

DISTRICT COURT OF QUEENSLAND

CITATION: *Hinton v Blake-Walker & Anor* [2020] QDC 26

PARTIES: **JILL MAREE HINTON**
(applicant)
V
JYRA BLAKE-WALKER
(first respondent)
AND
AAI LIMITED TRADING AS SUNCORP INSURANCE
(ABN 48 005 297 807)
(second respondent)

FILE NO/S: 572/20

DIVISION: Civil

PROCEEDING: Application

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 09 March 2020

DELIVERED AT: Brisbane

HEARING DATE: 02 March 2020

JUDGE: Farr SC DCJ

ORDER:

- 1. Pursuant to s 51A(5)(a) of the *Motor Accident Insurance Act 1994* (Qld), the parties conduct a **Compulsory Conference with respect to the applicant’s claim for personal injuries from a motor vehicle accident, which occurred at or about 9.30am on 26 December 2017, on Gympie Road at Chermside in the State of Queensland, (“the Claim”) at 2pm on Monday, 16 March 2020, at the Chambers of Mr Guy Hampson, Barrister at Law, located at Level 18, 239 George Street, Brisbane;****
- 2. Failing resolution of the claim at the Compulsory Conference referred to in paragraph 1 above, the parties exchange mandatory final offers pursuant to s 51C of the *Motor Accident Insurance Act 1994* (Qld);**
- 3. Each party be at liberty to apply with three days’ notice;**

4. The applicant pay the second respondents' costs of the application on a standard basis, to be assessed or agreed.

CATCHWORDS: CIVIL LAW – APPLICATION FOR COSTS – insurance – motor vehicles – liability for personal injury – where the applicant sought an order dispensing with the holding of a Compulsory Conference pursuant to the *Motor Accident Insurance Act 1994* (Qld) s 51A – where the application was abandoned – where the applicant and second respondent sought orders for costs.

COUNSEL: G Hampson for the applicant
R Morton for the second respondent

SOLICITORS: O'Donnell Legal for the applicant

- [1] This application sought an order dispensing with the holding of a Compulsory Conference in circumstances where the second respondent had indicated that it wished to proceed to a Compulsory Conference.
- [2] The applicant has now abandoned that part of the application and the parties have agreed to hold a Compulsory Conference on 16 March 2020.
- [3] Both the applicant and the second respondent continue to seek orders as to costs.

Background

- [4] The applicant suffered personal injury as a result of a motor vehicle accident on 26 December 2017. On 14 March 2018, the second respondent received a compulsory third party claim on behalf of the applicant from her solicitors, alleging negligence by the first respondent.
- [5] The second respondent has agreed to indemnify the first respondent and has admitted liability for the claim.
- [6] In May 2019, the applicant's solicitors and the second respondent obtained medico legal reports to assess the applicant's injuries.
- [7] In December 2019 and January 2020, the applicant's solicitors and the second respondent entered into without prejudice settlement negotiations which failed to resolve the claim.
- [8] On 27 January 2020 the applicant's solicitors requested the second respondent agreed to dispense with the Compulsory Conference because the parties had reached "*their best possible position on the evidence at hand*".¹
- [9] On 4 February 2020, the applicant's solicitors foreshadowed this application if the second respondent did not respond to its request by 11 February 2020.²

¹ Exhibit 35 of the affidavit of Thomas Noel O'Donnell filed on 25 February 2020.

² Exhibit 36 of the affidavit of Thomas Noel O'Donnell filed on 25 February 2020.

[10] On 7 February 2020, the second respondent responded, advising the applicant's solicitors that the second respondent wanted the Compulsory Conference to proceed.³ In that letter the second respondent asked as to the applicant's availability to attend such a conference within "the coming month". The second respondent also requested the following further information:

- Pay slips/invoices detailing year to date income;
- Schedule of Damages;
- Enclosed questions answered in relation to previous and subsequent illnesses and injuries; and
- Enclosed questions answered in relation to economic loss.

[11] Due to what appears to have been an administrative error, the questionnaires were not enclosed. The solicitor for the applicant did not bring this oversight to the attention of the second respondent and did not request that a copy of the questionnaires be forwarded to him.

Applicant's submissions

[12] The applicant submits that the second respondent had ample time and opportunity to investigate and consider quantum material – either supplied by the applicant or obtained through its own investigations, in order to consider quantum and attempt to resolve the applicant's damages claim.

[13] The applicant further submits that the material first requested in the second respondent's letter of 7 February 2020 was likely to delay the holding of a Compulsory Conference and was likely to result in further delay in resolution of the applicant's claim for damages, notwithstanding that the second respondent had been aware of the nature of her claim since at least 13 March 2018.

[14] The applicant submits that she was therefore justified in bringing the application, as she was anxious to avoid further delay in the progress of her claim.

[15] It is submitted that it was reasonable in the circumstances for the applicant to seek orders dispensing with the Compulsory Conference and seeking exchange of Mandatory Final Offers, so that she could proceed to litigation with no further delay.

[16] The applicant submits that it would not be unreasonable for her to seek orders that would allow her to litigate her claim almost two years after she had first served Notice of her claim and where she had already, in good faith, attempted to negotiate settlement.

[17] The applicant further submits that it was unreasonable of the second respondent to propose a course of action that in the applicant's submission would have led to delays in holding the Compulsory Conference until an uncertain future date and that any such delay was contrary to one of the stated objects of the *Motor Accident Insurance Act 1994* (MAIA), as set out in s 3(g), being:

"To encourage the speedy resolution of personal injury claims resulting from motor vehicle accidents."

