SUPREME COURT OF QUEENSLAND

CITATION:	*Bell v Australia Meat Holdings P/L* [2003] QCA 209
PARTIES:	**LESLEY ERNEST BELL** (applicant/respondent) v **AUSTRALIA MEAT HOLDINGS PTY LIMITED** ACN 011 062 338 (respondent/appellant)
FILE NO/S:	Appeal No 11162 of 2002 SC No 869 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Appeal from interlocutory decision
ORIGINATING COURT:	Supreme Court at Townsville
DELIVERED EX TEMPORE ON:	23 May 2003
DELIVERED AT:	Brisbane
HEARING DATE:	23 May 2003
JUDGES:	Davies and Jerrard JJA and Wilson J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**1. Appeal dismissed** **2. Appellant to pay respondent's costs to be assessed**
CATCHWORDS:	WORKERS' COMPENSATION - WORKERS' COMPENSATION - MISCELLANEOUS MATTERS - OTHER MATTERS - where respondent injured at work - where injury described in notice of claim as "multi level disc injuries" to "lower back" - where injury described in notice of assessment as "mild aggravation of pre-existing degenerative disease in lumbosacral spine" - whether injuries described are the same injuries - whether notice of claim complied with s 280 *WorkCover Queensland Act* 1996 *WorkCover Queensland Act* 1996 (Qld), s 34, s 280
COUNSEL:	G J Cross for the appellant A J Moon for the respondent
SOLICITORS:	Abbott Tout for the appellant Connolly Suthers (Townsville) for the respondent

DAVIES JA: This is an appeal from a declaration made in the Supreme Court on 13 November 2002 that a notice described as a notice given by the applicant, who is the present respondent, to the respondent, who is the present appellant, on 15 August 2002 is a notice of claim which complies with s 280 of the "WorkCover Queensland Act" 1996 ("the Act"). That notice is dated 13 August 2002 but was apparently served on the appellant on 15 August.

The notice describes the injury as having occurred at about 6.30 a.m. on 24 August 1999. The injury is described in the notice as "multi level disk injuries"; the part of the body said to have been injured is described as "lower back"; and the degree of permanent impairment alleged to have resulted from the injury is stated as "10%".

A central question argued and determined in the primary court was whether the injury so notified was the same injury as that referred to in the notice of assessment by the appellant, pursuant to s 203 of the Act on 7 November 2001. The appellant's letter of 27 August 2002 indicated that it was not satisfied that the notice of claim complied with s 280 because, it said, "Your client states that he has a multi level disk injury to his lower back. Your client's claim is limited to a 'mild aggravation of pre-existing degenerative disease in the lumbosacral spine'".

The words quoted by the appellant in that letter were taken from the notice of assessment which was relevantly in the following terms:

"As assessed by Dr Gibberd on 22 October 2001 - Code 4413 (Definition of this code pursuant to *WorkCover Queensland Regulation* 1997, "Mild aggravation of pre-existing degenerative disease in lumbosacral spine with subjective symptoms, but no significant clinical findings other than degenerative changes on X-ray")".

It was further stated in that notice that it had been determined as a result of the medical assessment that the respondent had not sustained permanent impairment from his injury. The notice also specified the date of injury as 24 August 1999.

The learned primary judge in making the declaration, answered the question to which I have just referred, by concluding that the injury the subject of the notice of claim was a quite different injury from that referred to in the notice of assessment. However, his Honour concluded also, contrary to the appellant's contentions, that the notice of claim complied with s 280 notwithstanding that.

Perhaps somewhat surprisingly his Honour reached his conclusion that the injuries specified in each of the notices were different injuries notwithstanding that the respondent persistently asserted, and still asserts, that the injury the subject of his notice of claim and the injury the subject of the notice of assessment is the same injury. These assertions were made in the respondent's solicitor's letters of 3 September 2002, 23 September 2002 and 17

October 2002 and the respondent seeks to advance this contention in his notice of contention in respect of which he sought and has been granted, an extension of time.

The term "injury" is defined in s 34 of the Act as a "personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury". It is plain that in that subsection "personal injury" is used in its ordinary meaning of damage to the body.

In s 34(2) there is an immaterial exception to the requirement in that definition that the employment be a significant contributing factor to the injury. And then in s 34(3) injury is said to include, amongst other things, an aggravation of a personal injury or of a disease.

Notwithstanding his Honour's conclusion to the contrary I do not think that there is any reason to reject the respondent's consistent contention that the injury described by him in his notice of claim is the same injury as that which had been assessed and notified in the notice of assessment. It is, in each case, the personal injury which the respondent suffered to his lower spine at the date and time to which I have referred.

It is not suggested by the appellant that the respondent suffered more than one injury and, of course, the respondent has contended to the contrary. Moreover the descriptions "aggravation of pre-existing degenerative disease of the

lumbosacral spine" in the notice of assessment and "multi level disk injuries" in the "lower back" in the notice of claim are not by any means necessarily inconsistent. They both describe injuries to the lower spine which, possibly on both views, aggravated a pre-existing degenerative condition.

The descriptions of injury in the notices differ in two respects. The first is that the description in the notice of assessment is more specific than that in the notice of claim. However, the very generality of the second description should not prevent a conclusion, accepted and even advanced by its author, that it is of the same injury as that described in the earlier notice of assessment.

The second difference between the two descriptions is in their assessment of the seriousness of the injury and of its consequences including its permanent consequences. It seems unlikely that the respondent would accept that it caused only mild aggravation of pre-existing degenerative disease and it is plain that he asserts, contrary to the appellant's assessment, that it has caused a permanent disability of 10 per cent. He may also contend that to describe it merely as an aggravation of a pre-existing degenerative disease is to understate its seriousness.

However these differences cannot, in my opinion, justify the conclusion that the respective descriptions are of different injuries. Rather they are descriptions of the same injury in different ways; and it is unsurprising, I think, that the

respondent describes it in an apparently more serious way than the appellant.

Once it is seen, as I think it is, that the injury referred to in the two notices are the same injury, the question in issue between the parties in my opinion resolves. That is because, if the injuries are the same, the notice of claim is, as his Honour held, a notice of claim in compliance with s 280 of the Act. The only basis upon which the appellant has contended that the notice of claim did not comply with s 280 depended on the conclusion that the injury to which it referred was an injury different from that which has been assessed.

Although, therefore, my reasons differ from those of the learned primary judge, in my opinion, the declaration he made was properly made and I would, for the reasons I have given, dismiss the appeal. It is unnecessary to consider whether and, if so, in what circumstances where an injury has been assessed a notice of claim in respect only of some other injury may nevertheless be a notice in compliance with s 280.

JERRARD JA: I agree. I consider the notice given under section 280 in this matter satisfies event the test required in paragraph 9 as a dissenting judgment of Williams JA in Lau v. WorkCover Queensland. It is an injury which has been the subject of prior assessment.

WILSON J: I agree for the reasons advanced by the learned presiding Judge.

DAVIES JA: The appeal is dismissed.

MR MOON: I seek costs, if your Honour pleases.

DAVIES JA: You can't say anything about that Mr Cross?

MR CROSS: Your Honour, the only matters I raise in relation to that are the - if the decision at first instance was correct that there was separate injuries then it was an arguable case - or extremely arguable case, that the - a notice of claim couldn't be compliant given that there be no assessment of that separate injury and the notice of claim, in essence, had no assessed injury and could never have been compliant. They're the only issues I raise, your Honour.

DAVIES JA: Thank you.

DAVIES JA: The appellant to pay the respondent's costs to be assessed.