IN THE SUPREME COURT OF QUEENSLAND Appeal No. 3689 of 1983

FULL COURT

BEFORE:

Mr. Justice Kelly S.P.J.

Mr. Justice Connolly

Mr. Justice Moynihan

BRISBANE, 15 DECEMBER 1987

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BETWEEN:

LLOYD HALVORSEN (Plaintiff)

-and-

MARY KATHLEEN URANIUM LTD. (Defendant)

-and-

SUNCORP INSURANCE AND FINANCE (Third Party) Appellant

-and-

WORKERS' COMPENSATION BOARD OF QUEENSLAND (Fourth Party) Respondent

JUDGMENT

MR. JUSTICE KELLY: In this matter I have had the advantage of reading the reasons prepared by my brother

Connolly. I agree with those reasons and with the order which he proposes.

I am authorised by my brother Connolly to say that in his opinion the appeal should be dismissed and to publish his reasons which I now do.

MR. JUSTICE MOYNIHAN: I agree that the appeal should be dismissed for the reasons published by my brother Connolly.

MR. JUSTICE KELLY: The order of the Court is that the appeal is dismissed with costs.

IN THE SUPREME COURT OF QUEENSLAND   Writ No. 3689 of 1983

FULL COURT

BETWEEN:

LLOYD HALVORSEN (Plaintiff)

AND:

MARY KATHLEEN URANIUM LTD. (Defendant)

AND:

SUNCORP INSURANCE AND FINANCE (Third Party) Appellant

AND:

WORKERS' COMPENSATION BOARD OF QUEENSLAND (Fourth Party) Respondent

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KELLY S.P.J.

CONNOLLY J.

MOYNIHAN J.

Reasons for Judgment delivered by Connolly J. on the 15th December, 1987.

Kelly S.P.J. and Moynihan J. concurring with those reasons.

"APPEAL DISMISSED WITH COSTS."

IN THE SUPREME COURT OF QUEENSLAND No. 3689 of 1983

Before the Full Court

Mr. Justice Kelly S.P.J.

Mr. Justice Connolly

Mr. Justice Moynihan

BETWEEN:

SUNCORP INSURANCE AND FINANCE (Third Party) Appellant

AND:

WORKERS' COMPENSATION BOARD OF QUEENSLAND (Fourth Party) Respondent

JUDGMENT - CONNOLLY J.

Delivered the fifteenth day of December, 1987.

CATCHWORDS:

Counsel: Mr. S.C. Williams Q.C. and Mr. J.B.L. Taeffe for Appellant
Mr. J.A. Griffin Q.C. and Mr. D.J. McGill

for Respondent

Solicitors: W.R. Scott and Scott for Appellant
O'Mara Patterson and Perrier for Respondent

Hearing dates: 9th and 10th December, 1987.

IN THE SUPREME COURT OF QUEENSLAND No. 3689 of 1983

FULL COURT

BETWEEN:

SUNCORP INSURANCE AND FINANCE (Third Party) Appellant

AND:

WORKERS' COMPENSATION BOARD OF QUEENSLAND (Fourth Party) Respondent

JUDGMENT - CONNOLLY J.

Delivered the fifteenth day of December, 1987.

On 17th August, 1982 the plaintiff was driving a Toyota vehicle the property of the defendant in the action, Mary Kathleen Uranium Ltd. at the company's mine site at Mary Kathleen. A policy of insurance under the Motor Vehicles insurance Act was in force in relation to this vehicle.

Also on the site was a heavy vehicle known as a Euclid dump truck which was operated by one Machen, who was also employed by the defendant, and which was not insured under the Motor Vehicles Insurance Act. The plaintiff drove the Toyota land cruiser to the area of the crushed ore stock pile and stopped some distance ahead of the Euclid. The Euclid was equipped with a safety radio but Machen had turned it down, contrary to general safety instructions, and did not hear the plaintiff announce on his two-way radio that he was arriving. The Euclid was being loaded by an end loader with a quantity of ore; and when this operation was complete, Machen, who was unaware of the presence of the Toyota, moved off, without sounding his

horn, and drove over the Toyota, injuring the plaintiff. The plaintiff successfully brought this action against the defendant for damages for its negligence, the learned trial Judge finding that the defendant was vicariously liable for the negligent operation of the Euclid by Machen; and also directly liable for failure adequately to warn the drivers of light vehicles such as the Toyota against parking in positions in which they might be at risk from the movement of a stationary Euclid without warning.

The learned Judge had then to resolve issues raised between the appellant and the respondent as to which of them was liable to indemnify the defendant against its liability to the plaintiff. This contest raises the now familiar problem posed by s. 8(1)(b) of the Workers' Compensation Act which reads as follows:

> "8. Employers to obtain policies. (1) ...
>
> Every employer shall insure himself and keep himself insured with the Office against all sums for which, in respect of injury to any worker employed by him, he may become legally liable by way of -
>
> (a) compensation under this Act; and
>
> (b) in the case of injury as aforesaid ... (except such an injury in respect whereof the employer is required by some other Act to provide against such liability as prescribed by such other Act) damages arising under circumstances creating also, independently of this Act, a legal liability in the employer to pay damages in respect of that injury."