³ Exhibit 37 of the affidavit of Thomas Noel O'Donnell filed on 25 February 2020.

- [18] The applicant submits that prior to the application being filed, no Compulsory Conference had been held before the “relevant date”⁴ nor had a “reasonable time and place” been nominated by the second respondent for the conference.
- [19] Additionally, the applicant submits that the second respondent’s letter of 7 February 2020 did not contain a request for additional information of the type contemplated by s 51A(3)(b) of the MAIA.
- [20] It is for these reasons that the applicant submits she had “good reason” to seek the Court dispense with the Compulsory Conference pursuant to s 51A(5)(b) of the MAIA.
- [21] The applicant submits that she has complied with all relevant obligations related to the pursuit of the claim prior to her request to dispense with the Compulsory Conference.
- [22] The applicant further submits that her recent agreement to participate in a Compulsory Conference was a compromise on her part, and it only came after she brought this application which was the catalyst for what has taken place since.
- [23] The applicant submits, therefore, that as she has acted reasonably and in accordance with the MAIA in circumstances where she has already attempted to resolve her claim for damages, her request to dispense with a Compulsory Conference was reasonable, and as the reasonable compromise has now only been reached after she served her application, she ought to be awarded her costs of the application.

Second respondent’s submissions

- [24] The second respondent has submitted that the filing of this application was precipitous on the part of the applicant.
- [25] The second respondent had received no response to its letter dated 7 February 2020 and only learned of the filing of this application when it was uploaded to the second respondent’s electronic file for the claim after business hours on Wednesday 26 February 2020.
- [26] The second respondent submits that in its letter of 7 February 2020 it had provided the applicant with a means of finalising the pre-proceeding requirements of the MAIA by offering a Compulsory Conference within one month.
- [27] On Thursday 27 February 2020, the second respondent wrote to the applicant’s solicitor offering to attend a Compulsory Conference on 13 March 2020 and suggested that, on that basis, the application was unnecessary and that each party should be responsible for its own costs.⁵
- [28] The solicitor for the applicant rejected the proposition that each party be responsible for its own costs. The second respondent subsequently retained counsel for this application.

⁴ Section 51A(3) MAIA.

⁵ Exhibit TOD2-1 attached to affidavit of Thomas Noel O’Donnell filed with leave on 2 March 2020.

- [29] The second respondent then received a letter on Friday 28 February 2020 from the applicant's solicitor advising that the applicant would agree to attend a Compulsory Conference on 16 March 2020.

Conclusion

- [30] Section 51A(4) of the MAIA provides for when parties may agree to dispense with a Compulsory Conference, and section 51A(5)(b) provides for when the Court may, on application by a party, dispense with a Compulsory Conference. In both cases, "good reason" is required.
- [31] Section 51A(6) says that in considering whether to dispense with the Compulsory Conference, the Court must take into account the extent of compliance by the parties with their respective obligations related to the claim.
- [32] The applicant's position, set out in the letter from the applicant's solicitor dated 27 January 2020, is that the parties had reached their "best possible position on the evidence at hand" and that a Compulsory Conference would be a waste of time and costs. The second respondent denies giving the applicant's solicitors any such impression and at no point had expressed its offers as final. In my view the applicant did not have a good reason to dispense with the Compulsory Conference. In fact, as was outlined in the second respondent's letter dated 27 February 2020, there were a number of good reasons why a Compulsory Conference should be held. These reasons are relevant to the objective under s 3(g) of the MAIA around the speedy resolution of claims and include the opportunity for the parties to:
- (a) meet in person and come to a better understanding of each other at an early stage of the claim;
 - (b) potentially avoid litigation and the associated additional delay and costs; and
 - (c) at least further narrow the quantum issues in dispute, noting that liability issues are resolved.
- [33] The matter could have been advanced with less expense or more expeditiously by attending a Compulsory Conference. In fact, given that such a Conference is now arranged, I infer that the applicant concedes that that should have been done. Of course it goes without saying that the holding of a Compulsory Conference offers the additional advantage of presenting an opportunity for resolution of the claim.
- [34] It appears to me that the approach of the applicant's solicitor to this matter has not resulted in the most expeditious outcome. Had the second respondent's offer of a Compulsory Conference within a month of 7 February 2020 been accepted, then any such Conference would have been held before the date that has now been scheduled.
- [35] Furthermore, I find little persuasive value in the applicant's submissions that the second respondent's request for further information on 7 February 2020 would have resulted in unacceptable delay. Even if the information requested was relevant to the holding of a Compulsory Conference (a fact that the applicant disputes), there is no evidence before the Court as to how long it would have taken to compile the information requested. In fact, the solicitor for the applicant didn't even bother to request that he be supplied with the questionnaires that should have been attached to the correspondence.

- [36] In my view the filing of the subject application was precipitous and unnecessary for the appropriate advancement of the matter. That fact is evidenced unambiguously by the fact that the applicant has now agreed to attend a Compulsory Conference.
- [37] For these reasons, the applicant should pay the respondent's costs of this application.

Orders

1. Pursuant to s 51A(5)(a) of the *Motor Accident Insurance Act 1994* (Qld), the parties conduct a Compulsory Conference with respect to the applicant's claim for personal injuries from a motor vehicle accident, which occurred at or about 9.30am on 26 December 2017, on Gympie Road at Chermside in the State of Queensland, ("the Claim") at 2pm on Monday, 16 March 2020, at the Chambers of Mr Guy Hampson, Barrister at Law, located at Level 18, 239 George Street, Brisbane;
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