Farrar v Territory Insurance Office Board [2001] NTSC 80

PARTIES:	SUSAN FARRAR
	v
	TERRITORY INSURANCE OFFICE BOARD
TITLE OF COURT:	MOTOR ACCIDENTS (COMPENSATION) APPEAL TRIBUNAL OF THE NORTHERN TERRITORY
JURISDICTION:	REFERENCE TO TRIBUNAL FROM DECISION OF THE BOARD
FILE NO:	M1 of 2000 (20002565)
DELIVERED:	6 September 2001
HEARING DATES:	28 May 2001
JUDGMENT OF:	THOMAS J

CATCHWORDS:

REFERENCE TO TRIBUNAL FROM DECISION OF THE BOARD – STATUTORY INTERPRETATION

Interpretation of s 18 Motor Accidents (Compensation) Act 1979 (NT) – provision of expenses for treatment and other care – definition of treatment – definition of attendant care services – definition of permanent impairment – history of legislation – whether definition of care includes household services – whether s 18(2A) provides for the provision of attendant care services independently of s 18(1)

Motor Accidents (Compensation) Act 1979 (NT), s 4, s 18, s 18(1), s 18(2), s 18(2)(a), s 18(2)(b), s 18(2)(c), s 18(2A), s 18(3), s 18(4), s 18A, s 18B and s 29(4)
Motor Accidents (Compensation) Rates of Benefit Regulations 1984 (NT), reg 3A and reg 4A

Ebatarinja v Territory Insurance Office (1992) 109 FLR 65; *McMillian v Territory Insurance Office* (1988) 91 FLR 436; *Saroukis v Territory Insurance Office* (1988) 91 FLR 448, cited
Pollard v Territory Insurance Office (1997) 6 NTLR 142, adopted
Kingston v Keprose (1987) 11 NSWLR 404; *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 72 ALJR 841; *McGale v Glad* (1980) 49 FLR 335, referred to
Pennant Hills Restaurants Pty Ltd v Barrell Insurances Pty Ltd (1981) 145 CLR 625; agreed with

REPRESENTATION:

Counsel:

Applicant:	D Alderman
Respondent:	P McIntyre

Solicitors:

Applicant:	Markus Spazzapan
Respondent:	Hunt & Hunt

Judgment category classification:	C
Judgment ID Number:	tho200121
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IN THE MOTOR ACCIDENTS (COMPENSATION)
APPEAL TRIBUNAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Farrar v Territory Insurance Office Board [2001] NTSC 80
M1/2000 (20002565)

BETWEEN:

SUSAN FARRAR
Applicant

AND:

TERRITORY INSURANCE OFFICE BOARD
Respondent

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 6 September 2001)

[1] This is a reference to the Tribunal from a decision of the Board under the Motor Accidents (Compensation) Act 1979 (NT). It involves an interpretation of s 18 of the Motor Accidents (Compensation) Act which refers to the provision of expenses for treatment and other care.

[2] The application arises as a consequence of a motor vehicle accident that occurred on 16 October 1992. The applicant sustained injuries when the car she was driving rolled in a single vehicle accident on the Stuart Highway near Alice Springs. These injuries included a closed head injury, a pulmonary contusion and compound fractures of the right knee and ankle.

[3] Between 16 October 1992 and 8 December 1992, the applicant underwent 14 operations. In August 1993, she had an arthrodesis of the right ankle. As a result of her injuries she sustained a significant muscle loss of the right calf, a fracture of the medial tibial condyle, a loss of movement of her right knee and a fixed right ankle.

[4] The applicant suffered certain limitations and incurred expense for care needed to assist her overcome these limitations. The applicant sought reimbursement from the Territory Insurance Office for these expenses. The application for reimbursement was refused.

[5] The parties did not call evidence in this matter. Instead they have filed a statement of issues.

[6] At the commencement of the hearing counsel for the applicant, Mr Alderman, sought to amend the statement of issues which had been prepared and signed by the parties.

[7] The argument then proceeded on the basis of an amended statement of issues which reads as follows:

> 1. Whether the applicant may have an entitlement pursuant to s 18 or s 18A of the Motor Accidents (Compensation) Act for the expenses for the provision of any (and which, if any) of the services described on page 2 of the letter from Ward Keller to the Territory Insurance Office dated 29 October 1999 and numbered firstly 1 to 7.

