

IN THE COURT OF APPEAL

[1994] QCA 084

SUPREME COURT OF QUEENSLAND

Appeal No. 170 of 1993

Brisbane

Before      Fitzgerald P.  
                Davies J.A.  
                Mackenzie J.

[Cardakliya v Mount Isa Mines]

BETWEEN:

NIZIJA CARDAKLIYA

(Plaintiff)

Appellant

AND:

MOUNT ISA MINES LIMITED

(Defendant)

Respondent

**REASONS FOR JUDGMENT - THE COURT**

**Judgment delivered 06/04/1994**

This is an appeal from an order of a District Court judge that the plaintiff in an action pursuant to s. 3 of the Law Reform (Husband and Wife) Act 1968 file and serve a statement of loss and damage pursuant to r. 149A of the rules of that Court. Rule 149A(1) (a) provides:

"This Rule applies to actions for damages for personal injury or death."

The question before his Honour and before this Court is whether an action pursuant to s. 3 of the above Act is an action for damages for personal injury within the meaning of r. 149A(1) (a). Section 3 provides as follows:

**"Wife's remedy for loss or impairment of consortium.**

(1) Where a person causes injury to another by wrongful act, neglect or default, whether or not the injury results in death, he shall be liable in damages to the wife of the injured person for loss or injury suffered by her as a result of the loss or impairment of the consortium of husband and wife.

(2) The damages shall be assessed in the same manner as upon a claim by a husband for damages in tort in respect of loss or impairment of consortium."

The appellant submitted that the terms of r. 149A, in particular the statement of loss and damage required by sub-r. (3)(a) of that rule, are inappropriate to a claim pursuant to s. 3. We do not think that there is any substance in that contention. Indeed, each of the sub-paragraphs of sub-r. (3)(a) is capable of applying to an action of this kind. Even if that were not so, the mere fact that some of them might apply would be sufficient to rebut this argument. It is plainly not the intention of the sub-rule that all of them must apply to every action.

Sub-section 3(2) requires that damages be assessed in the same manner as upon a consortium claim. In Toohey v. Hollier (1955) 92 C.L.R. 618 at 625-6 the High Court described the term "consortium" as a "descriptive word sufficiently appropriate for the purpose of any pleader alleging the consequential loss or damage which any husband suffered whose wife was incapacitated as the result of a battery". As the forms of pleading discussed in the judgment at 626 show, the claim is for loss of comfort, company, fellowship, aid and assistance in domestic affairs or words to that effect. It is a claim for loss by, but not, in

ordinary language, injury to, the claimant.

The respondent submitted, correctly in our view, that r. 149A(1)(a) will apply to an action of this kind if either:

- (a) the "loss or injury" referred to in s. 3(1) is or includes "personal injury" within the meaning of the rule; or
- (b) the word "for" in the phrase "damages for personal injury" in the rule means "in respect of" or "consequential upon".

Plainly damages for loss or impairment of consortium are in respect of or consequent upon injury to the spouse.

Though on its face the presence of the word "injury" in s. 3(1) appears to give some support to the respondent's contention that loss or injury for which a claim may be made under that section is or includes personal injury to the claimant, we do not think that that is its true character. The requirement in sub-s. (2) that the damages be assessed in the same manner as a common law claim for loss or impairment of consortium means that the "loss or injury" in s. 3(1) has no greater claim to be described as personal injury than loss or impairment of consortium at common law.

Notwithstanding the submissions of the appellant to the contrary, there is no reason to give r. 149A(1)(a) a restrictive construction. On the contrary, given its remedial nature and its purpose of ensuring mutual exchange of documents at an early

stage so as to enable the speedier and cheaper resolution of actions, it should, we think, be construed to apply to all actions in tort for damages which arise out of personal injury or death; that is, not merely actions in which a person personally injured or the representative of a person killed sues, but also actions by one person which, by common law or statute, arise out of the infliction of personal injury or death upon another. These would include dependency actions under the Common Law Practice Act 1867, actions for nervous shock and actions for loss of consortium. It therefore applies to an action pursuant to s. 3.

The appeal must therefore be dismissed.

IN THE COURT OF APPEAL

SUPREME COURT OF QUEENSLAND

Appeal No. 170 of 1993

Brisbane

[Cardakliya v. Mount Isa Mines]

BETWEEN:

NIZIJA CARDAKLIYA

(Plaintiff)

Appellant

AND:

MOUNT ISA MINES LIMITED

(Defendant)

Respondent

---

Fitzgerald P.  
Davies J.A.  
Mackenzie J.

---

Judgment delivered 06/04/1994

REASONS FOR JUDGMENT - THE COURT

---

**APPEAL DISMISSED.**

---

**CATCHWORDS:** STATUTE - INTERPRETATION - Appeal against order that plaintiff file and serve a statement of loss and damage - RDC 149A(1)(a) - nature of wife's action for loss or impairment of consortium pursuant to s. 3 of the Law Reform (Husband and Wife) Act 1968 - whether an action 'for damages for personal injury' within the meaning of the rule

Counsel: J.J. Clifford Q.C. for the Appellant  
S.C. Williams Q.C. for the Respondent

Solicitors:       Messrs Murrell Stephenson t/a for Conroy &  
                      Conroy for the Appellant  
                      Messrs Bowdens Solicitors for the Respondent

Date(s) of Hearing:       23 March 1994