SUPREME COURT OF QUEENSLAND

CITATION:	*Bourboulas v Torrent & Anor* [2003] QCA 262
PARTIES:	**SOPHIA BOURBOULAS** (plaintiff/applicant) **v** **JENNIFER TORRENT** **SUNCORP METWAY INSURANCE LIMITED** ACN 075 695 966 (defendants/respondents)
FILE NO/S:	Appeal No 210 of 2003 DC 2782 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Application for leave s118 DCA (Civil)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	20 June 2003
DELIVERED AT:	Brisbane
HEARING DATE:	20 June 2003
JUDGES:	McPherson and Jerrard JJA, and Atkinson J Separate reasons for judgment of each member of the Court, each concurring as to the orders made.
ORDER:	**Application dismissed with costs**
CATCHWORDS:	APPEAL & NEW TRIAL – PRACTICE & PROCEDURE – QUEENSLAND – WHEN APPEAL LIES – BY LEAVE OF COURT – GENERALLY – s 118 DCA application for leave to appeal – whether giving notice under *Motor Accident Insurance Act* automatically makes the applicant ineligible for the application of s 31(2) of the *Limitation of Actions Act*
COUNSEL:	R A I Myers for the applicant D A Skennar for the respondent
SOLICITORS:	Suncorp Metway Insurance Limited for the applicant James Walker Solicitor for the respondent

McPHERSON JA: This is an application for leave to appeal against a decision in the District Court granting an extension of time to the plaintiff for bringing an action against the applicant/respondent - that is, the applicant/respondent in this Court arising out of a motor vehicle accident. The issues involved in the primary application before the District Court were and are essentially matters of fact and there is, in my view, no reason for supposing the careful decision of Judge McGill given below was wrong or that his Honour's discretion miscarried in any way.

There was evidence on which his Honour's findings can properly be supported as well as the inferences that he drew from that evidence. It is, however, suggested in the written outlines that there is a question of law at issue which is said to arise, as I understand it, in this way. The Motor Accident Insurance Act 1994 makes it a condition precedent to any action being brought by a claimant for damages that notice of claim should be given furnishing the specified particulars or information within a certain time of the injury being sustained. The objects of that legislation are, it would appear, to encourage settlement of such claims to promote rehabilitation and no doubt also to deter fraudulent claims from being made.

It is argued by the applicant before us, in effect, that if a claimant is in a position to give such a notice then she must necessarily also have been aware of a material fact or facts

of a decisive character within the meaning of section 31(2) of the Limitation of Actions Act 1974 and so, by virtue of that circumstance, disqualified from obtaining the necessary extension. However, limitation statutes which have a long history going back at least to 1623 serve a different purpose from the provisions of the much more recent Motor Accident Insurance Act. Their function is to limit stale claims and it has long been settled that they serve to bar the remedy and not the right. The question whether the Act will or does operate to do this in a particular case depends on the limitation defence being expressly raised and pleaded. If not pleaded it is no bar to the action being brought. In that, and other important respects, the two statutory regimes are quite dissimilar.

Quite apart from that consideration the question for the learned Judge in this case was, in the end, simply or straightforwardly, whether or not the plaintiff satisfied the requirements of section 31(2). It was a question of fact and of fact alone which was determined in her favour. There was evidence, as I have already said, on which the Judge was entitled to reach the conclusion he did and exercise his discretion in the way that he did. The fact that the plaintiff had given notice of claim under the Motor Accident Insurance Act did not automatically or necessarily signify that she was unable to bring herself within the relevant provision of the Limitation Act.

The statutory criteria are not the same. A person is perfectly capable of satisfying one of them without falling foul of the other. By which I mean section 31(2). That was, as the Judge found, the case here. The application has no other justification for attracting the appellate intervention of this Court and as an application for leave it has to my mind no merit at all and should be dismissed with costs.

JERRARD JA: I agree with the order proposed.

ATKINSON J: So do I.

McPHERSON JA: The order is that the application for leave to appeal is dismissed with costs.