SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

Case Title:	**Almazaydeh v Gajjh United Pty Ltd**
Citation:	**[2026] ACTSC 331**
Hearing Dates:	2-4 June 2026 and 17 June 2026
Decision Date:	1 September 2026
Before:	Mossop J
Decision:	(1) Judgment for the plaintiff in the sum of $14,740. (2) The proceedings are listed at 9:15am on 16 September 2026 for argument in relation to costs. (3) Each party is directed to provide by email (copied to the other party) to the Associate to Mossop J any proposed evidence in relation to costs no later than 11 September 2026.
Catchwords:	**NEGLIGENCE** – PERSONAL INJURY – Slip and fall in McDonald's restaurant – whether defendant breached its duty of care – whether plaintiff sustained injury as a result of a slip – where quantum of damages is contested – defendant found to have breached duty of care – plaintiff does not adduce expert evidence as to causation – defendant's expert supports only limited causally-related injury – damages awarded
Legislation Cited:	*Civil Law (Wrongs) Act 2002* (ACT), ss 43(1)(a), 43(1)(b), 45, 46, 100, 168
Cases Cited:	*Brozinic v ISS Facility Services Australia Limited* [2014] ACTSC 8 *Brozinic v The Federal Capital Press Pty Limited trading as The Canberra Times* [2015] ACTCA 8 *Griffiths v Kerkemeyer* [1977] HCA 45; 139 CLR 161
Parties:	Mohammad Almazaydeh (Plaintiff) Gajjh United Pty Ltd (Defendant)
Representation:	**Counsel** Self-represented (Plaintiff) W Sharwood (Defendant) **Solicitors** Self-represented (Plaintiff) Sparke Helmore Lawyers (Defendant)
File Number:	SC 64 of 2024

MOSSOP J:

Introduction

1. This is a claim for personal injury arising from a slip at the McDonald's restaurant in Mitchell, on Northbourne Avenue just before it turns into the Federal Highway at the northern end of Canberra. On 17 February 2021, the plaintiff attended the premises to meet someone. At that time, the area in front of the service counter was being cleaned. As he passed a wet-floor sign that was placed there for the purposes of warning that the floor was being cleaned, he slipped but did not fall. He steadied himself on the warning sign and immediately clutched his hip. He claims in these proceedings to have suffered a variety of different injuries as a result of the accident and has claimed a total of $2,150,000 in damages. He was not legally represented at the hearing. He was assisted by a McKenzie friend, Mr Ebraheam Alfarach.

Overview of the plaintiff's case

2. The plaintiff gave evidence that he was attending the McDonald's restaurant in order to meet somebody to obtain a certificate relevant to conducting a waterproofing business. He said he had an offer from a waterproofing business for subcontracting work but could not obtain that work until he had the relevant certificate.

3. This was the first time he had been to this particular McDonald's restaurant. He parked his car, saw the entry and entered the premises. He said he was not looking down at his phone or watch. He was looking for the toilet and for the person from whom he was to collect the certificate. When he saw where the toilet was, he walked there and then went back to find a person with the certificate. He said he did not notice that the floor was wet. He did not see any warning sign, either when he first entered, nor after returning from the toilet.

4. He slipped on the floor. He said that he damaged his right shoulder and also his hip on both sides. On the day of the accident, he saw a doctor at a medical clinic in Belconnen. There was then a follow-up with the same doctor at a clinic in Conder.

5. The plaintiff's evidence was that his injuries were getting more severe over time, that he would wake 30 times a night and needed to take medication in order to assist him to sleep. The medication that he was taking included Panadeine Forte, Ibuprofen, Endone and Tramadol.

6. He gave evidence about attending Dr Igor Policinski and the advice that he was given. Documentary evidence indicated that this occurred in 2024. He was referred to a public hospital for an operation on his right shoulder. He said he was told by Dr Policinski that

even with the operation, the movement of his right arm would be limited and it would have a consequence for his neck. He was told he would not be able to carry more than 15 or 20 kg and that his condition would be permanent. The plaintiff said that he had consented to the operation on two different occasions and that he was on a waiting list to have the operation carried out in the public system.

7. He indicated in opening that he was claiming $1.8 million in lost earnings and $650,000 for pain and suffering, and domestic services or domestic assistance. In closing submissions the claim for loss of earnings was reduced to $1.5 million.

8. He gave evidence that the injuries he suffered affect his capacity to do domestic work, including looking after his disabled wife and his children.

9. He said that a long time ago, he had an accident involving his shoulder, but that he recovered and was in good health at the time of the McDonald's incident. He said he used to work in tiling. He said he had not had any other accidents in the last 10 years.

Video evidence

10. There was high quality CCTV of the incident and the events preceding it. The relevant video evidence was six minutes and 43 seconds in duration. It consisted of a video taken from high on a wall looking down across the area in front of the service counter towards one of the entrances to the premises.

11. In the background of the video, there is an entrance in the middle of the frame, and an area leading to toilets to the right which is partially obscured by a screen. In the middle ground on the left is a long table (the table) and stools. In the foreground to the right is the service counter and entrance to the kitchen, the kitchen itself being just off camera to the far right.

12. The video of the incident begins at 9:51:12am on 17 February 2021. It starts with a largely empty restaurant, with one customer ordering at an automated kiosk (the automated kiosk) located perpendicular to the service counter towards the back of the viewed area. Another person can be seen walking through the dining area. A McDonald's employee (the worker) is seen wheeling a mop and bucket into the dining area. Four wet floor signs can be seen in the footage, placed in a rectangular pattern approximately a metre from each of the corners of the table. Having regard to the fact that the area that was to be first cleaned was that immediately in front of the service counter, it is not clear why two of the wet floor signs were placed some distance away at the far end of the long table. The wet floor sign relevant to the incident (the sign) can be seen approximately a metre

away from the automated kiosk in the passageway between that kiosk and the end of the long table.

13. At 00:26, the worker begins to mop, starting from the bottom corner of the service counter. At 01:39, the worker pauses from mopping to move the relevant wet floor sign slightly back and to the left of the frame, seemingly to avoid it obstructing foot traffic or to facilitate mopping near to that area. The worker begins wet mopping the area relevant to the incident at 01:56 (bumping the sign slightly to the left at 02:00), and commences dry mopping the same area at 02:17. At 02:28, the worker again shifts the sign left while mopping, again seemingly to facilitate mopping the area under it. By 02:00, the worker has wet mopped the area in front of the automated kiosk. By 2:30, the worker has dry mopped the area including the area to the left of that wet mopped so as to spread the water from in front of the automated kiosk to an area about 50 cm beyond the relevant wet floor sign towards the entrance to the restaurant.

14. While the worker continues mopping other parts of the dining area, the plaintiff enters the camera's frame outside the building at 04:28. The plaintiff enters the restaurant through the entrance located at the middle background of the frame at 04:37, walking towards the sign.

15. At 04:44, the plaintiff, with his head down, comes within one step of the sign. At this point, he turns around and heads towards the toilets. At 04:56, the plaintiff exits the camera frame, re-emerging from the top right of the frame at 05:35.

