Alagic v Callbar Pty Ltd [1999] NTSC 90

PARTIES:	ALAGIC, Esad v CALLBAR PTY LTD
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	12 of 1995
DELIVERED:	27 August 1999
HEARING DATES:	10, 14 May 1999
JUDGMENT OF:	MARTIN CJ.

CATCHWORDS:

NEGLIGENCE – RES IPSA LOQUITUR – REASONABLE FORESEEABILITY

Proof of negligence – failure to plaintiff to adduce evidence of negligence of defendant – injury to patron of hotel not shown to be caused by defendant on balance of probabilities.

CONTRACT – IMPLIED WARRANTY

Injury to plaintiff not reasonably foreseeable.

Hackshaw v Shaw (1984) 155 CLR 614, applied
Watson v George (1953) 89 CLR 409, applied
Voli v Inglewood Shire Council (1963) 110 CLR 74, applied
Government Insurance Office v Fredrichburg (1968) 118 CLR 403, applied
Kearney v London, Brighton & South Coast Railway Co (1871) LR 6 QB 759, considered
Pope v St Helen's Theatre Limited (1947) KB 30, considered

REPRESENTATION:

Counsel:

Plaintiff:	John Waters QC
Defendant:	Tim Bryant

Solicitors:

Plaintiff:	Waters James McCormack
Defendant:	Cridlands

Judgment category classification:	C
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mar99023
SUPREME COURT OF
THE NORTHERN TERRITORY
OF AUSTRALIA

Alagic v Callbar Pty Ltd [1999] NTSC 90
No 12 of 1995

BETWEEN:

ESAD ALAGIC
Plaintiff

AND:

CALLBAR PTY LTD
Defendant

CORAM: MARTIN CJ.

REASONS FOR JUDGMENT

(Delivered 27 August 1999)

[1] In September 1992 the plaintiff went into a hotel occupied by the defendant. He sat at a table in the bar whilst his companion purchased a drink for each of them. Whilst he was seated a tile fell from the ceiling and hit him on the head. He suffered loss and claims damages from the defendant. He produces no evidence as to what the defendant did, or failed to do, which caused the tile to fall. The defendant produces no evidence as to the cause of the tile falling.

[2] The Statement of Claim puts the plaintiff's case this way:

"4. On or about 18 September 1992 the Plaintiff was sitting in a bar at the Premises when a ceiling tile dislodged from the roof and struck the Plaintiff on the head ("the Accident").

…

7. The said injuries and loss and damage were occasioned to the Plaintiff by reason of the negligence and/or breach of duty on the part of the Defendant, its servants and agents.

PARTICULARS

(a) Failing to carry out obligations to keep the said roof in a good and proper state of repair;

(b) Permitting the said ceiling to become and remain in a state of disrepair and a danger to persons lawfully entering and using the said Hotel;

(c) Failing to take any adequate measures whether by way of periodic or other examination, inspection, test or otherwise to ensure that the ceiling was in a reasonably safe condition and was not defective or dangerous or in a condition in which it was likely to break suddenly."

[3] The only evidence which might have had some bearing on the issue as to how the tile came to be detached from the ceiling came from the plaintiff's companion, who said that on the day following the event, he returned to the bar and spoke to "Mr Geoff". He said that he was a customer at the hotel and that Mr Geoff was the manager. According to that evidence, Mr Geoff said to him "I am sorry – what happened yesterday, you know .. Electrician was working on that corner there and he don't fix it properly". Just what the electrician was doing is not disclosed.

[4] A question as to the admissibility of that piece of evidence was reserved provisionally, but the indication that there may be an objection to it was not pressed. Instead, counsel for the defendant, in his closing address, treated the evidence as being before the Court, but submitted that it was of no assistance, the bare assertion by Mr Geoff that it was the contractor's fault did not establish liability against the defendant. As I understood that submission, it was that it had not been shown that there was reasonable foreseeability on the part of the defendant of real risk of injury to the plaintiff arising from the contractor's work such as to cast the requisite duty of care upon the defendant.

[5] In any event, the plaintiff did not seek to rely on that evidence. It was not pleaded that the defendant was responsible for the acts or defaults of the contractor or that it failed to discharge a duty of care to the plaintiff arising from the electrician's attendance at the premises, or work undertaken by the electrician.

