SUPREME COURT OF QUEENSLAND

CITATION:	*King v Parsons & Anor* [2006] QCA 49
PARTIES:	**DESMOND CHARLES KING** (applicant/appellant) **v** **ELSA ALVINA PARSONS** (first respondent/first respondent) **SUNCORP METWAY INSURANCE LIMITED** ACN 075 695 966 (second respondent/second respondent)
FILE NO/S:	Appeal No 6746 of 2005 SC No 5038 of 2005
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	3 March 2006
DELIVERED AT:	Brisbane
HEARING DATE:	13 February 2006
JUDGES:	de Jersey CJ, Keane JA and Muir J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**1. Appeal dismissed** **2. Appellant to pay the respondents' costs of the appeal to be assessed on the standard basis**
CATCHWORDS:	WORKERS' COMPENSATION - ENTITLEMENT TO COMPENSATION - EMPLOYMENT RELATED INJURY, DISABILITY OR DISEASE - where appellant was injured in the course of his employment as a postal delivery officer employed by the Australian Postal Corporation - where second respondent has acknowledged liability for appellant's claim - where respondent's claim identified the contribution of his employment to the injury in respect of which he claims damages - whether the appellant's injury was an injury as defined under the *Workers' Compensation and Rehabilitation Act* 2003 (Qld) and whether the *Civil Liability Act* 2003 (Qld) applied to the respondent's claim *Civil Liability Act* 2003 (Qld), s 5(b) *Personal Injuries Proceedings Act* 2002 (Qld), s 6(2)(b) *Workers' Compensation and Rehabilitation Act* 2003 (Qld), s 32

Newberry v Suncorp Metway Insurance Limited [2006] QCA 48; CA No 7137 of 2005; 3 March 2006, cited

COUNSEL: D O J North SC, with D C Rangiah, for the appellant
D V C McMeekin SC, with B J Hartigan, for the first respondent
W Sofronoff QC, with R I M Lilley, for the second respondent

SOLICITORS: Maurice Blackburn Cashman for the appellant
Herbert Geer & Rundle for the first and second respondents

[1] **de JERSEY CJ:** I have had the advantage of reading the reasons for judgment of Keane JA. I agree with the orders proposed by His Honour, and with his reasons.

[2] **KEANE JA:** On 20 July 2003, the appellant, Mr King, suffered an injury to his back in the course of his employment as a postal delivery officer employed by the Australian Postal Corporation ("the APC"). The APC is a "licensed corporation" under the *Safety Rehabilitation and Compensation Act* 1988 (Cth) ("the SRCA").

[3] Mr King's claim against the respondents is that the injury was caused by the negligent driving of a motor vehicle by the first respondent. Mr King was driving his motorcycle while making mail deliveries along a footpath at Wootton Crescent, Springwood when the first respondent reversed her car from a driveway into the path of Mr King's motorcycle, forcing him to swerve and then drop the motorcycle to avoid colliding with a tree.

[4] Mr King, in his claim form dated 12 September 2003, in answer to the question "Who caused the accident and why", replied: "Elsa Parsons for failing to keep a proper lookout as she reversed out of her driveway". The second respondent has acknowledged liability for Mr King's claim.

[5] There is a dispute between Mr King and the second respondent, however, as to whether the *Civil Liability Act* 2003 (Qld) (the "CLA") applies to Mr King's claim for damages. The resolution of this dispute, which affects the quantum of damages recoverable by Mr King, turns upon the proper construction of s 5(b) of the CLA.

[6] That dispute was resolved in favour of the respondents by the learned primary judge. His Honour held that s 5(b) of the CLA did not operate to exclude the application of the CLA (and its limitations upon the damages recoverable thereunder) to Mr King's claim.

[7] The learned primary judge's principal reason for this conclusion was that, by the expression "an injury as defined under the [WCRA], s 5(b) [of the CLA] refers to an injury occurring in a set of circumstances which would bring a damages claim for that injury within the regime of the WCRA".[1]

[8] His Honour also held, in the alternative, that, assuming that "s 5(b) directs the inquiry only to s 32 of the WCRA …, still this claim is not within s 32 … because there is no 'employment' as that term is used in the WCRA".[2] His Honour took the view that the injury contemplated by s 32 is an injury to a "worker" within the meaning of the *Workers' Compensation and Rehabilitation Act* 2003 (Qld) ("the

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1 [2005] QSC 214 at [29].
2 [2005] QSC 214 at [30].