16. At 05:41, the plaintiff heads towards the sign with his head down. The slip itself occurs within the span of a second at 05:43. At 05:43.04, the worker can be seen looking directly at the plaintiff, with the plaintiff's head up and facing slightly to the left of the frame. At 05:43:36, the worker is looking away from the plaintiff, with the plaintiff taking a step with his right leg. At 05:43:63, the plaintiff attempts to move his left leg to finish the stride. At 05:43:66, the plaintiff's left foot begins to slide. At 05:43:75, the plaintiff is seen reaching out to the sign to regain balance, his left foot sliding towards his right foot. At 05:43:83, the plaintiff places his body weight on the sign, shifting it slightly to the left in the frame. His left foot begins to slide back towards the back of the frame. The plaintiff is still trying to regain balance at 05:43:95, further arching over to hold the sign. At 05:44:15, the plaintiff can be seen with his right hand on the sign, his left hand in the air for balance, and his left foot again sliding towards his right foot. The worker can be seen looking up at the plaintiff at 05:44:35. The plaintiff begins to recover balance from the slip at 05:44:45, using the sign for support and taking backward steps towards the background. At 05:45:14, the plaintiff has come to a stop, resting on the sign for balance with his face

down; the worker can be seen looking at the plaintiff with her hands in front of her in an expression of shock or concern.

17. The worker can then be seen moving towards the plaintiff. At 05:46, the plaintiff can be seen limping towards the table, with his left hand on his left hip area. The worker reaches the table at 05:51, putting her mop down to approach the plaintiff. The plaintiff can be seen at 05:52 with both hands on the table, standing. The worker moves a stool out of the way of the plaintiff at 05:54; the plaintiff immediately begins backing away, down the table to the left of the frame, his left hand on the table for support. At 06:00, the plaintiff reaches the end of the table, pauses, and looks down. The worker continues to follow the plaintiff, and reaches the edge of the table at 06:03. The plaintiff immediately begins walking away, and walks off frame at 06:05.

18. The footage then shows the 38 seconds immediately after the incident. At 06:15, the worker can be seen walking towards the kitchen off-frame, with her hands on her head. She exits the frame at 06:18, and re-emerges at 06:30. The worker then picks up her mop, moving the sign away from herself and to the left in the frame at 06:37. The worker then resumes mopping at 06:38, starting with the area near the slip. The video ends at 06:43.

19. A number of points of significance arise from the CCTV footage:

    (a) First, the plaintiff walked up to the relevant warning sign upon first entering the premises, before going to the toilet and subsequently returning past the sign where he slipped.

    (b) Second, the plaintiff at the relevant times was looking down at what was in his hand or was looking around him as distinct from watching where he was going.

    (c) Third, when he slipped he did not fall, having steadied himself on the relevant warning sign.

    (d) Fourth, in recovering from the slip, the plaintiff can be seen twisting his upper body.

Documentary chronology

20. The oral evidence given by the plaintiff was relatively limited. Much of the evidence in the case was documentary in the form of medical notes, correspondence or reports. The following facts can be discerned from that documentary material.

21. The plaintiff had, in the past, a variety of attendances at the Canberra Hospital for treatment following accidents, some of which involved his shoulder. These attendances

resulted in various investigations, none of which demonstrate a pre-existing injury to the plaintiff's shoulder or hip of the nature alleged to have arisen from the accident in 2021. The hospital records do indicate a past history of back problems as at 1998, and injuries to his right shoulder from as early as 1994.

22. In August 2015, the plaintiff attended his general practitioner due to a non-healing fracture in his right foot. He also reported pain in his right shoulder which had never been investigated.

23. In 2017, the plaintiff was diagnosed with diabetes.

24. In October 2018, the plaintiff had an ultrasound of his right shoulder and left elbow following a heavy object falling on him. Amongst other things that were disclosed were a probable partial thickness tear of the supraspinatus tendon and a tendon tear associated with his left elbow.

25. On 13 November 2018, he attended Dr Al-Naser saying he had slipped while attending his son's work, stretched both legs and bruised his right leg, thigh and buttock. He was prescribed painkillers. He saw the doctor nine days later and was complaining of neck pain, right shoulder pain, right hip pain and right thigh pain.

26. In January 2019, the plaintiff was still being treated for his diabetes, his general practitioner recording a weight increase of 10 kg in the two preceding months. On 6 December 2019, the plaintiff underwent a gastric sleeve operation.

27. On 17 February 2021, following the accident, he attended Dr Al-Naser. The doctor recorded that he had slipped at the Mitchell McDonald's and "twisted [his] left thigh/hip". He recorded that the plaintiff complained of pain in his left hip that went through to his left thigh. On examination, there was tenderness near the groin and reduced flexion due to pain. The reason for contact was described as "soft tissue injury". He was sent for a left hip x-ray and prescribed ibuprofen.

28. On 18 February 2021, the plaintiff underwent an x-ray of his left hip. The alignment was normal and no bone lesions or fractures were seen.

29. On 3 March 2021, the plaintiff underwent an x-ray of his pelvis and both hips at the request of Dr Al-Naser following a report of pain in both hips. That only disclosed mild degenerative joint disease.

30. On 15 June 2021, the plaintiff saw Dr Nicholas Tsai at the request of Dr Al-Naser. He complained of low back pain and pain over the lateral aspect of both sides. He also reported some tingling over the lateral thigh. At that stage, he had not had any physiotherapy. He reported having low back pain about 15 years ago. He was walking

with a limp. The doctor recorded that it was not clear whether the pain upon movement of his hips was due to back pain or actually coming from the hip joint. He referred the plaintiff for an MRI scan of his lumbar spine and a SPECT-CT scan of his back and pelvis.

31. On 29 June 2021, the plaintiff underwent a bone scan, also described as a SPECT/CT, at the request of Dr Tsai. That was following a report of pain in the hips (with the left worse than the right) and lower back pain. The scan disclosed no significant active arthritis in the hip joints, low-grade trochanter bursitis in both hips, low-grade degenerative disease in the lumbar spine, and certain other findings.

32. On 23 August 2021, the plaintiff underwent a right shoulder ultrasound. This disclosed that there was a complete tear of his supraspinatus as well as subacromial bursitis.

33. He was referred to Dr Maurizio Damiani, an orthopaedic surgeon, in order to determine whether surgery was appropriate. Dr Damiani saw him on 27 October 2021 and reported that an x-ray and MRI scan were required.

34. The plaintiff returned to Dr Al-Naser on 1 December 2021. The reason for his visit was described as “feeling tired and ache all over, no fever, was doing gym work at [CIT] felt unwell and wanted to rest”. No reference was made to his hip. The oral evidence and the other evidence in the case did not explain what was referred to by “doing gym work at [CIT]”.

35. On 9 December 2021, the plaintiff underwent an x-ray of his right shoulder. That indicated conditions suggesting a full-thickness rotator cuff tear and mild shoulder joint osteoarthritis. An MRI on the same day of the plaintiff’s right shoulder showed a full-thickness supraspinatus tear.

36. On 17 January 2022, Dr Damiani referred the plaintiff for physiotherapy for “right shoulder chronic impingement + SST tear, worsened by a fall in March 2021 with [increased] inflammation”. He intended to see him again in three or four months to make a decision about the desirability of surgery.

37. On an unspecified date, the plaintiff underwent an MRI of his right shoulder upon referral from Dr Damiani. That indicated a full-thickness tear of the supraspinatus and musculotendinous retraction of 2.5 cm.

