

# SUPREME COURT OF QUEENSLAND

CITATION: *Coles Supermarkets Australia Pty Ltd v Sharon May Mead & Ors* [2013] QSC 37

PARTIES: **COLES SUPERMARKETS AUSTRALIA PTY LTD**  
(applicant)  
v  
**SHARON MAY MEAD**  
(first respondent)  
**TNT AUSTRALIA PTY LTD**  
(second respondent)  
**BLUESTAR SECURITY PTY LTD**  
(third respondent)  
**SUNCORP METWAY INSURANCE LTD**  
(fourth respondent)

FILE NO/S: 462 of 2013

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 30 January 2013

DELIVERED AT: Brisbane

HEARING DATE: 30 January 2013

JUDGE: Atkinson J

ORDER:

- 1. The applicant has leave to join the second respondent, TNT Australia Pty Ltd, and third respondent, Bluestar Security Pty Ltd, as contributors to the first respondent's claim under the *Personal Injuries Proceedings Act 2002 (Qld)*.**
- 2. The application is otherwise dismissed.**
- 3. The applicant is to pay the fourth respondent's costs of and incidental to the application assessed on the standard basis, and the first respondent's costs of and incidental to the application on an indemnity basis.**

CATCHWORDS: INSURANCE – MOTOR VEHICLES – INSURANCE OF MOTOR VEHICLES FOR LOSS OR DAMAGE – LIABILITY FOR PERSONAL INJURY – where the first respondent was injured in an incident which took place at a Coles Supermarket – where the first respondent gave a Notice of Claim in relation to her injury to the applicant under the

	<i>Personal Injuries Proceedings Act 2002 (Qld) (PIPA) and gave a Notice of Accident Claim form under the <i>Motor Accident Insurance Act 1994 (Qld) (the MAIA) in relation to the driver of the motor vehicle – whether the injury was an injury in relation to which the MAIA applied – whether the injury was an injury in relation to which PIPA did not apply</i></i>	1
	PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – DECLARATIONS – where the applicant applied by originating application to the court for one of two declarations and various relief in the alternative – where the first declaration sought was a declaration that, by virtue of s 6(2)(a) of PIPA, PIPA did not apply to the first respondent’s claim for damages for personal injuries as the first respondent’s claim for personal injuries fell under the MAIA – whether the injury was so clearly an injury in relation to which the MAIA applied that a declaration could be made at this stage	10
	<i>Personal Injuries Proceedings Act 2002 (Qld), s 6(1), s 6(2), s 6(2)(a)</i> <i>Motor Accident Insurance Act 1994 (Qld), s 5, s 5(1)</i> <i>Technical Products Pty Ltd v State Government Insurance Office (Qld) [1989] HCA 24; (1989) 167 CLR 45, cited</i> <i>Boath v Central Queensland Meat Export Co Pty Ltd [1986] 1 QdR 139, cited</i>	20
COUNSEL:	T Matthews for the applicant M J Robinson ( <i>sol</i> ) for the first respondent B Hamilton ( <i>sol</i> ) for the second respondent T Hubbard for the third respondent M Grant-Taylor SC for the fourth respondent	30
SOLICITORS:	Sparke Helmore Lawyers for the applicant Shine Lawyers for the first respondent Moray and Agnew Lawyers for the second respondent Warlow Scott Lawyers for the third respondent Bray Lawyers for the fourth respondent	40

HER HONOUR: The applicant, Coles Supermarket Australia Pty Ltd (Coles), has applied by originating application to the Court for one of two declarations and various relief in the alternative. The relief in the alternative does not appear to have been opposed by any party, so should not detain me long, however, I shall deal with the question of the declarations that are sought.

The first declaration sought is a declaration that, by virtue of section 6(2)(a) of the *Personal Injuries Proceedings Act 2002* (PIPA), PIPA does not apply to the first respondent's claim for damages for personal injuries which occurred on 5 October 2010, as the first respondent's claim for personal injuries falls under the *Motor Accident Insurance Act 1994* (MAIA).

Further or in the alternative, a declaration is sought that the applicant is indemnified in respect of the first respondent's claim for damages for personal injuries by the fourth respondent, pursuant to section 5 of the MAIA. The fourth respondent is Suncorp Metway Insurance Limited, the compulsory third party insurer of the driver of the motor vehicle.

It should be said immediately that, in my view, in the circumstances which apply, it would be absolutely impossible to make the second declaration sought and that it depends very closely on findings of fact which would have to be made at

trial and was not pressed before me in the same way that the first declaration that was sought. I turn, therefore, to deal with the declaration sought that because the first respondent's claim for personal injuries falls under the MAIA, PIPA does not apply to the claim for damages for personal injuries.

