

COURT FINDS MAIB NOT LIABLE TO INDEMNIFY EMPLOYER FOR PTSD COMPENSATION PAID

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Unsuccessful claim by employer seeking indemnity for payments of workers' compensation made in respect of employee's PTSD.

In Issue

- Whether Mr Jordan suffered an injury in or out of the course of his employment.
- Whether PTSD was a disease to which his employment contributed to a substantial degree.

The background

Mr Jordan was employed as a truck driver by Bernie Howe Pty Ltd (the plaintiff). In 2011 Mr Jordan was driving home after attending an induction session, when he was involved in a head-on collision with a motorcycle. The motorcyclist died at the scene. As a result of the accident Mr Jordan developed PTSD. He claimed compensation pursuant to the *Workers Rehabilitation and Compensation Act 1988* (the WRC Act). By virtue of s134(1) of the WRC Act, the plaintiff sought indemnity against the Motor Accidents Insurance Board (MAIB) for the payments of workers compensation made by it in respect the PTSD suffered by Mr Jordan. This was on the basis that the motor accident was caused by the motorcyclist's negligence.

MAIB acknowledged that the motorcyclist's negligence caused the accident, however denied liability on the basis that PTSD is a disease and his employment did not contribute to that disease to a substantial degree as required by the WRC Act. In the alternative, MAIB argued that if the PTSD was not a disease, it did not, as required, arise out of or in the course of employment because there was no evidence that the journey was work- related.

The decision

On the issue of the PTSD being a disease, the court accepted that Mr Jordan had no pre-existing mental health issues, and that there was an immediate onset of symptoms at the time of the motor accident. However the court held that as Mr Jordan gave unchallenged evidence that his symptoms developed as time continued, his condition was properly characterised as a disease pursuant to s3(1) of the WRC Act. As a result, the court held that the plaintiff was only liable to pay compensation if Mr Jordan's employment contributed to that disease to a

substantial degree (s25(1)(b) WRC Act). The court held that the PTSD was caused by the fatal collision which was a result of the motorcyclist's negligence, and as Mr Jordan was not driving for the purpose of employment duties, his employment did not contribute to a substantial degree to the PTSD. Therefore, the plaintiff was not obliged to pay compensation to Mr Jordan under the WRC Act, and MAIB was consequently not obliged to indemnify the plaintiff.

The court further noted that if it was wrong in categorising Mr Jordan's PTSD as a disease, and the PTSD was instead an injury, the action would still fail. The court was not satisfied that Mr Jordan was in the course of his employment at the time of the accident because there was no evidence that he was driving for any work-related purpose and therefore the PTSD did not arise out of or in the course of his employment.

Implications for you

This case confirms that successful recovery actions under the WRC Act require proof of foundational liability of the employer being established. It highlights the importance of conducting an early investigation into all aspects of the claim.

It also uncontroversially suggests that a psychological injury will typically be classified as a disease, rather than an injury.

Authored by Demi Peters

[Bernie Howe Pty Ltd v Motor Accidents Insurance Board \[2017\] TASSC 27](#)