38. On 10 May 2022, Dr Al-Naser referred the plaintiff to Dr Diaa Attallah for physiotherapy.

39. On 17 June 2022, the plaintiff saw Dr Attallah, presenting with right shoulder pain, pain in both hips and low back pain. Dr Attallah found symptoms consistent with a supraspinatus tendon tear. In relation to both hips, he recommended local injection of

cortisone into the bursae. In the low back he found muscle spasm more on the right side and stiffness in the lowest three lumbar vertebrae, also more on the right side. Further physiotherapy was recommended.

40. From at least 18 July 2022, the plaintiff was consulting solicitors in relation to his claim for personal injury and had executed an authority for the release of his medical records from Dr Damiani.

41. On 19 July 2022, the plaintiff underwent an ultrasound-guided injection into his right hip of Celestone and Bupivacaine. The indication for this was trochanteric bursitis.

42. On 21 July 2022, the plaintiff underwent a steroid injection (a combination of Celestone and Xylocaine) into his left greater trochanteric bursa.

43. The physiotherapist, Dr Attallah, reported on the plaintiff on 24 July 2022. He recorded that the plaintiff's main complaints were low back pain, right shoulder pain and pain in both hips.

44. On 30 August 2022, Dr Al-Naser referred the plaintiff back to Dr Damiani, the presenting problem being identified as bilateral hip pain. On 5 October 2022 he saw Dr Damiani again. Dr Damiani suggested rotator cuff repair. The plaintiff indicated that he would like to go ahead but wished Dr Damiani to write to Dr Al-Naser first.

45. On 24 October 2022, a radiologist reported to Dr Tsai on an MRI of the plaintiff's lumbar spine. The report described various disc bulges and protrusions from L1/2 to L5/S1.

46. On 14 December 2022, the plaintiff underwent an ultrasound-guided right hip injection of Celestone and Xylocaine.

47. On 20 December 2022, the plaintiff underwent an ultrasound-guided injection into his left hip of Celestone and Xylocaine. The indication for this was trochanteric bursitis.

48. On 11 June 2024, the plaintiff had an ultrasound of his right shoulder which demonstrated a full-thickness tear of the supraspinatus and infraspinatus along with fatty atrophy of the tendon.

49. On 27 June 2024, the plaintiff was seen by Dr Igor Policinski, an orthopaedic surgeon. Dr Policinski's reporting letter records that, following consultation with Dr Damiani, the plaintiff had not followed up to have his rotator cuff repaired. It records that pain was located over the biceps and the plaintiff felt that his biceps had torn approximately two months earlier. It describes the plaintiff having difficulty sleeping and decreased range of motion as a result of his shoulder pain. He diagnosed a right rotator cuff tear and long head of biceps tear. He said that the long head of biceps tear was irreparable but that it

was mainly a cosmetic problem and did not need to be repaired. He recommended a right shoulder MRI to determine how bad the rotator cuff tear was and whether it was still repairable three years after injury.

50. Dr Policinski saw the plaintiff again on 4 July 2024, following an MRI. That showed a retracted supraspinatus tear of approximately 2.8 to 3 cm, atrophy in the supraspinatus and a tear of the long head of the biceps. The diagnosis was a right irreparable rotator cuff. He recommended a right reverse shoulder replacement. He said that the plaintiff's range of motion will never be the same, and the operation was designed to give him pain relief. He pointed out the risks. The reporting letter and consent documents showed that the plaintiff was happy to proceed.

51. On 24 July 2024, Dr Attallah summarised the conditions of the plaintiff. The main complaint was lower back pain, right shoulder pain and pain in both hips. He reported that scans showed a complete tear of one of the rotator cuff tendons and multiple disc protrusions/herniations in his lumbar spine. Scans also revealed hip bursitis for which the plaintiff had received local injections but still complained of pain.

52. On 17 September 2024, the plaintiff travelled to Wollongong for the examination by Dr Frank Machart, a doctor engaged by the defendant.

53. On 18 July 2025, the plaintiff remained on the orthopaedic surgery waiting list. The evidence did not disclose how long he had previously been on the waiting list for. On 9 August 2025, he confirmed on a form that he still required surgery and, I infer, returned that to Canberra Health Services.

54. On 14 October 2025, Dr Saiful Ansary of Conder Surgery certified that the plaintiff had been presenting to the clinic for lower back, bilateral hip and right shoulder pain since 2021 and had seen multiple specialists in relation to the matter and has been recommended to have surgery on his shoulder.

55. Prescription records show that during 2025 and 2026 the plaintiff continued to be prescribed Endone: Exhibit 23 and 24.

56. On 2 April 2026, Dr Ansary referred the plaintiff to Dr Rob Creer, a sports medicine doctor. The referral referred to bilateral hip pain. The referral contained a history of conditions for which he was treated from 2016. On 10 May 2026, there was an otherwise identical referral (save for the variation of the order of two pages of medical notes) made to another sports doctor, Dr Gawel Kulisiewicz, at the same practice . Dr Kulisiewicz requested x-rays of the plaintiff's left and right hips and an MRI.

Matters not explained in evidence

57. There was very limited evidence about the plaintiff's work history. As pointed out earlier, there was some evidence of a tiling business with which he was associated. Neither his oral evidence nor any documentary evidence indicated when or how much he worked in that business. Because of the failure to disclose or tender his tax returns, it cannot be determined whether he had a history of earning income.

58. There was some evidence that, since 2010, the plaintiff has been the carer for his disabled wife. The nature of that disability was not disclosed, although the documentary material made some reference to a diagnosis of pancreatic cancer in 2018. He gave evidence that he continued to do some paid work outside the home and that this was always disclosed to Centrelink.

59. There was evidence of the plaintiff having in the past run a business involving training in Taekwondo. The nature and duration of this activity was not made clear by the evidence. In evidence was a certificate dated 14 June 2020 which indicated that he had successfully completed a 6th Dan Taekwondo promotion test.

60. The very limited nature of the evidence was such that it did not present a picture of how the plaintiff spent his time prior to the accident or what, if any, earning capacity he had at that time.

Defendant's medical evidence

61. The defendant relied upon two reports of Dr Frank Machart. Dr Machart is the head of the Orthopaedic Department at the Bankstown Hospital. He saw the plaintiff on 17 September 2024 and signed his report on 18 September 2024. Dr Machart recorded that the plaintiff came to Australia from Jordan 32 years ago and that he was a self-employed tiler between 2003 and 2004. He also recorded that he became a carer for his wife. He records a history of the injury and summarises the consultations, investigations and treatment.

62. Dr Machart questioned why the plaintiff had not proceeded with the surgery recommended by Dr Damiani through the public system if private funding was not available. He recorded that the plaintiff reported that "every single symptom was gradually increasing in severity without additional injury".

63. Dr Machart summarised the various scans that were provided to him by the solicitors for the defendant. He recorded as past history: "Fit and healthy from the physical point of view". On examination, he reported that the plaintiff had walked slowly, limped heavily, used a walking stick and was supported by his young daughter who accompanied him.

He recorded that he laboriously got up from a chair, was able to stand but needed support when moving. He reported the results of his examination of the lumbar spine, right shoulder and hips.

