SUPREME COURT OF QUEENSLAND

CITATION:	*Farnham v Pruden & Anor* [2016] QCA 18
PARTIES:	**JANE MAREE FARNHAM** (applicant) **v** **DEBBIE JUNE PRUDEN** (first respondent) **RACQ INSURANCE LIMITED** ACN 009 704 152 (second respondent)
FILE NO/S:	Appeal No 6415 of 2015 DC No 70 of 2014
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave s 118 DCA (Civil)
ORIGINATING COURT:	District Court at Mackay – [2015] QDC 141
DELIVERED ON:	12 February 2016
DELIVERED AT:	Brisbane
HEARING DATE:	28 October 2015
JUDGES:	Margaret McMurdo P and Gotterson and Morrison JJA Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. The time for filing the application for leave to appeal is extended to 21 July 2015.** **2. The application for leave to appeal is refused.** **3. The applicant is to pay the respondents' costs, of and incidental to the application including the reserved costs of the application for extension of time for leave to appeal, to be assessed on the standard basis.**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – EXCESSIVE OR INADEQUATE DAMAGES – GENERAL PRINCIPLES – PERSONAL INJURY OR DEATH CASES – where the applicant was injured when a car collided with the rear of her vehicle and that collision pushed her car into the path of an oncoming car, which also collided with her vehicle – where the applicant was employed as a community support worker – where the applicant was travelling to the home of another person where she intended to carry out the duties of her employment – where the applicant experienced a number of stressors in her life prior to sustaining her injuries as a result of the car incident – where the central question at trial was whether the assessment of damages was to be made in accordance with the *Civil Liability*

Act 2003 (Qld) or the common law – where the learned trial judge held that the *Civil Liability Act* provisions did apply and assessed the damages in the total sum of $47,389.75 – where the learned trial judge held that no damages for future economic loss, nor the loss of capacity to develop other careers, should be awarded – whether an appeal is necessary to correct a substantial injustice – whether there is a reasonable argument that there is an error to be corrected

Civil Liability Act 2003 (Qld), s 5(1)(b)
District Court of Queensland Act 1967 (Qld), s 118(3)
Workers' Compensation and Rehabilitation Act 2003 (Qld), s 32(1), s 34(1)(c), s 35, s 108

Adelaide Stevedoring Co Ltd v Forst (1940) 64 CLR 538; [1940] HCA 45, cited
Ballandis v Swebbs [2015] QCA 76, followed
Favelle Mort Ltd v Murray (1975) 133 CLR 580; [1976] HCA 13, considered
Kelly v The Queen (2004) 218 CLR 216; [2004] HCA 12, followed
King v Parsons [2006] 2 Qd R 122; [2006] QCA 49, cited
Makita (Australia) Pty Ltd v Sprowles (2001) 52 NSWLR 705; [2001] NSWCA 305, cited
Newberry v Suncorp Metway Insurance Limited [2006] 1 Qd R 519; [2006] QCA 48, followed
Purkess v Crittenden (1965) 114 CLR 164; [1965] HCA 34, cited

COUNSEL: R A I Myers for the applicant
K S Howe for the respondent

SOLICITORS: Shine Lawyers for the applicant
Quinlan, Miller & Treston for the respondent

[1] **MARGARET McMURDO P:** The applicant, Jane Farnham, brought an action against the first respondent for damages for the injuries the applicant received when the first respondent's car collided with the applicant's car. She was awarded damages in the District Court of $47,389.75 with a costs orders including that the costs she was ordered to pay be set off against the judgment sum. She instructed her solicitors to pursue an appeal and they mistakenly filed a notice of appeal instead of an application for leave to appeal. By the time they realised their error, the period within which they were entitled to file the leave application had expired a few weeks earlier. They immediately applied for an extension of time within which to apply for leave to appeal. The respondents were notified of the applicant's intention to pursue her appeal rights within time and have suffered no prejudice resulting from the delay. Sensibly they have made no submissions opposing the extension of time. In those circumstances, the time for filing the application for leave to appeal should be extended to 21 July 2015.

[2] I agree with Morrison JA's reasons for refusing this application for leave to appeal with costs.

[3] It is uncontentious that shortly before the accident the applicant commenced working at her home as a community visitor for the Commission for Children, Young People and Child Guardian. She set off in her car in the course of her employment to visit a child at the child's home. Before she reached her destination the accident occurred.

[4] One benefit of modern technology is that employees commonly work remotely from their places of employment, often from their homes. This decision and another recent decision, *Ballandis v Swebbs & Anor*[1], means that workers who have commenced their employment by working at home and who are then injured in a motor vehicle accident whilst driving to another part of their workplace cannot claim common law damages. They are instead subject to the more limited scheme of damages applicable under the *Civil Liability Act* 2003 (Qld). This is the unequivocal effect of the legislative scheme established by the *Civil Liability Act* 2003 (Qld) s 5(1)(b) and the *Workers' Compensation and Rehabilitation Act* 2003 (Qld) s 32, s 34, s 35(1) and the definition of "place of employment" in Schedule 6. This result, however, may not have been the intent of the legislature discernible when amending the *Civil Liability Act* 2003 (Qld) in 2007, apparently in response to this Court's decision in *Newberry v Suncorp Metway Insurance Ltd*.[2] See the observations of the then Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland in the Second Reading Speech of the *Criminal Code and Civil Liability Amendment Bill* 2007 (Qld)[3] and the Explanatory Notes to that Bill.[4]

[5] I agree with the orders proposed by Morrison JA.

[6] **GOTTERSON JA:** I agree with the orders proposed by Morrison JA and with the reasons given by his Honour.

[7] **MORRISON JA:** On 21 May 2012 Ms Farnham was injured when a car collided with the rear of her car. That collision pushed her car forward into the path of an oncoming car, which also collided with her car. She sustained a soft tissue injury to her cervical spine, and developed an adjustment disorder with mixed anxiety and depressed mood. The learned trial judge accepted that the accident was emotionally distressing for her.[5]

[8] At the time she was employed as a community support worker for the Commission for Children and Young People and Child Guardian.[6] She was travelling from her home to the home of another person where she intended to carry out the duties of her employment.

[9] Liability was not in issue and therefore the quantum of the damages that might be awarded was the focus of the trial. The central question on that issue was whether Ms Farnham was driving in circumstances whereby the assessment of damages was to be made in accordance with either the *Civil Liability Act* 2003 (Qld) or the common law.

