Employer blamed for driver's fall from truck

The District Court of Queensland has recently held an employer responsible for injuries suffered by a truck driver ("the plaintiff") after he fell whilst climbing from the cab of his truck. He claimed his injuries were caused by the negligence, and/or breach of contract of his employer.

Facts
The plaintiff commenced his shift at 6.00pm on 14 January 2008 and drove his B-Double truck to Gladstone. After a 30 minute change-over he commenced the return journey to Brisbane. During the journey, lights and alarms in the trucks dashboard were activated, indicating a loss of air associated with the vehicle's brakes. The plaintiff pulled the vehicle over to investigate. He had to climb in and out of the truck to check the airlines, and on the third occasion doing this, fell and suffered injury. It was dark and raining at the time of the fall.

The plaintiff provided the following description of how he came to fall:

"…recalls placing his right foot onto the top step while remaining partially seated in order to begin descent of the access system. … At some point following this, [the plaintiff] recalls his right foot slipping and/or losing his balance. After this, he only recalls, coming to lying on the roadway."

Evidence

The plaintiff gave evidence that:

• he never received any instruction in relation to getting out of these vehicles during his employment with the defendant;
• the edge of the step did not come out far enough to see from where he sat behind the wheel;
• he had driven everyday for the defendant for at least two months and had been doing this particular manoeuvre at least twice a day over this period;
• he had never previously had any difficulty in finding where the first step was;
• he got out of the truck on 2 previous occasions that night without incident while the steps were wet;
• ordinarily when exiting the cab of the truck, the plaintiff would place his right foot on the first step; his right hand on the handle on the door and his left hand on the steering wheel.

A director of the defendant employer gave evidence that:

• At least 60 people had driven the same type of trucks as that which the plaintiff drove;
• He was not aware of complaints from other employees about the steps or their edges being slippery;
• There was no formal induction system or training policy dealing with getting into and out of the trucks;
• He had fallen from a truck himself.

Expert evidence

Three expert reports were admitted in evidence for the plaintiff. The reports expressed a number of opinions, including that:

• smooth steel or aluminium surfaces provide poor slip resistance in wet conditions as there are no textures or roughness to provide grip underfoot;
• there were inexpensive measures (such as an aggressive nosing design or the use of nosing strips for ladder rung covers) which could have been taken to minimise the risk posed by a slippery stair entry to the truck;
• there existed reports and research which suggested that falling while using access systems of trucks was "an ongoing problem".

Two expert reports were admitted into evidence for the defendants. According to the author of those reports, there is no relevant Australian Standard or design rule dealing with access to cabins of trucks, but the access system in this case did comply with international standards. The Court however, noted that one of those standards recommended as a minimum that step surfaces be slip resistant at foot contact areas.

Conclusion

The court accepted the plaintiff's evidence that his foot slipped off the top step of the truck as he swivelled around whilst in the process of climbing out of the truck as result of the step being slippery, as opposed to his failure to maintain 3 points of contact. That finding, however was not enough for the plaintiff to succeed with his claim.

The Court considered in detail the legal principles concerning whether the defendant breached its duty of care to the plaintiff. The Court considered High Court decision of *Mclean v Tedman*[1] and stated, *"even if the plaintiff fell and injured himself through inadvertence in the course of hurrying to exit the cabin the defendant was obliged to take this possibility into account".*

The Court concluded that, *"inadvertence by a truck driver in exiting the defendant's Volvo in wet conditions was a foreseeable possibility and there was a foreseeable risk of injury through inadvertence even by an experienced truck driver"*.

The Court found that a reasonable employer would have:

- implemented an adequate system of risk assessment;
- devised a method to safely exit its Volvo prime mover cabins;
- trained employees in its use and instructed them to use it; and
- taken reasonable steps to ensure the instruction was implemented.

The Court considered that a reasonable employer would have responded to the degree of risk by implementing increased slip resistance at the nosing edge of the tread and found the defendant liable for the plaintiff's injuries. The defendant was ordered to pay $225,000 in damages.[2]

The decision should provoke employers in the transport industry to review the access mechanisms and training procedures in place concerning the entry and exit of vehicles. Where simple and inexpensive measures can be taken to avoid a risk of slip and fall, an employer should seriously consider adopting such measures.

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[1] (1984) 155 CLR 306

[2] *Schmidt v S J Sanders Pty Ltd* [2012] QDC 148