64. Dr Machart described what can be seen on the CCTV recording that was provided to him. So far as diagnosis was concerned, he said:

> Having examined the CCTV, I was unable to diagnose substantial or structural injury to 4 separate areas of the body, lumbar spine, left hip, right hip and right shoulder. It appeared to me that the major injury was the twist to the lumbar spine which could have caused pain in the buttock and not injury to the hip joint.
>
> Clinical examination and progress was indicative of nonorganic illness behaviour, not consistent with injury 3-1/2 years ago.
>
> I did not see evidence of sufficiently severe direct trauma to the right shoulder to cause a rotator cuff disruption.
>
> I did not see evidence that the injury caused bilateral trochanteric bursitis.
>
> The suggestion that all symptoms were gradually increasing in severity after 4 years, without additional injury, is not part of the prognosis of soft tissue injury.
>
> The physical presentation was complicated by substantial nonorganic illness behaviour.
>
> The initial assessment from the GP was left hip pain, my assessment was buttock pain radiating for a strain to the torso. This was consistent with the video evidence. If there was substantial injury to the right shoulder, such as a rotator cuff disruption, lumbar spine, or the opposite hip, then I expect such to be documented by the GP. I did not see contemporaneous evidence in favour of substantial or structural injury, other than documentation sometime later, which was not contemporaneous.

65. In answer to specific questions he said:

> The self reporting of substantial, disabling, and increasing symptoms, in 4 separate areas, was not consistent with the objective evidence on the CCTV, and with the documentation from the primary general practitioner.

66. He recorded his diagnosis as being: “Soft tissue injury to the left buttock/lumbar spine. No additional injury. Pain behaviour.”

67. So far as pre-existing conditions were concerned, he said:

> I was unable to define pre-existing injury or conditions on objective basis. The doctor may need to explain what he meant by osteoarthritis in his documentation of pre-existing conditions.

68. He expressed the opinion that the treatment received by the plaintiff included treatment for symptoms that were separate from the injury. He accepted that reasonable and necessary treatment would have been initially analgesics and physiotherapy not exceeding three months.

69. Consistently with his opinion, he did not accept that there was a requirement for domestic assistance arising from "definable injury pathology sustained at the time of the incident on 17 February 2021". Further, there was no such future requirement.

70. Dr Machart was then asked to examine certain additional documents, being 86 pages of medical documentation and 307 pages of hospital notes. Those are listed in his report of 3 January 2025. Having examined those, he said:

> As outlined in my [independent medical examination], the reported symptom pattern now is multiple focal, not consistent with the mechanism of injury displayed on the CCTV. When there is discrepancy between objective and subjective, attention needs to be paid to contemporaneous evidence. The first contact with the GP did not indicate injury to any of the areas now claimed to be painful, specifically not trochanteric bursitis. The pain was anterior in the groin. This was investigated subsequently by the general surgeons. Trochanteric bursitis was subsequently diagnosed in both hips. The mechanism of injury was not consistent with this diagnosis. Trochanteric bursitis is a frictional type injury, which usually occurs over time, or if there is a direct blow on one hip, and then it is unilateral. Presence of bilateral trochanteric bursitis was not consistent with the mechanism of injury, and not consistent with the objective contemporaneous evidence.
>
> The summary of documentation, clinical history, and medical examination, is that there may have been a soft tissue muscle strain that did not have the capacity to be symptomatic for more than several weeks. There is no indication that there was severe or structural injury, specifically to several areas on the body, causing symptoms or disability. The overall evidence is that soft tissue injury from the time of the incident had healed within the first month or two, and is no longer causing symptoms or disability.

Issues

71. The issues that need to be determined are:

    (a) Was there a breach by the defendant of its duty of care?

    (b) Was that breach a cause of the physical conditions alleged?

    (c) What are the damages attributable to causally related harm?

Breach of duty

The obligation

72. Section 168 of the *Civil Law (Wrongs) Act 2002* (ACT) (CLW Act) provides:

> **168 Liability of occupiers**
>
> (1) An occupier of premises owes a duty to take all care that is reasonable in the circumstances to ensure that anyone on the premises does not suffer injury or damage because of—
>
> (a) the state of the premises; or
>
> (b) things done or omitted to be done about the state of the premises.

(2) Without limiting subsection (1), in deciding whether the duty of care has been discharged consideration must be given to the following:

(a) the gravity and likelihood of the probable injury;

(b) the circumstances of the entry onto the premises;

(c) the nature of the premises;

(d) the knowledge the occupier has or should have about the likelihood of people or property being on the premises;

(e) the age of the person entering the premises;

(f) the ability of the person entering the premises to appreciate the danger;

(g) the burden on the occupier of removing the danger or protecting the person entering the premises from the danger as compared to the risk of the danger to the person.

(3) …

(4) This section replaces the common law rules about the standard of care an occupier of premises must show to people entering on the premises in relation to any dangers to them.

(5) This section does not affect—

(a) other common law rules about the liability of occupiers to people entering on their premises; or

(b) any obligation an occupier of premises has under another Act or any statutory instrument or contract.

(6) …

73. In *Brozinic v ISS Facility Services Australia Limited* [2014] ACTSC 8 at [51]-[52] I explained the operation of s 168 as follows:

> 51. The obligations of an occupier are set out in s 168 of the *Civil Law (Wrongs) Act 2002*. As I indicated in *Harris v Commissioner for Social Housing* (2013) 8 ACTLR 98 at [144]-[146] it is not clear what useful consequence the legislature was attempting to achieve when enacting s 168. Although the section makes it clear that it replaces the common law rules about the standard of care that an occupier of premises must show to people entering on the premises: s 168(4), the test under s 168 is, in substance, the same as the common law although the factors in s 168(2) groups together a list of factors to be considered.
>
> 52. Although the legislature's intention as to the relationship between the tests in s 42 and s 168(1) and in s 43(2) and s 168(2) is not clear (and worthy of some legislative consideration), I proceed on the basis that the provisions of chapter 4 of the *Civil Law (Wrongs) Act* need to be applied, in addition to s 168, in determining whether or not the second defendant breached its duty of care: s 41. Therefore ss 42, 43 and 44 are relevant to assessing whether or not there has been a breach of the second defendant's duty of care and the test of causation in s 45 must be applied.

(An appeal from the decision was dismissed: *Brozinic v The Federal Capital Press Pty Limited trading as The Canberra Times* [2015] ACTCA 8, although it did not specifically address this point.)

The defendant's system

74. The defendant's system for floor cleaning was set out in the McDonald's Australia Crew Training Guide entitled "Everyday Restaurant Tasks: Secondary Tasks for All Employees Induction Training Guide". The document is dated June 2020. Cleaning of the floor other than spot cleaning is dealt with under the heading "Sweep and mop floors". Relevantly, in relation to the mopping of floors it provides:

> Mop Floors: Place wet floor signs out where they are clearly visible. Wet mop in mop bucket and wring until it is damp. Mop a 3m x 3m section of floor using a figure 8 motion. Rinse red coloured mop in mop bucket, wring and begin next section. Continue until entire area has been completed. After going over with the mop, use a Dry Mop to ensure floors are dry and not slippery.
>
> Red Mop & Bucket & Red Dry Mop: Customer areas
>
> Green Mop & Bucket and Green Dry Mop: Service area to back of house.