[6] Counsel for the plaintiff indicated that his client's claim was based upon negligence and contract. However, he submitted that in the circumstances of this case, the distinction between the two causes of action was of no consequence.

[7] I take the law to be applied in respect of the claim in negligence as formulated by Deane J. in *Hackshaw v Shaw* (1984) 155 CLR 614 at pp662,

663 as endorsed by the majority of the High Court in *Australian Safeway Stores Pty Ltd v Zaluzna* (1987) 162 CLR 479 at 488:

> "… it is not necessary, in an action in negligence against an occupier, to go through the procedure of considering whether either one or other or both of a special duty qua occupier and an ordinary duty of care was owed. All that is necessary is to determine whether, in all the relevant circumstances including the fact of the defendant's occupation of premises and the manner of the plaintiff's entry upon them, the defendant owed a duty of care under the ordinary principles of negligence to the plaintiff. A prerequisite of any such duty is that there be the necessary degree of proximity of relationship. The touchstone of its existence is that there be reasonable foreseeability of a real risk of injury to the visitor or to the class of person of which the visitor is a member. The measure of the discharge of the duty is what a reasonable man would, in the circumstances, do by way of response to the foreseeable risk."

[8] As to the claim in contract, if the occupier of premises agrees for reward to allow a person to enter his premises for some purpose, he impliedly warrants that the premises are as safe for that purpose as the exercise of reasonable care can make them (*Watson v George* (1953) 89 CLR 409; *Calin v Greater Union Organisation Pty Ltd* (1991) 173 CLR 33 at p38). In the latter case, reference is made to *Voli v Inglewood Shire Council* (1963) 110 CLR 74 where no distinction was drawn between the purchaser of a ticket and the holder of a ticket which was purchased on his or her behalf by someone else. I would apply that by analogy in this case so as to find that a contract came into existence between the parties to these proceedings, and that there was such an implied warranty.

[9] At the end of the day the Court was invited to infer from the established fact that a tile fell from the ceiling that the defendant was negligent; the accident

speaks for itself of the negligence of the defendant, res ipsa loquitur. It was not disputed that the paraphrase by Sangster J. in *Ranieri v Ranieri* (1973) 75 SASR 418, of what was said by Barwick CJ. in *Government Insurance Office (NSW) v Fredrichburg* (1968) 118 CLR 403 at 413, represents the law in Australia:

> "In my opinion, what the cases really establish is that, in relation to the question whether the defendant was negligent –
>
> (a) If the occurrence is left to speak for itself and that occurrence is unlikely without negligence by the defendant then the Court may find negligence against the defendant without evidence or findings of specific acts or omissions amounting to such negligence.
>
> (b) If evidence of specific acts or omissions is given the plaintiff may rely on the occurrences itself or on the evidence of specific acts or omissions or both.
>
> (c) At the end of the whole of the evidence the simple question remains whether on the balance of probabilities the defendant was negligent and that question may be answered by inference from the occurrence itself or from evidence of specific acts or omissions or from evidence of explanations inconsistent with negligence or from a combination of all or any of them."

[10] Although it was in the best position to investigate the cause of the tile becoming detached from the ceiling, no evidence has been called by the defendant to rebut any inference of negligence if one is able to be drawn. No question arises as to the defendant's responsibility if negligence is shown.

[11] I have already drawn attention to the paucity of evidence about the tile. It is established that it fell from the ceiling. According to the plaintiff's

companion, Mr Kantardjic, it split into two pieces when it hit the plaintiff on the head. He looked up and saw "the wire coming through". That observation was not better explained. His command of English was not good, but he indicated that the tile was made of a mixture of straw and cement and was about half an inch thick and half a metre square. He said he picked up the pieces of tile, they were "very very heavy – if you put it together, then pieces small but weigh about a kilo, two kilos". In cross-examination he said he was not interested in how heavy the tile was, except that it was "quite heavy … my judgment is twenty kilos". I place little reliance on that evidence about the weight of the tile. What is known is that it inflicted little by way of physical injury upon the plaintiff. It is uncertain as to whether the plaintiff was rendered unconscious, but the only physical injuries noted by a doctor very soon after the incident comprised erythema of the scalp, and multiple superficial abrasions of the dorsum of the right hand. He then complained of a headache, which he says is ongoing.

