

Sydney: 02 8297 5900

Newcastle: 02 4929 9333

www.rankinellison.com.au

RANKIN ELLISON

lawyers



RANKIN ELLISON CASE NOTES

CONTRIBUTORY NEGLIGENCE – CONSUMER’S FAILURE TO HEED WARNING AND EXAMINE DEFECTIVE LADDER

Bamber v Hartman Pacific Pty Ltd [2018] NSWCA 248

The Court of Appeal has unanimously found in favour of a consumer who sustained injury as a consequence of his use of a defective ladder. Interestingly, the injured consumer was only awarded partial costs as a consequence of his initiating proceedings in the wrong court.

Material facts

The Appellant, William Bamber, purchased a ladder which had been manufactured by the Respondent, Hartman Pacific Pty Ltd. On 8 November 2012, the Appellant fell from that ladder after its locking mechanisms failed. He suffered a significant ankle injury which he alleged was caused by a manufacturing defect in the ladder. The Appellant commenced action against the Respondent for damages in the Supreme Court of NSW.

The Respondent denied any manufacturing defects. In the alternative, the Respondent submitted that the Appellant contributed to his injury by failing to check that the safety mechanism on the ladder was properly engaged at the time of use. The Appellant’s action was dismissed on the basis that he failed to prove on the balance of probabilities that any defects in the ladder occurred during its manufacture. The trial Judge found that in any event the Appellant contributed to the accident by failing to check that the safety lock was secure before extending the ladder. Finally, the trial Judge found that the Appellant was not a credible witness and therefore rejected his evidence (which was corroborated by his wife) with respect to his ongoing injury and impairment. The Appellant appealed against the first instance decision on the basis that the trial Judge erred in her abovementioned findings.

Court of Appeal decision

The Court was satisfied that the trial Judge adequately considered the medical evidence and explained her reasoning in finding that the Appellant’s evidence was “inaccurate, exaggerated, and implausible”. Given the inconsistencies between the Appellant’s evidence and that of the other witnesses, the Court found that the trial Judge was open to make adverse findings about the Appellant’s credibility.

With respect to the mechanism of the collapse of the ladder, expert evidence was adduced that the hauling rope in the ladder was excessively taut such that it had a tendency and capacity to prevent the safety mechanism from locking fully. On consideration of that evidence, the Court was satisfied that the excessive tautness of the rope loop was probably present at the time the ladder was purchased by and supplied to the Appellant. Accordingly, the Appeal succeeded on the basis that there was a safety defect in the ladder at the time of its supply and that the defect had a causal connection with the Appellant’s injury.

However, the Court affirmed the trial Judge’s decision to the extent that the Appellant was contributorily negligent for his injuries. It was determined that the Appellant failed to heed the warning sign affixed to the ladder which directed users to ensure that all locking functions were secured prior to use. The Respondent did not make any submissions in relation to the apportionment of the injury to the Appellant’s negligence. The Appellant failed to prove any fault in the trial Judge’s 30% deduction. As such, the Court did not interfere with the 30% deduction made in the first instance.

The Court made a costs Order in favour of the Appellant in respect of the Appeal only. Given the relatively insignificant quantum of damages - \$73,531.47 – the matter fell outside the Supreme Court’s jurisdictional limit. The Court therefore determined that the Appellant ought to have commenced proceedings in the District Court.

Implications

Regardless of the ladder’s probable defect, the Court of Appeal determined that the Appellant’s failure to ensure that the locking mechanism was secure significantly contributed to his injury. Importantly, this decision exemplifies the Court’s wide discretion to award costs to a litigant.

Should you have any questions about a particular personal injury matter please contact us on 02 4929 9333 (Newcastle) or 02 8297 5900 (Sydney).

Our experience.
Your results.

RANKIN ELLISON

lawyers