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## RANKIN ELLISON CASE NOTES

### “Does the WA District Court favour Luntz’s or Vincents’ Tables?”

Rowe v Rose [2018] WADC (21 March 2018)

The Western Australia District Court recently heard an action in negligence against a driver who struck and killed a pedestrian. The Court’s decision reiterated the well established common law principles of negligence as well as provided valuable insight into the operation of the *Vincents Chartered Accountants* and *Luntz* tables in respect of calculating damages in personal injury claims.

#### Material Facts

In 2013, Mr Prime was struck and killed by a motor vehicle being driven by the Defendant, Ms Rose. At the time of his death, Mr Prime and the first Plaintiff, Ms Rowe, were in a relationship and had two young children aged 10 and 5 years old.

Ms Rowe commenced civil action against the Defendant in her capacity as dependant of the Deceased. Ms Rowe also commenced action on behalf of the two children as dependants of the Deceased. The respective Plaintiffs alleged that Mr Prime’s death was a consequence of the negligent driving of the Defendant. It is noted that at all relevant times both Mr Prime and Ms Rowe were in receipt of Centrelink benefits.

#### WA District Court Proceedings

The weight of the factual evidence surrounding the motor vehicle accident was not disputed: it was night time but there was street light, the road was in good condition and was dry, the road was sufficiently wide, the Defendant was exceeding the speed limit by approximately 5 to 10 km per hour, the deceased was wearing dark clothes, and the deceased had a BAC of 0.1%.

Taking into account the gradient of the road, the street lighting and the overhanging foliage, expert evidence established that the Deceased was visible to the Defendant from up to 61 meters away. Further, considering the Defendant’s reaction time, it was found that she had ample time to take action and prevent the accident from occurring.

It was found that the possibility of a pedestrian crossing a reasonably busy road in a built up urban area at 10:00pm on a weeknight was reasonably foreseeable and not insignificant. Judge Goetze determined that the Defendant ought to have taken account of the possibility of inadvertent and negligent conduct of the Deceased and taken reasonable steps to avoid risk of harm to him. It was concluded that a reasonably prudent driver, aware of his/her surroundings and keeping a proper lookout, would have seen the deceased and been able to stop prior to reaching the point of impact. The Court observed the Defendant was required to take reasonable care when driving the motor vehicle and this required her to have consideration for other road users who may not always take due care.

Notwithstanding, Judge Goetze found that the Deceased had contributed to the negligence of the Defendant by failing to keep an adequate lookout for oncoming traffic. Liability was ultimately apportioned between the Defendant and the Deceased in the amounts of two-thirds and one-third respectively.

#### Quantum of Damages

As noted above, at all material times the Deceased and the first Plaintiff were in receipt of Centrelink benefits. The

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Deceased received a disability pension and fortnightly payments from the Public Trustee in respect of a previous criminal injuries compensation claim. The first Plaintiff received a carer's allowance (for both the Deceased and one of the second Plaintiffs), a pension, and a family tax benefit.

After the death of the Deceased, the first Plaintiff lost her carer's allowance (in respect of the Deceased only) and the status of her own pension changed. Payment of the Deceased's criminal injuries compensation was advanced to the first Plaintiff in the form of a lump sum (less funeral expenses).

Pursuant to relevant Western Australian legislation, economic loss was calculated as the pecuniary loss from the Deceased's pension less his personal expenditure.

The Court calculated the Deceased's personal expenditure as 16% of the family's net income (equating to approximately 47.5% of the Deceased's Centrelink disability pension) using the *Vincents Chartered Accountants 'Personal Consumption Percentages in Australia – Current Tables for 2015'* table for two parent families. Interestingly, Judge Goetze noted that that Table was to be published in the forthcoming edition of Luntz's text book.

Court assessed that 16% of the family's net income equated to approximately 47.5% of the Deceased's pension. Therefore, the dependent family was able to benefit from approximately 52.5% of the Deceased's pension.

The Court confirmed that, "as it has been widely accepted for several years", Professor Luntz's table of dependency of a surviving parent and children should be followed. Accordingly, the Court calculated past economic loss on the basis of Luntz's 52% dependency table.

In respect of future economic loss, the Court calculated three distinct periods of dependency. Importantly, Judge Goetze confirmed that a child ceases to be a dependent once they reach 18 years of age and that a spouse ceases to be a

dependent at such time as the Deceased would have ordinarily reached his/her life expectancy. The Court used Luntz's tables to calculate dependency for the future periods during which only one or neither of the children are dependants.

An additional provision of damages was made to the Plaintiffs for past and future loss of gratuitous domestic contributions of the Deceased, funeral expenses, and ongoing costs associated with administration of the second Plaintiffs' award of damages.

#### Implications of the Decision

Judge Goetze rehashed the long standing common law principle that motor vehicle drivers are required to exercise reasonable care and take into account other road users who may not always sufficiently exercise due care.

Though the Court relied on the *Vincents* tables to a degree, it confirmed that *Luntz's* tables (4th Edition) are the correct instruments for calculating quantum of damages in personal injury claims. In doing so, the Court opposed the use of the 'Personal Consumption Percentages in Australia' tables, which have garnered increasing support by Plaintiffs of late. Notwithstanding, it is noted that Western Australian decisions are not necessarily binding on NSW courts.

Finally, this decision clarified that dependency ceases for children once they reach 18 years of age and cannot continue beyond the average life expectancy of a deceased person.

If you have any questions about a particular compensation claim by a dependent of a deceased person, please contact our team by phoning 02 4929 9333 (Newcastle) or 02 8297 5900 (Sydney).

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