75. On its face the system is a reasonable one. It involves:

    (a) putting out wet floor signs;

    (b) only mopping a small area at any one time;

    (c) using a dry mop after the wet mop in order to ensure that the floors are not left in a slippery condition.

76. No oral evidence was called by the defendant from the employee who carried out the mopping on the day in question. There was therefore no specific explanation as to why the wet floor signs were placed where they were or how effective the dry mopping was to render the floor non-slippery, particularly after the dry mop had been used for some time.

77. It is apparent that an area greater than the three metre by three metre area indicated in the manual was mopped at one time.

Plaintiff's submissions

78. The plaintiff's submissions identified the following aspects of the defendant's conduct.

    (a) The relevant warning sign was not placed at the beginning of the water hazard.

    (b) The warning sign was not at the centre of the passageway but had been moved to one side.

    (c) The relevant warning sign was camouflaged by the yellow structure referred to by the plaintiff as a "treasure box" located behind it.

(d) The cleaning was not undertaken incrementally.

(e) The dry mop used following the wet mop was not in fact dry, and was merely spreading the water around.

Defendant's submissions

79. The defendant submitted that the cleaning operations were obvious, given that there was a large red bucket prominent within the premises, the employee was wearing a red uniform, there were four large yellow signs in prominent places and nothing to obscure the plaintiff from seeing that cleaning was being carried out in the relevant area. Further, the defendant submitted that the premises were not busy and other entrants had managed to avoid the cleaning operations. It pointed to evidence which it said indicated that it was the plaintiff who was not taking care for his own safety, rather than the system adopted by the defendant, which was the problem.

Consideration

80. The area being mopped appears to be the whole of the area in front of the service counter. The positioning of the warning signs does not seem to have been targeted at the cleaning of that area alone, as two of them were placed at some distance from the cleaning, at the other end of the long table.

81. During the mopping, there does not appear to have been any clear passage to the service counter not affected by the mopping. That fact was not causally significant, as the plaintiff does not appear to have been attempting to attend the service counter.

82. What is of significance is that, although initially the passageway into the area had a centrally placed warning sign, by the time the plaintiff arrived, and also when he returned from the toilet, that sign had been moved to the side so that it was less prominent. The defendant is correct to submit that anybody paying reasonable attention would have observed the McDonald's worker doing the mopping in the area in front of the service counter. That was in the direct line of sight of anybody walking in the direction that the plaintiff was, both when he initially approached and when he subsequently slipped.

83. However, as described earlier, the area affected by mopping extended beyond the relevant warning sign in the direction from which the plaintiff approached by approximately 50 cm. It would not necessarily have been obvious that this was the case, rather than the mopped area being within the outer boundary defined by the warning sign.

84. It is relevant to take into account various matters referred to in s 168(2) of the CLW Act:

(a) **The gravity and likelihood of the probable injury**: The potential for an injury arising from a slip and fall in a restaurant such as McDonald's is significant. It is a location where spillages may occur regularly and where there is potential for slippery substances to end up on the floor in a manner which does not result in spot cleaning. The nature of the injury that will be suffered from a slip and fall can vary from no injury through to catastrophic injury. Serious injury is within the reasonable contemplation of an occupier of such premises.

(b) **The circumstances of the entry onto the premises**: The entry into the premises occurred as an invitee of the operator of the restaurant.

(c) **The nature of the premises**: The premises were a restaurant which people were encouraged to attend.

(d) **The knowledge the occupier has or should have about the likelihood of people or property being on the premises**: The occupier knew that people would attend the premises in significant numbers.

(e) **The age of the person entering the premises**: The plaintiff was an adult of normal ability. However, the occupier invited clientele which included children of limited attention and predictably unpredictable behaviour.

(f) **The ability of the person entering the premises to appreciate the danger**: The plaintiff had the ability to appreciate the danger. The hazard arising from using water to clean the floor is an obvious one. That this was occurring would have been obvious to someone paying reasonable attention to what they were doing within the premises. However, a fast food restaurant such as McDonald's, when taking reasonable steps to avoid injury to customers, must have regard to the fact that their customers will be of varying abilities and intelligence and will not necessarily be paying full attention to potential hazards within the premises. It must therefore cater for a degree of inadvertence, inattention or misjudgement in relation to safety issues.

(g) **The burden on the occupier of removing the danger or protecting the person entering the premises from the danger as compared to the risk of the danger to the person**: The burden of taking additional steps to address the risk of inattentive persons walking into the area being cleaned was modest. It would simply have required warning signs to be centrally placed at the entries into the area actually being mopped and ensuring that the area of floor mopped was within their boundary rather than beyond them. Had the area being mopped

been confined to the 3m by 3m area contemplated by the manual, it would have been even more clearly apparent to entrants that a potential hazard existed.

85. There can be no doubt that the risk of a slip and fall arising from a cleaning operation was foreseeable: CLW Act s 43(1)(a). Further, it was not insignificant: CLW Act s 43(1)(b). The significant question is whether a reasonable person in the position of the defendant would have taken steps beyond those documented and implemented in relation to mopping the floors. In the circumstances of the present case, that would involve ensuring that when the system was implemented, warning signs were placed in a manner which clearly defined the area being cleaned so as to identify the area of the hazard more effectively than was done on the present occasion.

86. Neither the plaintiff nor the defendant pointed to any relevant standard applicable in the circumstances. Neither the plaintiff nor the defendant pointed to any relevant previous court decision determining the standard in an equivalent case. The defendant did not call any lay or expert evidence as to the adequacy of its system. In those circumstances, it is necessary for me to determine whether a reasonable person in the position of the defendant would have taken the relevant precaution.

87. Because no oral evidence was called, there was no evidence going beyond the terms of Exhibit 43 and what can be seen on the CCTV. In particular, there is no evidence as to whether any oral instructions were given as part of the system adopted in this restaurant as to how the system should be implemented and the manner in which the signs should be deployed. The arrangement of the signs in the present case, spread throughout the whole of the restaurant, seem to be intended to allow them to be left in place while each part of the restaurant was cleaned, rather than being deployed around the area actually being cleaned. This had the effect of not drawing to the attention of entrants to the restaurant the particular area the subject of cleaning. So far as the particular warning sign that was visible to the plaintiff was concerned, it had, during the cleaning, been moved out of the passageway which was the natural approach to the service counter. It was accordingly less effective in drawing the hazard to the attention of persons attempting to approach the service counter from that direction. On the other hand, anybody concentrating on where they were going would have observed the worker actually undertaking the mopping, and the condition of the tiled floor which was shiny and reflective because of the water on it.

88. I consider that the defendant did not take all care that was reasonable in the circumstances to ensure that anyone on the premises did not suffer injury or damage as a result of the carrying out of its cleaning operations. In particular, the placement of the relevant warning sign was not such as to make clear that a person passing beyond it,

into the area outside the service counter, would be travelling into an area where the floor was wet. Even though the warning sign had initially been centrally placed, its position at the time that the plaintiff slipped was off to the side, at the entrance to a different passage for foot traffic. Further, the position of the other warning signs were not such as would make clear to somebody passing the warning sign in question that the area beyond it was the area in which there was the relevant hazard. Overall, the cleaning system created an obvious slipping hazard and although the system documented was appropriate in most respects, the limited evidence adduced by the defendant did not show that the measures adopted on this occasion included all reasonable measures to avoid the risk of a slip and fall by a customer entering the restaurant.