[10] The learned trial judge held that the *Civil Liability Act* did apply and assessed the damages in the total sum of $47,389.75.[7] His Honour held that no damages for future economic loss, nor loss of the capacity to develop other careers, should be awarded.

[11] Ms Farnham seeks to appeal from those orders. She needs leave to so do under s 118(3) of the *District Court of Queensland Act* 1967 (Qld). The issues raised by the application are whether:

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1 [2015] QCA 76.
2 [2006] 1 Qd R 519.
3 Hansard, *Criminal Code and Civil Liability Amendment Bill*, 7 February 2007, p 139.
4 Explanatory Notes, *Criminal Code and Civil Liability Amendment Bill*, pp 1, 3 and 8.
5 Reasons [1].
6 For ease of reference I shall refer to this body as the Commission.
7 Reasons [78].

(a) an appeal is necessary to correct a substantial injustice; and

(b) there is a reasonable argument that there is an error to be corrected.[8]

Suggested errors to be corrected

[12] It was contended that there were numerous specific errors on the part of the learned primary judge, reflected in the proposed grounds of appeal:

(a) finding that the provisions of the *Civil Liability Act* applied to the claim;

(b) not finding that the adjustment disorder resulting from the accident in question:

  (i) interfered significantly with Ms Farnham's health and occasioned suffering and a loss of amenities of life; and

  (ii) gave rise to a significant impact in terms of her economic capacity – both past and future;

(c) deferring to the experts, in spite of his own concerns about over-interpretation of Ms Farnham's medical and other history, his obligation to determine the claim in accordance with law;

(d) concluding, in spite of his own hesitation, that both expert psychiatrists considered that it was non-accident related stressors which led to Ms Farnham's resignation from her employment with the Commission, as such a conclusion was against the evidence and the weight of the evidence;

(e) not concluding that there was substantial conflict in the opinions expressed by Doctor Chung and Doctor Oelrichs respectively;

(f) not finding, in accordance with the evidence of Doctor Chung, that Ms Farnham would have continued with her pre-accident plans in terms of education and employment, in spite of life's stressors, had she not been injured in the accident giving rise to the action;

(g) not acting upon the evidence of psychologist Caroline Ritchie that the appellant was coping with her pre-existing stressors and that it was the accident giving rise to the claim that had given rise to incapacitating symptoms;

(h) effectively finding that there was evidence given in the case that permitted him to find, with some reasonable measure of precision, that Ms Farnham's pre-existing condition would inevitably lead to an adjustment disorder without the accident giving rise to the claim;

(i) having concluded that Ms Farnham suffered an adjustment disorder in consequence of the accident giving rise to this claim, attributing its genesis and its consequences to any other cause;

(j) ascribing to a so-called "obsessive compulsive personality trait" a basis for rejection of Ms Farnham's own evidence going to the issue of causation;

(k) having apparently accepted as witnesses of truth Mrs Joanie Grieves, Mrs Toni Robinson and Mr Anthony Langton, in making findings inconsistent with their evidence without addressing his reasons;

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[8] *Pickering v McArthur* [2005] QCA 294 at [3]; *Mbuzi v Hornby* [2010] QCA 186 at [13]; *Johnson v Queensland Police Service* [2014] QCA 195 at [29].

(l) placing undue emphasis on Ms Farnham's capacity to drive and little or no emphasis upon the impact of the accident upon the appellant's coping skills and the loss of emotional energy to continue supporting children in her role as a community visitor, resulting from the accident;

(m) determining, irrespective of the reasons for Ms Farnham's resignation, that the injuries occasioned to her in the accident giving rise to the claim, including the adjustment disorder, did not impact significantly upon her health and upon her economic capacity; and

(n) concluding that the presence of an obsessive compulsive personality trait gave rise to a conclusion that Ms Farnham has failed to prove, on balance, that the accident did contribute materially to her resignation or more significantly to a loss of economic capacity.

Applicability of the *Civil Liability Act*

[13] The resolution of the contentions advanced by Ms Farnham requires some factual analysis and the application of the *Civil Liability Act* and the facts relevant to that issue.

[14] The evidence established that Ms Farnham worked on a casual basis[9] from her home. She owned her home in her own right, and had done so for about 10 years.[10] The Commission allocated her a number of foster homes that she had to visit. She would create her own schedule to do so.[11]

[15] The Commission did not provide a car or a computer, but it did provide a mobile phone and stationery.[12] Ms Farnham said she claimed part of her expenses of the car and her home office as tax deductions.[13] However, her taxation returns were in evidence, showing that she had claimed only her "work related car expenses" as a tax deduction.[14] Her payslips recorded her as performing "casual hours" and claiming a motor vehicle allowance.[15]

[16] Ms Farnham said she would use her own computer to log onto the Commission's computer system. The work she did was logged onto the computer, including details of what she did and for how long.[16] When Ms Farnham drove to work at the nominated homes she was paid an allowance of 75 cents per kilometre travelled. She was paid from the time she left the house.[17] She kept a record of the odometer readings for that purpose.[18]

[17] The routine was that when she returned home after work she would attend to "the computer work, the phone calls, the emails that you do". That included any necessary calls to her manager, the CSOs, mandatory reporting on the visit just completed, and administrative changes on the computer. The hours of work were recorded on the computer system, as well as travel, and the time it took to do reports and emails.[19]

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9 Exhibit 14, AB 373.
10 AB 119 lines 35-45.
11 AB 8 lines 44 - AB 9 line 2.
12 AB 115 lines 3-8.
13 AB 115 lines 10-13.
14 AB 380 (2010/2011), AB 402 (2011/2012), AB 433 (2012/2013); using a cents per kilometre calculation.
15 AB 459-480.
16 AB 9 lines 4-11.
17 AB 9 line 39.
18 AB 9 lines 34-40.
19 AB 114 lines 6-36.

[18] At the time of the accident she was going to visit a foster home. She followed her normal routine, logging on and confirming the visit, preparing the resources needed for her interaction with the child, and then driving towards the home.[20]

[19] Whether Ms Farnham actually had a home office was not clear on the evidence. She suggested so, answering a leading question as to whether she claimed "home office expenses", by saying she did. However the tax returns made it clear she did not. A letter from the Commission said she did,[21] but the author was not called and it is by no means clear how the author could have known that Ms Farnham worked from "her home office", nor what was meant by that phrase.