[8] It is convenient to set out the relevant parts of the letter which omitting formal parts reads as follows:

> "I refer to my letter of 28 July 1999 requesting an appeal from the designated person's decision to the Territory Insurance Office Board, your letter of 7 October 1999, my letter of 13 October 1999 and your subsequent letter of 18 October 1999.
>
> I refer to your interpretation of Section 18(2)(A), that this provision is made for Attendant Care Services on a short term basis. Section 18(2)(A) provides for Attendance Care Services for those who are not permanently impaired as defined as opposed to Section 18(A) for Attendant Care expenses for those persons who are permanently impaired. There is no reference to a time frame or that Section 18(2)(A) applies on a short term basis.
>
> With respect, the type of household services or assistance Mrs Farrar requires is one that the Commonwealth Rehabilitation Service should have requested from Mrs Farrar prior to providing the Territory Insurance Office with their report, on which the Territory Insurance Office determined to cease Mrs Farrar's entitlements. It is not a matter which I should be required to inform you of, as to how many hours per day, per week Mrs Farrar requires assistance. I enclose (*) a copy of a typed schedule Mrs Farrar provided to Clair Cheel from the Commonwealth Rehabilitation Service on 16 February 1999 clearly setting out the tasks Mrs Farrar requires assistance with, and the time taken to complete those tasks. This document however you have seen, and had notice of before ceasing Mrs Farrar's entitlements.
>
> **Tasks and The Time Required for those Tasks:**
>
> While your letter of 18 October 1999 indicated that you were aware of the types of household services for which Mrs Farrar requires assistance I now reiterate those household services for ease of reference:
>
> Mopping and sweeping laundry floor, kitchen floor, bathroom floor, scrubbing laundry sink, kitchen sink and benches, bathroom sink, shower, glass in shower, polishing vanity and cupboard and mirror in bathroom cleaning windows in bathroom, sills, toilet etc. Wiping down washing machine, wheelchair, sweeping verandah, sweeping along path to car, lots of leaves which make it dangerous for me to walk along, watering plants on verandah, I can't carry bucket, vacuum study, dust, pick up all sorts of things on floor, vacuum carpet in dining room and lounge, rugs, polish china cabinet, wall unit, desk, chairs, table, coffee tables, skirting boards, wipe down,

wipe down lights in dining room and bedrooms, replace globes, clean windows in kitchen, study, laundry, all doors are glass, vacuum fireplace in two rooms, vacuum lounge etc, they move furniture to clean, windows in lounge, vacuum hall, three bedrooms, dust girl's tables, clean on top of wardrobe and ceiling fan, I can't climb a ladder, empty rubbish, clean inside fridge when necessary and stove, clean inside microwave, on top of fridge, shelves, help clean cupboards, I can't bend down to see pantry, put clothes on beds, washing etc, basic gardening services, washing car inside and out, looking under beds for shoes etc, pushing the supermarket trolley, taking in the shopping, taking out the garbage bin when Leigh is away, there are three bins, bringing them back in etc, there are probably more simple things, but I can't think of them at the moment. Many things are seasonal, weather changes plans especially for washing, drying. There are certain things I can't get down when Leigh is away. Sometimes I leave the girls here with the cleaners, so I can go to massage or acupuncture. Leigh also washes up and cleans up after dinner as I am in too much pain by that time of the night, especially in the humid weather. If there are boxes of some description in the car I have to wait for someone to bring them inside, same with fruit and vegetables, meat etc, taking down curtains, washing them, wiping down blinds, windows.

Mrs Farrar therefore generally requires assistance to:

1. iron;
2. wash;
3. clean;
4. drive;
5. exercise;
6. general house assistance (extra cleaning, lawn mowing, gardening); and
7. shopping.

An estimate of the time such tasks take is as follows:

1. ironing – 2 hours per week;
2. washing – 2 hours per week;
3. cleaning – 3 hours per week;
4. driving and exercising – 3 hours per week;
5. general assistance – 3 hours per week; and
6. shopping – 1-2 hours per week.

> I look forward to hearing the Territory Insurance Office Board's determination given this matter was initially appealed on 28 July 1999."

[9] I have set out the letter in full. The parties are agreed that the estimate as to the time taken on these tasks is not relevant to the question being question number 1 in the agreed statement of issues.

[10] Question number 2 on the amended statement of issues reads as follows:

> "2. Whether s 18(2A) of the Act provides for the provision of attendant care services independently of section 18(1) of the Act?"

[11] The third question raised in the original statement of issues as filed is now deleted.

[12] Section 29 of the Motor Accidents (Compensation) Act provides for appeals to the Tribunal from a determination of the Board. Section 29(4) provides that a hearing conducted by the Tribunal is a hearing de novo. See *Ebatarinja v Territory Insurance Office* (1992) 109 FLR 65, *McMillan v Territory Insurance Office* (1988) 91 FLR 436 at 438 and *Saroukis v Territory Insurance Office* (1988) 91 FLR 448 at 449.

