



Transcript of Proceedings

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Date: 13 December, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

No 458 of 2004

ETHEL THELENA BOSUEN

Plaintiff

and

WILLIAM PEINKINNA and
SUNCORP METWAY INSURANCE LTD

Defendants

CAIRNS

..DATE 09/12/2004

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 on the part of the defendants that the plaintiff undergo a further medical examination pursuant to section 46 of the Motor Accident Insurance Act.

The plaintiff opposes the application on the basis that it is unnecessary, and on the basis that there was a prior agreement between the parties that the medical examinations undertaken for the compulsory conference, which has recently been held, were sufficient and satisfactory.

The plaintiff, as a result of the motor vehicle incident, suffered incomplete tetraplegia at the C6 level. It is a very serious injury, and it is one in respect of which damages will be assessed at quite high levels.

The earlier report from Dr Powell, a physician and specialist in geriatric medicine and rehabilitation, indicated that the plaintiff had a pre-accident condition of obesity, and has suffered subsequent diabetes melitis. These are matters which are material to the question of any reduction in the plaintiff's longevity arising as a consequence of her incomplete tetraplegia.

Dr Geraghty, who is the treating doctor for the plaintiff, has commented upon this issue in an earlier report. The difficulty about obtaining update medical reports of the plaintiff's condition arises from the fact that she resides at

Napranum, a remote Aboriginal community near Weipa on the western shores of Cape York.

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She would find it difficult to travel to any major centre where expert medical advice can be obtained, and it is probably a factor in her not having routine specialist medical treatment and assessment at present.

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The defendant proposes that the plaintiff be examined by one physician chosen from a panel of three physicians. That physician is prepared to fly to Weipa, and then to visit the plaintiff in her own home.

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There would be advantages not only in the assessment of the plaintiff's present condition from having a visit so structured, but also of having a medical opinion as to the circumstances in which the plaintiff lives.

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The plaintiff is concerned that that would give the defendant a forensic advantage by having an expert nominated by them to bring about the examination.

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Each expert, of course, is expected to dispassionately and impartially express opinions in these matters. So I do not accept that there is necessarily any forensic advantage, particularly when the plaintiff has the opportunity to choose the expert from a panel of three which is being proposed, and that includes one of the experts who has previously advised the plaintiff's legal advisors.

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This case, as I have mentioned, concerns significant injuries. The quantum of damages will inevitably be high, and I take the view that it is in the interests of the parties to ensure that the plaintiff's medical condition is properly assessed and, indeed, I would have thought ought to be assessed on some periodic basis.

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It is unlikely that this matter will come to trial before the middle of next year, and it seems to me in all the circumstances that a medical examination undertaken at this time will be a useful part of the evidence which will ultimately be led at the trial.

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I would urge the parties to discuss the choice of the consultant physician who should undertake the examination, and perhaps arrange for the physician to examine the plaintiff on behalf of both sides. That way it will minimise any suggestion of any forensic advantage, and the expert's position with the Court will be sufficiently highlighted.

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But I propose to allow the application for medical examination which will be undertaken at a time and on terms which are to be agreed. And failing agreement, to be further raised with the Court.

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HIS HONOUR: I give the parties liberty to apply two days
notice to the other party if they cannot reach agreement as to
the terms and conditions of the examination.

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HIS HONOUR: No order as to costs.

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