[20] When Ms Farnham made her WorkCover claim she said on the form that the accident occurred "on way to work" and "On a journey to or from work".[22]

The Civil Liability Act

[21] Section 5(1)(b) of the *Civil Liability Act* provides:

> "(1) This Act does not apply in relation to deciding liability or awards of damages for personal injury if the harm[23] resulting from the breach of duty is or includes—
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> …
>
> (b) an injury for which compensation is payable under the *Workers' Compensation and Rehabilitation Act 2003*, other than an injury to which section 34(1)(c) or 35 of that Act applies."

[22] As was pointed out in *Ballandis v Swebbs*,[24] the language of s 5(1)(b) means that if compensation for the injury to Ms Farnham is covered by s 35 of the *Workers' Compensation and Rehabilitation Act*, then the *Civil Liability Act* applies.

Application of the *Workers' Compensation and Rehabilitation Act*

[23] When considering the proper construction of the statutory provisions it is necessary to adopt the approach referred to by McHugh J in *Kelly v The Queen*.[25] That requires that the words of a definition section must first be read into the substantive enactment to which it applies and only then can the substantive enactment be construed, bearing in mind its purpose and the mischief that it was designed to overcome.[26]

[24] Section 108 of the *Workers' Compensation and Rehabilitation Act* provides that "Compensation is payable under this Act for an injury sustained by a worker".

[25] The term "injury" is defined in s 32(1): "An injury is personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor

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20 AB 9 lines 23-27.
21 Exhibit 14, AB 373.
22 Exhibit 11, AB 368.
23 Section 5 was construed as if the words "the claim is that" preceded the words "the harm", in *Newberry v Suncorp Metway Insurance Ltd* [2006] 1 Qd R 519; [2006] QCA 48, at [23]. (***Newberry***)
24 [2015] QCA 76 at [11]. (***Ballandis***)
25 [2004] HCA 12; (2004) 218 CLR 216 at [84], [103]. (***Kelly***)
26 See also *Watson v Scott* [2015] QCA 267 at [49]-[50], per Morrison and Philippides JJA.

to the injury".[27] However s 35(2) provides that for the purposes of s 35(1), employment need not be a significant contributing factor.[28]

[26] Reading the definition of "injury" into s 108, it reads: "Compensation is payable under this Act for personal injury, sustained by a worker, arising out of, or in the course of, employment if … the employment is a significant contributing factor to the injury".

[27] Section 35 of the Workers' Compensation and Rehabilitation Act relevantly provides:

> "(1) An injury to a worker is also taken to arise out of, or in the course of, the worker's employment if the event happens while the worker—
>
> (a) is on a journey between the worker's home and place of employment."

[28] The term "place of employment" is defined in Schedule 6: "place of employment means the premises, works, plant, or place for the time being occupied by, or under the control or management of, the employer by whom a worker concerned is employed, and in, on, at, or in connection with which the worker was working when the worker sustained injury".

[29] *Ballandis v Swebbs* referred to the effect of s 35(1) in these terms:[29]

> "… s 35(1) is, in effect, a deeming provision. It provides that an injury which happens on a journey between the place of employment and the worker's home **is taken to arise** out of, or in the course of, the worker's employment. It operates so that even if the injury does not actually arise out of, or in the course of, the worker's employment, it will be taken to do so, if it occurs on the journey between home and the place of employment. On its plain words it applies even if the employee has finished work or is not then performing any work under their employment. Thus it applies to a journey outside working hours, such as to the workplace before work starts, or home after work has finished for the day, just as much as it does to a journey during working hours."

Approach of the learned trial judge

[30] The learned trial judge did not make a finding as to whether the accident occurred while Ms Farnham was on a journey between her home and place of employment. Instead, his Honour based his decision on the application of s 32 of the *Workers' Compensation and Rehabilitation Act*.

[31] His Honour referred to a submission by the respondent, that if Ms Farnham "did not come within s 35, then she came within s 32 and, if so, that cannot be satisfied because her work was coincidental, there being no alleged breach of duty, or breaches of duties, by the employer". He then said:[30]

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27 This is the wording of s 32(1) in Reprint 6, the version applicable when the accident occurred in 2012.

28 This provision mirrors s 32(2) which provides that employment need not be a significant contributing factor to the injury if s 35(2) applies.

29 [2015] QCA 76 at [19].

30 Reasons [14].

> "The problem that [Ms Farnham] faces though is the last point raised by the defendants. Thus, even if I were to find that she was not on a journey between her home and place of employment under s 35(1)(a), she still would not satisfy the requirements, already examined, of s 32 which were analogously canvassed in *Newberry* and *King*. There is nothing illogical in that outcome, even though the mental processes might tend to be akin to confusion."

Discussion

[32] It is convenient to consider whether s 35 applies. The facts applicable to this question are not controversial: see paragraphs [14] to [20] above.

[33] Ms Farnham contended that s 35 was inapplicable because at the time she was not on a journey between her home and place of employment. That depended on the contention that as she worked to some extent from home, her home was, in fact, a place of employment, so that she was going from one place of employment to another place of employment.

[34] For a number of reasons the contention must be rejected.

[35] First, the term "home" is relevantly defined in s 35(4) to mean the worker's usual place of residence. That definition accords with the ordinary meaning of "home", namely a dwelling place or fixed residence.[31] The term "place of employment" is relevantly defined to mean "the premises … or place for the time being occupied by, or under the control or management of, the employer by whom a worker concerned is employed".

[36] Applying *Kelly* and importing the definitions into the substantive enactment, s 35(1)(a) then reads "on a journey between the worker's usual place of residence and the premises … or place for the time being occupied by, or under the control or management of, the employer by whom a worker concerned is employed". The plain words maintain a distinction between the "usual place of residence", namely where someone usually resides, and the place of employment, which is a place occupied, controlled or managed by the employer. In my view, the mere fact that a worker does some work at home does not mean that it loses its character as the worker's home. The usual place of residence remains exactly that even though the worker does some work there.

