# SUPREME COURT OF QUEENSLAND

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| CITATION: | *Boulter v Crouch & Anor* [2011] QCA 93 |
| PARTIES: | **ISABEL ELIZABETH BOULTER**<br>(appellant)<br>**v**<br>**MICHAEL CROUCH**<br>(first respondent)<br>**NICOL ROBINSON HALLETTS LAWYERS**<br>(second respondent) |
| FILE NO/S: | Appeal No 8753 of 2010<br>SC No 8481 of 2007 |
| DIVISION: | Court of Appeal |
| PROCEEDING: | General Civil Appeal |
| ORIGINATING COURT: | Supreme Court at Brisbane |
| DELIVERED ON: | 10 May 2011 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 28 April 2011 |
| JUDGES: | Margaret McMurdo P and Muir and Fraser JJA<br>Separate reasons for judgment of each member of the Court, each concurring as to the order made |
| ORDER: | **Appeal dismissed with costs** |
| CATCHWORDS: | APPEAL AND NEW TRIAL – APPEAL - GENERAL PRINCIPLES – EXCESSIVE OR INADEQUATE DAMAGES – GENERAL PRINCIPLES – where appellant was injured in an accident involving a council bus – where appellant sued her former solicitors for their negligence in failing to commence a personal injury claim within the statutory limitation period – where respondents admitted that the appellant's claim for damages in respect of her personal injury would have succeeded – where the issue in dispute was the quantum of damages that the appellant would have been awarded had the proceedings commenced in time – where the reliability of the appellant's evidence at trial was not supported by medical evidence – whether the primary judge erred in dismissing the appellant's claim<br><br>APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – WHEN APPEAL LIES – GENERALLY – where appellant's notice of appeal did not disclose an appellable error on the part of the primary judge – where appellant relied on facts and circumstances not in |

evidence at trial – whether primary judge erred in assessing damages

*Uniform Civil Procedure Rules* 1999 (Qld)

COUNSEL: The appellant appeared on her own behalf
J Wiltshire for the respondent

SOLICITORS: The appellant appeared on her own behalf
Brian Bartley & Associates for the respondent

[1] **MARGARET McMURDO P:** I agree with Muir JA's reasons for dismissing this appeal.

[2] A judge of the Trial Division of this Court dismissed the appellant's claim for damages for professional negligence against her former solicitors who failed to file her claim for damages for injuries caused in a bus accident within the statutory time limit. This appeal is from that order. The appellant was self-represented at trial. She was born in the Philippines and English is not her first language. Her only paid employment in Australia was as a casual cleaner. Liability was not in issue at trial, but nonetheless, her self-representation and limited English language skills meant that there was a real power imbalance between the parties. The primary judge, however, recognised this disparity and did all that reasonably could be done to ensure fairness to the appellant.

[3] The appellant's lengthy grounds of appeal and written outlines were difficult to comprehend. In her oral submissions, she made clear that she was contending that the primary judge erred in not assessing a significantly higher amount of damages for her injuries arising from the bus accident. For the reasons given by Muir JA, that contention was baseless, save for a modest amount concerning travel expenses to medical appointments which would have no impact on the outcome of this appeal.

[4] This Court encouraged the appellant, who remained self-represented in this appeal, to explain her strongest points. She challenged the judge's assessment of damages for loss of earning capacity. The appellant contended the judge failed to take into account that the appellant had been busy as a mother raising five children, both in Australia and in the Philippines, and that this was why her pre-accident earnings[1] as a casual cleaner had been low. Her point seemed to be that, but for the bus accident, she would have been able to earn a sizeable income and was entitled therefore to a significant award for past and future economic loss.

