

# NSW Supreme Court finds for plaintiff in train platform accident case

*Chol v Sydney Trains* [2022] NSWSC 1266

SEPTEMBER 2022

## At a glance

- The Supreme Court has found for a plaintiff who suffered major injuries after falling between a platform and a train at a Sydney train station.
- The Court accepted that Sydney Trains had a reasonable system of keeping passengers safe but found one employee (the train guard) did not follow that system in this case. It followed that Sydney Trains was liable.
- The case illustrates the perils for defendants in personal injury damages litigation, even when there is good evidence regarding the appropriateness of the defendant's systems.



## Background

The plaintiff, Ms Chol, was sitting on the platform of Auburn Railway Station, Sydney, on the afternoon of 4 August 2016. A train pulled into the platform and she walked towards the doors of the train. As she approached, the doors started closing. She threw out an arm into the carriage while holding her handbag. The train doors closed on the strap of the handbag, with the bag itself trapped inside the train. The train started to move while the plaintiff kept up alongside, pulling on the strap. She then fell between the edge of the platform and the moving train, suffering catastrophic injuries. All of these events were captured on CCTV.

## The claim

The plaintiff commenced proceedings against Sydney Trains in the Supreme Court. By the time of trial, her claim was advanced in terms of negligence only.

She alleged that the defendant's staff, in particular the guard on the train, had not taken necessary steps to ensure that the train did not move while the plaintiff was in a position of danger. The defendant argued it had a reasonable system in place to safeguard against the risk of such accidents and that the plaintiff had caused her own misfortune.

## Evidence

The matter proceeded to trial in June 2022 before his Honour Cavanagh SC. His Honour did not accept all aspects of the plaintiff's account of how the accident occurred (she said her body was caught in the doors, which did not accord with the CCTV footage), however he accepted that she was a genuine person who was doing her best to give honest evidence. Discrepancies in her evidence went nowhere as the accident was fully captured in the CCTV footage.

The defendant relied on tendency evidence from NSW Police that the plaintiff had been found intoxicated at train stations previously. It was suggested from this evidence that she was intoxicated on the day of the accident. His Honour did not accept this inference, determining that the fact she had been intoxicated previously did not indicate she was intoxicated on this occasion.

The defendant called the customer service attendant, who had been standing on the train platform at the time of the incident and had waved a white flag to indicate that the train was safe to move. His evidence was that he did not see the plaintiff when he raised the white flag and that the train was already moving when he first noticed her and raised the red flag to signal for the train to stop.

The defendant also called the train guard who had been located in the middle of the train. His duties included leaning out of the

carriage when the train is at a station, visually checking that the train was safe to move, waiting for the customer service attendant's white flag, pressing a button to issue the "stand clear, doors closing" announcement, blowing a whistle, and then pressing a button to close the door.

The guard's statement included evidence that he observed the plaintiff "moving away from the train" before he signalled for the train to move. However in cross-examination, after watching the CCTV, he conceded that the plaintiff had not moved away from the train before it moved.

### Liability

In line with *Tapp*, his Honour started by identifying the 'risk of harm'. His Honour accepted the plaintiff's formulation of the risk of harm, being the risk of a passenger such as the plaintiff, who was taking reasonable care for her own safety, becoming trapped between the train doors while the train was moving and then falling into the void between the platform and the train and suffering injuries as a result. That risk was both foreseeable and significant.

The question was what reasonable precautions were required to safeguard against that risk.

His Honour accepted that the duty was only to take care, not to prevent all such injuries. He accepted the defendant's evidence that people using the Sydney Trains network will, from time to time, seek to rush towards trains as the doors are closing and squeeze between the closing doors. His Honour rejected the plaintiff's argument that the defendant should have had a system where trains should be stopped when people run across the platform, as it is too regular an occurrence for such a system to work.

His Honour accepted that Sydney Trains had in place a reasonable system to safeguard against the risk of harm. That system entailed the customer service attendant and train guard both looking up and down the platform before giving the relevant signal for the train to move.

The remaining question was whether that reasonable system was followed in this instance.

His Honour accepted, and was not critical of the fact, that the customer service attendant did not notice the plaintiff before raising the white flag. It was unfortunate, but not negligent, that he did not see the plaintiff.

His Honour noted that the train guard's evidence was that he believed it was safe for him to signal to the train driver to move because he believed the plaintiff had started to move away from the train. He said he saw the plaintiff move in his witness statement, which was prepared before he watched the CCTV footage. However, the CCTV footage showed that the plaintiff had not moved at all. She stood next to the train at all times. The guard's evidence was that he perceived the plaintiff moving when she did not. His Honour concluded from this evidence that the guard had not in fact checked that the plaintiff was moving away from the train. He might have assumed that she was but, considering the CCTV footage, he could not have seen her do so.

His Honour concluded that the defendant did not, through its guard, follow its own system and do what was necessary to ensure that the train was safe to move.

### Contributory negligence

The plaintiff accepted she was guilty of a level of contributory negligence. She placed herself in a position of danger by throwing her handbag into the train door while the door was closing.



Conversely, his Honour noted that Sydney Trains knew this was a mistake that passengers regularly made.

His Honour considered that the relative culpability of the plaintiff was 33% and reduced the damages accordingly.

## Damages

The plaintiff's hips and intra-abdominal area had been badly damaged in the accident. She spent months in hospital and now requires continual outpatient care. She has weakness in both legs and cannot walk without a walker.

The most significant heads of damage claimed were general damages, past and future care, and future accommodation costs. There was no claim for economic loss.

Non-economic loss was assessed at \$400,000 on the basis that the plaintiff is a severely disabled person and will remain so for the rest of her life.

The plaintiff claimed gratuitous care in the amount of three hours per day, a figure his Honour accepted as being reasonable given she cannot dress herself, make a full cooked meal, clean or drive.

The plaintiff claimed damages for future accommodation needs on the basis that, according to her OT, her house is not safe or suitable in the longer-term. She can only continue to live there as long as her children are there to assist and will need to move in the longer-term. The defendant accepted she had this need but argued her children would never leave. This was not accepted by the trial judge. The plaintiff was awarded an amount for future rent at a more appropriate location.

The total damages award was:

|                                             |                       |
|---------------------------------------------|-----------------------|
| General damages                             | \$400,000             |
| Past care                                   | \$187,488.33          |
| Future care                                 | \$802,581.60          |
| Additional accommodation costs              | \$288,072.40          |
| Past out-of-pocket expenses                 | \$7,410               |
| Future medical treatment                    | \$30,440              |
| Continuing equipment and treatment needs    | \$44,259.21           |
| TOTAL                                       | \$1,760,251.50        |
| <i>Less 33% for contributory negligence</i> | <u>\$1,179,368.53</u> |

## A sound reminder

This case illustrates the perils for defendants in personal injury damages litigation, even when there is good evidence regarding the appropriateness of the defendant's 'systems'. Each case will be decided on its own facts. In this case, that included evidence provided by one employee witness, which the Court did not accept.

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