[37] Secondly, the mere fact that a worker does some work at home does not turn the home into a "place of employment" under the Act. That term is relevantly defined to mean "the premises … or place for the time being occupied by, or under the control or management of, the employer by whom a worker concerned is employed". It cannot be said that Ms Farnham's home, or even the space in which her computer was situated, was ever occupied by, or under the control or management of, the Commission. Counsel for Ms Farnham conceded as much in the course of argument.[32]

[38] Thirdly, the fact that Ms Farnham was paid for the time she worked while at home does not turn her home into a "place of employment". The fact that a worker doing paid work at home might lead to an argument that the **worker** was, for the time being, under the control or management of the employer during that time, but the same cannot be said for the home. Further, acceptance of that contention would raise other

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[31] *The Australian Concise Oxford Dictionary*, 7th ed, 1987, p 509.

[32] Appeal transcript T 1-23 lines 22-33.

difficulties, such whether the home should be regarded as a "place of employment" only during the time that the worker works, but not before or after. That result does not sit well with the definition of "place of employment".

[39] Fourthly, the fact that Ms Farnham was paid for the time she spent travelling to clients' homes does not mean that the journey ceases to be one between her home and place of employment. As was said in *Ballandis*,[33] s 35 applies to a journey that occurs within working hours.

[40] Counsel for Ms Farnham pressed the contention that there was some ambiguity in s 35(1)(a) in so far as the definitions of the worker's "home" and "place of employment" were concerned. Based on that it was urged that the Court should read various statements made in Parliament in the course of debate on an amendment bill introduced in the aftermath of the decision in *Newberry v Suncorp Metway Insurance Limited*.[34] The contention focussed on the fact that Ms Farnham was working at home for part of the time, and it was said that introduced the possible ambiguity, where it was unclear what "usual place of residence" or "place of employment" meant.

[41] I do not accept the contention. Each of the definitions uses plain and clear words. "Home" is defined as the worker's "usual place of residence". "Place of employment" is defined as meaning "the premises … or place for the time being occupied by, or under the control or management of, the employer by whom a worker concerned is employed". The one cannot be confused with the other. The concession that Ms Farnham's employer did not control or manage her home puts any suggested ambiguity out of question.

[42] Assuming a case where the worker's usual place of residence was also a place under the control or management of the employer, still the suggested ambiguity does not arise because of the additional part of the definition of "place of employment". Not only is it a place that must be occupied, controlled or managed by the employer, it must also be a place "in, on, at, or in connection with which the worker was working when the worker sustained injury". Ms Farnham was not injured in, on or at her home. Nor was her home a place in connection with which she was working when injured, because she had ceased her work at home and was travelling to another place to work.

[43] In my view, Ms Farnham's claim was caught by s 35 of the *Workers' Compensation and Rehabilitation Act*, with the consequence that the *Civil Liability Act* applied.

Application of s 32 Workers' Compensation and Rehabilitation Act

[44] Section 32(1) defines the term "injury" for the purposes of the *Workers' Compensation and Rehabilitation Act*:[35]

> (1)(a) "An ***injury*** is personal injury arising out of, or in the course of, employment if… the employment is a significant contributing factor to the injury."

[45] The learned trial judge held that if s 35 did not apply Ms Farnham was still caught by s 32, in that her employment was not a significant contributing factor to her injuries. In that respect his Honour relied upon the decisions in *Newberry* and *King v Parsons & Suncorp Metway Insurance Ltd*.[36]

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33 [2015] QCA 76 at [19].

34 [2006] QCA 519. (***Newberry***)

35 The relevant version of the Act is Reprint 6.

36 [2006] QCA 49. (***King***)

[46] Counsel for Ms Farnham attacked that finding on the basis that *Newberry* and *King* were wrongly decided because those courts were not referred to the line of authority exemplified by *Favelle Mort Ltd v Murray*[37] and *Adelaide Stevedoring Co Ltd v Forst*,[38] which were concerned with whether employment contributed to a worker's injuries.[39] It was contended that the learned trial judge had sought "to thwart parliament's intentions by attaching to the phrase "significant contributing factor to the injury" a meaning that was never intended by the legislator (sic)".[40]

[47] *Newberry* was concerned with injuries sustained by a worker when he was travelling in the course of his employment, in a truck driven by his brother. The injuries occurred when the truck collided with another vehicle which was on the wrong side of the road. The issue for determination turned on the construction of s 5(b) of the *Civil Liability Act*. Both sides in the case agreed that s 34(1)(c) and s 35 of the *Workers' Compensation and Rehabilitation Act* did not apply, so the question was whether the *Civil Liability Act* was excluded because the injury was covered under s 32 of the *Workers' Compensation and Rehabilitation Act*.

[48] Keane JA[41] rejected the suggestion that the ultimate consideration should turn to Explanatory Notes and speeches in Parliament:[42]

> "These considerations may afford assistance in the event that the effect of the language used by the Parliament is unclear, but a consideration of the proper legal construction of s 5(b) of the *CLA* must focus upon the language of the provisions of the statute understood within its context. In this case, of course, the statutory context includes the relationship between s 5(b) of the *CLA* and the *WCRA*, a relationship made explicit by the text of s 5(b) of the *CLA* itself."

[49] Keane JA examined the operation of s 5(b) of the *Civil Liability Act*, and the claims to which it was directed, and in particular the requirement of s 32 of the *Workers' Compensation and Rehabilitation Act* that the injury be one where "the employment is a significant contributing factor to the injury". His Honour said:[43]

> "In short, s 5(b) excludes from the scope of the *CLA* claims which involve the assertion that the personal injury caused by the breach of duty by a non-employer occurred in circumstances where the claimant's employment activities nevertheless also contributed to the occurrence of that injury in a way which is significant. Whether the contribution of the employment activities was, or was not significant, involves a consideration of issues of causation and causal potency in the relationship between the breach of duty and the employment activities. These issues simply do not arise in the context of a determination of the simpler issue whether an injury falls within s 32 of the *WCRA*."

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37 (1975) 133 CLR 580, at 601. (***Favelle***)

38 (1940) 64 CLR 358, at 563. (***Adelaide Stevedoring***)

39 Appeal transcript T 1-4 line 28.

40 Ms Farnham's outline in reply, paragraph 9; relying on *Federal Broom Co Pty Ltd v Semlich* (1964) 110 CLR 626. (***Federal Broom***)

41 With whose reasons de Jersey CJ and Muir J concurred.

42 *Newberry* at [9]. Internal footnote omitted.

43 *Newberry* at [24].

