



Transcript of Proceedings

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Date: 13 September, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

No 46 of 1997

VERONICA MARY MACUMBER

Plaintiff

and

SHANE DONALD ZANOLOTTI and
FAI GENERAL INSURANCE COMPANY LIMITED
(ACN 000 327 855)

Defendant

CAIRNS

..DATE 07/09/2004

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: This is an application for the transfer of a claim for damages from the Cairns registry to the Brisbane registry.

The plaintiff chose to commence her action in Cairns on the 20th of March 1997. The accident from which the claim arises occurred on the 22nd of May 1995, and liability for her damages was admitted on the 29th of February 1996. The plaintiff is aware that the action was one for assessment of quantum of damages and commenced with that knowledge.

The plaintiff now resides on the Gold Coast and has retained lawyers in Brisbane. The defence solicitors and counsel are based in Brisbane. A good many of the medical practitioners who have examined the plaintiff for the purpose of assessing damages are also located there.

There remains in Cairns some potential witnesses in the form of health professionals who provided early treatment for the plaintiff, and also some relatives and friends. But nonetheless, if the trial is to proceed in Cairns there will be a number of persons having to travel to Cairns for the purpose of the trial.

I discount the likelihood of medical practitioners travelling to Cairns since the practice very much these days is for the evidence of medical witnesses to be taken by telephone.

The question of the plaintiff and persons supporting her coming to Cairns would on its face seem to be a matter where the expense for such travel and accommodation would have to be paid by the plaintiff and not as a cost reasonably arising out of litigation.

The provision upon which the transfer is based is section 289 of the Supreme Court Act which provides that transfer might be made where it can be dealt with more expeditiously, cheaply, conveniently, and advantageously in another place. Where the defendant seeks a change of venue against the will of the plaintiff in circumstances where the action was started in a place where the tort was committed and where the early treatment was undertaken then there is an onus of showing that the balance is very clearly favours the trial in Brisbane. In circumstances where that is opposed that may not be an easy onus to achieve.

On the material before me I am not satisfied that the action can be tried more expeditiously in Brisbane given the state of the civil list of matters awaiting trial in Cairns and the times available for hearing. As to whether the case can be more cheaply heard in Brisbane I discount the fact that the defendant's lawyers are in Brisbane. This is a matter of choice, the defendant could just as easily retain lawyers in Cairns, and I take into account that the plaintiff's legal representatives have not yet been firmly decided upon.

They seem to me to be the two major matters dealing with convenience and advantage. No other matters have arisen which would outweigh the significance of those matters. Therefore, I am not satisfied that the defendant has satisfied the onus of proving that the balance for the matter being tried expeditiously, cheaply, conveniently, or advantageously has been shown to favour a trial in Brisbane.

I dismiss the application.

...

HIS HONOUR: There is a second application that relates to the dispensation of the signature of the defendant's solicitors for the matter to be listed for trial. That application was not opposed if my decision as to the venue was that the matter would remain in Cairns, so I will order that the defendant's signature on the request for trial be dispensed with, and that the action be listed on the list of matters awaiting trial in Cairns.