The defendant was, of course, insured under the standard policy against its liability in respect of injuries to its workers, but the Workers' Compensation Board contends that the case is within the parenthesis in para. (b) in that the defendant's liability to the plaintiff was one in respect of the Toyota for damages cause by, through or connection with the Toyota. Accordingly, it says, the injury was one in respect whereof the defendant was required by the Motor Vehicles Insurance

Act to provide against the liability so that, by virtue of the parenthesis, there was no obligation in the employer to insure against damages arising under these circumstances, with the further consequence that the standard policy under the Workers' Compensation Act excludes from the risk insured liability for the injuries sustained by the plaintiff in the circumstances of this case. The Board, of course, relies on s. 3(1) of the Motor Vehicles Insurance Act which requires the owner of a motor vehicle to keep himself indemnified against sums for which he shall become legally liable by way of damages in respect of such motor vehicle for accidentally bodily injury to any person where such injury is caused by, through or in connection with such motor vehicle.

That the defendant's liability to the plaintiff was a liability in respect of the insured Toyota is, to my mind, clear, at least in so far as the liability was founded upon the defendant's breach of duty adequately to warn the plaintiff in relation to his management of that vehicle in the vicinity of Euclid trucks. I am prepared to assume, for the purpose of this appeal, that it was not a liability in respect of the Toyota in so far as it was a vicarious liability for Machen's negligent handling of the Euclid.

It is, I think, equally clear that the injury to the plaintiff was caused through and in connection with the Toyota if only because that vehicle had been negligently placed where it was vulnerable to the Euclid, Prima facie this means that the injury sustained by the plaintiff in respect whereof the defendant was required by the Motor Vehicles Insurance Act to provide against its liability as prescribed by that Act and that the case is within the exception stated in the parenthesis in s. 8(1)(b). It is strongly contended however by Mr. Williams that on the proper construction of that provision, the obligation to insure against common law liability is only excluded to the extent to which the cover provided by the legislation referred to in the parenthesis is of the same extent as the cover provided under the Workers' Compensation Act. Here it

is said, if I understand the argument correctly, that the cover provided under the Motor Vehicles Insurance Act is limited to liability in respect of a motor vehicle where the injury is caused by, through or in connection with that motor vehicle. The liability which must be insured against under the Workers' Compensation Act is not so limited. So much is plainly correct. Thus, in a situation in which an employee is injured through the fault of his employer in circumstances unconnected with a motor vehicle, obviously the indemnity under the Workers' Compensation Act is unlimited. Again, it is possible to imagine a situation in which an employee suffers multiple injuries, some only of which can be clearly identified as having been suffered in connection with a motor vehicle in circumstances in which the employer's liability can properly be said to be one in respect of that-motor vehicle. In such a case it could credibly be argued that the liability of the Workers' Compensation Board to indemnify the employer was limited to the consequences of those injuries which had no connection with the motor vehicle, the balance being subject to the indemnity under the Motor Vehicles Insurance Act.

Such an argument cannot be mounted in this case in which the plaintiff's injuries were all suffered through or in connection with an insured motor vehicle and the legal liability of the employer by way of damages was a liability in respect of that motor vehicle. The fact that (as I have assumed) the source of the liability in this case was a two-fold breach of duty, one such breach only (the employer's personal breach of duty as distinct from its vicarious liability for the negligence of Machen) rendering the third party liable to indemnify does not mean that the language of the parenthesis is not satisfied. Whatever be the legal foundation upon which the liability rests, the Workers' Compensation insurance would not extend to it if the plaintiff's injury and damages are required to be fully insured by the Motor Vehicles Insurance Act.

In my opinion the meaning of the parenthesis is that the Workers' Compensation policy does not cover an employer

against any injuries sustained by a worker for which he may become legally liable and in respect whereof he is required by the Motor Vehicles Insurance Act to provide against the same liability. If the injury arises out of a master and servant relationship and the employer is in breach of his duty to his employee, he will be legally liable. If the same injury is also caused by, through or in connection with a motor vehicle and if the liability arises in respect of that motor vehicle it is a liability against which he is also required to provide by the Motor Vehicles Insurance Act. The parenthesis applies where all three factual situations co-exist and the liability will necessarily be of the same extent. It matters not that the legal foundation of the liability, the heads of negligence or breach of duty, which will found the liability may be more extensive in the one case than in the other. Once fault is established, the defendant is liable for the whole of the damages which flow from the breach of duty.

The common law would have solved the problem of two insurers being liable to indemnify the defendant for the same damages by ordering contribution. Section 8(1)(b) is so framed as to exonerate the Workers' Compensation Board entirely. There is no room for contribution, no basis in this case on which the Board can be held liable. This was the conclusion of Derrington J. and in my opinion it was correct. I would dismiss this appeal.