



*L. M. G.*

## Transcript of Proceedings

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Date: 17 April, 2003

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Claim No 72 of 2000

JAMES WARWICK MANNING

Applicant (Plaintiff)

and

CAPE TIMBERS PTY LTD  
(ACN 075 692 885)

Respondent (Defendant)

CAIRNS

..DATE 14/04/2003

JUDGMENT

**WARNING:** The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: Shariana Manning and Sirbastian James Manning are the children of James Warwick Manning, the plaintiff in these proceedings. Mr Manning died in September 2000 leaving those children as his sole beneficiaries. The children were respectively born on the 2nd of June 1986 and the 17th of April 1988.

Mr Manning had been injured in a work-related incident on 23rd October 1997. The applicants assert that in respect of the injuries which the deceased received at that time he was entitled to make a claim for damages, but that claim on which these proceedings are based was done on a conditional certificate issued by WorkCover Queensland. No unconditional certificate has been issued because by the time of his death no assessment had been made as to the extent of his injury. There is some doubt now whether, because of his death, such an assessment can be made. This is particularly so in respect of the deceased's psychiatric condition, which has not been the subject of any finality in medical reports, nor has there been an opportunity for the medical assessment tribunal to make any assessment itself. There is also some doubt whether the personal representatives of the deceased could undertake the various pre-Court procedures on behalf of the deceased.

These are matters that do not arise for resolution but they are to be taken into account by me in determining whether the proposed compromise is a proper one in the interests of the applicants.

The basis of the claim of the applicants is really one for support from the deceased for the period between the date of his injury and his death. The children have no claim based on the fact that his death itself was work related. As a consequence, the amount to which they are entitled is really quite small. The compromise sum of \$40,000 is well within the range - it is to the upper end of the range - of counsel's opinion which is put before me and which was used as the basis for the compromise of the action.

I have had the advantage of reading detailed opinions prepared by Mr Ryall of counsel. I have now this morning had the advantage of reading an opinion by Mr R J Douglas SC identifying the position which the defendant would take at the hearing, and it must be said there is doubt surrounding the outcome of any determination of the rights of these applicants in the circumstances. That being the case, I have no hesitation in sanctioning the settlement in the term which has been outlined to me.

The material also discloses that if the compromise is accepted it will be done as a bar or discharge to any further claims that might be made on behalf of the applicant children.

...

HIS HONOUR: I will delete all the words after the words  
"these proceedings" and before the words "is hereby  
sanctioned".

I will finish my orders by saying I make orders in terms of  
the amended draft initialled by me and placed with the papers.

...

HIS HONOUR: I make a further order in the matter of Manning  
that the advices of counsel are to be placed in a sealed  
envelope marked "Not to be opened except by the leave of the  
Court or a Judge". Thank you.

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