April, as Dr Singh's record would suggest, and that he did not hurt it bending or kneeling down.

[23] Interestingly, the plaintiff also completed an injury and incident investigation report (page 540 of exhibit 4). Although it is not signed or dated, the plaintiff accepts it was in is handwriting.

[24] It is uncertain to me whether it was completed on 27 or 28 April, although I tend to favour the view that it was completed on 28 April, because of the absence of any record in the sick book supportive of his telling people at head office of an injury prior to a recording in this sick book of a phone call being made at 5.05 pm that notation that he was to attend work the following day to discuss the matter, but absenting himself from work on that day.

[25] That injury and incident investigation report completed by the plaintiff records the event as happening at 8 am on "27", which clearly means 27 April 2009 and gives the following description of the incident:

> "Lifting a box of meat off the ground onto a table"

[26] That description is inconsistent with his evidence before me and, of course, with his pleaded case.

[27] A subsequent application for compensation completed by the defendant, but signed by the plaintiff, says the incident happened "picking up a box". In my view that really adds nothing to the history and is likely to have reflected the defendant's re-statement of the position in the injury and incident investigation report that I referred to earlier.

[28] The documents that I referred to earlier, namely, the GP's recording of the event and the injury and incident investigation report completed by the plaintiff, do cause me

to have some significant disquiet about the plaintiff's credit and his description of the incident. That disquiet, at least as it applied to the manner in which the incident may have occurred, was to some extent lessened by the introduction into evidence of exhibit 15, being an extract of a WorkCover Queensland "Verbal and Unsuccessful Communication Report" of 1 May 2009.

[29] It is clear from that document that at 3.54 pm on 1 May the plaintiff rang WorkCover. The conversation is summarised in a file note compiled by a WorkCover officer, Lisa Milligan. It should be noted that this call was four days after the subject incident, that is, on the Friday of the week of the alleged incident. Ms Milligan records:

(a) That the plaintiff said he had sustained injury on Monday, the 27th of April;

(b) That he was lifting a box onto a machine and experienced lots of pain and numbness in his legs;

(c) He did not think too much about it – and kept working

(d) He ended the day with an incident report being made;

(e) He went to his local GP for assistance with the pain and was referred to a CT scan which showed a disk had slipped and was impinging on his nerves.

[30] The balance of the report shows some subsequent medical intervention in the week of the incident.

[31] It Is noted that this documentation:

(a) supports the fact that he was lifting a box ‘onto a machine’ and not a table, consistent with lifting it onto the dicing machine; but

(b) indicates that at the time he did not think much of the incident, kept working and ended the day with an incident report being made before going to his local GP.

[32] In my view the document supports the findings I have made about the plaintiff's completion of his normal shift on 27 April, which is supported also by the absence of any record of leaving early in the sick book and the wage records themselves. It is, I find, inconsistent with his evidence that he ceased work about 15 to 30 minutes after the incident.

[33] The plaintiff says that since the subject incident he has had two jobs, in January 2010 with Skilltech Consulting Services, and in July August 2011 with Arkwood (Gloucester) Pty Ltd.

[34] He said his brother worked with Skilltech and got him a job as a water meter reader. He said this was casual work and he was able to work his own hours. It involved him walking from house to house taking water meter readings. This was done by opening the water meter and then inserting a code into a machine. The meter was read by the machine electronically and he himself did not have to physically read it.

[35] Apart from the walking the only other physical requirement of the job was removing the pit covers from the water meter pit. They were typically concrete. An expert occupational therapist, Mr Stephen Hoey, called by the plaintiff said he was familiar with the job of a water meter reader. He said such pit covers can weigh up to 15 kilograms but the plaintiff said they were lifted using a metal rod which fitted inside a hole in the cover, overcoming the need to bend or crouch to remove it.

[36] Whilst the weight of 15 kilograms might sound heavy for someone with the symptoms that the plaintiff complained of, and to which I shall later refer, it seems to me that the weight would only need to be lifted a very small height to the lip of the pit and could be done with a straight back using one's legs to brace, as Mr Hoey said, against the weight of the lid. I do not think it would be classified as heavy work on that account, but it does seem to me that walking continuously throughout one's working day is somewhat demanding, at least for someone who presented in the way that the plaintiff did when giving evidence, and when walking to and from the witness box, and also as he presented to medical practitioners, a matter I shall refer to later.