[50] Keane JA noted that the claim in *Newberry* did not allege that his employment contributed in any way to the injury allegedly caused by the breach of duty owed to him. He then dealt with the construction of s 32 and the requirement that the "employment" contribute to the injury:[44]

> "It cannot be disputed that, when s 32 of the *WCRA* speaks of 'employment' contributing to the worker's injury, it is referring to employment as a set of circumstances, that is to the exigencies of the employment of the worker by the employer. The legislation is referring to 'what the worker in fact does during the course of employment'. The requirement of s 32 of the *WCRA* that the employment significantly contribute to the injury is apt to require that the exigencies of the employment must contribute in some significant way to the occurrence of the injury which the claimant asserts was caused by the breach of duty of the person (not the employer) against whom the claim is made."

[51] Notwithstanding that Mr Newberry was travelling in the course of his employment when he was injured, there was no exigency or activity of his employment that made a significant contribution to the occurrence of his injury. As Keane JA explained:[45]

> "That Mr Newberry was employed by his employer, and that he was acting in the course of that employment, are facts which are immaterial to his claim against the appellant and any 'form of action' on which that claim might legally be based. **The breach of duty alleged against the appellant and the injury to Mr Newberry caused by that breach were not such as to involve, or to require, any reference to the exigencies or activities of Mr Newberry's employment. The duty which the appellant's insured owed to Mr Newberry was owed to Mr Newberry as another user of the road. Mr Newberry's activities as an employee were irrelevant to the duty which was owed by the appellant's insured, the breach of that duty and the injury caused to Mr Newberry as a result of that breach.** An assertion that the exigencies or activities of Mr Newberry's employment made significant contribution to the occurrence of the injury which was claimed to result from the breach of duty by the appellant's insured would have been nonsense. No doubt it is for that good reason that these assertions of fact were not made in Mr Newberry's initial formal claim against the appellant."

[52] The question in *Newberry* turned on the construction of the particular statute, and not by reference to common law concepts of whether an injury arose in the course of, or was contributed to, by the worker's employment. Keane JA made that plain:[46]

> "It is clear, as a matter of language, that the words 'if the employment is a significant contributing factor to the injury' are intended to be a requirement of connection between employment and injury additional to each of the requirements that the injury occur in the course of employment or arising out of the employment. It cannot, in my respectful opinion, sensibly be read as lessening the stringency of the latter or increasing the stringency of the former."

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44 *Newberry* at [27]. Internal footnote omitted.

45 *Newberry* at [28]. Emphasis added.

46 *Newberry* at [42].

[53] Nor was the process of construing the statutory provisions involved in *Newberry* governed or assisted by different statutory enactments, such as that in *Favelle*.

[54] Therefore there was no need to refer to cases such as *Favelle* or *Adelaide Stevedoring*. However, and contrary to the contention by Ms Farnham, the Court in *Newberry* was referred to *Favelle*, and it was distinguished:[47]

> "[43] The decisions on which the learned primary judge relied are readily distinguishable. In *Favelle Mort Ltd v Murray*, the injured worker had been exposed to the virus which caused his injury in the course of carrying out his employment. That was sufficient to entitle him to workers' compensation. In *Mercer v ANZ Banking Group Ltd*, the injured worker suffered injury while actually carrying out the duties of her employment in circumstances where it was common ground that the mechanical task in which she was engaged when injured was part of her employment and that it had made a material contribution to her injury. The only issue was whether that contribution was 'substantial'.
>
> [44] More importantly, and in my view decisively for present purposes, neither of these cases required a consideration of whether it was claimed that employment was a significant contributing factor to an injury which was alleged to have been caused by the breach of duty of a person other than the employer."

[55] In my respectful view, *Newberry* was correctly decided. To have taken the contrary view, that is to say that the mere fact of an injury to a worker during working hours is enough to ground a claim under s 32 regardless of the nature of the breach of duty alleged and against whom it is alleged, is to attribute no proper meaning to the words in s 32 "if the employment is a significant contributing factor to the injury". I respectfully agree that the requirement of s 32 of the *Workers' Compensation and Rehabilitation Act*, that the employment significantly contribute to the injury, requires that the exigencies of the employment must contribute in some significant way to the occurrence of the injury caused by the breach of duty of the person (not the employer) against whom the claim is made.

[56] The contention that *Newberry* was not correctly decided because the Court was not referred to the *Favelle* line of authority cannot be sustained.

[57] The same applies to *King*. It was argued before the same court and at the same time as *Newberry*.

[58] The circumstances in *King* were different from *Newberry*, *Ballandis* or Ms Farnham's case. Mr King was a postman whose duties as a postman required him to drive a motorcycle on the footpath, and in danger of colliding with cars reversing out of driveways. Keane JA said of that:[48]

> "In this regard, as his Honour observed, 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

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[47] *Newberry* at [43]-[44]. Internal footnotes omitted.

[48] King at [10].

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."

[59] In my view the learned trial judge was correct to find that the *Civil Liability Act* applied to Ms Farnham's claim. This ground of appeal fails.

[60] That conclusion makes it strictly unnecessary to deal with other grounds raised, however I shall do so.

Impact of the Adjustment Disorder and resignation from employment

[61] This section covers the grounds set out in paragraphs [12](b) - (l) and (n) above.

[62] Ms Farnham's injuries included the development of an adjustment disorder. She said that had an adverse impact upon her life and work, and in particular led to an inability to cope with the exigencies of her employment. She contended that the adjustment disorder led her to resign her employment with the Commission on 16 November 2012, thereby suffering economic loss.[49] That loss was the largest component of the overall claim.

