

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN
[SQUARE BRACKETS]

**SUPPRESSION ORDERS EXIST IN RELATION TO ASPECTS OF THIS
JUDGMENT PURSUANT TO S 205 CRIMINAL PROCEDURE ACT 2011: SEE
PARAGRAPH [19].**

<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360354.html>

**IN THE DISTRICT COURT
AT QUEENSTOWN**

**CRI-2017-059-000529
[2018] NZDC 4732**

WORKSAFE NEW ZEALAND
Prosecutor

v

MILLER FOODS LIMITED TRADING AS REMARKABLE TORTILLAS
Defendant

Hearing: 12 March 2018

Appearances: N L-L K Szeto for the Prosecutor
E L Keeble for the Defendant

Judgment: 12 March 2018

NOTES OF JUDGE J J BRANDTS-GIESEN ON SENTENCING

[1] I am conscious of the time and that people have come here, some from a distance. As I indicated earlier, I will be giving full reasons in due course.

[2] I have to acknowledge, and it has already been acknowledged, that [the victim] has suffered a very serious injury - the amputation of the tips of three fingers. The effect it has had on his ability with handwriting, on his music, on his ability to touch and feel, is very significant. He is a young man and life is never going to be quite the same for him. It will limit many aspects of his life, recreational as well as vocational. All that could have been avoided, had there been proper training and had the machine been much safer than it was at the time of the accident.

[3] It has been suggested this machine was not quite as faulty as [the victim] says it was. Sometimes machines do play up more for one person than another, and that is often a reflection of the training people have had. The fact of the matter is that a factory machine should be pretty well fool-proof.

[4] One of the difficulties in a small factory is often that there are no engineers or fitters onsite, and people are reluctant to call in outside help because they would have to be paid for, no doubt at an on-call and hourly rate.

[5] I have come to the conclusion I should deal with it in this way. First, as far as reparation is concerned, I believe the figure of \$45,000 is appropriate. That is higher than has been submitted for by the defendant, and it is indeed on the higher range suggested by the prosecution, but having listened carefully to what the victim impact statement said, I consider that higher figure is not an excessive figure.

[6] Accordingly, I make an order that reparation of \$45,000 be paid. In addition to that, there is the shortfall in the physiotherapist fees of \$541 and I direct that be paid. So, too, the shortfall in ACC of \$6741.97. Taking all those figures together, that is the reparation figure I order.

[7] The question of costs also arises. Apart from instructing outside counsel on a brief matter which I suspect may have been an adjournment, all these costs have been incurred by WorkSafe itself on an in-house basis. For that reason, and also for the reasons of affordability, I do not make an order for costs in this case.

[8] The question then arises as to what is an appropriate starting point for a fine. Every case stands on its own facts. In this situation, for reasons I will give in detail but not today, I consider a starting point of \$600,000 is appropriate.

[9] I note the offer of reparation, the remedial action that has been taken, and the co-operation that has been given by the company, which of course has shown great remorse because for any company this sort of accident is horrendous, not just from an economic point of view but also from a personal point of view.

[10] I am sure [the victim] was a valued member of the staff, I suspect he would have been popular, and to see real hurt being suffered by a staff member is an ordeal for a company. There is always the overlay of the economic cost but I certainly do not think that concern should in any way detract from the remorse that has been expressed. I would grant a 25 percent discount for those factors. That brings me down to \$450,000, and for the early guilty plea a further deduction of 25 percent.

[11] I think the proper process with sentencing is for these discounts to be applied successively rather than cumulatively. We come to an end result of \$337,500 as an appropriate penalty.

[12] As in so many things in life, 'the coat has to be cut according to the cloth'. Here, it is agreed by both the prosecution and defence,[financial details deleted]. No doubt this is a company that produces a valuable product and is generally of value to the community.

[13] There is little doubt in what I have already directed to be paid, whether it is covered by insurance or not, and bearing in mind the difficulties this company has had to overcome as a result of this accident, that there is plenty of incentive for the company to ensure it will be far more careful than it was up to the time of this accident.

[14] The defendant is a small company. It is not an enormous public company where a fine is often simply regarded as 'an expense of doing business'.

[15] I would expect this experience will act as an incentive in future, not just to reach for high standards but to actually achieve them. That is often a moving target. The company must make sure it does not cut corners in good design, in training, in monitoring, and in maintenance of staff and machinery. As industry standards increase, one would expect this company would also continue to meet those new standards.

[16] It is unfortunate that so soon after it started operation it has had such an event happen, but a machine that breaks down frequently - however frequent that may be - and which does not have a lockout device, is, in my view, inherently dangerous.

[17] In this case, I suspect [the victim] may have had inadequate training. He is a very young man. He is not an engineer. He had not worked for the company or its predecessor for terribly long. In any event, people on the factory floor have to be protected, sometimes even protected from themselves.

[18] I will give my full reasons in due course. This is a sad day for everyone and I do hope [the victim] will be able to reshape his life and the company will reshape some of its practices.

[19] I suppress the financial details of the company. They have had to come before the Court; they have had to be made available to WorkSafe; but it is not appropriate for them to become part of the public domain because they are commercially sensitive.

J J Brandts-Giesen
District Court Judge