[13] I accept with respect the approach endorsed by Bailey J in *Pollard v Territory Insurance Office* (1997) 6 NTLR 142 at 148:

> "Mr Alderman cited a considerable number of authorities to illustrate the approach which should be adopted in construing the Act. It is unnecessary to repeat those in any detail beyond referring to my endorsement of the approach adopted by Kearney J in *Jones v Motor Accidents (Compensation) Appeal Tribunal* (1988) 59 NTR 12,

applying *McMillan v Territory Insurance Office* (1988) 57 NTR 24 (per Gallop J at 28):

> 'By its very nature the Act is designed to provide benefits for persons suffering injuries in motor vehicle accidents. Its emphasis and policy is that personal injuries in motor vehicle accidents should not go without compensation.'

I accept the views of Kearney J in *Jones* (supra) that the Act should receive a broad and benign construction so as to prevent its obvious purpose from being defeated."

[14] In this matter it is not in dispute the applicant is entitled to a benefit in respect of the injury she received and that injury was received by her arising out of the use of a motor vehicle.

[15] Section 18 of the Motor Accidents (Compensation) Act provides as follows:

> "18. **Medical and rehabilitation expenses**
>
> (1) Subject to subsections (2A) and (3) and sections 18A and 18B, there is payable to or on behalf of a person entitled to a benefit under this Act in respect of an injury received by him in or as a result of an accident all the expenses reasonably incurred by him or on his behalf for the provision of the treatment required by him in respect of that injury other than -
>
> (a) accommodation and treatment as a public patient in a public hospital;
>
> (b) accommodation as a private patient in a public hospital; or
>
> (c) single room accommodation in a private hospital,
>
> in the Territory. (*See* back note 5)
>
> (2) In subsection (1) "treatment" means -
>
> (a) medical, surgical or dental treatment or nursing or other care provided to the person referred to in that subsection;
>
> (b) training, education or care required for the rehabilitation of that person; and
>
> (c) the conveyance of that person to any place for the purpose of his receiving any treatment referred to in this subsection or to a hospital.

(2A) Any payment made under subsection (1) to or on behalf of a person who is not permanently impaired in respect of attendant care services shall be limited to an amount per hour calculated at a rate of 2% of the average weekly earnings indexed annually, in respect of those services provided to the person for the number of hours, not exceeding 28 hours, in any one week.

(3) Subject to subsection (4) where a person referred to in subsection (1) requests the Board to approve the provision to him of treatment or care of a particular kind or by a particular medical practitioner, whether or not in the Territory, and the Board is of the opinion that the request is reasonable in the circumstances, the reasonable expenses incurred in providing that treatment or care, as the case may be, shall be payable to or on behalf of that person.

(4) The Board shall not give its approval to a request under subsection (3) unless it is satisfied on medical advice that the requested treatment or care is necessary on medical grounds."

[16] It is also relevant to consider the provisions of s 18A which provides:

18A. Reimbursement of attendant care expenses for permanently impaired persons

Subject to section 18B, in addition to any amount payable under section 18, there is payable to or on behalf of a person referred to in that section -

(a) who has suffered a permanent impairment for not less than 2 years; or

(b) who has suffered a permanent impairment that, in the opinion of the Board, is likely to endure for more than 2 years,

in the absolute discretion of the Board, an amount per hour calculated at a rate of 2% of average weekly earnings indexed annually, in respect of attendant care services of a standard acceptable to the Board provided or to be provided after the commencement of this section to the person for the number of hours, not exceeding 28 hours, in any one week."

[17] In s 4 of the Act "attendant care services" is defined as:

"… in relation to a person, means services of a standard satisfactory to the Board (other than household services, medical or surgical

services or nursing care) that are required for the essential and regular personal care of the person;"

[18] Section 4 also contains a definition of "permanent impairment" used in s 18A which is:

> "… means an impairment or impairments assessed by the Board, in accordance with the American Medical Association Guides to the Evaluation of Permanent Impairment as published from time to time, as being an impairment, or combination of impairments -
>
> (a) for the purposes of section 17 - of not less than 5% of the whole person; and
>
> (b) for the purposes of sections 18 and 18A - of not less than 85% of the whole person;"

[19] It is relevant to look at the history of this legislation.

[20] The consolidation of the Act as it was in force on 1 January 1987, contained no definition of "attendant care services" or "permanent impairment". There was no s 18A or 18B. Section 18 with some small variations is the same as the current legislation.

[21] The Act was then amended by No. 61 of 1989. This then included in s 4 Interpretation a definition of "attendant care services" and "permanent impairment". There was a minor amendment to s 18(1) so as to make that subsection subject to subsections (2A) and (3) and sections 18A and 18B. Sections 18A and 18B were added.

[22] In amendment No. 8 of 1991 subsection (4) of s 18 was included so that approval to request for a particular type of care as appears in subsection (3) had to be supported by medical advice. There were further amendments,

being No. 48 of 1991 and in 1997 the limitation on the amount payable under s 18(2A) and s 18A was made.

[23] With respect to the application to this Tribunal the applicant relied upon the following material.

[24] On 19 July 1999, the "designated person" made a determination that the applicant had no entitlement under the Act for attendant care or benefits.