89. For these reasons, the defendant breached its duty of care to the plaintiff.

Causation

90. In deciding liability for negligence, the plaintiff always bears the burden of proving, on the balance of probabilities, any fact relevant to the issue of causation: CLW Act s 46. The plaintiff is therefore required to prove on the balance of probabilities that the defendant's negligence was a necessary condition of the happening of the relevant harm: CLW Act s 45.

91. In the context of this case, that involves proving on the balance of probabilities that the injuries alleged arose from the slip and twist that occurred.

92. The injuries alleged in the statement of claim are as follows:

> Injury to right side of hip;
>
> Mild bilateral joint space loss;
>
> Articulars surface sclerosis and irregularity;
>
> Mild degenerative joint disease
>
> Injury to right shoulder;
>
> Full supraspinatus thickness tear;
>
> Soft tissue injuries;
>
> Psychological sequelae.

93. Although not pleaded, the plaintiff also made a claim, said to arise from these injuries, for economic loss arising from loss of the opportunity to earn substantial income from undertaking work as a tiler or waterproofer.

Plaintiff's evidence

94. The evidence tendered by the plaintiff involved letters between treating doctors, referrals and reports of imaging results. Amongst the reports relied upon were the following documents which make reference to the incident on 17 February 2021 in specific or general terms:

    (a) undated medical certificate of Dr Qays Alsha'er (Exhibit 1);

    (b) reporting letter of Dr Tsai dated 15 June 2021 (Exhibit 12);

    (c) physiotherapy referral of Dr Damiani dated 17 January 2022 (Exhibit 12);

    (d) referral letter from Dr Al-Naser dated 10 May 2022 (Exhibit 5);

    (e) undated reporting letter from Dr Tsai to Dr Al-Naser (Exhibit 7);

    (f) certificate from Diaa Attallah, physiotherapist, dated 24 July 2024 (Exhibit 8);

    (g) medical certificate of Dr Ansary completed on 14 October 2025 (Exhibit 19);

    (h) referral letter from Dr Alsha'er dated 17 June 2024 (Exhibit 33);

    (i) reporting letters of Dr Policinski dated 27 June 2024 and dated 4 July 2024 (Exhibit 20);

    (j) referral letters prepared by Dr Ansary on 2 April 2026 and 10 April 2026 (Exhibit 26, 27); and

    (k) MRI request form completed by Dr Kulisiewicz on 14 April 2026 (Exhibit 25).

95. Although each of these documents made reference to the incident on 17 February 2021 specifically or in general terms, they did so in the course of reciting the history given by the plaintiff, rather than expressing any opinion about the causal relationship between the incident and the medical conditions referred to. The various reports simply record that the plaintiff suffered from injuries following the accident. None of the doctors were called upon to express an opinion about the causal link between the incident and medical conditions. The documents do not provide expert opinion evidence addressing whether or not the accident as shown on the CCTV could have or did cause the injuries listed in the statement of claim. The reliance by the plaintiff upon these reports as reflecting expert opinion as to the causal link between injury and medical conditions was a significant misconception in the manner in which his case was put forward.

96. The reference to the injury to the right shoulder appears to duplicate the complaint of supraspinatus tendon tear, rather than being a separate injury. The evidence did not

disclose how mild bilateral joint space loss, articulars surface sclerosis and irregularity, or mild degenerative joint disease could have been caused by the accident.

97. So far as psychological sequelae are concerned, there was no expert evidence indicating that the plaintiff suffered from any particular psychological condition. However, the plaintiff also relied upon the evidence of two of the plaintiff's children who gave evidence about the change in mood of the plaintiff. They described him having less energy and enthusiasm for life and obtaining less pleasure from life due to his medical conditions. While I accept this evidence as to his changed mood, the causal link between this and the accident is dependent upon the establishment of a causal link for his physical conditions. It therefore is dependent upon the evidence in relation to causation of those conditions.

Defendant's evidence

98. The expert evidence relied upon by the defendant is that of Dr Machart, who specifically addressed the issue of causation.

99. Dr Machart conducted a physical examination of the plaintiff, reviewed the various medical records which were provided to him, and watched the CCTV of the incident. The conclusions that he reached, as set out in his two reports, are summarised at [61]-[70] above.

100. The conclusion reached by Dr Machart was that the accident was of a type that could only have caused soft tissue injury. He expressed the opinion that it was not the cause of the supraspinatus tendon tear or the injury to the hip.

Consideration

Limitations on the plaintiff's evidence

101. As pointed out earlier, notwithstanding the tendering of a wide variety of letters and documentation, none of those reports addressed the question of causation in a manner useful when determining the current issue. In particular, none of the opinions were expressed having regard to the video or an accurate statement as to what occurred on the video and none were specifically directed to whether or not the accident was sufficient to establish factual causation.

Criticism of Dr Machart

102. In submissions, the plaintiff relied upon the evidence of both the plaintiff and his daughter in order to contest the reliability of the opinion of Dr Machart.

103. The plaintiff's daughter, Sally Almazaydeh, attended the examination by Dr Machart along with her father. There was also an interpreter present during the examination. Ms Almazaydeh felt that Dr Machart did not give her a chance to speak and that he was "being quite rude" to the plaintiff. Her perception was that every time her father or she tried to speak, Dr Machart would tell them to be quiet. She also said that there were difficulties with the interpreter, who would misinterpret what the plaintiff was saying or stop halfway through.

104. In the absence of Dr Machart being required for cross-examination, and having these complaints put to him, it is difficult to reach any positive conclusion about them. I accept that there was potential for there to be difficulties with interpretation, having regard to the dialect spoken by the plaintiff. Such difficulties were apparent with a different interpreter during the course of the hearing. However, it is not possible to reach any conclusion as to whether or not the impression gained by Ms Almazaydeh reflected any lack of appropriate manner on the part of Dr Machart, or whether it was simply a result of the doctor attempting to efficiently conduct a routine examination focused only on issues of relevance and doing so in circumstances where communication was made more difficult by the need for an interpreter.

105. More generally, insofar as the plaintiff submitted that the report of Dr Machart ought not be relied upon, it can be accepted that, in an adversarial system of dispute resolution of personal injury claims where parties may engage experts to provide their opinion, there is the potential for the parties to select experts whose approach to the medical issue in question is likely to favour their respective forensic positions. However, it is not possible to accept the submission that the doctor was unfair in his approach to the examination, biased against the plaintiff, or that his opinions were unreliable. That is because:

    (a) none of the criticisms were put to Dr Machart as he was not required for cross-examination; and

    (b) there was no expert evidence contradicting his examination findings or opinion as to causation.

106. Notwithstanding that there was the potential for:

    (a) a different doctor of the same specialisation to reach a different conclusion as to causation; or

    (b) for a doctor with a different specialisation to reach a different conclusion as to causation,

no such evidence was adduced by the plaintiff. Even recognising the potential for a specialist orthopaedic surgeon to address questions of causation in definitive terms without regard to the potential for other doctors with different specialisations to see things differently, it is not possible, in the circumstances of this case, to discount the evidence of Dr Machart on that basis when there is no relevant competing expert evidence and the expert opinion expressed by Dr Machart is not inconsistent with other facts found in the case.

