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LAWYERS

WHAT PRICE INJURY IN SPORT?

- ⊕ What price for spinal injury occurred in sport?
- ⊕ What if the injury occurred during physical contact sport, such as Rugby League Football where players accept that the sport has a risk of injury?
- ⊕ Does it matter that the controllers of the sport earn huge money through the sporting competition, including the television broadcasting rights of the games?
- ⊕ Is there any difference if the injury occurred due to another player breaking the rules?

These are the questions which are currently being heatedly debated by the public and the authorities in Australia. This follows the consideration of legal action by Alex McKinnon of the Newcastle Knights who suffered a serious spinal injury whilst being tackled by two Melbourne Storm players in a match last season. The incident during the game left him disabled and confined to a wheelchair. As a young man he has concern for his future and can't return to play professional football.

Most people think of sport as a recreational activity, so the idea of suing someone because of injury from recreation does not seem reasonable. Especially in peoples' minds is the thought that physical contact sport has an element of danger with the risk of injury known to the people who play that type of sport. The everyman thinks that an individual should be responsible for their own safety. With this type of thinking, then it's the actions by the injured player which may have contributed to the injury which would also be relevant. In legal speak, there is a concept called "contributory negligence" where the injured persons own actions (or lack of action) can discount the compensation payout price.

However, the Football Clubs operate the holding of the professional games as part of a huge commercial enterprise, where enormous money is made from the players' participation in the sport. This comes via advertising, broadcasting rights and even gambling connected to the professional Rugby League games. The position is similar with other professional sporting codes, such as Australia Rules Football. In this way the game in which Alex McKinnon suffered injury was played within a commercial context, meaning that it wasn't a social sport. In that way, he was playing football as his job.

As mentioned, the injury was sustained in a tackle by two players from the opposing team. It was a dangerous lifting tackle, where a player is tipped over horizontally and has little control over the manner in which he lands. The Rugby League judiciary reviewed the incident post-game and adjudicated that the opposing players had broken the rules of the game. In that sense, it could be argued that Mr McKinnon was injured outside of the rules. When he accepted the risk of playing the physical contact sport, Mr McKinnon's acceptance was that there was a risk of injury when the game was played within its rules. Naturally, he never agreed to submit himself to the consequences of an opposing player acting outside of the rules of the game.

From a business perspective (and in terms of practicalities), adequate coverage via insurance is a key issue. Just as there can be scrutiny on the level of funding in other fields of commercial enterprise, such as adequacy of funding for WorkCover payments, in the same way the personal impact on Mr McKinnon highlights the need for consideration for the adequate coverage of young players who sustain injury and are unable to return to further pursue their sporting career.

Another way to think of the situation is that Mr McKinnon was severely injured in a workplace accident, and as such he has legal avenue. This was a legal entitlement first established in the famous case of *Steve Rogers -v- Mark Bugden* from 1985 which decided that whilst players accept risks that go with the game when it is played within the rules, they can successfully sue for financial compensation when sustaining damage as a result of actions that are well outside the rules. In that case, Mr Bugden broke Mr Rogers jaw during the football match. That injury was worth \$68,154.00 (in 1990 Australian dollars). The Canterbury Bulldogs Football Club (for whom Mr Bugden was playing) paid the compensation to Mr Rogers because it was ruled that the Club was vicariously liable, as the employer of Mr Bugden.

In the current spotlight of Mr McKinnon's situation, these legal principles might give concern to the Melbourne players who face legal action. In turn, their club/employer, the Melbourne Storm also face the potential of being vicariously liable.

Where to from here? Professional football in Australia is no longer a social sport. It is big business. Just as other large commercial enterprise takes account of the adequacy of insurance for its employers, the football Leagues and associated Clubs have some thinking to do about the support of its players. It can no longer deflect responsibility via placement of personal responsibility, since it is known law (and has been from 1985) that there is entitlement to financial compensation for a player who is injured as a result of another player or players actions that are outside the rules of the sport. Since such event occurs within the context of the professional game which is itself part of a huge commercial enterprise, the financial welfare of the player should be part of the responsibilities of the League and the individual Clubs. That might involve the creation of a separate fund (as a suggestion) in which moneys would be put aside to be drawn on in situations like Mr McKinnon's where there is genuine concern with regard to his future.

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