

PARTIES: Martine Vercauteren  
v  
Michael Richard Fraser and Ors

TITLE OF COURT: Supreme Court of the Northern Territory

JURISDICTION: Interlocutory Application

FILE NO: 41/95 (9505320)

DELIVERED: 21 November 1996

REASONS OF: Master Coulehan

**CATCHWORDS:**

PRACTICE - Northern Territory - Interrogatories -  
objection to answering - O.30.07(2)(b) Supreme  
Court Rules - whether interrogatories relate to a  
question

STATUTES - Northern Territory - S.40 Motor Vehicles  
(Compensation) Act - status of Territory Insurance Office

Cases followed:

Dalywater v Dalywater 30 NTR 14

**REPRESENTATION:**

Counsel:

Plaintiff: Mr Stuart  
Defendant: Ms Millar

Solicitors:

Plaintiff: Mildrens  
Defendant: Cridlands

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

41/95 (9505320)

Between:

MARTINE VERCAUTEREN

Plaintiff

and

MICHAEL RICHARD FRASER

First Defendant

BARRY WILLIS

Second Defendant

GEORGE ALFRED BRUCE HATELEY

Third Defendant

MASTER COULEHAN: REASONS FOR DECISION

(Delivered 21 November 1996)

The plaintiff claims damages for negligence arising out of a motor vehicle accident when she was travelling as a passenger in a vehicle which left the road and overturned. The particulars of negligence generally relate to the driver's control and management of the vehicle.

The plaintiff has sought answers to interrogatories from the second defendant, some of which the second defendant has declined to answer on

the grounds that the interrogatories do not relate to a question between them (see O.30.07(1)(a) ). Whether or not the second defendant may so decline is the subject of this application.

The interrogatories and answers in dispute may be dealt with in discrete groups.

1. Interrogatories 63, 64, and 65.

These interrogatories enquire as to any alcohol consumed by the second defendant and also as to his employment and social activities prior to the accident, presumably with the purpose of exploring his fitness to control the vehicle. While these may relate to questions between the parties in the broad sense, they are matters which have not been pleaded or particularised and the second defendant relies on O. 30.07(2)(b) which provides:-

**“ ( 2 ) Without limiting sub-rule (1) (a), an interrogatory that does not relate to a question includes an interrogatory the sole purpose of which is to -**

**(a) .....**

**(b) enable the interrogating party to ascertain whether he has a claim or defence other than that which he has raised in the proceeding .....**”

The only apparent purpose of these interrogatories is to ascertain whether there are facts which may support a claim that the second defendant's ability

to drive was impaired. As this has not been raised in the pleadings it is not a question between the parties as defined.

2. Interrogatories 68, 69 and 70.

These interrogatories enquire as to the condition of the brakes and tyres on the vehicle. They do not relate to a question between the parties for the reasons given in the preceding paragraph. Although the second defendant did not object to interrogatory 66 which relates to the vehicle's steering mechanism, this is not a valid reason for requiring answers to interrogatories to which proper objection has been taken.

3. Interrogatories 77, 78, 79, 80, 81 and 82.

These interrogatories enquire as to whether a medical kit was in the vehicle, the means of communication available, the location of available medical assistance, the second defendant's medical or first aid training and the assistance rendered to the plaintiff by the second defendant. It is argued on behalf of the plaintiff that these interrogatories relate to damages.

Of these interrogatories, those enquiring as to the use of the medical kit and the treatment rendered by the second defendant to the plaintiff relate to the plaintiff's damages for pain and suffering and do not necessarily infringe O.30.07(2)(b). The remainder have no direct relation to damages and may be construed as relating to possible failures on the part of the second defendant, matters which have not been raised in the pleadings.

4. Interrogatories 85, 86, 87, 88 and 89.

Interrogatories 85 and 86 relate to insurance policies. The plaintiff refers to letters from the Territory Insurance Office, the subject of interrogatories 87, 88 and 89, arguing that they make relevant the question of insurance.

Usually, in proceedings involving motor vehicle accidents, the existence of insurance does not relate to a question between the parties. However, the plaintiff may seek to rely on the letters as containing admissions of liability, in which case the status of the Territory Insurance Office and the authors of the letters and the relationship of the letters to the accident the subject of this proceeding relate to a question between the parties.

It is clear from the letters and S.40 of the **Motor Accidents (Compensation)** Act that the Territory Insurance Office is involved by reason of its obligations under the Act (see also **Dalywater v Dalywater 30 NTR 14**). S.40(3) of the Act does not appear to apply because it refers to "... any other claim, action or proceeding ...". S.6(2) of the Act provides that the Territory Insurance Office is not bound to indemnify a person who is already indemnified under a contract of insurance. Interrogatories as to the existence of insurance relate to a question between the parties because of the effect such insurance may have on the status of the Territory Insurance Office.

ORDER

It is ordered that the second defendant file and serve further sworn answers to interrogatories 77 (with the exception of that part relating to the medical supplies comprised in the medical kit), 82, 85, 86, 87, 88 and 89.