[5] The judge specifically referred to the appellant's children.[2] Her Honour found that the appellant had pre-existing degenerative disc disease and that her earlier car park accident, together with the bus accident, produced musculoligamentous strain, with the bus accident causing additional soft tissue injury jaw and neck. Her Honour considered that all these accident-related injuries should have resolved relatively quickly[3] and any psychological and psychiatric injury arising from the bus accident lasted only a year or two.[4] The judge also found that, although the appellant's

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1 *Boulter v Crouch & Anor* [2010] QSC 258, [110].
2 Above, [15] and [18].
3 Above, [65].
4 Above, [95].

present physical condition appeared to prevent her from undertaking unskilled labour, there was no evidence that any loss of earning capacity after May 2001 was related to the bus accident rather than the earlier car park accident.[5] The fact that the appellant may have worked hard as a mother and homemaker had no bearing on the judge's findings concerning economic loss. This contention is baseless.

[6] The appellant claimed the judge erred in placing weight on the fact that local people in the Philippines considered her mother, who died when the appellant was 11 years old, was a witch. The judge made reference to this matter only by way of background and in summarising the appellant's account to psychiatrist Dr Persley.[6] In doing so, her Honour did not err. In any case, the observation had no significant bearing on her Honour's reasoned conclusions. This contention is baseless.

[7] The appellant also contended that the trial judge erred in not taking into account the earlier car park accident when assessing her damages arising out of the bus accident. Her Honour well appreciated the circumstances of the car park accident.[7] The judge considered that it was relevant only in separating the injuries and damages arising out of the car park accident from those arising out of the bus accident. The judge also considered inconsistencies between the appellant's testimony in her trial in the Magistrates Court concerning the car park accident and her subsequent statements[8] in assessing the appellant's credibility. The judge's approach in these respects was entirely proper. This contention is also misconceived.

[8] The appellant contended that the judge failed to give proper weight to a schedule of damages prepared by the appellant's accountant, Mr Swayne. The judge did not accept the appellant as a reliable witness.[9] Her Honour found that the schedule was based almost exclusively on the appellant's oral instructions to Mr Swayne and was therefore unreliable.[10] These findings were well open on the evidence. This contention is not made out.

[9] For these reasons, together with those of Muir JA, the appellant has failed to demonstrate any error of significance in the primary judge's careful reasons.

[10] It is regrettable that, despite having suffered modest but nonetheless real injuries through the fault of others, both in the car park accident and in the bus accident, the appellant has personally received nothing by way of damages and now faces costs orders for a two day Supreme Court trial and this appeal. The reality is that legal and expert costs significantly erode modest claims like the appellant's, making their pursuit in the courts of marginal utility. The appellant's former solicitors (not the present respondents) advised her on 5 July 2000 to accept an offer of settlement of $45,000 inclusive of costs, outlays and statutory refunds, encompassing both the car park accident and the bus accident. They informed her that she could expect to personally receive only about $14,800.[11] Instead, she will receive nothing and is additionally liable for the respondents' costs. This unfortunate situation arises from her decisions to ignore sensible legal advice and to then pursue her case against the respondents, both at first instance and on appeal.

[11] The appeal must be dismissed with costs.

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5 Above, [115]-[117].
6 Above, [14], [46].
7 Above, [6]-[13].
8 Above, [8]-[9].
9 Above, [5], [71], [95], [112].
10 Above, [119].
11 Letter from Watling Roche Lawyers to the appellant dated 5 July 2000 contained in the trial bundle.

[12] **MUIR JA: Introduction** The appellant commenced proceedings in the Supreme Court on 25 September 2007 against the first respondent solicitor claiming damages for breach of duty in respect of the first respondent's retainer to act as her solicitor in a claim for damages for injuries suffered by her in an accident involving a Brisbane City Council bus on 26 September 1998.

[13] The primary judge described the bus accident as follows:

> "[3] …Ms Boulter was injured in an accident involving a Brisbane City Council bus ("the bus") on 26 September 1998 ("the bus accident"). The bus accident, occurred when Ms Boulter was boarding a bus from her home at Bellbowrie to Kenmore. The front doors closed on her, catching her head between the doors, and when the doors opened and she freed her head from the doors she fell out of the bus and onto the ground. The defendants accept that the accident as alleged occurred, that the Brisbane City Council would have been wholly liable in negligence for the accident and that there was no contributory negligence on Ms Boulter's part. Liability was admitted by the Brisbane City Council's insurer on 22 April 1999."