10

The basis for the argument is the wording of the two sections of the two Acts. Section 6(1) of PIPA provides that PIPA "applies in relation to all personal injury arising out of an incident whether happening before on or after 18 June 2002." Subsection (6)(2), however, provides circumstances in which PIPA does not apply. The first exception is the one which is relevant to this application; that exception is that PIPA does not apply to personal injury within the meaning of the MAIA and in relation to which the MAIA applies.

20

30

There does not seem to be much dispute that the first respondent, who was injured, received a personal injury within the meaning of the MAIA. The question is, is that an injury in relation to which the MAIA applies and, more importantly for the purposes of this application, is it so clearly an injury in relation to which the MAIA applies that a declaration can be made at this stage? The applicant submits that prior to any proceedings being issued and any pleadings in the matter being drawn the Court could declare that PIPA does not apply to the factual circumstances of this case where there are disputed facts and there has been no finding by the

40

50

Court of precisely what the facts are.

Merely to state the proposition which the applicant has to make good is to point out the difficulties that the applicant faces in making an application at this stage.

10

The first respondent, Sharon Mead, was injured on 5 October 2010 in an incident which took place at a Coles Supermarket at Port Douglas in far north Queensland. She has given a Notice of Claim in relation to her injury to Coles under PIPA and she has also given a Notice of Accident Claim form under the MAIA in relation to the driver of the motor vehicle.

20

Both of those, of course, are necessary to protect her rights under those Acts and I do not regard either as constituting an election. The factual circumstances that are alleged in those notices are not wholly accepted by the fourth respondent, which is not in a position, absent pleadings and absent full investigation, to agree as to whether or not those are the findings of fact that might be made at trial and that form the basis of liability.

30

40

What is accepted is that the claimant was injured on the date on which I mentioned, at the loading dock at the Coles Supermarket at Port Douglas, when she attended the Coles Supermarket to deliver a parcel in the course of her employment. She was crushed by a truck against the rear of the docking area by a truck driven by an employee of her

50

employer, the company. As it happened, the driver was her husband, but that is not relevant to liability.

However, the factual circumstances which may be pleaded as to who or what was negligent and precisely what was the cause of the personal injury is not accepted. On the facts alleged before me, it seems possible that the driver of the motor vehicle might be found wholly or partly negligent, but it may well be that other parties, including Coles Supermarkets and/or TNT Australia and/or Bluestar Security, may be found wholly or partly negligent and therefore liable for the incident.

10

20

It is in that state of factual uncertainty that I turn to the law which applies under the MAIA. As I have already mentioned, PIPA does not apply to a personal injury in relation to which the MAIA applies: not, it should be said, an injury to which the MAIA **may** apply.

30

The application of the MAIA is governed by section 5 of that Act. Section 5(1) provides,

40

"This Act applies to personal injury caused by, through or in connection with a motor vehicle if, and only if, the injury -

(a) is a result of -

- (i) the driving of the motor vehicle; or
- ii) a collision, or action taken to avoid a collision, with the motor vehicle; or
- (iii) the motor vehicle running out of control; or

50

(iv) a defect in the motor vehicle causing loss of control of the vehicle while it is being driven; and  
(b) is caused, wholly or partly, by a wrongful act or omission in respect of the motor vehicle by a person other than the insured person."

As can be seen from my discussion of the potential factual findings that might be made in respect of pleadings which have not yet been drawn in respect of this incident, it is possible that the personal injury was a result of the driving of a motor vehicle or a collision with a motor vehicle, caused, wholly or partly, by a wrongful act or omission in respect of the motor vehicle by a person other than the insured person, but it is also possible that it was not.

The words "in respect of the motor vehicle" are clearly words of limitation and it is not sufficient that subsection (5)(1)(a) is satisfied. Subsection (5)(1)(b) is cumulative and must also be satisfied: see *Technical Products Pty Ltd v State Government Insurance Office (Qld)* (1989) 167 CLR 45; *Boath v Central Queensland Meat Export Co Pty Ltd* [1986] 1 QdR 139. In the circumstances of this case, it may be satisfied or it may not.

In those circumstances, it would be entirely inappropriate to grant a declaration that, by virtue of section 6(2)(a) of PIPA, that Act does not apply to the first respondent's claim for damages, because it falls under the MAIA and I refuse the

declaration. In the circumstances already set out, it would be entirely inappropriate, in addition, to make the second declaration sought. I'll hear any submissions that parties have about the alternative relief sought, which I understand is not the subject of dispute.

1  
10

...

HER HONOUR: The applicant has leave in accordance with paragraph 2(a) of the application. The applicant, Coles, has leave to join the second respondent, TNT Australia Pty Ltd, and the third respondent, Bluestar Security Pty Ltd, as contributors to the first respondent's PIPA claim.

20

...

HER HONOUR: The only costs orders will be that the applicant should pay the fourth respondent's costs of and incidental to the application on the standard basis to be assessed, and the applicant should pay the first respondent's costs of and incidental to the application on an indemnity basis to be assessed.

30

40

-----

50