

Money, motor cars and Mad Max!

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How a Lighthorseman received over \$33 M.

With Mad Max 4 thundering onto our cinema screens – with a brooding British actor in the title role – we’re reminded that Aussie actor Mel Gibson (at 21) played the lead with swaggering intensity in the original Mad Max movie released in 1979. With V8 engine style acceleration, Mel’s career took off leading him to Hollywood fame and fortune.

Mel’s stratospheric rise to stardom – a graduate of NIDA and local (Australian) movie roles led onto major Hollywood block busters – was used as a template in argument about compensation entitlement for another up-coming Aussie movie star, Jon Blake.

Jon Blake had considerable charm and good looks, who many likened to Mel Gibson. Blake played the lead role in the film “The Lighthorsemen” which was filmed in western South Australia, completed on 1 December, 1986. Blake attended a party and then started on journey by car back to Adelaide. During the long journey Blake was seriously injured in a major (real life) motor car accident involving 2 other vehicles.

His injuries prevented Blake from continuing his movie career. He made a legal case seeking financial compensation for his injuries and the associated losses which included consideration of loss of salary from his destroyed chance at Hollywood fame. The claim was with the insurance company connected to the motor vehicle.

There were 2 major areas of debate:

- Apportionment of Liability (percentage of fault between the drivers of the vehicles); and
- The amount of financial compensation (the price).

The insurance company was prepared to allow compensation for future lost salary based on a modest wage as an actor in the local Australian film industry, together with discounts for contingencies (which is standard) such as reduction for the fact that Blake may have been away from work for other reasons in the future. Prior to the accident, Blake had earned about \$60,000.00 per annum. It was considered that if he had not been injured and had kept working in the Australian film industry his earnings might have risen to about \$300,000.00 per annum.

In the debate about the evaluation of the financial compensation, there were several relevant factors. One of the key questions was the allowance for Blake’s prospective future loss of salary. Since Blake was a young man (aged 28 at the time of the accident) he had potential for regular work in the film industry for the next 25 years, but for the car accident. There was extensive conjecture about the prospect of his becoming a Hollywood superstar following the career path of Mel Gibson, which would have meant a dramatic increase in his salary.

The challenge for the Court, was that there was no certainty, at the time of the accident, that Blake would have progressed in his career to become a superstar. In a complex Judgement, the Court

adjudicated that Blake had achieved considerable success in Australia but that the prospect of his becoming a Hollywood star involved many and unpredictable hurdles such that it was impossible to say any more than with his talents (and the Court made particular point of the glowing references of his qualities in the evidence) that Blake had a small but indeterminate chance of becoming a superstar. This was significant, because the Court did not exclude the chance of his becoming a superstar.

The Court approached the difficult task of assessing the future chance by first considering the mathematical theory of probabilities. That is, multiply the probability that the event will be favourable by the amount to be gained if it is. For example, a one change in ten of winning \$500, has an expectation of \$50. In this case, the Court considered that where the possibilities are limited, such as the way that the Court noted that there was evidence from various persons as to Blake's potential for future success in the film industry, but there was little, if any, regard to either the size or the quality of his competition within that industry. The Court considered that the information concerning Blake was not of itself enough material upon which to gauge the extent of the chance that Blake would best his competition. It was decided that Blake had good prospects and noting that he was handsome, enthusiastic, dedicated and blessed with rare quality. Those were attributes which should have enabled him to succeed. However, the Court noted that success in the film industry, particularly to achieve super stardom was elusive and dependant on many things, including the fickleness of the public. For this reason, the Court decided that it was impossible to quantify the loss of chance by using percentages. Plus, the Court noted that even if the chance of becoming highly successful was a certain percentage it did not follow that there was the same chance of maintaining that level over 20 years into the future. The proper approach by the Court was to assess what it was most likely that Blake would earn during the rest of his working life and adjust that amount for contingencies including the possibility that he might have done far better.

When calculating the compensation price, in terms of lost salary over a period of 25 years into the future, the sum awarded was over \$33 M.

My coda for this column is in 2 parts:

- On a serious note, Australian State Government law has now capped the amount of compensation, specifically limiting the capacity of the Court to allow such a high level of loss of income figure, even in circumstances where the accident results in the destruction of a young life, as occurred for Jon Blake.
- On a lighter note, the film "The Lighthorsemen" remains a testament of Blake's star power and skill. He played the character "Scotty" in a film with much drama and occasional humour including this exchange:

Dave: "Hey, Scotty, you're not Scotch, are you?"

Scotty: "No."

Dave: "Then, why do they call you Scotty?"

[Scotty thinks]

Scotty: "Cause I'm Irish."