[63] Ms Farnham commenced employment in 2009 with a firm called Phoenix, and in the same year enrolled in a Diploma of Counselling. She suspended work on the Diploma and in 2011 sought different employment so she could further her desire to work with children. In 2012 she left Phoenix to work with the Commission. That gave her the chance to work fewer hours and get back into the Diploma course.[50]

[64] Ms Farnham identified stressors in her own life, including her marital breakdown in 2004, loss of a child at birth in about 1994, the death of her sister being in 2012,[51] and her mother's deteriorating health from 2011 and 2012. Notwithstanding the stressors in 2012 she did not need to take time off work.[52]

[65] Ms Farnham said that prior to the accident she wanted to complete the diploma course in counselling, and build up her career as a child counsellor.[53] However after the accident she did not return to full employment. She explained that she found the

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49 At the trial there were claimed economic losses for the past as well as into the future.
50 AB 7-8.
51 Ms Farnham's sister died in December 2012, the month after she resigned from the Commission.
52 AB 7.
53 AB 16.

driving stressful, and struggled to cope with the interaction with the children she was working with. She did not keep up the consistency needed to build a rapport with the children and realised she was not doing a good job for them. She also experienced trouble with the computer work. In the end she felt she was failing the children, and the Commission, and that she could not "get back to the person I was before". She therefore resigned from the Commission.[54]

[66] Since the accident she said she was more fearful, unmotivated and reluctant to take risks. She described lack of concentration, confusion and poor sleeping. She also doubted that she would return to the study course as she didn't have the desire any more to work in that field.[55] That was due, at least in part, to her feeling a lack of commitment on her part, leading to her not putting in the same effort as before. The same applied to her home schooling of her children.[56]

[67] In 2013 Ms Farnham started to look for work again, and went back to work with Phoenix. She was still employed there at the time of the trial. The hours worked at Phoenix were greater than those at the Commission.[57]

[68] Prior to the accident Ms Farnham had consulted a number of doctors in relation to matters including memory loss (mixing things up), balance and fatigue, sciatica of the leg, headaches that came with a smoky smell, and psychological stress caused by her family relationships.[58]

[69] Ms Farnham's mother was hospitalised just before the accident, for vascular dementia caused by a stroke.[59] At the same time her sister had terminal breast cancer.[60] In the months leading up to November 2012 Ms Farnham told various doctors that she was not coping well with the stress caused by her mother's and sister's deteriorating conditions.[61]

[70] The learned trial judge recognised that a significant determinant of the effect of the adjustment disorder was the extent to which pre-existing stressors in Ms Farnham's life had an impact on her post-accident decisions, and in particular on decisions as to her employment.[62] The most important of the employment related decisions was to resign in November 2012. It was that decision which formed the centrepiece of the contentions advanced by Ms Farnham.

[71] The learned trial judge went into considerable detail when examining the causal link between the accident and the resignation. As will be seen, his Honour had reservations about the reliability of Ms Farnham's evidence as to the reasons why she did things after the accident. Having referred to *Purkess v Crittenden*[63] as to the need for an evidentiary base for establishing the causal link, his Honour spent some time examining what might be drawn for the evidence of medical witnesses, Ms Holland (a psychologist) and Dr Cleveland. In each case his Honour was not prepared to draw much from what they said.[64]

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54 AB 16-18.
55 AB 13.
56 AB 14-15.
57 AB 177.
58 AB 121-130.
59 AB 130.
60 AB 172.
61 AB 178-182.
62 Reasons [16].
63 (1965) 114 CLR 164.
64 Reasons [23]-[25].

[72] His Honour then examined the evidence of the two psychiatric experts, Dr Chung and Dr Oelrichs, as well as that of a psychologist, Ms Ritchie.

[73] As to the evidence gained from Ms Ritchie's records of consultations with Ms Farnham, the respondents contended at trial that they showed the stresses related to Ms Farnham's mother and sister were the predominant factors in her own state of anxiety, and the real cause of her resignation. The learned trial judge did not accept those submissions. In particular his Honour had a reservation about accepting the conclusion of Ms Ritchie (that Ms Farnham had "significant emotional distress relating to her sister's impending passing") "as a conclusion to be reached without the benefit of the views of the expert psychiatrists".[65] Plainly the learned trial judge placed greater weight upon the expert psychiatrists' evidence.

[74] The learned trial judge examined the psychiatrists' evidence in detail. There were significant features of each that his Honour noted. First, with Dr Chung:

(a) his report said that Ms Farnham continued "to satisfy the diagnostic criteria for an adjustment disorder with anxiety and depressive symptoms", she had "obsessive compulsive personality traits" and was "in a state dependent obsessive compulsive personality disorder";[66]

(b) his second report said that her symptoms had improved dramatically after December 2012, since her sister's death;[67]

(c) however, having been taken to the history of pre-accident medical conditions, Dr Chung concluded that the history of sleeping problems, lack of energy, fatiguing easily, concentration worsening and memory problems, would be contrary to Ms Farnham being classified as a high functioning person prior to the accident;[68]

(d) more importantly, he concluded that the pre-accident medical history, which he had not been told about when he did his reports, presented a different picture in contrast to someone coping well prior to the accident; he said the new information "does indicate that at that point in time she probably wasn't coping as well as she should";[69] and

(e) Dr Chung conceded that the barriers for continuing with work were not accident related stressors, adding that it seemed that the reason that Ms Farnham resigned from her position was because of the demands of having to care for her terminally ill sister, and perhaps once that was over with, "she felt that she was able to look for other employment".[70]

[75] As for Dr Oelrich, the factors noted by the learned trial judge included these:

(a) she had not seen the prior medical records, but in light of them it was possible, in view of the plaintiffs sister's illness and her mother's dementia, that Ms Farnham might have resigned from her employment even if the motor vehicle accident had not occurred;[71]

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65 Reasons [31]-[34].
66 Reasons [35].
67 Reasons [35].
68 Reasons [36].
69 Reasons [37].
70 Reasons [38].
71 Reasons [40].

(b) she believed there was a very significant chance Ms Farnham would have resigned in any event;[72]

(c) she concluded that it was more likely that notwithstanding the accident, because of the stressors, Ms Farnham would not have been able to continue to manage and cope with work;[73] and

(d) Ms Farnham's anxiety with respect to driving would, by 9 October 2012, have been within the normal range and would not have been impairing her.[74]

[76] The learned trial judge described the resignation as the pivotal event,[75] and having recorded those aspects of the evidence from Dr Chung and Dr Oelrichs, his Honour held that it had not been proven that the accident caused the resignation:[76]

> "The conclusion that I am driven to reach, despite my own hesitation to so extrapolate, is that both expert psychiatrists have concluded that it is consistent with their opinions that it was non-accident related stressors which led to this resignation. It is, of course, not for them to decide the fact of probability, or not. The factor that, in particular, leads me to defer to the experts, despite my own concerns about the possible over interpretation of the medical and other history, is that even Dr Chung concluded that, as a result of the plaintiff's personality, she had become inflexible in the way she thought and could not cope with not being able to live up to her own excessively high expectations of seeing herself as a high functioning mother to four children, teacher to her children, a capable career woman and being able to cope with studying for a degree, in circumstances where most people at her age 'would see these goals as highly unattainable and probably unrealistic'. This 'obsessive compulsive personality trait' was a pre-existing condition. What needs to be separately considered is that the 'but for' test can be satisfied (e.g. by the 'straw that broke the camel's back') while the second part of the statutory causation test can fail on *Medlin* considerations. Hence, I conclude that the accident has not been proved, on balance, to be a material contributing cause to the resignation."

