



Transcript of Proceedings

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Date: 13 October, 2005

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

No 428 of 2005

BRIAN JOHN TILLEY by his litigation
guardian EILEEN MAUD TILLEY

Applicant

and

BZOURNE ANTHONY MUNROE and

First Respondent

SUNCORP METWAY INSURANCE LIMITED
(ACN 075 695 966)

2nd Respondent

CAIRNS

..DATE 12/10/2005

JUDGMENT

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: The applicants in each case were injured in the same motor vehicle accident on 19 October 2002. Each has made a claim for damages which has been acknowledged as a complying claim for the purpose of the Motor Accident Insurance Act 1994 (hereafter "the Act"). The statutory regime under the Act prohibits the commencement of legal proceedings until a claimant and the insurer have participated in a compulsory conference, and if the claim is not settled each has made a mandatory final offer.

In relation to these three claims, no such conference has yet been held, nor can that occur before the expiration of the limitation period on 19 October 2005. Each applicant seeks leave to commence proceedings now with consequential orders that the action be stayed until such a conference is held, and offers made, as if they were done in accordance with s.51A of the Act.

Confronted with the views expressed by his Honour Judge McGill in Lindsay versus Ammaalii (2004) QDC28, the applicants are prepared to give undertakings that they will not argue that the proposed delayed conference and final offer did not have the same effect as if made pursuant to the Act. The respondents' position is that the giving of such undertakings is an unnecessary subterfuge.

The applicants are in the position of having given a notice of claim which is acknowledged to be complying. Each of them, therefore, falls within the ambit of section 57 of the Act,

which permits the commencement of proceedings after the
expiration of the limitation period. The respondents have no
objection to the period being extended beyond the six months
so long as it is related to compliance with the statutory
provisions of undertaking the compulsory conference and making
the final offer.

Mr Houston of Counsel for the applicants raised a concern of
that proposal by the respondent, that in the event that due
compliance is not made it might lead to an invalidation of the
commencement of the proceedings. He argued for greater
certainty by commencing within the limitation period, and
claimed that the respondents' position is protected by the
undertakings which his clients are prepared to give.

Mr Durward of Senior Counsel on behalf of the respondents
argues that that is not so. The respondents wish to have the
benefit of the statutory requirements which resort to section
57 will allow without any prejudice to the applicants.

The application raises an interesting issue about the effects
of granting leave to commence proceedings in these
circumstances, and the deferring of the holding of a
compulsory conference and the making of a mandatory offer.
However, I do not feel it necessary in this instance to
examine that issue. The applicants' position is properly
covered by the terms of section 57 of the Act.

The down side which Mr Houston of Counsel for the applicants identified as a risk - of the subsequent overturning of the compulsory conference and/or mandatory offer - seems to me to be somewhat speculative. Those steps in the process are quite routine, and are not usually the subject of allegations of invalidity. In any event, such a declaration would involve the Court and would not necessarily result in the applicants' course of action being lost.

I am not convinced there is any reduced certainty because the commencement of the proceeding is only permitted pursuant to section 57 of the Act. If there is, it comes about because the applicants have not pursued their respective claims with due celerity. The respondents on 22 March 2004 admitted liability to pay damages in full, but contended that each applicant was guilty of contributory negligence. The applicants proposed a compulsory conference on 3 November 2004. There followed argument about the sufficiency of the information supplied, but no satisfactory explanation is given why the matter could not have progressed to a point of their having held the compulsory conference before October 2005.

In those circumstances it seems to me that the respondents should not be denied the benefits of the statutory processes provided for under the Act, or have its rights substituted to the enforcement of the personal undertakings of the applicants. I am satisfied that with proper diligence and compliance with the statutory provisions, the matter can be quickly brought to the point of holding a compulsory

conference, and if that is unsuccessful then to the
commencement of proceedings.

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For these reasons I dismiss the plaintiffs' application, and
instead I will make the orders as proposed by the respondents
in the document which is now initialled by me and placed with
the papers.

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I will take that course now, and that order provides that
there will be no order for costs.

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