

BRIGGS v STATE OF NEW SOUTH WALES (S144/2017)

Court appealed from: New South Wales Court of Appeal
[2016] NSWCA 344

Date of judgment: 9 December 2016

Special leave granted: 12 May 2017

Mr Ryan Briggs is a former police officer who suffered a psychological injury caused by his exposure to traumatic events in the course of his duties. He claimed that his injury was a result of tortious acts of the Commissioner of Police and his officers, for which the State of New South Wales (“the State”) was vicariously liable. At all times Mr Briggs’ claim was treated as a “work injury damages claim” for an award of “modified common law damages” under Part 5 of the *Workers Compensation Act 1987* (NSW) (“the Act”). Consequently the *Civil Liability Act 2002* (NSW) did not apply.

The primary judge found in favour of Mr Briggs. His Honour accepted that the State had breached its duty of care by failing to take reasonable steps to avoid exposing Mr Briggs to the foreseeable risk of psychological injury. His Honour specifically found that the State had breached its duty of care:

- (a) between July 2003 to July 2011, given Mr Briggs’ exposure to “traumatic and gruesome events” in the course of his general duties; and
- (b) more specifically, after Mr Briggs told his supervisor he was “struggling” and had applied for a theoretical demotion in July 2011.

Upon appeal, the State alleged errors of law in how the primary judge formulated the content of the duty of care, breach, causation and damages. It also highlighted failures in the primary judge’s findings of fact.

On 9 December 2016 the Court of Appeal (McColl, Ward & Leeming JJA) allowed the State’s appeal. Their Honours unanimously held, that in relation to the numerically large body of police officers, breach of a duty of care must be assessed in light of a postulated system that should have been devised, or a general instruction which should have been given, and which would probably have prevented the psychological injury. Justices Leeming and Ward further held that when considering the relationship between the parties, the scope or content of the duty of care must be moulded by having regard to statutes which apply peculiarly to the NSW Police Force. They found that a defendant is not negligent merely by failing to take a course of conduct which would have eliminated the risk of harm. Unless it is shown that the defendant was acting unreasonably in failing to take that course, negligence is not established.

Justices Leeming and Ward further held that the scope of a duty of care must be formulated prospectively and not by engaging in a hindsight analysis of whether a risk of injury could have been reduced or eliminated.

The grounds of appeal include:

- The Court of Appeal erred in finding ([154] to [168]) that the State had not breached its duty of care as “employer” by failing to make enquiries as to Mr Briggs’ reasons for seeking what was regarded as a theoretical demotion in circumstances referred to in paragraphs [102] to [109] of the primary judgment;
- The Court of Appeal erred in its formulation of the content of the State’s duty of care.