[12] This case is distinguishable from those in which the injury was sustained as a consequence of objects, such as bags of sugar or a barrel of flour falling from a building onto the plaintiff, or where the defendant was in control of a crane or train or motor vehicle (see the examples in Clerk and Lindsell on Torts 17th Edition, par 7-177). More akin to this case is *Kearney v London, Brighton & South Coast Railway Co* (1871) LR 6 QB 759. A brick fell out of a bridge supporting a railway line, and it was held that it was the duty of the defendant to inspect and ascertain whether the brickwork was in order

and the bricks secure. In *Pope v St Helen's Theatre Limited* (1947) KB 30, the plaintiff was injured when the ceiling of the theatre fell. The occupier was on notice of an occurrence, a bomb blast nearby, which could have caused damage to the building and had failed to inspect. In each case it was held that there was a reasonably foreseeable risk of injury, given the nature of the structure and the potential for it to have fallen into disrepair, the defendants had failed to do what a reasonable man would do.

[13] There is no evidence as to how the tiles were attached or held in place, or the period during which they were there, nor whether any event, such as a tile or tiles having previously fallen, which could give rise to such a risk. So far as is known to the Court there is no circumstance or occurrence which should have caused the defendant to reasonably foresee the risk arising from a tile falling from the ceiling.

[14] Counsel for the defendant suggested that the tile may have fallen for a reason which was not discoverable by the defendant exercising proper care; examples were given in address, but not, as I have already said, in evidence. I do not take them into account as an explanation. Submissions based on conjecture do not assist either party.

[15] I am unable to find that the falling of the tile was more consistent with negligence on the part of the defendant than with any other cause. For the same reasons, the plaintiff cannot succeed on a cause of action based upon breach of the implied warranty.

[16] There will be judgment for defendant.

[17] Should it be found that I am wrong in relation to the question of liability, I now proceed to look at the question of damages.

[18] The plaintiff claims to have suffered from a psychiatric illness caused by the accident. He presented in Court in a manner apparently consistent with the observations recorded by some of the psychiatrists. He seemed troubled, frowned continuously, and was "guarded and suspicious". He gave the impression that he had given up and was helpless. Perhaps he experienced some difficulty in the English language, but I note that he has been in Australia for 25 years prior to the accident, and had been employed in a responsible supervisory position in the abattoir business. The manager of the abattoir, Mr Deicmanis, spoke very highly of him as an employee in that capacity and said nothing about any communication difficulties. During the course of his evidence the plaintiff often professed to lack of memory or defective recollection of events until prompted by reference to documents in cross-examination. It is difficult to accept his initial reluctance to agree to the proposition that a house and a motor car depicted in a video were his, as being genuine. I also note, as appears in more detail later, that the history he gave to the psychiatrists, or at least as reported by them, although relatively consistent, was not altogether accurate. Bearing in mind his personal background and the symptoms of the psychiatric illness, I do not find that he conscientiously attempted to mislead the Court. However, I consider that he has focused so much on the accident as being the cause of

all his troubles that he has sought to down play, consciously or otherwise, the other factors to which reference will be made.

[19] The plaintiff was born in Bosnia on 12 June 1942. Although not attaining any university degree, he would appear to have had tertiary education and studied economics. After army service in his home country, he came to Melbourne via Germany in 1967. His first work was as a labourer and driver. He went to Saudi Arabia to pursue religious studies for nearly two years, returning in 1976. He then became involved in the butchery business as an Halal slaughterer inspector and supervisor ensuring that stock for export to Muslim countries was killed in accordance with Muslim tradition and complied with other standards. He was so employed by a number of employers in Queensland and Victoria, and had been in that employment for many years prior to the accident. It ceased during 1990, long before the accident. He was not employed for reward in any capacity thereafter.

[20] The work was seasonal. Although the evidence is not clear, it appears that his active employment ranged from around seven to nine months per annum, and his daily duties sometimes extended over very lengthy hours. There is no evidence that he earned any income during the off season. His income had diminished significantly over the years immediately prior to his leaving his employment, and it is likely that that factor and the problems which existed in the abattoirs industry in those days, led to his considering striking out on his own and going into business.

