

REVISED COPIES ISSUED  
State Reporting Bureau

Date: 14 December, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

FRYBERG J

QSC [2004] 441

No 10037 of 2004

SUNCORP METWAY INSURANCE LIMITED  
(ACN 075 695 966)

Applicant

and

STANKA JOVANOVIC

First Respondent

and

DRAGUTION JOVANOVIC

Second Respondent

BRISBANE

..DATE 10/12/2004

ORDER

**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 by an insurer under the Motor Accident Insurance Act for a declaration that a compulsory conference did not take place on the 4th of November 2004. Strictly, I suspect that the declaration which is sought is not so much that the conference did not take place as that the respondents failed to comply with their obligations under the Act at the conference. Nothing turns on that however.

The respondents are persons who have given the applicant notices of claim under the Act. The hoops which the Act creates have been jumped through by the parties up to the point of the compulsory conference which was called by the parties without a mediator on the 4th of November 2004. At the conference the representative of the applicant sought to ask questions to the respondents and demanded that the respondents answer those questions directly. The respondents are persons whose first language is not English and although they have a reasonable understanding of English they sometimes require assistance with the language.

At the conference they refused to answer directly to the applicant but expressed their willingness to answer through their legal advisers who were present. The applicant asked one question namely, "Are you an Australian citizen?" and the lawyers for the respondents renewed their objection to that proceeding and the conference went effectively no further.

The applicant's frankly admitted purpose in wanting to question the respondents directly was to assess their credibility. The applicant has disclosed on this application a considerable amount of material which shows that there is grave reason to doubt the respondents' credibility. The applicant submitted that it ought to be permitted to not only to ask the questions but that it was entitled to have personal answers from the respondents to its questions relating to credibility in order that it might form a view about the credibility of the respondents and therefore be in a position to make an offer of settlement in the event that the prima facie doubts which it has about the respondents' credibility were dispelled.

From my own experience in having regard to the material in the applicant's evidence, I gravely doubt that there was any likelihood that that suspicion would have been dispelled by any amount of questioning but that need not be finally determined.

The applicant puts its claim for a declaration on a very broad basis. It submits that in any case where it is appropriate, (and I interpolate that the description of "where it is appropriate" extends to cover any case where credibility is an issue such as it is in the present case), it is entitled to adopt the procedure which I have outlined by reason of the provisions of section 51B of the Act. It relies in particular on subsections (9) to (11):

"(9) Each of the following is a conference participant-

1

- (a) the claimant or the claimant's guardian;
- (b) a person authorised by the insurer to settle the claim on the insurer's behalf.

(10) Each conference participant must (unless he or she has a reasonable excuse) attend the compulsory conference and actively participate in an attempt to settle the claim.

10

(11) The compulsory conference may be conducted, if the parties agree, by telephone, closed-circuit television or another form of communication allowing contemporaneous and continuous communication between the parties."

20

Section 51B is part of a sequence of sections designed to make provision for the parties to attempt to settle the claim before Court proceedings. It is apparently the purpose of the bracket of sections, indeed of the whole Act, to attempt to save the parties money by avoiding litigation.

30

Whether the sections achieve that purpose is not altogether clear. However, the scheme in relation to compulsory conferences provides that either party may call a conference at an agreed time or place or after a relevant date has passed at a reasonable time and place nominated by the party calling the conference.

40

The parties are entitled "for good reason" to dispense with the conference by agreement. The Act gives no indication or perhaps only the most general indication of what might constitute good reason. A compulsory conference may be held with a mediator if the parties agree.

50

...

1

HIS HONOUR: The Act provides at some length for disclosure of material between the parties before the conference and also contains extensive powers for an insurer to interrogate a claimant. The applicant submits however, that these powers are not adequate for its purposes because they do not extend to permitting it to conduct oral examination of the claimant and that that is the only way by which the applicant could form a view as to the credibility of the claimant.

10

20

In my judgment the wording of the three sections referred to above and the Act in general is quite inadequate to achieve the purpose for which the applicant contends. The purpose of the compulsory conference is to enable negotiations to take place between the parties with a view to settling the proceedings. That is reinforced by the provision that in the event that the matter is not settled each must deliver a mandatory final offer to the other, a matter which has consequences. The provisions requiring each conference participant to actively participate require only participation in an attempt to settle the claim. I do not think they require participation by way of undergoing cross-examination nor by way of provision of evidence. They require participation only to the extent that the parties are taking steps in the negotiation process.

30

40

50

That is a fairly wide description and it may not always be easy to say precisely whether conduct or refusal to do things

falls within it. However what is proposed in the present case, in my view, plainly does not fall within the statutory formula. Moreover, active participation in an attempt to settle the claim must, in my judgment, refer to an attempt by each party. Each party must be attempting to settle the claim. I do not think it can be said that answering questions of the nature proposed in this case is something which would amount to an attempt to settle the claim by the respondents.

In summary, I do not think that parties can be obliged to provide factual information at the conference. They are obliged to participate and to attempt to settle the claim that may involve some discussion of factual issues that are in dispute particularly if there is the possibility of resolving particular factual issues. However, it does not, it seems to me, mandate the conduct of a mini trial or of some form of case appraisal. For these reasons, in my judgment, the application should be dismissed. The application is dismissed with costs.

-----

1  
10  
20  
30  
40  
50  
60