

SUPREME COURT OF QUEENSLAND

CITATION: *Motor Accidents Insurance Board v Gibson* [2010] QSC 152

PARTIES: **MOTOR ACCIDENTS INSURANCE BOARD**
(applicant)

v

KATRINA MAREE GIBSON
(respondent)

FILE NO/S: 3239 of 2010

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 15 April 2010

DELIVERED AT: Brisbane

HEARING DATE: 15 April 2010

JUDGE: Fryberg J

ORDERS: **1. Pursuant to section 50(1) of the *Motor Accident Insurance Act 1994*, the Respondent submit to medical examination by Dr Greg Gillett, Orthopaedic Surgeon, at 4:15 pm on 28 June 2010 at 201 Wickham Terrace, Spring Hill;**
2. The Respondent pay the Applicant's costs of and incidental to this Application.

CATCHWORDS: Insurance – Motor vehicles – Compulsory third party insurance and like schemes – Defence conducted by insurer and related matters – Queensland – *Motor Accident Insurance Act 1994* (Qld), sub-s 50(3) – Consequential or ancillary orders in relation to orders for specific action – Whether claimant liable for fees of medical appointments not attended

Motor Accident Insurance Act 1994 (Qld), s 46A, s 50

COUNSEL: M P Williams for the applicant
No appearance for the respondent

SOLICITORS: Quinlan Miller & Treston for the applicant
No appearance for the respondent

HIS HONOUR: I have before me an application by the third party insurer of a motor vehicle for an order pursuant to s 50 of the *Motor Accident Insurance Act 1994* requiring the respondent who is a claimant under that Act to submit to a medical examination by a nominated doctor at a nominated time and place.

1
10

The section in question empowers the Court to order a claimant to take specified action to remedy a default within a specified time and a default is a failure to comply with division 2, 3 or 4. Section 46A of the Act falls within one of those divisions and requires a claimant to comply with a request by an insurer to undergo a medical examination at the insurer's expense.

20

The evidence before me shows that the insurer made appointments for the claimant to attend two doctors and she failed to do so. Both doctors have charged the insurer some hundreds of dollars for the non-attendance. The situation now seems to be that unless an order is made the claimant will not have an examination although there does not appear to have been an explicit refusal to do so.

30
40

No appearance has been entered by the respondent and no material is before me which would explain the non-attendance. It seems to me, therefore, that it is appropriate for me to make the order sought in para 1 of the application.

50

The order sought in para 2 of the application is not pursued.

The orders sought in paras 3 and 4 are for payment of the non-attendance fee. Counsel submitted that sub-s 50(3) of the Act was wide enough to empower such an order. It provides that the Court may make consequential or ancillary orders in relation to an order to take a specified action.

1

10

I invited counsel to demonstrate how an order to pay costs incurred by the insurance company in relation to past non-attendance can be said to be consequential on or ancillary to an order to attend a specified doctor in the future and the counsel was unable to identify any way in which that could be. Moreover, no case was cited to me where such an order has been made and counsel informed me that his researches did not disclose the existence of any such case.

20

I note that s 46A requires the examination to be at the insurer's expense. It does not seem to me that the terms of sub-s 50(3) are wide enough to enable the order sought in paras 3 and 4, at least, in the absence of any authority or in the absence of any identification of a semantic reason for that in the terms of the order. That being so I'm not willing to make those two orders.

30

40

I will order in accordance with para 1 of the draft. The applicant also seeks an order for the costs of this application and that seems to be appropriate in the circumstances.

50

I'll renumber para 4 as number 2 and with those amendments

there'll be an order in accordance with the amended draft,
initialled by me and placed with the papers.

1

10

20

30

40

50