[14] The appellant had been injured in another accident, which occurred when a car in the car park of a shopping centre in Kenmore reversed into the appellant on 29 January 1998. The primary judge said of the car park accident:

> "[8] Ms Boulter gave evidence about the injuries she suffered as a result of the car park accident at the trial in relation to that accident in the Magistrates Court in May 2001. She said that as a result of the car park accident she suffered from a swollen throat, neck and head. She could hardly swallow and had difficulty breathing. She had nightmares. She had a grinding sensation of bone on bone in her lower back and thoracic spine. She could not put down her right foot and had to rely on her left leg. She suffered from a bleeding bowel because of severe constipation caused by the medications she was taking. Her tailbone felt like it was broken. She could not sit. She could not stand up or walk for long. She had difficulty sleeping and felt like she had a knife digging into her lower back. She said the symptoms and pain had only diminished a little between the car park accident and the trial in May 2001. When asked about the effect of the bus accident on her compared with the car park accident, her evidence in the Magistrates Court was:
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> > 'The worse one is the - the - the ever worse ever happen - the worse one is the car that has slammed onto my back that I carried away on that car. Press down on my lower back. That's the worse ever happened to my life.'
>
> This is consistent with instructions she gave to her then solicitors by letter dated 10 March 1999 that the car park accident rather than the bus accident was the primary cause of her injuries."

[15] The car park accident was significant, as on the evidence before the primary judge, it was difficult to determine which of the appellant's alleged complaints and symptoms, to the extent that they were found to exist, were attributable in whole or in part to one accident rather than the other.

[16] The statement of claim, which does not appear to have been drafted with the *Uniform Civil Procedure Rules* 1999 (Qld) in mind, contains a rambling narrative of

the progress of the appellant's claim and the history of her various injuries and the symptoms to which they allegedly gave rise. The statement of claim made an unparticularised claim for $500,000 damages and interest at the rate of seven per cent per annum.

[17] It is difficult to detect from the allegations in the statement of claim the basis upon which the claim was brought, but on the trial of the proceeding, which commenced on 31 March 2010, it was common ground that the respondents (Messrs Nicol Robinson Halletts Lawyers had by then been added as the second defendant) had breached their duty to the appellant by not commencing proceedings against the Brisbane City Council within the limitation period.

[18] The primary judge noted in her reasons that the respondents admitted that the appellant's personal injuries claim was likely to have succeeded, and that what was in dispute between the parties was the quantum of damages the appellant was likely to have been awarded had proceedings against the Brisbane City Council been commenced within time.

[19] The primary judge dismissed the appellant's claim on 20 July 2010 and she appeals against that decision.

**The grounds of appeal**

[20] There are 17 grounds of appeal. Some of them are incoherent, unintelligible or both. Others are of the nature of comments or assertions which, if established, would not demonstrate appellable error. It is sufficient, I think, to illustrate these observations to quote some of the shorter grounds of appeal, without spelling or grammatical corrections:

> "3. GROUNDS - Justice Atkinson failed to focus the main issued of the professional negligence
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> …
>
> 5. GROUNDS - JUSTICE ATKINSON DISMISSED THE PLAINTIFF;S PLEADINGS WITHOUT SOLED GROUND OR CONCRETE IVEDENCE OR FOUNDATION TO DISMISSED THE PLAINTF'S CLAIM NO EXPLANATION ON HER JUDGEMENT
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> 6. GROUNDS – Justice Atkinson did not consider the fact of the Plaintiff claims was relevant
> Matters.
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> 7. GROUNDS - Justice Atkinson did not consider the fact of the plaintiff's claims, and also
> she did not taking in to accounts of the severe Negligence action of the defendants.
>
> 8. GROUNDS - Justice ATKINSON did not consider the main issues of negligence, she consecrates of other issues, she did not consider of the subject of claims of negligence.
>
> …
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> 10. GROUNDS - Justice Atkinson was not ask question to the plaintiff if any offer by Brisbane city council to Mrs. Boulter.
>
> 11. GROUNDS - Justice Atkinson did not consider that the defendants did not admitted to the Law society of their negligence action included the missing monies from the Judgment settlement