[25] In document number 2 attached to the statement of issues, being a letter from Ward Keller to the Territory Insurance Office dated 28 July 1999, the final two paragraphs read as follows:

> "On 24 March 1994, the Territory Insurance Office awarded a maximum payment of $200.00 for the provision of all attentive care or home help services to Mrs Farrar from 5 April 1993 and ongoing until such time as the Territory Insurance Office approved rehabilitation provider recommended a reduction/cessation of those services. Mrs Farrar is entitled to attendant care expenses pursuant to section 18A in accordance with the Territory Insurance Office' determination assessing Mrs Farrar at 40% permanent impairment. This permanent impairment was assessed on or about 1994 and as such she meets the criteria of section 18A(a) and she is thereby entitled to attendant care services at 2% of the average weekly earnings indexed annually for a total number of hours not exceeding 28 hours in any one week. Mrs Farrar describes the questioning of her last attendant care or home help assessment as casual and ill informed. Mrs Farrar does not require assistance to dress, shower, put on her makeup or go to the bathroom however, she still requires some home help or attendant care services to carry out her daily tasks around the home and managing her 2 children.
>
> We await receipt of the Territory Insurance Office Board's determination."

[26] Document number 3 is a letter from the Territory Insurance Office to Ward Keller dated 7 October 1999. The final paragraph on page 1 states:

"In regard to attendant care, in your letter of 28 July 1999 you refer to Section 18A and 18A(a), and your client's 40% permanent impairment. We would appreciate your comments regarding the definition of 'permanent impairment' in Section 4 of the Act as it applies to Section 18A."

[27] Document number 4 is a letter from Ward Keller to the Territory Insurance Office dated 13 October 1999 which states in paragraph 3:

"With respect to Attendant Care Services, Mrs Farrar's 40% permanent impairment determination made 3 August 1995 does not satisfy the 85% permanent impairment provision with respect to section 4's definition of permanent impairment in relation to section 18 and 18A. The submission made by my letter of 28 July 1999 was clearly in error and I resubmit the Appeal on the following basis:

1. Mrs Farrar is entitled to the treatment as defined by section 18(2) as other care pursuant to section 18(2A). The care is in all circumstances reasonable in light of the serious nature and incapacitating effect Mrs Farrer's (sic) injuries have upon her daily life and function with the Territory Insurance Office's letter of 24 March 1994 recognising her requirement.

Mrs Farrar has not been advised that her rehabilitation provider has recommended a reduction or cessation of any home help services as illustrated in the Territory Insurance Office letter of 24 March 1994 and Mrs Farrar seeks reinstatement of these payments."

[28] Document number 5 is a letter from the Territory Insurance Office to Ward Keller dated 18 October 1999 which, omitting formal parts, reads as follows:

"Further to your letter dated 13 October 1999, under Section 18A and 18(2A), Attendant Care is defined as:

> 'Attendant Care services, in relation to a person, means services of a standard satisfactory to the Board (other than household services, medical or surgical services or nursing care) that are required for the essential and regular car of the person'.

Provision is provided under Section 18(2A) for short-term basis care for a claimant that has a permanent impairment less than 85%. This benefit uses the same rate as for Section 18A but is limited in

duration. It is usual for regular reviews of the services required to support any ongoing entitlement.

When the Home Assessment was carried out by Commonwealth Rehabilitation Service back in February 1999, the following activities defined as Attendant Care services were addressed with Mrs. Farrar;

- Hygiene, by assisting with bathing, grooming etc
- Clothing, by helping the person to get dressed and undressed
- Feeding, by assisting the person to eat or drink
- Administration of medicine
- Assistance with exercise
- Other activities of physical dependence (e.g. Getting out of bed)

We note in your recent correspondence that 'the care is in all circumstances reasonable in light of the serious nature and incapacitating effect Mrs. Farrar's injuries have upon her daily life and function'.

To date we only have an indication of the types of household services Mrs. Farrar requires assistance with. It would be appreciated if you could supply a detailed outline of these, how many times a week it is required and for how many hours per day/week.

We await you reply in due course to assess Mrs. Farrar's further entitlement to Attendant Care services.

As such this matter will be held in abeyance on proceeding to the TIO board pending this reply."

[29] Document number 6 is the letter from Ward Keller to the Territory Insurance Office dated 29 October 1999 and set out in par [8] of these reasons for judgment.

[30] Document number 7 is a report from Clair Cheel, an occupational therapist with Commonwealth Rehabilitation Services to the Territory Insurance Office dated 18 February 1999. This letter states:

"1. Request for Attendant Care

Mrs Farrar does not require any assistance with Attendant Care.

