

Plaintiff lawyers not negligent

Algar v Gall Standfield & Tiley (2000) QSC085

At the age of 6 Mr Algar was hit by a motorcycle as he was crossing the Gold Coast Highway. He suffered serious injuries.

No proceedings were instituted and no determination of liability was made but in 1988 the compulsory third party insurer of the motorcycle agreed to settle the claim for \$15,500.00 including costs. The settlement was sanctioned by the Public Trustee. Mr Algar turned 18 in 1994.

The Defendant acted as Mr Algar's Lawyers in settling the matter with the compulsory third party insurer.

In 1994 Mr Algar filed a Supreme Court Writ against his former Solicitors alleging that he suffered a degree of brain damage in the accident, that the Defendant had not acted with reasonable care and skill in the prosecution of his claim and had settled the matter for wholly inadequate compensation for the actual disability caused by the accident.

The trial of the matter proceeded before His Honour Mr Justice Chesterman in the Supreme Court of Queensland over a six day period in late March and early April 2000.

"Plaintiffs who complain that their Solicitors negligently advised them to compromise an action for damages ordinarily encountered substantial difficulty."

At the outset His Honour stated that Plaintiffs who complain that their Solicitors negligently advised them to compromise an action for damages so that they received inadequate compensation ordinarily encountered substantial difficulty. To support this His Honour quoted a number of recent decisions and a textbook.

His Honour then examined the evidence before the Court about the childhood of Mr Algar, recognising extremely poor behaviour at school, attendance at Boys' Town, smoking marijuana at the age of 9, drinking alcohol at 13 and numerous criminal offences including being sentenced in 1988 to 8 years imprisonment for breaking and entering and armed robbery.

Several of the leading medico-legal experts in Brisbane gave evidence and

the Judge heard evidence from the Solicitor involved at the time and Mr Algar's mother.

In the course of the evidence differing psychological opinions were put forward by Dr Maureen Field, Clinical Neuropsychologist and Dr Douglas. Dr Field supported the Plaintiff.

However, His Honour recognised that the difference in the psychological opinion was shown to have been caused by an erroneous factual basis supporting Dr Field's opinion which could not therefore rationally have been preferred over the opinion of Dr Douglas. His Honour stated that the case is not one of differing expert opinion both drawn with equal validity from a set of established facts.

His Honour then held that in his opinion there was no acceptable evidence that the Plaintiff sustained brain injury in the accident of 18 July 1982 and the Plaintiff therefore had no worthwhile chance of recovering damages in respect of such an injury. His Honour went on to say that the overwhelming probability is that, had the Defendant referred him for examination by a Neurosurgeon or Psychiatrist, the result would have been a report indicating no relevant injury and the same would have occurred had the Plaintiff been referred to a Neuropsychologist.

His Honour then dismissed the Plaintiff's claim and gave judgment for the Defendant with costs to be assessed on the standard basis. ■