> from the first accident on 29 on January 1998. my complaint as well is the settle the first far to low.
> 12. GROUNDS - Justice Atkinson did not consider that is seven years that defendants did not admitted to the Law Society of their negligence action due that further more psychological put upon Mrs. Isabel Elizabeth Boulter."

**Other grounds of appeal**

[21] Ground one commences with what appears to be a criticism of the catchwords used in the reasons for judgment and of the primary judge's perceived failure to use headings of an unspecified nature. This ground asserts, wrongly, that the primary judge did not consider the appellant's "negligence action".

[22] Ground two is as follows:

> "2. GROUNDS - Justice Atkinson failed to mention when was the bus accident accord she did not mention the date of the accedint, Justice Atkinson also failed to mention that the defendants the main ensued is all about negligence to take proceeding to Court or to be negotiated prior of the plaintiff taking the defendants onto proceedings in this Supreme Court.
> Justice Atkinson did not consider the plaintiff's Statement of pleadings claims was important ensued statements of claims and statement of Mrs. Isabel Elizabeth Boulter and the affidavit of the plaintiff on that pleadings."

[23] This ground alleges that the primary judge did not mention the date of the last accident or, construing the ground as best I can, duly consider the failure of the respondents to bring about a negotiated settlement. The primary judge gave careful and detailed consideration to the car park and bus accidents and to the injuries resulting from them. The complaint about a negotiated settlement is addressed later.

[24] This ground also included the allegation that the primary judge did not consider the allegations in the statement of claim or "the affidavit of [the appellant] on that pleadings". The statement of claim did not disclose a cause of action let alone comply with the relevant provisions of the *Uniform Civil Procedure Rules*. The appellant was fortunate that it was not struck out. The primary judge took an approach which was extremely favourable to the appellant and she treated the claim as one for breach by the respondents of their duty to the appellant by failing to commence proceedings before they were statute barred. She then assessed the damages which would have been awarded had the claim succeeded.

[25] Ground four contained a further allegation that the primary judge disregarded the appellant's pleadings and asserted also that the primary judge failed to allow for compensation for "loss of income" as a result of the bus accident, and for the "financial difficulties" caused by the lapse of time.

[26] The primary judge considered and rejected the appellant's claims for past and future economic loss. In relation to future economic loss, her Honour said:

> "**Loss of earning capacity**
>
> [116] She is not able to undertake secretarial work but Ms Murray attributed that to her lack of relevant skills rather than any injury.

> Her physical condition would appear to prevent her from undertaking unskilled labour in the future. In his report to QSuper on 16 March 2001, Dr Curtis said that she suffered disablement from the car park accident of such a degree that she was rendered unlikely ever to be able to work again in a job for which she was reasonably qualified by education, training and experience.
>
> [117] Accordingly, there is no evidence from which I could be satisfied on the balance of probabilities that any loss of earning capacity is related to the bus accident."

[27] The primary judge dealt at some length with the appellant's past economic loss claim, finding that no loss had been proved. She found, in particular, that the car park accident had prevented the appellant from taking up any work offered in school year 1998 and that the appellant had been compensated by the Magistrates Court settlement of the car park accident claim for any lost earnings between 1998 and May 2001. The appellant failed to show any error in the primary judge's reasons in this regard.