[77] Counsel for Ms Farnham submitted that the learned trial judge had not made any adverse findings as to the credit of Ms Farnham, and therefore it was not open to find, contrary to her evidence, that she was not coping with the non-accident stressors in her life, nor that those stressors were the real reason why she resigned.

[78] It is true that the learned trial judge did not make adverse findings of credit in respect of Ms Farnham. However, there were reservations about the reliability of her evidence, reflected in the following passage:[77]

> "The view that I formed of the plaintiff in the witness box, who had to endure constant interruptions to her evidence to enable other witnesses to be called to give evidence, showed to me that she: was a resourceful

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[72] Reasons [40].
[73] Reasons [40]. The Reasons quote from Exhibit 7 (AB 349) which uses the phrase "but for the accident" but the context makes it clear that it should be understood as "notwithstanding the accident".
[74] Reasons [40].
[75] Reasons [27].
[76] Reasons [41].
[77] Reasons [18]-[19]. Emphasis added.

> person; was not overly dramatic in any aspect upon which she was examined (and particularly cross-examined); and attempted to explain the many trying circumstances concerning her life in a way that, while admittedly very subjective, was not such that I would conclude that she lacked candour (**though she may have lacked insight into her real reasons for acts done**).
>
> Having reached such a conclusion, though, **that subjective approach that I have mentioned may also have tended to obscure her memory of the underlying reasons why she took particular actions that she did**, **which, as I explore later, may find a base in her personality as diagnosed**."

[79] The highlighted parts above found their expression in the finding by the learned trial judge that Ms Farnham had pre-existing "obsessive compulsive personality traits".[78] That finding was supported by the evidence of Dr Chung, which was accepted. No compelling reason has been advanced as to why it was not open to the learned trial judge to accept that evidence.

[80] Counsel for Ms Farnham submitted that the evidence led at the trial was incapable of supporting the finding that the accident did not give rise to any element of economic loss. That contention focussed on the evidence of Dr Oelrichs, which, it was said, should have been rejected out of hand because in her second report she had resiled from the opinions in the first report "for completely inexplicable reasons"[79] or for "absolutely no reason",[80] and in the second report "there is not one factor … which leads to justification for resiling".[81] The contention continued, that a change in opinion by Dr Oelrichs had to be sourced in a written report and could not be given in oral evidence in cross-examination.[82]

[81] I cannot accept that contention.

[82] Dr Oelrichs gave two reports, the first dated 18 March 2014,[83] and the second 6 January 2015.[84] In the first report Dr Oelrichs concluded that the adjustment disorder with depressed and anxious mood was caused solely by the accident, and whilst there were other significant stressors, "the main symptoms that are residual relate to residual anxiety regarding driving a motor vehicle and some deterioration in social functioning and an emotional impact upon her ability to work in her pre-existing job which required use of the motor vehicle".[85]

[83] The second report recorded that Dr Oelrichs had the benefit of new material on which to base an opinion. The new material included a supplementary report from Dr Chung, an MRI, reports from Dr Pentis, reports from another psychiatrist, and records from Sonic Health Plus (Dr Cleveland). Most importantly the new material included a more recent examination of Ms Farnham. Using all that material, Dr Oelrichs concluded that:[86]

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78 Reasons [21].
79 Appeal transcript T 1-31 line 19.
80 Appeal transcript T 1-33 line 43.
81 Appeal transcript T 1-34 lines 22-23.
82 Appeal transcript T 1-39 line 30 to T 1-40 line 11.
83 AB 331.
84 AB 351.
85 AB 342.
86 AB 358-359.

> "Commenting upon the stressors in Ms Farnham's life in 2012, the stressors had been relating her mother developing dementia, breast cancer and her sister's terminal illness and subsequent passing away in December 2012. There had also been an impact upon Ms Farnham relating to her being unsuccessful in applying for her former job at the Commission, These had contributed in a multifactorial way to her developing an Adjustment Disorder with depressed and anxious mood. These features are now all residual in their impact.
>
> It is possible in view of her sister's illness and mother's dementia that [Ms Farnham] may have resigned from her employment with the Commission even if the motor vehicle accident had not occurred."

[84] Dr Oelrichs also signed a note of opinions given by her when preparing for trial.[87] They included that:

(a) there was a very significant chance that Ms Farnham would have resigned her employment in any event, even if the accident had not occurred;

(b) it was more than likely that Ms Farnham would not have been able to continue to manage and cope at work because of the family related stressors (the sister's illness and her mother's dementia, family conflict and a relative's attempted suicide in 2011) even without the accident; and

(c) the anxiety about driving was not impairing her ability to work when first seen by Dr Oelrichs in March 2014, and would have been within normal range by October 2012, five months after the accident.

[85] In evidence, Dr Oelrichs said that at the December 2014 assessment of Ms Farnham, her presentation was more to do with family stressors rather than the accident.[88] By then factors other than the accident had become more apparent.[89] It was at the second assessment in December 2014 that it became apparent how significant those stressors were.[90] She described them as "quite significant".[91] Her view had changed with the further information she had been given.[92] She said that she no longer believed that the accident was the sole cause of the adjustment disorder:[93]

> "I don't think that it has been caused solely by the accident. There were other life stressors and the motor vehicle accident happened and it was like it was a straw that broke the camel's back situation."