Assessment of the evidence

107. Dr Machart's opinion appears to be consistent with what is seen on the CCTV footage and contemporaneous documentation.

    (a) The slip results in a twisting movement which ends when the plaintiff steadies himself on the relevant warning sign. He then clutches his left hip.

    (b) The complaint of pain made the same day documented by his general practitioner is only in the left hip through to the left thigh.

    (c) Further, the plaintiff had, since 2018 or earlier, at least a partial supraspinatus tendon tear.

    (d) Finally, the bilateral nature of the hip pain from which he currently suffers does not appear to be consistent with the mechanism of injury or his contemporaneous complaint.

108. Having regard to the fact that Dr Machart's opinion is directed to the critical question of causation and is based upon an understanding of what actually occurred as shown in the CCTV footage, that opinion is to be preferred to any opinion that might be discerned from the various letters and reports relied upon by the plaintiff to support causation in circumstances where:

    (a) causation was not a particular issue for the treatment of the plaintiff by those doctors, and they were not asked to specifically provide an opinion on that issue; and

    (b) those doctors were not provided with the CCTV footage or a careful description of the facts consistent with what can be seen on the CCTV footage.

109. Dr Machart's report may be criticised for the failure to specifically document the "illness behaviour" which he said that the plaintiff demonstrated and which contributed to the formation of his opinion. However, in the absence of any objection or any cross-examination on that issue, it does not provide a basis for rejecting his opinion.

110. For the reasons that I have given, I do not accept that the expert evidence tendered by the plaintiff establishes a causal link between the slip shown on the video and all of the consequences alleged to have flowed from it. Rather, I accept the opinion of Dr Machart that, at most, he suffered a soft tissue injury which may have been symptomatic for a number of weeks. As I have attempted to explain, that conclusion is not obviously unreasonable or inconsistent with the facts as I have found them to be. Specifically, I conclude that the plaintiff has not established that the accident was a necessary condition for his trochanteric bursitis or the supraspinatus tendon tear in his shoulder. To the extent to which the plaintiff himself attributes these injuries to the accident by reference to the timing of their onset, I do not consider that this lay evidence as to causation is reliable in light of the evidence of Dr Machart and my general assessment of the plaintiff's evidence.

Conclusion

111. The plaintiff bears the burden of proving causation on the balance of probabilities. So far as each of the injuries identified, the evidence is only sufficient to establish that some soft tissue injury was caused by the accident. The plaintiff has failed to prove, in relation to the other conditions, that the negligence was a necessary condition for them to arise.

112. So far as psychological sequelae of soft tissue injuries are concerned, it is not possible to conclude on the balance of probabilities that any psychological condition is attributable to those injuries as distinct from the various other conditions from which the plaintiff suffers.

Damages

113. The context in which this issue must be addressed is that I have found that there was a breach of duty on the part of the defendant but that the plaintiff has not established the significant injuries that he alleged were caused by the accident.

114. The damages claimed were arranged by the plaintiff into two categories, one resulting in a claim of $650,000 and the other being a claim of $1.8 million. The claim of $1.8 million was reduced to $1.5 million in closing submissions.

General damages and related claims

115. The plaintiff claimed $650,000 for damages, other than the claim for economic loss which is dealt with separately below. Although the way the plaintiff's claim was put was somewhat unclear, this aspect of the claim appeared to incorporate general damages,

Griffiths v Kerkemeyer [1977] HCA 45; 139 CLR 161 damages, damages under s 100 of the CLW Act, and a claim for recovery of amounts borrowed from others by the plaintiff.

116. *Griffiths v Kerkemeyer* damages and s 100 damages are dealt with later in these reasons.

117. The claims for amounts borrowed from other persons comprised the following:

    (a) $98,000 borrowed from a (named) good friend of the plaintiff; and

    (b) $113,000 borrowed from the plaintiff's older brother.

118. Although not adequately explained in the evidence, the inference that the plaintiff sought to be drawn was that these amounts would not have been required to have been borrowed other than by reason of the accident. The evidence does not demonstrate the reasons that these loans were made or the purposes for which the money was used. Further, having regard to my conclusion that the plaintiff has not proved a causal link between the accident and his current disabilities, even if the loans were incurred as a result of his shoulder or hip conditions, that would not be sufficient to make them recoverable as damages from the defendant.

119. That leaves the question of general damages. Having regard to my conclusions as to the scope of the causally-related injury arising from the accident, the plaintiff's claim to a substantial award of general damages cannot be accepted. I have accepted the opinion of Dr Machart that the accident only had the capacity to cause a soft tissue injury which would have resolved within a number of weeks. The defendant suggested an award of general damages of $20,000. Having regard to my acceptance of the evidence of Dr Machart, that is an appropriate sum, erring, if at all, on the generous side to the plaintiff and is sufficient to incorporate any amount that might have been awarded for interest had it been claimed.

Economic loss

120. The plaintiff initially claimed $1.8 million based upon the proposition that he would have earned $300,000 per year in each of the years 2021 through to 2026. The claim was reduced to 5 years of loss and hench $1.5 million in closing submissions.

121. This is based upon Exhibit 9, a letter dated 9 November 2020. That letter is from a business trading under the name "Canberra Waterproofing". The letter provides:

> Monday, 9 November 2020
>
> Request for Company Credentials & Insurance Documents

Dear Petra Tiling and Ceramics,

We hope this message finds you well.

As we prepared to move forward with assigning work to your team, we kindly request that you provide us with your full company credentials as soon as possible. This includes:

- Waterproofing and Tiling Certificates and licenses
- Current insurance documents (Public Liability, Workers Compensation, etc.)
- Business structure details
- Relevant credentials and qualifications
- Bank account details for payments

Please ensure that your insurance coverage is appropriate for project values ranging between $300,000 to $500,000 per annum, as this reflects the scope of work you may be receiving from us moving forward.

Once we have all the required documentation, we will be able to enter your company into our system and commence allocating jobs.

We look forward to building a successful working relationship together.

Kind regards,

Carl Ibrahim

[telephone number]

[email address]

122. There was no evidence from Carl Ibrahim or any other evidence about the business trading as Canberra Waterproofing beyond that contained in the letter itself.

123. There was evidence of the registration of the business name Petra Tiling and Ceramics commencing in July 2002. The record of registration that was in evidence (Exhibit 9) did not disclose that this was a business name of the plaintiff or of some entity controlled by or associated with the plaintiff.

124. The plaintiff pointed to his Certificate III in General Construction (Wall and Floor Tiling) from the Canberra Institute of Technology dated 26 October 2005 and a further Certificate III in Construction Waterproofing issued by Frontier Institute of Technology dated 21 April 2021: Exhibit 9. Although in his oral evidence the plaintiff referred to meeting someone from CIT at McDonald's for some purposes associated with obtaining a further certificate relevant to the business opportunity with Canberra Waterproofing, it is not clear why this would have been the case, as the only evidence of qualifications from CIT was from many years previously.

125. The plaintiff was 56 years old at the date of the accident and 61 years old at the date of the hearing. The plaintiff submitted that his claim for $1.5 million was in fact a compromise of his claim because he only sought damages in relation to the past and did not claim continuing damages for an additional eight years (amounting to an additional $2,400,000) until the point where he would otherwise have retired.