[28] The appellant had had an extremely meagre employment history. The primary judge found that in the 20 years between the appellant's arrival in Australia in 1978 "and the car park accident and the bus accident in 1998, she had engaged in paid work for only 106 hours over a period of just over five months." The primary judge found that her net income in 1996 and 1997 was $1,329.88. These findings were not put in doubt by any evidence identified by the appellant.

[29] The "financial difficulties" referred to in this ground were not particularised or otherwise described, and there is no reason to conclude that the primary judge overlooked dealing with the matters properly within the appellant's pleaded case.

[30] Ground nine is as follows:

> "9. GROUNDS - Justice Atkinson did not consider the Brisbane City Council willing to make a negotiation offer to the plaintiff if the claims has not lapse, Mrs. Boulder miss that claims and right to claims because of the negligence of the defendants the fact that the Brisbane city council was admitted liability on the 22 April 1999, Verbal offer was made to the plaintiff's and on to negotiation joint joints offer between MMI and SUNCORP METWAY second solicitors of the plaintiff WATLING ROCHE AND the Barrister advice to the plaintiff to not to take the offer because of the amount was low, and was willing to settle out of Court if the defendants do their duties it would resolved long time ago and it would settlement out of Court Mrs. Isabel Elizabeth Boulter & Mr. Boulter Claims without taking the Proceeding to Court, in fact the MMI Insurance made verbal offer to Mrs. Boulter on around 1999 Prior engaging Solicitors."

[31] The statement of claim contains no allegation that any alleged breach of duty on the part of the respondent involved a failure to negotiate a settlement. There is no evidence that the appellant would have been prepared to settle for a sum which the Brisbane City Council was likely to offer. The primary judge found that on 5 July 2000, the solicitors who were then acting for the appellant advised her that she had been offered a settlement of $45,000 for the car park accident and the bus accident,

and that the offer "was in excess of what she was likely to be awarded at trial". In this regard, the primary judge said:

> "[103]…They told Ms Boulter that they would terminate their retainer from her if she did not give instructions to agree to that settlement. Ms Boulter did not accept this advice and retained the defendants to act for her instructing them that she did not want the claims resolved jointly but rather separately."

[32] The primary judge also relevantly found:

> "[104] On 30 March 2001 the defendants advised Ms Boulter that she was in breach of her retainer with them when she refused to accept their advice to accept a reasonable offer from the third party insurer in respect of the car park accident in mediation in the Magistrates Court on 27 March 2001. That was settled at trial for $25,000 and costs."

Accordingly, there is no substance in this ground.

[33] Ground fourteen alleges a failure on the part of the primary judge to find that the appellant's employment was "destroyed by the both accidents". It also incorporates a complaint about the alleged inadequate recoupment of moneys from the settlement of the proceeding in respect of the car park accident.

[34] There was no claim in the proceeding in respect of the car park accident. The appellant was prohibited from making such a claim by a consent order made on 21 December 2009 as she failed to file an amended claim and statement of claim incorporating such a claim by the date specified in the order. This complaint is therefore unsustainable. The allegation concerning economic loss has been dealt with above.

[35] Ground fifteen alleges that the primary judge failed to consider that the appellant had lost her earning capacity and had suffered "damages…because of ACCIDENTS". The primary judge, as the above discussion shows, gave careful consideration to the quantification of the appellant's damages claims.

[36] Ground sixteen alleges that the primary judge "…did not consider that [the appellant] was granted a Disability Pension start on December 1999 by Centrelink." The appellant did not mention her Disability Pension in her written outline of argument or in submissions, but presumably the point of referring to it was to provide some evidence of incapacity or disability.

[37] A letter dated 10 December 2002 from Centrelink to the appellant was in evidence. The letter advised that the appellant could "…continue to receive Disability Support Pension." The evidence, however, does not reveal the circumstances in which the pension was granted and there is no means of knowing whether the condition which justified the provision of the Pension was related to the car park accident, some other accident or condition or even whether the appellant's true circumstances warranted the provision of the Pension. The primary judge did not find the appellant to be a credible witness. She remarked that the appellant "was an unreliable historian and witness".