[86] Finally, in evidence Dr Oelrichs said that by December 2014 the effects of the accident were "quite residual", "minimal compared to her other concerns at that time" and there was no effect from the accident impairing her ability to return to work.[94]

[87] In my view, it was open to the learned trial judge to accept the evidence of Dr Oelrichs, and in particular the opinions given in the second report and the note

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87 AB 349.
88 AB 93 lines17-33.
89 AB 93 line 46 to AB 94 line 4.
90 AB 95 lines 10-14, AB 96 lines 4-11.
91 AB 105 line 41.
92 AB 98 lines 9-32.
93 AB 96 lines 28-31.
94 AB 106 lines 1-15.

signed by her. This was evidence from an expert, based on a more complete set of medical records and a recent assessment. The expert gave an explanation why her opinion had altered, identifying the new information she had. There was nothing inherently improbable about the opinions expressed, which were tested in cross-examination. Contrary to the submission made, the evidence of Dr Oelrichs did not offend against the requirements set out in *Makita (Australia) Pty Ltd v Sprowles*.[95] No part of those requirements confines an expert's opportunity to state the facts or assumption upon which the opinion is based to the written report itself, and just as a written report can be tested in cross-examination so can it be amplified or supplemented. Any deficit in the second report itself was adequately explained in oral evidence.

[88] Counsel for Ms Farnham contended that the use of the phrase "defer to the experts" when used in paragraph [41] of the reasons, signified that the learned trial judge had "deferred ... his obligation to determine the claim in accordance with law".[96] Not surprisingly, this contention received no additional comment in oral submissions. It does not demonstrate that. All his Honour was expressing was his own hesitation in reaching the conclusion he did, and the comfort he derived from the fact that they were prepared to reach the same conclusion, non-binding though their opinion was on this point.

[89] There was no relevant difference between the two experts at the end of the evidence. Each concluded that the accident was not the reason why Ms Farnham resigned, but rather the family related stressors. The learned trial judge placed considerable weight on the psychiatrists' evidence, more so than on witnesses such as Ms Ritchie. For that reason the fact that Ms Ritchie may have concluded that Ms Farnham was coping with her stressors does not have much impact on the outcome, if it was open to accept the psychiatrists' evidence to the contrary.

[90] The same is the case when one considers the evidence of lay witnesses such as Mrs Grieves, Mrs Robinson and Mr Langton.

[91] Given the opinions expressed by each of Dr Chung and Dr Oelrichs, it was open to the learned trial judge to find that Ms Farnham's resignation was not causally related to the accident. That finding cannot be said to be glaringly improbable or the product of a misuse of the trial judge's opportunity to assess witnesses.[97]

[92] It is true that such a finding is contrary to the evidence given by Ms Farnham, but the answer to that lies in the finding that her obsessive compulsive personality meant she may have lacked insight into why she did things, may also have tended to obscure her memory of the underlying reasons why she took particular actions.[98]

Ability to return to work and future economic loss

[93] This section deals with ground (m): see paragraph [12](m) above.

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95 [2001] NSWCA 305, at [79].

96 Ground 2(c); see paragraph [12](c) above.

97 *Anderson v Connelly* [2011] QCA 37, [39]; *Fox v Percy* (2003) 214 CLR 118, 128; *Devries v Australian National Railways Commission* (1993) 177 CLR 472, Brennan, Gaudron, McHugh JJ, 479; [1993] HCA 78.

98 See paragraph [78] above.

[94] Ms Farnham challenged the findings concerning her ability to return to work, and to drive for that purpose. The learned trial judge accepted the evidence of Dr Oelrichs, Dr Chung and Ms Ritchie, supported as it was by other evidence, that by late 2012 or early 2013 Ms Farnham was able to drive sufficiently to be able to work, albeit under a treatment plan initiated by Ms Ritchie.[99]

[95] There is no substance to the challenge. Ms Farnham had driven to Townsville a month before she resigned from the Commission. That was under Ms Ritchie's treatment plan, which (the evidence showed) was "progressing well". It was Ms Ritchie's record of what she was told by Ms Farnham, that in January 2013 the symptoms and difficulties with driving were "stable" and that strategies were in place to manage the driving anxiety.

[96] Dr Chung noted that as at January 2013 Ms Farnham said she could drive without anxiety, an opinion supported by Dr Oelrichs. Dr Chung was of the view that by May 2013 (when his first report was given) Ms Farnham was able to return to full-time work, and drive for that purpose.

[97] The finding by the learned trial judge on this aspect was:[100]

> "Since, by January 2013, [Ms Farnham] had applied for her old job back, despite self-expressed concerns, I find she was fit to return to work and, from the finding that I have already made, had been fit for work (insofar as the accident related effects were concerned) on and from 16 November 2012."

[98] His Honour then set out the evidence that supported that conclusion.[101] A substantial part of that evidence was from Dr Chung and Dr Oelrichs. I have dealt earlier with the reasons why it was open to the learned trial judge to accept their evidence. The balance came from the experts who assessed the physical injuries sustained, Dr Williams and Dr Pentis, each of whom said that there was minimal to no adverse impact on ability to work. There was no serious challenge to that evidence.

[99] The ultimate finding, again unimpeachable given the matters referred to above, was in these terms:[102]

> "Because of the findings that I have made concerning the non-accident stressors in [Ms Farnham's] life, no discount should apply on *Malec v JC Hutton* principles (for the reasons that there has been insufficient evidence to cross the threshold discussed in *Medlin:* see *Allianz Australia Insurance Ltd* v *McCarthy* at [49]). As analysed, the liability has not been proved to be a contributing cause, either direct or indirect, to that intervening decision to resign – and therefore, the consequences of attempts of return to work afterwards – or any ongoing inability to obtain work after January 2013."

[100] Given that evidence referred to above, that finding by the learned trial judge is unimpeachable.

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99 Reasons [43]-[50].
100 Reasons [53].
101 Reasons [54]-[58].
102 Reasons [67]. Internal footnote omitted.

[101] For the same reasons the learned trial judge was, in my respectful view, correct to find that there was no demonstrated future economic loss. That the basis was the same evidence and finding was recognised by the learned trial judge:[103]

> "Thus, as in this case on my acceptance of the relevant medical evidence that [Ms Farnham] has no impairment of her working capacity by any accident-related consequence of injury, there is no principled basis upon which to conclude that there is any future economic loss."

Conclusion and orders

[102] None of the proposed grounds of appeal have been demonstrated to involve an error on the part of the learned trial judge. The application for leave to appeal should be refused with costs.

[103] I would propose the following orders:

1. The time for filing the application for leave to appeal is extended to 21 July 2015.
2. The application for leave to appeal is refused.
3. The applicant is to pay the respondents' costs, of and incidental to the application including the reserved costs of the application for extension of time for leave to appeal, to be assessed on the standard basis.

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103 Reasons [73].