

SUPREME COURT OF QUEENSLAND

CITATION: *Ibbs v Woodrow & Anor* [2002] QCA 298

PARTIES: **JANE IBBS**
(plaintiff/appellant)
v
JOHN LESLIE WOODROW
(first defendant/first respondent)
QBE INSURANCE LTD ACN 000 157 899
(second defendant/second respondent)

FILE NO/S: Appeal No 11536 of 2001
DC No 679 of 2001

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Order

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: Judgment delivered 21 June 2002
Further Order delivered 16 August 2002

DELIVERED AT: Brisbane

HEARING DATE: 24 April 2002; 21 June 2002

JUDGES: Davies and McPherson JJA and Atkinson J
Further Order of the Court

ORDER: **The second respondent pay the appellant’s costs of the trial, the appeal, and this application as to costs, to be calculated on the indemnity basis.**

CATCHWORDS: PROCEDURE – COSTS – DEPARTING FROM THE GENERAL RULE – ORDER FOR COSTS ON INDEMNITY BASIS – where appellant made offer of settlement – where offer not accepted – where court awarded damages no less favourable than offer of settlement – whether second respondent should be ordered to pay indemnity costs
Uniform Civil Procedure Rules 1999 (Qld), r 360, r 361

COUNSEL: J G Crowley QC, with R W Trotter, for the appellant
R M Treston for the respondents

SOLICITORS: Shane Ellis Lawyer (Gold Coast) for the appellant
Quinlan Miller & Treston for the respondents

[1] **THE COURT:** After a trial in the District Court judgment was given for the plaintiff. The plaintiff successfully appealed to this court in relation to the quantum

of damages and this Court set aside the judgment of the trial judge and substituted a higher award of damages.

- [2] When the judgment of this Court was delivered, the appellant sought an order that the second respondent pay its costs on the indemnity basis on the ground that the award made by this Court was no less favourable than the appellant's offer of settlement. The sole question for determination is whether the second respondent should be ordered to pay the appellant's cost on an indemnity basis.
- [3] On 6 June 2001, the second respondent delivered a formal offer of settlement to the appellant in the sum of \$60,000.00 with costs on the standard basis. On 15 June 2001, the appellant delivered a formal offer of settlement in the sum of \$75,000.00 with costs on the standard basis. Neither offer of settlement was accepted and the case proceeded to trial.
- [4] On 27 November 2001, judgment was delivered for the appellant in the sum of \$52,889.44. Since this amount was less than the second respondent's formal offer of settlement, the learned trial judge ordered, in accordance with r 361 of the *Uniform Civil Procedure Rules* ("UCPR") that the second respondent pay the appellant's costs up to the date of the offer and that thereafter the appellant pay the second respondent's costs.
- [5] On 21 June 2002, this Court set aside the original judgment and entered judgment for the appellant in the sum of \$86,681.94. Since this sum was more than the appellant's offer of \$75,000.00, the appellant has sought an order that the costs of the trial, the appeal, and this application as to costs should be assessed on an indemnity basis, in accordance with r 360 UCPR.
- [6] Rule 360 states:
- “(1) If –
- (a) the plaintiff makes an offer to settle that is not accepted by the defendant and the plaintiff obtains a judgment no less favourable than the offer to settle; and
- (b) the court is satisfied that the plaintiff was at all material times willing and able to carry out what was proposed in the offer;
- the court must order the defendant to pay the plaintiff's costs calculated on the indemnity basis unless the defendant shows another order for costs is appropriate in the circumstances.”
- [7] This rule provides that in the ordinary case, where a plaintiff obtains a judgment no less favourable than its offer to settle, the court must order the defendant to pay the plaintiff's costs calculated on the indemnity basis. The rule will only be displaced if the defendant discharges the onus of showing that another order for costs is appropriate.
- [8] The second respondent in this case argues that the circumstances of the plaintiff's claim had been altered between the date of settlement and the date of trial and that, therefore, the plaintiff's offer could not have been accepted at the earlier time and it should not be ordered to pay indemnity costs. In support of this argument, the second respondent submits that the claim for future economic loss, calculated by this Court on the basis that the plaintiff would lose one day of employment per

week for a period of 18 years, was only revealed in its present form three weeks before the trial when the appellant reduced her working hours by one day per week. The second respondent further submits that the extent of the appellant's pain, suffering, loss of amenities and loss of enjoyment of life was not revealed until statements by the appellant's friends, family and work colleagues were provided on 20 August 2001, and a statement of the appellant was delivered dated 30 October 2001.

- [9] However, these details of the loss suffered did not materially alter the nature of the claim. The appellant's statement of claim included a claim for future economic loss and outlined each of the injuries that the appellant relied upon at trial and before this Court. Although additional details of the claim for future economic loss and general damages were provided after the date of the offer of settlement, the substance of the claim was not altered between that date and the date of trial. The information added after the date of the offer of settlement was in no way unusual or unpredictable.
- [10] The second respondent has, therefore, failed to show why an order for indemnity costs should not be made and that will be the order of this Court.

Order:

- [11] The second respondent pay the appellant's costs of the trial, the appeal, and this application as to costs, to be calculated on the indemnity basis.