[21] The plaintiff's last employer was Camperdown Meats in Victoria. The evidence indicates that there was no certainty of continued employment in that trade by that company by reason of difficulties which arise in the abattoir business generally. However, I am satisfied that he was a skilled and reliable worker and supervisor, held in high regard by a former employer. Assuming the availability of that type of work and his continued fitness to work, it is more probable than not that he would have continued to be able to secure such employment.

[22] The only lay witness to his pre and post accident behaviour was the plaintiff's wife. (I leave aside Mr Deicmanis, the manager of the abattoir, who had had very little contact with him after he left that employment, and who had only seen him in the course of a car journey from Melbourne to Darwin immediately prior to the trial during which the plaintiff appeared to him to be agitated). Mrs Alagic told of changes she noticed in her husband after the accident which generally supported his evidence, but she did not say how long after the accident the changes became noticeable. She was the only witness to his behaviour prior to his seeing Dr Rogers in 1995. Her knowledge of her husband's business endeavours was very limited except to know that he commenced to organise businesses after he left the abattoir, that he went to Indonesia and that that created family financial difficulties. Both Mr Deicmanis and Mrs Alagic spoke of the plaintiff's proposed business ventures as "his dream".

[23] The plaintiff's social life seemed to revolve around his involvement in the local Muslim community. He was involved in the Bosnian society for some years, but resigned from the presidency in response to an internal dispute in 1990. However, he had been a committee member, attending regular committee meetings since 1996. He regularly attends at the Mosque in Noble Park to pray and goes to an associated canteen where he meets male colleagues. Video film shows him conversing with men outside the club. He accepts the assertion made by others that he is strongly involved in the Bosnian society.

[24] The plaintiff began considering entering into business involving export of food stuffs to Malaysia and Indonesia prior to ceasing his employment and took some tentative steps in that regard, but only one proposal seems to have advanced. At about the end of 1990 he had established contacts in Indonesia, and proposals for the establishment of a business were under consideration. The plan which evolved comprised the construction of an abattoir in Indonesia where stock exported from Australia would be slaughtered and processed in accordance with Islamic tradition. The plaintiff could not be involved financially, but thought he could manage the operation in return for which he would receive a percentage of profit. The capital funds would be obtained by the Indonesian interests. He arranged for the incorporation of a company in Victoria involving colleagues from there, and set about trying to establish what he called the "joint venture". As he had no business experience it is not possible to examine his

performance in that regard before and after the accident. The proposal was never implemented and no damages are sought on that account. It is, however, necessary to look at what the plaintiff was doing before and after the accident in that regard, because it has an important bearing on the question of whether or not the health problems which he says arose from the accident are attributable to it, or to other factors.

[25] On the day of the accident the plaintiff was in Darwin intending to proceed to Jakarta that afternoon. He says he became angry that his symptoms continued after the accident. He decided not to proceed with the journey, after postponing it for a few days, and returned to Melbourne. His evidence is that at that stage he started worrying about what he was losing, without specifying just what that was. He says that the family doctor in Melbourne prescribed Prozac and Panadine Forte. No evidence was called from the doctor, and I am unable to find when he first saw him, what symptoms he presented to the doctor, whether they changed, how often he attended on him, or at what intervals.

[26] The plaintiff's description in court as to his problems after returning to Melbourne are that he started to worry and lose confidence in himself, "He could do nothing". He asserted that he tried to stick with the business he was trying to develop. He said that after two months he was contacted by his Indonesian colleagues and decided to go there. Upon arrival in about November 1992, he said he was sick with the same symptoms for six weeks

and saw two doctors. There is a certificate in Indonesian language said to be from one of them in evidence, but it has not been translated.

[27] The plaintiff's oral evidence regarding the history of his efforts relating to the business venture was uncertain. Although it appears on his account that he made some efforts to advance the plans, he left me with the impression that it all came to naught because of lost confidence in himself and his loss of interest in that endeavour. The history as disclosed in his evidence is as follows:

- When the plaintiff left his last paid employment he was going to start a business venture.
- If that did not succeed, he would return to employment.
- The discussions about the proposed business were initiated by the Indonesians who talked to him upon a visit to Australia.
- People from Malaysia were also involved.
- The plaintiff had been to Indonesia prior to the accident in Darwin.
- He went to Indonesia a few months after the accident and remained there for six weeks, but was sick.
- About two months after he returned to Australia he was asked for about $32,000 to join the venture.