[38] Ground seventeen is an allegation that the primary judge "…did not consider that [the respondents] got their costs accessory was not accurate and no invoice proved bt the defendants Socitors."

[39] This ground appears to relate to the report dated 24 December 2008 by Mr Garrett, a costs assessor, which was in evidence before the primary judge. The report assessed the costs of the subject proceeding on the assumption that a trial would have taken place in the Magistrates Court, would have been of one day's duration, and would have resulted in judgment in favour of the appellant in a sum between $20,000 and $26,500. On those assumptions, Mr Garrett was of the opinion that the appellant's costs on a standard basis would have been assessed at $4,828 and her outlays would have been $8,069. He assessed the appellant's costs on an indemnity basis of $14,484 and her outlays on that basis at $10,367.

[40] In reliance on that report, the primary judge found that:

> "[128] Ms Boulter would be likely to have been awarded $7,500 for general damages on which she is now entitled to an additional $1,770 in interest. In my view she would not have received any award for loss of earnings or loss of earning capacity nor for past or future gratuitous assistance. For special damages she would have been entitled to $2487.22 being $2109.50 plus interest of $377.72. If the defendants had commenced proceedings within the limitation period a report by the cost assessors Hickey & Garrett shows that the standard cost of proceeding to trial would have been in the order of $4,828 costs and outlays of $8,069. The total amount of $12,897 would have been recovered from the defendants. However her real costs would have been in the order of $15,932.40 and her outlays $10,367. Together indemnity costs and outlays would have been $26,299.40. There would have been a shortfall between the costs she would have recovered from the defendants and the actual cost of the litigation of $13,402.40. The amount of damages she would have received ($11,757.22) would have been less than the cost of taking the matter to trial. That is why, although the plaintiff would have been successful in proving liability, no damages would have been ordered. In those circumstances no judgment can be entered for her in this court."

[41] The primary judge based her conclusion that the appellant "…would be likely to have been awarded $7,500 for general damages" on considerations including the separate opinions of four counsel retained on behalf of the appellant at different times in relation to her claim. $7,500 was the highest amount that any of the counsel considered was likely to be awarded by way of general damages for the bus accident. One counsel was of the opinion that an award of general damages in the vicinity of $5,000 to $10,000 could be anticipated for both the bus and car park accidents. In addition to the general damages award, the primary judge held that the appellant was entitled to interest at two per cent per annum on $7,500 ($1,770) and special damages plus interest of $2,487.22. The primary judge's calculations may have overlooked some travelling expenses in relation to the health care practitioners in respect of which special damages were awarded. If this was the case, the modest sums involved would not have removed the shortfall to which the primary judge referred. Her Honour's findings in relation to damages were not shown to be erroneous.

**Aspects of the medical evidence**

[42] The primary judge's scepticism about the reliability of the appellant's evidence received ample support from the medical evidence. In his report dated 26 November 1998, Dr Persley, a psychiatrist, observed:

> "In summary, this lady is displaying abnormal illness behaviour. She is exaggerating the degree of pain and disability that she has experienced from a motor vehicle accident in a carpark. There is little doubt that the exacerbation of her complaints is at least partly motivated by compensation issues."

[43] Another psychiatrist, Dr Rice, who was consulted in relation to pain management, said in his report of 7 September 1998:

> "She described how, on 29 January 1998, she was pushing her shopping trolley when she was hit on the back of the legs by a car that began reversing from a parking position.
>
> …
>
> She was able to drive to her general practitioner, then home to rest, then to visit her G.P. again.
>
> …
>
> She does not have a medical disorder, rather a social one in which she believes she has injuries caused by an accident for which she is claiming compensation. Her pain behaviour is Jurisigenic in aetiology and maintenance. Thus appropriate treatment must be legal rather than medical.
>
> …
>
> This has resulted in False Imputation that all her physical and psychological difficulties are related to this incident.
>
> …
>
> It is my opinion that she is *Falsely Imputing* all her aches, pains and psychological distress on this episode rather than dealing with the issues in her life that are aetiological (age, degeneration, personality structure, personal life events)."