The findings of the Assessment were as follows:

Personal Hygiene:

Mrs Farrar stated she is independent in all aspects of showering and grooming. Mrs Farrar stands to shower whilst holding onto the frame of the shower. She does not use a shower chair. The bathroom modifications have not been carried out and it is noted that a concern regarding Mrs Farrar's safety in the shower remains because the recommended modifications have not been carried out.

Should you need further clarification regarding the Attendant Care and Home Modifications Assessments please do not hesitate to contact me.

I will telephone you to discuss the additional requests Mrs Farrar has made. Please also can you return the approved Extended IRP form submitted to your office on 19/1/99.

With regards the Vocational Assessment requested by your office. Mrs Farrar is attending for this assessment at our offices on Tuesday 23 February at 10.30 am."

[31] Annexed to this document is a further document headed "Request for Attendant Care":

"Services that are required for the essential and regular personal care and hygiene of a person. Includes:

- Hygiene, by assisting with bathing, grooming etc
- Clothing, by helping the person to get dressed and undressed
- Feeding, by assisting the person to eat or drink
- Administration of medicine
- Assistance with exercise

NOTE Household services, medical or surgical services and nursing care are NOT attendant care services."

Written in there are the words "Mrs. S. Farrar". The box below that is headed "Recommended program of services" and written across this are the words "No services required". The assessment was by Clare Cheel dated 16 February 1999.

[32] Document 8 is a report prepared by Dr Maxwell Wearne. This sets out the history as given to him by Mrs Farrar. This refers to her history prior to her accident, a short history of what occurred when the accident took place, the injuries she sustained, the treatment, her progress and details of her current status. On p 4 of the report at par 5 he states:

> "At home she could do some cooking and could make the beds in her own time. She was also determined to be personally independent and could groom her own hair with difficulty and manage her own toileting and showering.
>
> In the house she was unable to iron, vacuum or mop. She was unable to hang out the laundry and, for this chore, was very dependent on her daughters, her home help, or her husband. She was unable to push a supermarket trolley. She was unable to clean windows and unable to reach high cupboards.
>
> She was able to throw wet clothing into the dryer on the wall, but was unable to pull out the clothing. She was unable to bend in the garden and was unable to extract articles or clean low cupboards. She could not carry a suitcase."

This is followed by an account of her present activities and treatment.

[33] The respondent did not seek to put any further evidence before the Tribunal. The respondent does not concede the assertion of fact in document number 6 set out in par 8 of these reasons for judgment. The respondent's position is that even if these matters are proved as facts in another forum the applicant has no entitlements under the provisions of the Motor Accidents (Compensation) Act.

[34] Counsel for the applicant, Mr Alderman, agreed that the facts would be proved in another forum but the argument as to entitlement under the Act is

a decision for this Tribunal. The position of the applicant is that under the Act there is such an entitlement.

[35] Mr Alderman referred to s 18(1) which gives the general power to the Board to provide for expenses for treatment. Reference was made to the definition of treatment in s 18(2). It is the applicant's submission that "other care" as it appears in s 18(2)(a) includes "attendant care services" but that the words "other care" are not limited to attendant care services. The applicant submits the Act also provides for some form of care that can be paid for that is not referred to in s 18(1). That is "care of a particular kind" referred to in subsection (3) further that subsection (4) makes a distinction between treatment and "care of a particular kind". It is Mr Alderman's submission that the legislature has included in the scheme a payment for treatment and a payment for care of a particular kind and then in the definition of "treatment" in addition to medical, surgical or dental treatment or nursing care, there is another care.

[36] The applicant is seeking assistance to carry out household chores and exercise. It is her position that the definition of "care" includes household services, which are excluded from the definition of "attendant care services". Further that under the general definition of "care", some of the matters which as household services would be excluded from the definition of "attendant care services" do go into the "care" of the individual who is the person injured. It is the applicant's position that because of her

limitations she has difficulty with household chores and that has an effect on the environment in which she lives.

[37] Mr Alderman submitted that because there were others in the applicant's household, being her husband and children, who would benefit from such attendant care services this could be dealt with by the Board allowing, for example, 25 per cent of such cost to cover the applicant's share but should not be a reason to disentitle her altogether.

[38] The applicant's case is that these services could, in appropriate cases, include driving, for example, to assist with shopping. The use of the word "care" in s 18(3) is, in the submission of the applicant, to look after or make provision for a person such as assisting them with a hygienic environment, assisting them with living in a comfortable fashion. The applicant states that s 18(3) provides a further extension of the type of care that can be provided because it distinguishes the word "treatment" and provides for "care of a particular kind", which may mean household services.

[39] It is agreed by counsel for the applicant that the applicant does not have a permanent impairment for the purpose of s 18 and s 18A of the Act as her impairment has been assessed as 40 per cent.

[40] Section 18(2A) refers to a person who is not permanently impaired. The position argued on behalf of the applicant is that she is permanently impaired, i.e. 40 per cent permanently impaired but does not have permanent impairment which under the Act is 85 per cent. The argument is that she

does have an entitlement to reimbursement for care other than care which is defined as “attendant care services” because that is all s 18(2A) and s 18A refer to, i.e. “attendant care services” not other care.