- He went to Indonesia, and after returning to Australia, provided the funds.

- He then decided he did not wish to continue and returned to Indonesia to obtain repayment of the money, and was partly successful.

- That was the end of the dealing. He has not pursued that or any other business venture since, nor has he been employed.

[28] Cross-examination and reference to sundry documents from the plaintiff's possession put to him discloses a somewhat different story.

- The period of six weeks during which he said he was sick in Indonesia was but part of a continuous period of about four months he spent overseas from October 1992 to early March 1993.

- He could not remember what he did in that period, except that he had discussions with people.

- He returned to Jakarta in May 1993 for about 10 days. Upon return to Australia he signed a document entitled "Letter of Intent to Government of the Republic of Indonesia". He said that others had composed the letter, that he did not "write" it because of his poor English language. That may so, but he was undoubtedly an author of the letter. A reply from the Governor of Central Jarva was dated 29 June 1993. When asked if he was still then interested in

establishing the business, the plaintiff gave what I regard as being an unsatisfactory series of responses.

- He asserted that he was interested, but could not do anything either because he had no money or because he was not fit.

- The plaintiff told the court unequivocally that it was part of his case that he had dropped his interest in the abattoirs in Indonesia because he was ill.

- In July 1993 he returned to Jakarta for about 10 days and said that he then explained that he could not be involved any more.

- On 9 July 1993 a "Memorandum of Understanding" was executed in Indonesia. It bears the plaintiff's signature. The Memorandum contemplated the establishment of the joint venture. When confronted with the document, the plaintiff acknowledged that he was then interested in pursuing the joint venture. A further document headed: "Joint Venture Agreement" was signed on 17 July.

- After the accident and prior to July 1993, the plaintiff was driving around northern New South Wales and Queensland looking for suitable property to be purchased to keep stock, and suggested to his Indonesian colleagues that they purchase a particular place. That was not done.

- The plaintiff took no further part in the project after that. No facts are objectively established to show whether the project proceeded further or not, and if not, why not.

- There is evidence that in 1990 and 1991 the plaintiff had unsuccessfully pursued other business ideas.

Medical Evidence

[29] Medical evidence largely resolved around whether the plaintiff was suffering from any debilitating psychiatric illness, and, if so, whether it was properly diagnosed as post traumatic stress disorder or chronic adjustment disorder, and in either event whether it was caused by the accident. The significant relevant difference between the two conditions is that a criteria of the former is that the patient be exposed to an event that involved actual or threatened death or serious injury or other threat to personal integrity. In contrast, the adjustment disorder may be caused by a stressor of any severity including financial difficulties (DSM – IV pp424 and 623).

[30] Diagnosis is largely influenced by the history given by the patient. If it is inaccurate or incomplete, then important factors may not be taken into account which may have a bearing upon the opinion of the psychiatrist. Here, there was nothing in the plaintiff's evidence, nor the history he gave to any of the psychiatrists which revealed that he considered that he was exposed to a threat such as is a criteria for post traumatic stress disorder.

Objectively, I do not consider that the tile falling on his head, albeit without warning, and the events which immediately followed posed such a threat.

[31] Dr Brownjohn, who saw the plaintiff immediately after the event, reported that he seemed upset, complained of a headache and spoke of seeking compensation. He saw the plaintiff again over the following few days when he continued to complain of headaches. On 24 September the doctor reported that the plaintiff intended to resume his journey to Jakarta the following Sunday. On that occasion the doctor informed the plaintiff that a review of the X-rays showed that there were no fractures of his skull, but that there was an ovoid lucency in the left frontal bone which could be a vascular lake. However, further assessment to exclude malignancy was indicated. The plaintiff attended on the doctor on 29 September complaining of persistent vertical and frontal headaches which the doctor noted had the distribution of a tension headache. On that occasion the plaintiff told him he had cancelled his trip and was returning to Melbourne the following day.

[32] In concluding his report, Doctor Brownjohn said that over the short period that the plaintiff had been seeing him, his main problem was his emotional response to the incident which the doctor "imagined could have developed in a post traumatic stress disorder". The doctor's qualifications to make such an assessment are not disclosed.