WCRA"). As Mr King was employed by the APC, he was not a "worker" within the meaning of the WCRA. Section 11(3) and Sch 2 Pt 2 of the WCRA exclude him from that category of persons because he was employed by a licensed corporation under the SRCA.

[9] In my respectful opinion, the learned primary judge's decision was correct for the second reason he gave. It will be apparent from my reasons in *Newberry v Suncorp Metway Insurance Limited*[3] that I would not accept that one can read s 5(b) in the way his Honour has in this case, that is, as referring to an injury occurring in a set of circumstances which would bring a damages claim for that injury within the regulatory scheme of the WCRA. I shall not repeat the reasons here for my decision in *Newberry v Suncorp Metway Insurance Limited*, but, in summary, I consider that, because the fact of Mr King's employment by APC was relevant to Mr King's claim for damages against the respondents, it could be said that Mr King's claim was one for damages for injury suffered as a result of breach of duty where Mr King's employment was a significant contributing factor to the injury the subject of the claim. On that basis, s 5(b) of the CLA would operate to exclude Mr King's claim from the scope of the CLA.

[10] The original claim made no mention of Mr King's employment by APC as a fact material to Mr King's claim for damages against the respondents as a result of his injury; but before the learned primary judge, Mr King's employment was said to be a fact material to his injury as an ingredient of Mr King's claim against the respondents. In this regard, as his Honour observed,[4] Mr King's employment was more than a fact apt to explain why Mr King was where he was when the first respondent's breach of duty caused his injury. The exigencies of Mr King's employment tend to explain how the first respondent's breach of duty came to cause Mr King's injury, in that the appellant's employment obliged him to ride his motorcycle on the footpath. There, he was, because of his performance of his duties as an employee of APC, particularly vulnerable to a driver in the position of the first respondent while she was reversing down a driveway. This case affords an example of a claim in which the nature of the duty owed by the party against whom the claim is made is such as to oblige that party to guard against the very risks which arose from the activities of the injured worker's employment. The claim thus identifies the contribution of the injured worker's employment to the injury in respect of which he claims damages. In this way, the claim in this case contrasts with that in *Newberry v Suncorp Metway Insurance Limited*. In the latter case, the claim did not identify any contribution of the injured worker's employment to the relevant injury; and the facts of that case were such that there could have been no genuine assertion of any such contribution.

[11] As I have said, however, I am of the opinion that his Honour was correct in relation to his second conclusion. I agree, with respect, in the reasons which his Honour gave for this conclusion. When s 32 of the WCRA speaks of an "injury" it refers expressly to an injury to a person in employment. That necessarily means a person employed by an employer. The term "employer" is defined to mean "a person who employs a worker".[5] Section 32, therefore, is speaking of an injury to a "worker" as defined in the Act.

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3 [2006] QCA 48 (which was heard together with the appeal in this case).

4 [2005] QSC 214 at [34].

5 See WCRA, s 30.

[12] This construction of s 32 of the WCRA is confirmed by a consideration of the context in which it appears. The WCRA is concerned with the provision of "benefits for workers who sustain injury in the course of their employment".[6] Section 11(3) and Sch 2 Pt 2 of the WCRA make it expressly clear that the WCRA is not concerned to provide benefits to persons injured in the course of their employment with licensed corporations under the SRCA. Injuries which occur to such persons are outside the category of employment with which the WCRA deals. Accordingly, it is impossible, in my respectful opinion, to accept the appellant's submission that "employment" in s 32 is to be understood in a "generic" sense which would include persons such as Mr King.

Conclusion and order

[13] The appeal should be dismissed, and the appellant should be ordered to pay the respondents' costs of the appeal to be assessed on the standard basis.

[14] **MUIR J:** I have read and agree with the reasons of Keane JA and the orders he proposes.

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6 See WCRA, s 5(1). See also s 5(3) and s 12 to s 22 of the WCRA for express extension of the benefits of the WCRA to those who are not "workers" in the defined sense.