



## HIGH COURT OF AUSTRALIA

3 September 2025

MICHAEL STEWART BY HIS LITIGATION GUARDIAN CAROL SCHWARZMAN  
v METRO NORTH HOSPITAL AND HEALTH SERVICE (ABN 184 996 277 942)  
[2025] HCA 34

Today, the High Court unanimously allowed an appeal from a judgment of the Court of Appeal of the Supreme Court of Queensland. The appeal concerned reasonableness in the assessment of loss where an injured party claims damages on the basis that they will live in a home setting rather than in an institutional setting.

The appellant, Mr Stewart, was catastrophically injured as a result of the negligence of the respondent ("MNHHS"). Prior to his injury, he lived in his own home with his brother. His son and dogs would often stay at home with him. At the time of trial, Mr Stewart was being cared for in an institution without his son and dog. He was miserable at the institution and his physical health was deteriorating, in part due to lack of engagement with therapy. Mr Stewart sought compensation for his losses, including the cost of nursing and medical care in a (rented) home of his own where his son and dog could stay.

The primary judge held that Mr Stewart could recover for the cost of nursing and medical care at the institution and for the additional cost of an external care assistant to provide more frequent therapy and exercise. But, balancing any benefits to his physical health against the substantial increase in the cost of care if Mr Stewart were to reside at and receive the required care in his own home, the trial judge held that an award of compensation to reflect that increased cost would be unreasonable. The Court of Appeal upheld that balancing exercise in terms of both the reasoning and the conclusion.

The High Court held that the approach taken to reasonableness was erroneous. The earlier decision of the Court in *Sharman v Evans* (1977) 138 CLR 563 had been misunderstood as requiring a balancing by the court of the health benefits to a plaintiff against the financial cost when assessing whether the plaintiff can recover damages for the increased cost of living in a home setting due to the consequences of the defendant's tort. This was essentially the approach of the trial judge and of the Court of Appeal. However, the evaluation of the reasonableness of Mr Stewart's response to repair the consequences of the tort was not discharged by balancing only the health benefits against the increased cost. An important factor was the plaintiff's choice to live in a home setting.

The proper approach to the assessment of the reasonableness of compensation starts from the premise that the plaintiff is entitled to compensation in a sum which, so far as money can do, will put them in the same position as they would have been in had the defendant not acted negligently. In Mr Stewart's circumstances, his choice of home care was a reasonable means of repairing the consequences of the tort. As Mr Stewart acted reasonably in seeking to live at home, the onus then fell upon MNHHS to establish that part or all of the claimed cost of home care could be avoided by an alternative that was unreasonably refused. However, MNHHS did not establish that part or all of that cost could be avoided but for an unreasonable decision by Mr Stewart to refuse a proffered alternative option. In other words, MNHHS did not show that Mr Stewart had failed to mitigate his loss by acting unreasonably in refusing such an alternative option.

*This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*