[33] Surprisingly there was no evidence from the plaintiff's family doctor in Melbourne whom he had been seeing after he had left Darwin. It was that doctor who referred the plaintiff to Dr John Rogers, psychiatrist, in February 1995, that is, two and a half years after the accident. Doctor Rogers says only that the plaintiff was very "shocked and frightened by the incident". That might be expected, but that does not go to support a diagnosis of posttraumatic stress disorder. Indeed, Dr Rogers was prepared to accept the diagnosis of others that the plaintiff suffered from a chronic adjustment disorder with symptom complexes the same as for the other condition. The symptoms described in Dr Rogers' report of 26 April 1999, which are also to be found to a larger or lesser degree in the reports of the other specialists, are in the following terms:

> "He was anxious, tense, upset easily and suffered with headaches, dizziness and sleep disturbance. He had trouble getting off to sleep and woke intermittently during the night. His mood was depressed. He felt "very low". He lacked energy, interest, motivation and libido. His concentration was poor and he was forgetful. He said that his social activity was "about 20%" of what it was prior to the accident. He was sensitive to noise and tried to avoid crowds. He tried to avoid thinking about the accident but intrusive recollections could occur especially if he was not distracted".

[34] In cross-examination, the doctor expressed the view that the significant ongoing factor in the plaintiff's condition was his loss of employment as a consequence of the injury. Nowhere does it appear from Dr Rogers evidence-in-chief that he had been informed that the plaintiff had been unemployed prior to the accident, that he persevered in his business venture and with all that entailed for months afterwards and that that came to

nothing in the end. He agreed that occupational problems and inadequate finances could be a stressor in relation to adjustment disorders. His understanding was that the plaintiff was involved in the live meat export industry for many years and had set up a company with a view to shipping live meat overseas, and was in the process of negotiating the final details of that when the accident occurred. His notes indicated that the plaintiff went to Jakarta four months after the accident to sign agreements, was sick and unable to cope and had returned to Melbourne, and that after that trip he had not worked. Asked to assume that the plaintiff continued working in the business for ten months after the accident and that it folded for financial reasons, he agreed that that would be a stressor impacting upon his mental health.

[35] The plaintiff was examined by a psychiatrist, Dr Garland, on behalf of the defendant, but called by the plaintiff. His opinion was that the plaintiff suffered from chronic post traumatic stress disorder as a result of "this frightening accident". The employment history, as recorded by the doctor, was that the plaintiff had finished work at Camperdown in 1990 and started the joint venture between Australia, Malaysia and Indonesia and had been dealing in exporting live stock to those countries since 1990. When asked to reconsider his opinion, he sought to rely upon "field theory" by reference to the plaintiff's birth place and the difficulties there, political tenseness between Australia and Indonesia and the fact that Darwin was a town noted for unexpected events, such as the Japanese bombing and Cyclone Tracey.

There was no evidence from the plaintiff that he was aware of any of those things, let alone that they impacted upon his mind. Those factors were not supported by any of the other psychiatrists and have created an adverse impression of the doctor's original opinion. In his latest report Dr Garland did not believe that the plaintiff's then condition met the criteria for post traumatic stress disorder, although he was still depressed and anxious. In cross-examination the doctor agreed that his understanding was that the injury set in train a series of things, like loss of job, loss of business and loss of friends.

[36] Dr Kornan was also called by the defendant and disagreed with the assessment that the plaintiff suffered from post traumatic stress disorder. He too based his opinion partly on what he perceived to have been influences upon the plaintiff by happenings in the land of his birth, but brought about a view diametrically opposed to that of Dr Garland in that regard. He categorised the plaintiff as an international businessman, which, with respect to the plaintiff, was hardly a fitting description in my view. I do not accept his opinion that on the material available to him the plaintiff had developed a "grossly hysterical reaction to a minor injury", nor that on the basis of that material the plaintiff was attempting to mislead the doctors with regard to the extent and severity of his symptoms. In my view Doctor Kornan placed too much weight upon what was shown on the video clips. The preponderance of evidence does not provide support for his views which, in any event, seem to have been somewhat modified by the time of

trial. However, Dr Kornan's opinions do tend to coincide with those of the psychiatrists who had been given a fuller history than that conveyed to him by the plaintiff. In his view cessation of employment prior to the accident with the failure of the business venture thereafter would explain the tension, anxiety and depression he noted.