[41] Mr Alderman submits that what the legislature has done in respect of those persons who have a permanent impairment of 85 per cent or more is to put a limit on how much they can be paid for attendant care services which excludes household services. He further submits that the legislature has been silent with respect to those persons who are permanently impaired and do not have a permanent impairment and that this was done for a purpose because a permanent impairment is different from somebody who is permanently impaired.

[42] The parties are in agreement that with respect to the letter from Ward Keller dated 29 October 1999, document number 6, that in considering the items in the first list (1) to (7) that it is appropriate I refer to the matters in the preceding paragraph of the letter so as to be more definite as to what is included, if any, in the question of what “care” is covered by the section.

[43] Mr Alderman submits that in s 18A the legislature intended to make it clear that this was in addition to any previous rights permanently impaired people may have. The other interpretation urged on behalf of the applicant is that s 18(2A) deals with all those persons who do not have a permanent impairment including those with a 40 per cent impairment and s 18A deals with those persons who do have a permanent impairment.

[44] Counsel for the applicant referred to the decision of *Kingston v Keprose* (1987) 11 NSWLR 404 McHugh J at 421 on the issue of statutory interpretation and in particular with respect to the purposive interpretation of a statute as distinct from the ordinary or grammatical meaning of the words in a statute.

[45] It is the applicants submission that this Tribunal should look at the objects and purposes of the statute and the means by which those purposes can be achieved and to bear this in mind when looking at the sections which are the subject of this application – see also *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 72 ALJR 841 at 855.

[46] It is the applicant's case that the purpose of the Motor Accidents (Compensation) Act is to provide for compensation for those with personal injuries. It was further argued on behalf of the applicant that the compensation in s 18 covers not only "attendant care"; but other forms of care, that the provision should not be read so as to keep the applicant out of compensation, but that it should be interpreted so that a person such as the applicant, who is permanently incapacitated, but does not come under the definition of permanent impairment is entitled to compensation. This can be done by saying that the provisions, when they were included, did not alter the status quo of the provisions prior to the enactment and the words used in s 18(2A) and s 18A are the same. The submission by Mr Alderman for the applicant is that for a person who does not come within the definition of permanent impairment that to limit the words "other care" in the definition

of treatment or to limit the words "care of a particular kind" in s 18(3) to mean "attendant care services" is not correct. The argument for the applicant is that there are other means of care which can be compensated and those other means of care in this application can include household services which relate to the care of the applicant. These household services, it is argued for the applicant, may have a direct effect on the health of a person even though they are not within the definition of "attendant care services" because of the hygiene, cleanliness, environment and general well being of the person who was injured. Such a person it is submitted should be entitled to compensation as provided for in the Act.

[47] Mr McIntyre on behalf of the respondent takes no issue with the submissions made on behalf of the applicant with respect to statutory interpretation. Mr McIntyre also agreed with the quotation relied upon by the applicant from *Pollard v Territory Insurance Office* (supra) Bailey J at 148 and agreed that one of the purposes of the legislation is to provide compensation for persons suffering injuries in motor vehicle accidents. It is Mr McIntyre's submission that in addition to this purpose the Act provides for the abolition of common law rights and the Act introduces a no fault scheme. Mr McIntyre submits that all benefits to injured persons under the Act are essentially described in s 18. The respondent's submission is that the Motor Accidents (Compensation) Act offers residents of the Northern Territory access to compensation with no question of fault. The quid pro quo in

public policy is that whilst the benefits do not require proof of fault the benefits will be less than the person might have received at common law.

[48] It is relevant to note here the introductory statement to the Act which is as follows:

> "An Act to establish a no fault compensation scheme in respect of death or injury in or as a result of motor vehicle accidents, to prescribe the rates of benefits to be paid under the scheme, to abolish certain common law rights in relation to motor vehicle accidents, and for related purposes"

[49] Section 4 of the Act defines "attendant care services" as follows:

> "… in relation to a person, means services of a standard satisfactory to the Board (other than household services, medical or surgical services or nursing care) that are required for the essential and regular personal care of the person;"

This provision also defines "permanent impairment" as follows:

> "… means an impairment or impairments assessed by the Board, in accordance with the American Medical Association Guides to the Evaluation of Permanent Impairment as published from time to time, as being an impairment, or combination of impairments -
>
> (a) for the purposes of section 17 - of not less than 5% of the whole person; and
>
> (b) for the purposes of sections 18 and 18A - of not less than 85% of the whole person;"

[50] It is the submission on behalf of the respondent that the entitlement for "attendant care" benefits and for all other care benefits, for persons who are not permanently impaired is derived from the entitlement to medical and

rehabilitation treatment as set out in s 18. Section 18(1) being subject to subsections (2A) and (3) and s 18A and s 18B.

[51] The respondent's position is that all claims must be considered in the context of whether such care constitutes "treatment" as defined in s 18(2). The three aspects to treatment as contained in the subsections to s 18(2) relate to (a) medical, surgical or dental treatment or nursing or other care (b) care required for the rehabilitation of the person and (c) the necessary transport.

[52] The submission on behalf of the respondent is that for any person with or without permanent impairment, attendant care is limited to 20 hours a week at $10 per hour – see Motor Accidents (Compensation) Rates of Benefit Regulations reg 4A.

[53] Mr McIntyre asserted that the apparent difficulty is that s 18(2A) the term "attendant care" is not referred to in the definitions of treatment in s 18(2). This raises the question whether "attendant" is "other care", that is s 18(2A) or whether it is "care required for the rehabilitation" in s 18(2)(b).

[54] I agree with the submission made on behalf of the respondent that for people who are not "permanently impaired" as defined under the Act, compensation is payable under s 18(2A).

[55] I also agree that the payment of benefits for attendant care services for people with a "permanent impairment" is covered by s 18A. I agree with the

interpretation advanced on behalf of the respondent that s 18A is in addition to payments under s 18 for persons with a "permanent impairment" and is not subject to the strict regime for s 18 payments. I also agree that it is in addition because the benefits payable for attendant care services under subsection (2A) are payable in respect of rehabilitation but a point is reached when a treatment or a care can no longer reasonably be said to be rehabilitation, unless the person is greater than 85 per cent permanently impaired. I agree that the legislation is stipulating that this type of attendant care expenses as stated in s 18A, cannot continue for more than two years, unless the permanent impairment is more than 85 per cent. The only other limit is as set out in s 18B which refers to it not being available if the person is an inpatient in a hospital nursing home or treatment institution.

[56] I agree with the submission made by the respondent that looking at the history of the legislation the broad definition of "treatment" including various types of care has been in place since the commencement of the Act.

[57] Section 62A of the Interpretation Act 1978 (NT) enables this Tribunal to make reference to the second reading speech at the time that s 4 of the Act together with s 18A and s 18B were introduced as part of a legislative package on 30 August 1989. The second reading speech sets out the following page 7097:

> "This bill also introduces a new section 18A which provides that a contribution may be made towards the cost of attendant care for seriously injured persons. This section was introduced to cater for persons suffering quadriplegia, paraplegia or serious head injuries,

who have been encouraged to live as independently as possible in their own homes, having had special facilities and equipment installed. To date, these costs have been met from funds provided under section 18, but are limited to the specified amount. The new section has been introduced to make a contribution towards attendant care costs and is intended to supplement other sources of assistance available through family and voluntary organisations.

To qualify for benefits under the new section, the person needs to have suffered an impairment of at least 85%. The benefit will be limited to 20 hours per week at , initially, $10 per hour. These figures are to be placed in the regulations for ease of review. The benefits will be payable, as necessary, up to the age of 65. The existing section 18 will remain to meet medical and rehabilitation expenses and short-term attendant care costs."

[58] With the introduction of the amendments to the Motor Accidents (Compensation) Rates of Benefit Regulations, amendment number 20 of 1989, reg 3A and reg 4A were added.

[59] The definition of "attendant care services" in s 4 specifically excludes household services, medical or surgical services or nursing care. This definition is essentially the same as in the Comcare legislation and the Work Health Act 1986 (NT). Both these Acts also make a specific separate reference to an entitlement to household expenses.

[60] In *Pennant Hills Restaurants Pty Ltd v Barrell Insurances Pty Ltd* (1981) 145 CLR 625 Mason J at 682:

"The final question is whether domestic assistance constitutes 'nursing' within the meaning of s. 10 of the Act. Woodward J. held that it did. The majority of the Court of Appeal disagreed, Mahoney J.A. dissenting.

Section 10(2)(c) provides:

'For the purpose of this section –

'Medical treatment' includes –

(c) Any nursing, medicines, medical or surgical supplies or curative apparatus, supplied or provided for him [an injured worker] otherwise than as a patient at a hospital.'

The assistance here in question was described by the worker as assistance in activities such as bed-making, cleaning, washing, laundry and cooking.

In a suitable context 'nursing' may denote a wider range of activities than those undertaken by a nurse in caring for a patient who suffers from illness or injury (*Wallbridge v. Dorset County Council* [1954] Ch. 659). There, s. 206 of the Public Health Act, 1936 referred to 'the nursing and maintenance of a child'. Here, we have a very different context. 'Nursing' occurs in a setting of medical services, rendered outside a hospital, not in a context of general maintenance. Consequently, in s. 10(2)(c) the word denotes care and attention to a patient which is designed to relieve or remedy the illness or injury from which he suffers. The domestic assistance needed by the injured worker here stands outside this conception."

I agree that in this case the phrase "other care" as it appears in s 18(2)(a) needs to take its meaning from the earlier words which all relate to professional treatment and care.

[61] I also agree with the interpretation of Mr McIntyre for the respondent that "attendant care services" as it appears in s 18(2A) would not come within the definition under s 18(2)(a) as such services whilst requiring a variety of skills, do not normally require professional qualifications which is the common element linking the different types of treatment and care in s 18(2)(a).

[62] I also agree that as all types of care mentioned in s 18(2)(a) namely, medical, surgical and nursing, are specifically excluded from the definition of "attendant care" in s 4, it is most unlikely that "attendant care" can be read to come within the meaning of "other care" in s 18(2)(a).

[63] The introduction of s 18(2A) refers to payment under s 18(1) and the relevant definition of treatment is s 18(2)(b) which refers to "training, education or care required for the rehabilitation of that person".

[64] I agree with the respondent's submission that there is no other definition of "treatment" that could cover "attendant care services" as it appears in s 18(2A) other than s 18(2)(b).

[65] I do not consider there is any distinction between the words "other care" as they appear in s 18(2)(a) and "care of a particular kind" as they appear in s 18(3).

[66] I accept that as the definition of "attendant care services" in s 4 specifically excludes household services then it excludes the following sorts of home management activities; shopping, banking, budgeting, preparing the meals, cleaning the house, vacuuming, washing dishes and clothes, ironing, gardening or taking care of dependent children. The provision of household services is not covered by s 18(2)(b) or any definition of "treatment" and accordingly is not payable by the respondent under that scheme.

[67] I agree that it is the clear purpose of the legislation to limit the benefits payable under this scheme and one of the ways it does this is to exclude payment for household services.

[68] The benefit obtainable under the Act falls under three classifications listed in s 18(2)(a), (b) and (c) which is either treatment, rehabilitation or

transport. Section 18A is for payments in addition because those persons have an ongoing condition of "permanent impairment".

[69] The limitation of benefits under the Northern Territory Motor Accidents (Compensation) Act is in accordance with benefits under the equivalent legislation in Tasmania, The Motor Accidents Liabilities and Compensation Act (1973) and Regulations. This area of common law damages has also been capped under similar legislation in NSW, Victoria and South Australia.

[70] I note also the decision of the ACT Supreme Court *McGale v Glad* (1980) 49 FLR 335 Connor ACJ at 341:

> "The remaining matter concerns the amount of $93.63 for housekeeping services. Section 11 makes the cost of 'medical treatment' recoverable; and this is defined in s. 6 to include, amongst other things, 'nursing attendance'. It has been held by the New South Wales Court of Appeal in *Pennant Hills Restaurants Pty. Ltd. v. Barrell Insurances Pty. Ltd* (1977) 34 FLR 222 and in *Thomas v. Ferguson Transformers Pty. Ltd.* [1979] 1 NSWLR 216 that domestic assistance as such does not come within nursing services and is not recoverable even though it may be rendered necessary by the workman's disability. It seems strange that an outlay such as this, which is directly attributable to the injury should be regarded by the legislature as more properly payable by the workman or the taxpayer rather than by the insured employer. That, however, appears to be the law and Mr. Lunney did not contend to the contrary. …"

[71] I agree with the respondent's overall submission that the Northern Territory Motor Accidents (Compensation) Act is legislation to provide a reasonable level of benefit to all residents in the Northern Territory, regardless of fault. It is not there to give all common law entitlements to Northern Territory residents.

[72] It is the argument for the applicant that household services can come within the meaning of "other care" as it appears in s 18(2)(a) being a nurturing type care. The fact that it is excluded under "attendant care services" does not in the submission of Mr Alderman for the applicant exclude it altogether and "other care" must mean something else and not be limited to being provided by professionals or semi-professionals. I do not accept this submission. I have concluded that household services cannot be claimed under s 18 of the Motor Accidents (Compensation) Act.

[73] I note there is nothing in the letter from Ward Keller dated 29 October (document number 6) that supports the claim in respect of exercise. There may well be circumstances where assistance with exercise comes within "other care" in s 18(2)(a) or "rehabilitation" in s 18(2)(b), however, that is a matter for the applicant to establish before the Board.

[74] I answer the two issues for determination by this Tribunal as follows:

1. The applicant does not have an entitlement pursuant to s 18 or s 18A of the Motor Accidents (Compensation) Act for the household services described on page 2 of the letter from Ward Keller to the Territory Insurance Office dated 29 October 1999 and numbered (1) to (7) inclusive, except if properly proved, No. 5 "exercise".

2. Section 18(2A) of the Act does not provide for the provision of "attendant care services" independently of s 18(1) of the Act.

[75] I grant leave to the parties to apply on the issue of costs.

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