[44] In a medico-legal report dated 6 February 2001 Dr Cooke diagnosed the appellant as having:

> "1. Dollar poultice syndrome.
> 2. Advanced degenerative L5/S1 spondylosis and osteoarthrosis.
> 3. Obesity."

[45] Dr Cooke's expectation was that the appellant would "…make a full recovery from her current abnormal illness behaviour once she comes to realise that there is no financial gain to be made in persisting with the complaints."

[46] He concluded his report:

> "I trust this information is of assistance to you in what is a very difficult problem with social issues being transformed into medial [sic] problems that have no organic basis."

[47] A general practitioner who was seeing the appellant in respect of her complaints advised:

> "I have seen her since on 20.2'98, 27.2'98, 9.3'98, each time quite weepy and with an increasing array of symptoms which I find hard to attribute to the accident … painful hips, pelvic pain, neck and lumber pain … I suspect that when a compensation claim looms, her symptoms may not really settle …"

The reference to "the accident" is to the car park accident.

[48] Referring to the car park and bus accidents, Dr Johnstone, orthopaedic surgeon, reported on 19 December 1998:

> "It is my opinion that [the appellant] had markedly severe L5/S1 degenerative disc disease and in particular facet joint arthritis which preceded either of her accident events. The bone scan finding of markedly increased uptake in the right L5 posterior elements has been clarified by CT scan as being due to severe degeneration in the apophyseal joints bilaterally at L5/S1. This does not indicate that there is any type of stress fracture or pars intra-articularis defect.
>
> It is my opinion therefore that her symptoms are those of aggravation of pre-existing L5/S1 degenerative disc disease. These symptoms could have easily been brought on by a simple fall, slip or bending over to pick up an object as opposed to the accident events where she was hit by a car and supposedly caught in the doors of a City Council Bus."

[49] After comprehensively reviewing the medical evidence, the primary judge concluded:

> "In summary, [the appellant] had pre-existing L5/S1 degenerative disc disease. The car park accident and the bus accident both produced some musculo-ligatmentous strain of the back and the bus accident caused some soft tissue injury to the jaw and neck. Both could have been expected to resolve relatively quickly if it were not for the abnormal illness behaviour which has no organic basis."

[50] The appellant placed considerable emphasis on the evidence of a psychiatrist, Dr Curtis, who diagnosed the appellant as suffering from Depressive Dysthymia, Generalised Anxiety Disorder and Acute Stress Disorder. He attributed the "nervous shock and psychiatric illness components as 66 per cent to the car park accident and 34 per cent [by way of aggravation] to the bus accident." The primary judge pointed out in her reasons that, in preparing his reports, Dr Curtis lacked relevant factual information and that the appellant's abnormal illness behaviour was entrenched by the time of the bus accident. Her Honour implicitly rejected Dr Curtis' opinions. There was ample evidence justifying that approach.

**Conclusion**

[51] The appellant's written outline of argument and her oral submissions did little to advance her cause. The outline contained a detailed critique of the judge's reasons but did not set out to address the grounds of appeal or to demonstrate how, if at all, the reasons were affected by error. The outline, like the oral submissions, relied on matters not in evidence, and thus not relevant for the purposes of the appeal. Both the written and oral argument emphasised the injuries allegedly sustained by the appellant in the car park accident. The appellant, seemingly, failed to appreciate that she had no claim in the subject proceeding in respect of the car park accident and that it was not in her interests to show that any injuries which she may have suffered were more likely to have been attributable to the car park accident rather than the bus accident.

[52] No error in the primary judge's reasons has been revealed and, accordingly, I would order that the appeal be dismissed with costs.

[53] **FRASER JA:** I agree with the reasons for judgment of Muir JA and the order proposed by his Honour.