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Case Alert

Shaping the future of insurance law

School successfully defends football head knock case

Mattock v State of New South Wales (New South Wales Department of Education) (No 2) [2021] NSWSC 1045

2 SEPTEMBER 2021

AT A GLANCE

- The NSW Supreme Court has dismissed a personal injury claim against a school involving a 'head knock' collision between students during a hybrid touch football/rugby game.
- The school failed in its reliance on the defences of dangerous recreational activity, obvious risk and inherent risk.
- It was held that the hybrid touch football/rugby game was not a dangerous recreational activity as the game was predominantly non-contact (apart from a high ball kick off at the start of each game).
- Further, the risk of head knock during a high ball kick off was not considered an obvious risk in circumstances where the 15 year-old plaintiff was an experienced and talented rugby league player.
- However, ultimately the plaintiff failed in his claim as he did not establish that the school had failed to take reasonable precautions that would have avoided the risk.

On 19 August 2021, the NSW Supreme Court dismissed a personal injury claim against a school, which followed the plaintiff being involved in a 'head knock' collision with another student during a PE class.

The plaintiff was a 15-year-old Year 9 student at Eden Marine High School (the School). On 29 June 2012, during a hybrid game of touch football, rugby league and AFL as part of a physical education (PE) class, a head knock collision occurred between the plaintiff and another student player. The collision occurred when both players jumped up to intercept the ball at the start of the game to gain possession for their respective teams. Their heads collided when they were running at significant speed.

The class, which comprised the top-graded male students of that year, was under the supervision of an experienced PE teacher whose practice was to start the game with a high ball kick-off.

The plaintiff had experience competing for high balls on around a weekly basis. He had played rugby league from age 9 and, at the time of the incident, was part-way through a rugby league season playing as a winger or fullback.

The plaintiff commenced proceedings against the School on the basis that the game was unsafe, and that the School failed to take precautions to protect students from the risk of harm posed by the high ball kick off at the start of the game. He also claimed the School failed to provide appropriate first aid.

The School failed in its reliance on the statutory defences of dangerous recreational activity, obvious risk and inherent risk (5F – 5L of the *Civil Liability Act 2002*). The Court found that a reasonable person in the position of the plaintiff (a 15 year-old boy who was a skilled, experienced and a talented rugby league player) would have been able to make a considered decision based on his experience about whether it was safe for him to contest the ball or not. The Court therefore found the plaintiff would not have thought that the risk of a head knock was obvious.

Further, the Court found that while the hybrid game falls into the category of a recreational activity, it was not a 'dangerous' game as it was predominantly non-contact (touch football). His Honour noted "there is a risk that two players may physically collide in the air, but the risk in my view is not a significant one".

Finally, it was found that the risk was not an inherent risk. The School submitted that *"[t]he only way the risk could be avoided is by not playing the game".* His Honour found that the risk here is not an inherent one because "[*u]nlike being dumped by a wave when body surfing where a person becomes subject to the will of the wave … the plaintiff with his skill and expertise was in a position to have exercised reasonable care and skill not to contest the high ball"*.

Despite this, the plaintiff's case still failed as the Court found the School did not breach the duty of care it owed to the plaintiff. His Honour noted that the mere fact that a serious injury has occurred, or that an injury was foreseeable, will not automatically result in a finding that a breach of duty has occurred. The Court considered the social utility of the game, the severity of the risk involved, the probability of the risk materialising and the level of the plaintiff's skill. In the circumstances of this case, while the risk was foreseeable, the risk of physical harm was insignificant and the School was not negligent.

The plaintiff also failed on causation and in his claim that the School failed to provide adequate and appropriate first aid.

Had the plaintiff succeeded, he would have been awarded damages of around $580,000.

The key issues for insurers

This case shows a sport will not necessarily be considered a dangerous recreational activity and that, even where a risk is foreseeable, negligence does not necessarily follow. In this case, while the risk of a head knock was foreseeable, the risk of physical harm was insignificant.

The decision also clarifies that schools are not absolutely liable for injuries sustained by students when they are under the supervision of their teachers. A plaintiff must demonstrate that a reasonable person in the defendant's position would have taken relevant precautions. Where reasonable precautions could not have prevented the incident, no breach of duty will have occurred.

In assessing reasonable precautions, the court will consider the benefits of the activity, the severity of the risk involved, the probability of those risks materialising and the level of skill of the participants.

Need to know more?

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