

SUPREME COURT OF QUEENSLAND

CITATION: *Walsh Mechanical Pty Ltd v Vucurovic* [2005] QSC 392

PARTIES: **WALSH MECHANICAL PTY LTD**
(Applicant)
v
ZDRAVKO VUCUROVIC
(Respondent)

FILE NO: S75/2005

DIVISION: Trial Division

DELIVERED ON: 7 October 2005

DELIVERED AT: Mackay

HEARING DATES: 16 September 2005

JUDGE: Dutney J

ORDER: **The application be dismissed with costs.**

CATCHWORDS: WORKERS' COMPENSATION – CONSTRUCTION OF STATUTE – EMPLOYER'S INDEMNITY – where the applicant was injured by a third party vehicle in the course of his employment – whether liability under *WorkCover Queensland Act* is excluded by s 11

Motor Accidents Insurance Act 1994 (Qld), ss 5, 20, 21, 23

WorkCover Queensland Act 1996 (Qld), s 11

Workplace Health & Safety Act 1995 (Qld)

COUNSEL: Mr G. C. O'Driscoll for the Applicant
Mr B. A. Harrison for the Respondent

SOLICITORS: Searles Solicitors for the Applicant
Bill Cooper & Associates Solicitors for the Respondent

- [1] The respondent (“the claimant”) was injured on 20 November 2001 in the course of his employment.
- [2] The claimant was an apprentice mechanic. The employer operated a garage. On the day he was injured, the claimant had been working on a Nissan Patrol in the workshop. The vehicle was owned by a finance customer and leased to a client of the claimant’s employer.

- [3] At about 9:00 am the vehicle had been taken off the hoist and was resting on the garage floor. The office girl came into the workshop, announced that she was bored and inquired whether there was anything she could do. The claimant said she could “start the car”. He also cautioned her to “make sure it is out of gear.”
- [4] The office girl started the vehicle but failed to ensure it was out of gear. The vehicle started and moved forward on its wheels, pinning the claimant to the wall of the workshop.
- [5] A Notice of Claim was lodged with WorkCover. WorkCover seeks a declaration that it is not required to indemnify the employer because the employer is indemnified under the provisions of the *Motor Accident Insurance Act 1994* (Qld).
- [6] Argument was advanced by both sides on the application of the *Motor Accident Insurance Act*. It seems to me, however, that the matter is resolved much more simply. In order to avoid the liability to indemnify the claimant under the *WorkCover Queensland Act 1996* (Qld), WorkCover must bring the claim within the scope of the exclusion in s 11(2) of the *WorkCover Queensland Act*.
- [7] Section 11, where relevant provides:
- “(1) ‘Damages’ is damages for injury sustained by a worker in circumstances creating independently of this Act, a legal liability in the worker’s employer to pay the damages to... the worker...
- (2) A reference in subsection (1) to the liability of an employer does not include a liability against which the employer is required to provide under... another Act ...”
- [8] The argument on behalf of WorkCover was that the liability was one for which the employer was required to provide under the *Motor Accident Insurance Act*.
- [9] The *Motor Accident Insurance Act* purports to impose an obligation to insure vehicles by Part 3 Division 1. Section 20 of the Act seeks to achieve this result by making it an offence for any person to drive an uninsured vehicle on a road in a public place.¹ It also makes it an offence for the owner of the vehicle to permit it to be driven on a road or in a public place while uninsured.²
- [10] Section 21 requires a person applying to register a vehicle to select a licensed insurer and either pay the appropriate premium or produce a certificate of insurance.
- [11] Section 23(1) of the Act provides that upon registration of the vehicle, a policy of insurance in the form in the schedule comes into force.
- [12] The schedule provides that the policy of insurance covers a liability to which the Act applies as defined in s 5. The insured persons under the policy are the owner, driver or other person whose wrongful act or omission in respect of the insured vehicle causes the injury. The policy does not apply if the injury arises from the failure to provide a safe system of work or some other breach of a duty of care owed

¹ Subsection (1).

² Subsection (2).

by an employer to an employee and where neither the employer nor another employee was the driver of the vehicle at the time of the accident from which the claim arose.

- [13] From the above analysis it seems that the obligation to insure is primarily upon the person by whom the vehicle is registered. In this case that would be either the lessee or the owner. There might also be an arguable obligation on any person driving an uninsured vehicle on a road or in a public place to insure it.
- [14] In this case there is no suggestion that the vehicle was uninsured. There is no suggestion that the vehicle was or was intended by the employer or any other employee to be driven on a road or in a public place.
- [15] In the absence of proof of either of the matters referred to in the preceding paragraph, WorkCover has failed to establish that, whether or not the claim falls within the scope of the *Motor Accident Insurance Act*, the claim is one to which s 11(2) of the *WorkCover Queensland Act* applies. Thus the operation of the *WorkCover Act* is not excluded.
- [16] Counsel for the applicant argued that a reference to a liability under another Act included a reference to a liability under the *Workplace Health & Safety Act 1995* (Qld). The flaw in this submission is that the liability to which the paragraph refers is a liability to pay damages to the worker. There is no liability to pay damages to a worker under the *Workplace Health & Safety Act*. At best, a breach of that Act may make the employer liable at common law to a claim for damages for breach of a statutory duty, breach of contract or for negligence. That is a liability under the common law, not the particular Act which has been breached. Further, any liability to pay damages to a worker under that Act is not a liability against which the Act requires the employer to make provision.
- [17] It was also submitted that the intention of the legislature was to avoid double insurance and I should construe the *WorkCover Queensland Act* to avoid that result.
- [18] Whether the intention of the Legislature is as clear as counsel for the applicant submits may be open to debate. In any event it is not the function of the Court to ignore the clear and unambiguous language of a statute in order to give effect to some perceived underlying but unexpressed intention.
- [19] In my opinion, the liability in this case is not one against which the employer was required to make provision under another Act or a law of another jurisdiction. Thus, liability under the WorkCover legislation is not excluded. It is therefore unnecessary to determine whether the exclusion in the schedule to the *Motor Accident Insurance Act* is applicable.
- [20] I dismiss the application with costs.