

Queensland coal miner awarded \$1.25m after crashing on drive home after 12-hour shift

By Paul Robinson

Courts

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Mr Kerle had wrapped up four consecutive night shifts at Norwich Park Mine when he crashed. (*ABC News: Megan Hendry*)

A central Queensland coal miner has been awarded more than \$1 million in damages after being injured in a car crash while driving home from work, in a case that has been tipped to change the way mining companies deal with fatigue.

Harold Kerle was driving home at 6:30am in October 2008 after a long night shift at the Norwich Park coal mine near Middlesbrough, north-west of Rockhampton, when he failed to negotiate a slight curve.

Key points:

- Lawyers for mining, contractor and labour hire companies argued Mr Kerle was partly to blame for the crash

He suffered brain damage as a result of the crash and has no memory of the accident or of events leading up to it, according to Supreme Court documents.

In a judgement handed down in the Supreme Court in Rockhampton today, Justice Duncan McMeekin found mining company BHP Mitsubishi Alliance (BMA), contractor HMP and the labour hire company Axial did not do enough to reduce the risk of fatigue.

During the hearing, defence lawyers argued Mr Kerle was partly to blame for the crash.

They said BMA made permanent accommodation available at the mine for workers to rest after a 12-hour shift.

But the court heard Mr Kerle had made up his mind to drive home, regardless of how he felt.

Mr Kerle's barrister said his client may not have been aware of the extent of his fatigue.

Justice Duncan McMeekin awarded the full claim of \$1.25 million, with no discount after ruling out a claim for contributory negligence.

"Perhaps many people would be wary of attempting a five-hour drive after completing a fourth consecutive 12-hour night shift. But the statistics ... support that this was commonplace among mine workers," he said in a Supreme Court of Queensland document.

"The 2008 study showed that 81 per cent of mine workers drove alone in their cars after finishing their roster."

- Mining company said it offered accommodation at the mine for workers after a 12-hour shift
- Mr Kerle's lawyer said his client may not have been aware of the extent of his fatigue

Fatigue management brought into question

During the civil trial in July, Professor Drew Dawson from CQ University gave evidence about the difficulties for mining companies in drawing up regulations to control fatigue-related crashes.

Professor Dawson told the court that since a parliamentary inquiry in 2001, mining companies had attempted to codify and regulate solutions.

But he said those rules would often not take into account real-life situations and the latest scientific knowledge.

After court, CFMEU Mining and Energy Division president Steve Smyth described the case as a "landmark decision" which could change the way mining companies respond to fatigue.

"The mines have been having incidents when workers have dozed off, micro-sleeps, but this is a landmark decision because the Supreme Court's actually made a decision and ruled on it and it's going to have the ripple effect and other effects through the industry now," he said.

"Industry is going to have to get their heads together and work out how they deal with it, not give it lip service, but give it the appropriate vigilance it requires to get it right."

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