126. There was some oral evidence given by the plaintiff that, despite receiving a carer pension in relation to care of his wife from about 2010, he continued to do some tiling or waterproofing work. His evidence was that he did no more than was permitted by Centrelink and disclosed all such income to Centrelink. However, no documents relating to Centrelink were tendered and no tax returns or income tax assessments were tendered (or provided to the defendant). The refusal of the plaintiff to disclose any of his tax returns meant that they were not available to support the claim for economic loss.

127. The plaintiff did not give an explanation of the dealings surrounding the sending of the letter of 9 November 2020. Mr Ibrahim was not called to give evidence of any such dealings. There was no evidence of Petra Tiling and Ceramics holding any current insurance at that time. Apart from evidence of registration of the business name, there was no evidence of the business structure. It is not possible to assess the prospects of either any, or any substantial, work being subcontracted from Canberra Waterproofing to Petra Tiling and Ceramics.

128. Had there been some prospect of some work being subcontracted by Canberra Waterproofing to the plaintiff, then it would have been necessary to assess the likely value of that work and the likely profit accruing to the plaintiff. What that exercise would have involved would have depended upon the nature of the work and the business structure operated by the plaintiff. Having regard to the absence of evidence, it is not possible to determine what assessment process would have been involved or the quantum that would have been disclosed. The method of calculating damages adopted by the plaintiff, which is based upon a gross anticipated annual contract value, could not be an appropriate method as it assumes that the quantum of profit is the same as the contract value, ignoring the costs of earning that income.

129. Even if the plaintiff had established causation in relation to the broader range of injuries going beyond temporary soft tissue injuries, the claim for economic loss arising from the Canberra Waterproofing letter has not been proved on the balance of probabilities and no award of damages on the basis of that letter would be appropriate.

130. In circumstances where he has only established causally related soft tissue injury, no award of damages arising from the letter of 9 November 2020 is appropriate.

Out-of-pocket expenses

131. The plaintiff's claim particularised out-of-pocket expenses in the form of medication costs, but the evidence that he tendered in relation to such costs did not include the period immediately after the accident. The first prescription in the schedule of particularised drug expenses was in May 2021. There is some evidence of the plaintiff being prescribed drugs upon his attendance on the day of the accident (some ibuprofen) but no evidence that he filled that script. The evidence did not establish other expenses in the three-month period following the accident.

132. The defendant submitted that upon the acceptance of Dr Machart's evidence, the out-of-pocket expenses incurred by the plaintiff arising from the injury would not exceed $2,000. Having accepted Dr Machart's evidence on causation, I agree with that assessment. That goes beyond what is established by the evidence. However, having regard to the position adopted by the defendant, there will be an award of out-of-pocket expenses consistent with the submission made on behalf of the defendant, namely a sum of $2,000. No additional award of interest is appropriate.

Domestic assistance

133. The plaintiff claimed *Griffiths v Kerkemeyer* damages, or damages under s 100 of the CLW Act, in relation to gardening and house cleaning for a period of 10 years.

134. The particulars provided by the plaintiff indicated that he was no longer able to perform the following functions: mowing the lawn, cleaning the house, tidying up the backyard, doing the shopping, cooking for the family and all the duties of being a carer for his family. He particularised this claim as 10 hours per week of domestic assistance following the accident.

135. Sally Almazaydeh, the 18-year-old daughter of the plaintiff, gave evidence about his current condition and matters relevant to *Griffiths v Kerkemeyer* damages or a s 100 claim. She said that the plaintiff struggled to get out of bed in the morning and to get up after he has been sitting down for too long. He did not do the things that he used to do. The plaintiff used to clean more frequently, but now she does most of the cleaning. He no longer mows the lawn or joins her walking her dog. Sometimes he needs help putting a jacket on. He no longer 'play fights' with her or her little brother. She says that he does not get enough sleep and that his movements have become "duller".

136. Amad Almazaydeh is the plaintiff's older son. He described his father before the accident as being "fit, strong, helpful and happy". He said that since the accident, the plaintiff's movement has been affected. The plaintiff's capacity to help him and his siblings around

the house, his daily activities, and doing things with his grandchildren have also been affected. He observed that movement is painful for the plaintiff when doing things like sitting down or getting up. He can no longer cook. He can no longer mow the lawn. He needs help with shopping. His independence has been reduced. He is more unhappy and grumpy since the accident. He can no longer do physical labour. He is unable to sit for more than about 20 minutes at family gatherings. The plaintiff used to be able to help his son with backyard work after his son's open-heart surgery in February 2024 and help with his son's children but now cannot. His son is now required to get assistance from other people. His son now does outdoor chores for his father.

137. I accept the observations of Sally Almazaydeh and Amad Almazaydeh. Their evidence was not challenged. It was, however, not particularly precise as to the temporal relationship between the accident in question and the changes they observed. The evidence as to the timing of the change was not precise enough to provide significant support for the causal link between the accident and the various conditions referred to.

138. Had causation been established, this evidence would have provided evidence to warrant an award of *Griffiths v Kerkemeyer* damages (reflecting the needs for services provided to the plaintiff) and CLW Act s 100 damages (compensating for the loss of services previously provided by the plaintiff to members of his family). However, as causation has not been established in relation to the broad range of conditions the plaintiff now suffers, and the evidence is insufficient to establish these categories of damages for the limited period of weeks in relation to which Dr Machart said that a soft tissue injury would have affected the plaintiff, no award of *Griffiths v Kerkemeyer* damages or s 100 damages is appropriate.

Contributory negligence

139. I have found that the defendant, when exercising reasonable care in the context of the operation of a fast food restaurant, needed to take into account the potential for customers of varying abilities that may not be paying close attention to hazards in front of them. However, I conclude in this case that the plaintiff failed to take reasonable care for his own safety. When the plaintiff initially walked into the restaurant, he had the opportunity to observe the warning sign and the cleaner mopping the floor in front of him. The position was the same when he returned from the toilet. On both occasions, he was looking down at his wallet (which also contained his mobile phone) or to the side. A person taking reasonable care for their own safety would have recognised the commonly used warning signs and, having been alerted to that presence, would have paid attention to the source of the hazard in its vicinity. In my view, the plaintiff was contributorily negligent and his award of damages should be reduced on that account by 33%.

Summary of damages

140. The damages to be awarded to the plaintiff are summarised in the following table:

Head of damages	**Amount ($)**
General damages (including interest)	20,000
Past and future economic loss	0
Past treatment	2,000
Future treatment	0
Past and future domestic assistance	0
Subtotal	22,000
33% reduction for contributory negligence	(7,260)
Total	14,740

Orders

141. Judgment will be entered for the plaintiff in the sum of $14,740. The defendant wished to be further heard in relation to costs and will be given that opportunity.

142. The orders of the Court are:

(1) Judgment for the plaintiff in the sum of $14,740.

(2) The proceedings are listed at 9:15am on 16 September 2026 for argument in relation to costs.

(3) Each party is directed to provide by email (copied to the other party) to the Associate to Mossop J any proposed evidence in relation to costs no later than 11 September 2026.

I certify that the preceding one hundred and forty-two [142] numbered paragraphs are a true copy of the Reasons for Judgment of his Honour Justice Mossop.

Associate:

Date: