

PARTIES: MATTHEW BROUGHTON HOBBS

v

MOTOR ACCIDENT COMMISSION  
OF SOUTH AUSTRALIA

TITLE OF COURT: SUPREME COURT OF THE  
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE  
NORTHERN TERRITORY  
EXERCISING TERRITORY  
JURISDICTION

FILE NO: 154 of 2005 (20530961)

DELIVERED: 3 December 2008

HEARING DATES: 1 December 2008

JUDGMENT OF: RILEY J

**CATCHWORDS:**

MOTOR VEHICLE ACCIDENT – non resident of the Northern Territory –  
whether assessment of damages is governed by Personal Injuries (Liabilities  
and Damages) Act or Motor Accidents (Compensation) Act

*Motor Accidents (Compensation) Act*

*Personal Injuries (Liabilities and Damages) Act*

*Jenkins v Territory Insurance Office* (2001) 11 NTLR 121

## **REPRESENTATION:**

### *Counsel:*

Plaintiff:	R Meldrum QC and S Gearin
Defendant:	S Walsh QC and I Morris

### *Solicitors:*

Plaintiff:	Withnalls
Defendant:	Hunt and Hunt

Judgment category classification:	B
Judgment ID Number:	Ri10816
Number of pages:	10

IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT DARWIN

*Hobbs v Motor Accident Commission of South Australia* [2008] NTSC 49  
No 154 of 2005 (20530961)

BETWEEN:

**HOBBS, Matthew Broughton**  
Plaintiff

AND:

**MOTOR ACCIDENT COMMISSION  
OF SOUTH AUSTRALIA**  
Defendant

CORAM: RILEY J

REASONS FOR JUDGMENT

(Delivered 3 December 2008)

- [1] The plaintiff was injured in a motor vehicle accident which occurred in the Northern Territory on 18 November 2003. A preliminary legal issue has arisen as to whether any assessment of damages is to be governed by the provisions of the *Personal Injuries (Liabilities and Damages) Act* or by the provisions of the *Motor Accidents (Compensation) Act*.
- [2] It is not in dispute that at the time of the accident the plaintiff was a non-resident of the Northern Territory for the purposes of the *Motor Accidents (Compensation) Act*. The plaintiff contends that damages payable to the plaintiff are to be assessed in accordance with the provisions of the

*Personal Injuries (Liabilities and Damages) Act*, whilst the defendant maintains that damages are to be assessed in accordance with the *Motor Accidents (Compensation) Act*.

### **The legislative history**

- [3] Prior to the commencement of the *Motor Accidents (Compensation) Act*, a person in the position of the plaintiff had a right to bring proceedings at common law against a person in the position of the defendant seeking damages arising out of injury suffered in a motor vehicle accident. Following the commencement of that Act, residents of the Northern Territory were subject to a no fault compensation scheme in respect of death or injury in or as a result of motor vehicle accidents. At present, following amendments made to the Act in 2007, and by operation of s 5 of the Act, common law rights "for the death of, or injury to, a person arising from a motor accident that occurs in the Territory" have been abolished. However, at the time of the motor vehicle accident involving the plaintiff, the section was in the following terms:

“(1) An action for damages shall not lie in the Territory -

- (a) in respect of the death of or injury to a person who at the time of the accident was a resident of the Territory; or
- (b) in respect of an injury to a person who, at the time of the accident, was not a resident of the Territory -
  - (i) for non economic loss in excess of the amount from time to time prescribed for the purposes of section 17;

- (ii) for future loss except at discounted present values; or
- (iii) for future economic loss of future loss of earning capacity calculated on a weekly basis for any sum in excess of the amount from time to time prescribed for the purposes of section 13,

in or as the result of an accident that occurred in the Territory."

- [4] It can be seen that the effect of the provision, as it applied at the relevant time, was not to abolish common law rights in relation to a non-resident but, rather, was to modify the existing common law rights by providing a cap upon the identified heads of damage.
- [5] The *Personal Injuries (Liabilities and Damages) Act* commenced in May 2003 with the identified purpose of modifying the law relating to the entitlement to damages for personal injuries. The Act fixed limits on certain awards of damages for personal injuries and made provision for periodic payments of damages for personal injuries. The Act was expressed to apply in relation to all civil claims for damages for personal injuries other than those civil claims identified and excluded in s 4 of the Act. Amongst those claims excluded under that section were claims for benefits in respect of a death or an injury as a result of an accident within the meaning of the *Motor Accidents (Compensation) Act*. Further, and of significance for present purposes, it was provided that the Regulations may exclude a claim or class of claim from the operation of the Act. Regulation 3, which came into effect at the same time as the Act, then provided that a "claim or action for

damages under the *Motor Accidents (Compensation) Act* is excluded from the operation of the Act other than Part 4, Division 6." Division 6 of Part 4 relates to orders for structured settlements.

[6] It was submitted on behalf of the plaintiff that, at the time of his accident, the plaintiff had a right to an action for damages at common law for general damages, past economic loss and future economic loss, even though those common law rights were capped by the *Motor Accidents (Compensation) Act*. It was further submitted that those common law rights were not claims or actions "under" the *Motor Accidents (Compensation) Act* and were therefore not excluded from the operation of the *Personal Injuries (Liabilities and Damages) Act*.

[7] The plaintiff contends that the assessment of damages in the present case is governed solely by the *Personal Injuries (Liabilities and Damages) Act*. The entitlement to damages on behalf of the non-resident plaintiff, not having been excluded from the operation of the *Personal Injuries (Liabilities and Damages) Act*, is governed by that Act which, so it was submitted, provides "a statutory template" for all damages available to the plaintiff. In effect the plaintiff says that the restrictions of s 5(1)(b) of the *Motor Accidents (Compensation) Act* did not apply in his case and he is entitled to damages assessed by reference to the *Personal Injuries (Liabilities and Damages) Act*.

- [8] The defendant argues that the *Personal Injuries (Liabilities and Damages) Act* does not apply to claims or actions for damages under the *Motor Accidents (Compensation) Act* and, as the plaintiff's proceedings are an action for damages under that Act, the *Personal Injuries (Liabilities and Damages) Act* has no application. The damages are to be assessed under and in accordance with the *Motor Accidents (Compensation) Act*.
- [9] The defendant points out that the *Personal Injuries (Liabilities and Damages) Act* is an Act of general application applicable to claims for damages for personal injury at large whilst the *Motor Accidents (Compensation) Act* applies specifically to accidents caused by, or arising out of, the use of a motor vehicle. It is not in dispute that the present matter involves injuries arising out of an accident as defined in the *Motor Accidents (Compensation) Act*.
- [10] The defendant notes that by operation of s 4(3) of the *Personal Injuries (Liabilities and Damages) Act* claims for "benefits" in respect of an accident within the meaning of the *Motor Accidents (Compensation) Act* are excluded from the operation of the *Personal Injuries (Liabilities and Damages) Act* as is a "claim or action for damages" under that Act. It is submitted that Parliament has comprehensively excluded actions and claims for damages and benefits under the Act and that should be taken to include circumstances, such as the present case, where such actions are commenced on behalf of a non-resident.

### **An "action for damages"**

[11] The issue to be addressed is what was meant by the expression an "action for damages under the *Motor Accidents (Compensation) Act*" for the purposes of the exclusion provisions of the *Personal Injuries (Liabilities and Damages) Act*.

[12] The expression cannot relate to actions for damages on behalf of residents of the Northern Territory because the right to such an action had been removed by the *Motor Accidents (Compensation) Act* and replaced with a no fault compensation scheme. However, the removal of the right did not extend to actions for damages on behalf of a non-resident of the Northern Territory. The right of a non-resident to recover common law damages was preserved, but in a modified form: *Jenkins v Territory Insurance Office*<sup>1</sup>. That was the situation at the time of the introduction of the *Personal Injuries (Liabilities and Damages) Act* in May 2003 and continued to be the case until the 2007 amendments to the Act. It would seem that the only "action for damages" available under the Act was that which related to a non-resident.

### **One legislative regime for motor vehicle accidents**

[13] The *Motor Accidents (Compensation) Act* is legislation specifically dealing with compensation (of whatever kind) payable in respect of death or injury as a result of a motor vehicle accident as defined in the Act. It provides for

---

<sup>1</sup> (2001) 11 NTLR 121 at 127

compensation payable to residents under the no fault scheme. At the relevant time it also applied to regulate actions for damages by a person who was not a resident of the Northern Territory. It did so by providing a cap upon certain heads of damage. It would seem unlikely that the Legislature, in those circumstances, intended that an action for damages by a person who was not a resident would be regulated by the *Motor Accidents (Compensation) Act* and also governed by another Act entirely. The Legislature has sought to regulate such claims by the provisions of the *Motor Accidents (Compensation) Act*. In the absence of an express provision it is unlikely that the intention was to provide further regulation of such claims under a different, and possibly conflicting, legislative regime. Further, it is unlikely that the intention was to have any action for damages of a non-resident resolved under the *Personal Injuries (Liabilities and Damages) Act* whilst all other claims for damages or benefits arising out of injuries suffered in a motor vehicle accident were to be dealt with under the *Motor Accidents (Compensation) Act*.

[14] Support for this view is to be found in the treatment of a claim for damages by a non-resident injured in a motor vehicle accident involving an uninsured motor vehicle. Regulation 3 provided for the exclusion of a "claim ... for damages" from the operation of the *Personal Injuries (Liabilities and Damages) Act*. The only claim for damages referred to in the *Motor Accidents (Compensation) Act*, as it existed at the time, is to be found in

s 40A. The section has subsequently been repealed. However, at the relevant time it permitted "a claim for damages" in respect of a person who was not a resident to continue against the Territory Insurance Office and not against the owner or driver of the uninsured vehicle. Both parties accept that, what is referred to and excluded by the terms of r 3 can only be a "claim for damages" under s 40A of the Act. It follows that a claim for damages by a person injured in a motor vehicle accident and who was not a resident, where the vehicle concerned was uninsured, will be governed by the provisions of the *Motor Accidents (Compensation) Act*.

[15] It is unlikely that Parliament intended to exclude from the operation of the *Personal Injuries (Liabilities and Damages) Act* an action for damages by a non-resident when the motor vehicle was uninsured and not do so in relation to an action for damages by a non-resident when the vehicle was insured. The effect of the submission on behalf of the plaintiff was that the claim of a non-resident plaintiff for damages will be covered by one legislative regime or the other, depending upon the incidental circumstance of whether the vehicle was or was not insured. There is no apparent reason for distinguishing between such claims on this basis.

### **Surplusage**

[16] The plaintiff was unable to suggest any reason for the employment of the alternative formulations for exclusion contained in the expression a "claim or action for damages" found in the regulation. When pressed it was

submitted that the word "action" is mere surplusage and is to be ignored. As a general principle of interpretation courts seek to provide all words with some meaning and effect. Generally speaking courts do not treat words as being superfluous and to be ignored. Whilst it is acknowledged that it may not be possible to give a full and accurate meaning to every word, the court is to give words a construction which produces the greatest harmony and least inconsistency.<sup>2</sup> In the present case the interpretation contended for by the defendant gives all words in the section work to do.

**Action "under" the *Motor Accidents (Compensation) Act***

[17] The plaintiff contends that no "action for damages" arises "under" the *Motor Accidents (Compensation) Act*. However, on one view of s 5 as it existed at the relevant time<sup>3</sup>, the action for damages available to a non-resident does arise "under" the *Motor Accidents (Compensation) Act* even though the right to damages originally arose at common law. The section provides that an action for damages shall not lie in the Territory in respect of an injury to a person who was not a resident of the Territory and then goes on to provide exceptions to the prohibition. The non-resident has a common law claim to damages as preserved under the Act. In my opinion the action for damages can be said to be available "under" the Act.

---

<sup>2</sup> Statutory Interpretation in Australia (sixth edition) Pearce and Geddes at (2.22)

<sup>3</sup> See paragraph [3] above

## Conclusions

[18] The present proceedings are "an action for damages under the *Motor Accidents (Compensation) Act*" and, as such, are excluded from the operation of the *Personal Injuries (Liabilities and Damages) Act* pursuant to r 3.

[19] The damages in this case are to be assessed in accordance with the provisions of the *Motor Accidents (Compensation) Act*.

-----