[37] Dr Grainger-Smith, psychiatrist, called in the defendant's case, was informed by the plaintiff that he had been self employed for about 18 months prior to the accident, and a planned trip to Jakarta and Kuala Lumpur did not occur because he was unfit to travel. Looking at the symptoms, this doctor diagnosed chronic adjustment disorder and accepted that that condition was a consequence of his minor head injury. He noted, however, that his statement that he had not worked since the incident must be believed unless there was proof to the contrary. There is such proof. When he was informed of that, he said that a collapsed business was a significant cause of depression. According to the doctor, the plaintiff could not have been working as an effective businessman, doing overseas trips, organising complex documentation if he were depressed. In those circumstances the head injury would be a very minor cause of depression in his opinion. I accept that there may be some debate about the effectiveness of the plaintiff as a businessman and the complexity of the documentation involved, but nevertheless, I place significant weight upon this doctor's opinion that the plaintiff's continuing business venture and related activities after the accident would indicate that the accident would be a very minor

cause of depression. His evidence also indicated that if unemployed prior to the accident, the plaintiff would be particularly disappointed at the business failure, resulting in difficulties in psychological adjustment.

[38] Dr Crowe, a consulting neureo-psychologist was called by the defendant. He had the plaintiff undergo a number of tests, as a result of which he concluded that the plaintiff had massive deterioration in many aspects of cognitive function which were out of keeping with the injury as described. The evidence may indicate that the plaintiff had not done his best under the test conditions. There could be a number of reasons for that, language and cultural factors, or a desire not to cooperate. I am unable to make any particular finding in respect of those matters, expect to say that I am not satisfied on that evidence that the plaintiff was exaggerating his symptoms or showed evidence from which it could be safely deduced that he was a malingerer.

[39] In my view, it is important to note that the psychiatric opinions were largely formed from incomplete or inaccurate information conveyed by the plaintiff. The plaintiff had ceased his employment long before the accident, after a time of diminishing income and had been unsuccessfully endeavouring to commence businesses. At the time of the accident, he had commenced his contact with the Indonesian interests and was on his way to that country to pursue that particular venture. He returned on occasion after that, progressing further along the way with correspondence with government officials, negotiations with the Indonesian parties and the execution of

formal business documents. He discussed the contents of some of the correspondence, which was sent to Indonesia with colleagues in Melbourne, and signed everything to do with the business which was placed in evidence. He had not only travelled to Indonesia to pursue those endeavours, but had also travelled in Australia looking for a suitable property on which to hold stock, which it was intended would be exported live to Indonesia for slaughter at the proposed abattoirs. For whatever reasons, his involvement in the proposal came to an end long after the accident, and I note that he was not first referred for psychiatric advice until 1995. He resigned as President of the Society before the accident, but thereafter had rejoined the committee of the Society and had been attending the committee meetings.

[40] I am not satisfied that the tile falling on the plaintiff's head precipitated posttraumatic stress disorder. It is more probable that the plaintiff suffered from chronic adjustment disorder precipitated by his ceasing to engage in paid employment, followed by the lack of success in the development of the proposed business venture, and the associated financial loss and difficulties. His dream had been shattered. I should say that there is no suggestion that the failure of the proposed business venture was caused by any fault on the part of the plaintiff, but the fact is it apparently came to naught. In my opinion, it is more probable than not that it was those stressors which caused the plaintiff's condition. There was disagreement between the psychiatrists as to the extent to which he is presently affected by the disorder, and as to the prognosis, but it is unnecessary for me to go into those matters.

[41] The evidence by which the plaintiff sought to establish that he had difficulties with his right wrist arising from the accident is quite unsatisfactory. He might have a minor problem with his wrist, but I am not prepared to find that he suffered any injury in the accident beyond that described by Doctor Brownjohn. An X-ray of the wrist showed no bone abnormality. There is no evidence that the plaintiff has since complained to any doctor regarding any disability in his wrist. His answers to interrogatories deny such an injury, and I do not accept what he had to say in regard to his problems with the English language in that regard.