[37] The plaintiff ultimately lost that job after 18 January 2010. On that day he committed the offence of dangerous driving and was dealt with by a magistrate the following day. He was fined and disqualified from driving. As a result of not having a driving licence he was unable to get to work and consequently the job was terminated. The records of the company show he was employed from 9 January and earned a gross income of $897. It seems that he would not have worked after 18 January. In evidence he said if he had not lost his licence he believe he could then and would now still be able to satisfactorily undertake that job. That, of course, is something different from saying that he would have worked continuously in that job.

[38] His next employment was with Arkwood. The company's payslips indicate the following:

Period of Employment	Hours Worked	$ Gross	$ Net
25 July – 31 July 2011	71.5	$1,510	$1,133
1 August – 7 August 2011	53.5	$1,130	$879
8 August – 14 August 2011	33	$697	$594
15 August – 21 August 2011	53.5	$1,130	$879
22 August – 28 August 2011	24	$507	$409
		$4,974	**$3,934**

[39] It is constructive to consider the report of Stephen Hoey of 25 August. He met with the defendant on that day in Brisbane. That can be seen to be the last day of the plaintiff's employment with Arkwood. Indeed, he said in evidence that he stopped work the day before he saw Mr Hoey. A letter from Arkwood records his resignation on 25 August, the day of seeing Mr Hoey. I conclude he would have last worked on 24 August since he saw Mr Hoey in Brisbane. It seems, therefore, that he would have worked no more than three days in that final week.

[40] The report of Mr Hoey records:

Mr Lewis recently commenced casual work at Arkwood Organic. He drives a tractor. In his first week he worked for five full days. This caused significant

aggravation in his lumbar symptoms and he is now reduced to two days of work each week. He continues to experience lumbar pain which is made worse from the jarring motion of the tractor when he's driving. This farm was out on a delivery run for his father who was a truck driver. This is how Mr Lewis came to secure the job."

[41] I accept that it is true that Mr Lewis's father worked for Arkwood and that this is how he obtained the work. That was consistent with the evidence of Mr Sirett, the farm coordinator for Arkwood. Importantly, Mr Hoey said in evidence he was surprised, having observed the plaintiff's presentation, that he was able to work the hours that I have indicated he did. So too did Dr Walden, a pain specialist who provided a report to the plaintiff's solicitors and who also gave evidence.

[42] I might say that in my view it is surprising in the extreme, having regard to his presentation before me and my understanding of his presentation to specialist medical practitioners who have provided reports, Dr Campbell and Dr Atkinson, of 7 March 2011 and 25 August 2009 respectively. Both thought he was commercially unemployable at the time they saw him. That is certainly how he presented in the courtroom. His limp was most pronounced, indeed bizarre. He regularly stood in a hunched way holding the witness desk for apparent support when giving his evidence.

[43] The work at Arkwood was described in evidence by Mr Sirett. He said that over a period of time due to wet weather material that was to be spread upon the paddocks of farms had been stockpiled and as a consequence there was some need for an

additional part-time casual employee. When Mr Lewis Senior asked Mr Sirett, Mr Sirett agreed to employ the plaintiff on a casual basis.

[44] The first day of his work was I think at Wongalley's farm, Mr Sirett instructed the plaintiff in the operation of the front-end loader and tractor. He says it would have taken probably over an hour initially to instruct him. He, Mr Sirett, initially performed the task and then had the plaintiff performed it while Mr Sirett was seated beside him. Subsequently he observed him from a distance of about 40 or 50 metres.

[45] He recalled getting back into the machines - probably the tractor - a couple of times subsequently to, as he described, "fine tune things". He said that the work at Wongalley farm was in a relatively compact area. He said the spreader took about four to six minutes to empty and that overall cycles of filling and emptying the spreader took about 18 minutes, that is, filling the bin of the spreader, spreading the material, returning it to the area where the material was stockpiled, getting out of the tractor and into a front-end loader and refilling the bin of the spreader being towed by the tractor before climbing back into the tractor.

[46] If that were so, and if he worked the hours that I have indicated, it is clear that he was climbing in and out of the machinery a very significant number of times. In evidence Mr Sirett was asked about that. In particular he was asked whether or not "Mr Lewis may have swapped between the machines six or seven times a day". He was asked if that was possible. He said:

Yes. Oh, easily. I think he might have done more than that on a lot of occasions.

[47] In my view it is highly likely that he did significantly more than six or seven such transfers a day. Mr Sirett did say that at the Wongalley farm his recollection is that only about 250 tonnes of material was being delivered each day. The bin on the spreader behind the tractor had 20 tonne capacity. On that basis only about 13 loads may have been involved daily, but of course, there was the stockpile that I have referred to and there is no evidence about the extent of the stockpile.

[48] In my view, the work that he was undertaking and the hours that he worked, particularly when it is borne in mind that there was in excess of one hour's commuting each way in a truck to and from work, was well beyond the capacity of a person with symptoms such as he presented to me and to examining doctors. I find such presentation indicated a significant degree of either conscious or unconscious exaggeration.

[49] Ultimately, I am unable to conclude whether he was exaggerating consciously or unconsciously, but I have no doubt that any injury he suffered, however that might have eventuated, did not result in the development of symptoms consistent with his presentation. In my view his statement to Mr Hoey on 25 August, the day after he had completed work, was far less than a proper expression of the work he undertook at Arkwood. I accept generally the evidence of Mr Sirett as to the work that he was required to perform.

[50] I had very real concerns, as can be seen, about the reliability of the plaintiff's evidence and about his reporting of symptoms and his demonstrated capacity for work after 27 April. I do not accept his description of the work practice about frozen meat being thrown onto the floor of the Coominya processing plant. I do,

however, accept evidence of Mr Dargusch that to require a worker to lift bags of meat, which I found weighed 12.3 kilos on average, and to tip the contents thereof onto the tray of a dicer at about the defendant's chin height in the way the plaintiff and Mr Watson (an assistant supervisor at the plant) described, was an inappropriate system of work. This is especially so as the lift required his hands, at least in the way the plaintiff described his work, to be even higher than the level of the tray.

[51] I do not accept the plaintiff's evidence that he used to lift cartons every three minutes on average and that he did so on 27 April from the start of his shift at about 5 am until about 8 am when he says he was injured. I accept the production records of the defendant establish that on 27 April only 15 cartons in total, two of which were only part filled, were emptied. I do not accept that the plaintiff left the factory soon after 8.30 am on 27 April or thereabouts. I find that he worked a full shift on that day.

[52] My findings about the day of the incident are particularly influenced by three matters. Firstly, the timesheets to which I have referred. I accept the evidence of Jason Giddins and Shiralee Fuller that if the plaintiff had left the factory early, the records would have shown the use of a figure of 3.5 hours or thereabouts in the column for 27 April to reflect the actual hours worked.

[53] Secondly, I accept the absence of any record in the sick book strongly supports the conclusion that I have reached.

[54] Thirdly the fact that he consulted his GP at 3.57 pm, as the records of Dr Singh indicate, is also strongly supportive of the fact that he worked a full day on that day,

as do the contents of exhibit 15, the file note of Lisa Milligan of WorkCover of 1 May 2009 to which I have referred.

[55] The plaintiff's credit was, in my view, also significantly impugned by the obvious conflict between his presentation both in court and to doctors who examined him and his obvious ability to work, especially the work he performed riding a tractor with Arkwood. In a decision of McMeekin J in *Bell v Mastermyne Pty Ltd* [2008] QSC 331 his Honour at paragraph 19 said:

> *"The assessment of damages for personal injury depends to a very large extent on a plaintiff's honest reporting - of his or her symptoms; of their impact on the plaintiff's life; of pre-existing problems; of the genuineness of effort to regain employment after injury; and of their capacity to maintain employment. These are all difficult issues for a defendant to thoroughly investigate and test. In truth no-one knows what level of pain an individual experiences and what impact that pain has on any particular plaintiff's capacity to maintain their activities. Here it is known that the plaintiff was prepared to be dishonest for his financial advantage. In my view that permeates every aspect of the case."*

[56] In my view somewhat similar considerations apply here. I do not specifically find that the plaintiff here was consciously exaggerating his symptoms. I am, however, left in a position where I find his evidence extremely unreliable. In my view it is not possible to conclude that any symptoms he suffered in his back were the result of: (a) lifting a box onto a table as he himself wrote in the report on the day of the incident; or (b) while crouching or bending, as Dr Singh records, perhaps exacerbating an earlier injury that he had suffered some days earlier; or (c) as he has described in his evidence.

[57] If the event had occurred as he described in his evidence I would have found the defendant negligent, but in my view, it is not clear if he was hurt as described, or in either of the other ways that I have postulated were possibilities. I also find that if

he did suffer an injury, whether as was described in the evidence by the plaintiff or in either of the other ways referred to above, his condition was not nearly as serious as he presents.

[58] I find he suffered only a musculo-ligamentous injury and consistently with the views of Dr Atkinson and Dr Williams, whose evidence I thought was persuasive, and who have vast experience in respect of spinal injuries, he would have very probably recovered within a period of about three months. Dr Williams said that in about 90 per cent of such cases a resolution is completed in that time.

[59] I accept the evidence of Dr Williams, who is an experienced spinal surgeon - practising exclusively in that area since 1999. So too I accept the evidence of Dr Atkinson. Dr Campbell also agreed with Dr Williams and Dr Atkinson that the plaintiff suffered only a musculo-ligamentous injury and not any nerve compression as Dr Walden had suggested.

[60] I accept the evidence of those three doctors, that is, Dr Campbell, Dr Atkinson and Dr Williams, about that issue rather than that of the pain specialist Dr Walden who had, it seems to me, vastly less experience with analysing such issues. I also accept Dr Williams' and Dr Atkinson's views, rather than that of Dr Campbell about the effect of the incident. I note that Dr Campbell when giving evidence said that he accepted that symptoms such as tenderness and guarding could be subjective and said, in respect of his own assessment that the plaintiff had suffered a DRE-II injury, that he "takes the examination on its face value". It was quite clear that he did not think there was any nerve damage or compression although he said that he

thought at the time of his examination he was commercially unemployable and unable to drive a tractor.

[61] In my view, the work that I have referred of Arkwood clearly indicates that any such assessment was wrong. It is not possible for me to know why the plaintiff would have presented in the way he did. The human condition is a complex one and there could be a significant number of different reasons why the plaintiff might exaggerate his symptoms, whether consciously or subconsciously. Ultimately it is, of course, for the plaintiff to prove his case. One is always concerned in assessing such matters to be cognisant of, for example, the plaintiff's lack of sophistication, education and perhaps his limited intelligence. It is, however, incumbent upon him to prove his case. In my view it is not possible to know why the plaintiff presented as he did, but ultimately I have come to the conclusion that the plaintiff has not established that the injury occurred in the way that he alleges and consequently am unable to find negligence against the defendant.

[62] If I had found that the defendant was negligent and liable for the consequences thereof then, consistent with these reasons, I would have concluded that the plaintiff suffered a soft tissue ligamentous injury and in such circumstances the assessment of his damages would be relatively minimal. Consistently with a decision of Martin J in the case of *Monger v Camwade* [2011] QSC 97, general damages in this case would have amounted to about $5,000. In addition he would have been entitled to a small sum for economic loss. He was in receipt of income of about $533 per week at the time of his alleged injury. In view of the fact that he was in employment at the time I would in such circumstances find he probably suffered a loss of about 13 weeks loss, amounting to about $8,000. He would also be entitled to

superannuation thereon in a figure of about $800. He would be entitled to minimal additional amounts by way of expenses over and above the workers' compensation payments. These are probably not more than about $250. Accordingly, his damages in such circumstances, having regard to the WorkCover refund, would be no more than $10,000.

[63] I give judgment for the defendant.

[64] I approve the parties agreed costs order.