# HIGH COURT OF AUSTRALIA

17 August 2017

TRANSPORT ACCIDENT COMMISSION v MARIA KATANAS
[2017] HCA 32

Today the High Court unanimously dismissed an appeal from the Court of Appeal of the Supreme Court of Victoria concerning the narrative test of serious injury under s 93(17) of the *Transport Accident Act* 1986 (Vic) ("the narrative test") laid down in *Humphries v Poljak* [1992] 2 VR 129.

The respondent was involved in a motor vehicle accident in July 2010. Following the accident, she suffered a range of psychological symptoms including lowered mood, nightmares and daytime thoughts of the accident. She also reported restrictions in her social pursuits and difficulties in concentration. The respondent received psychological treatment, and, in April 2013, she was prescribed anti-depressant medication and began to attend on a psychiatrist. Medical evidence indicated that the respondent had suffered a post-traumatic stress disorder and either a major depressive disorder or an adjustment disorder which was substantially related to the accident.

On 16 April 2013, the respondent filed an originating motion in the County Court of Victoria seeking leave to commence common law proceedings for a serious injury under s 93(4) of the *Transport Accident Act*. The primary judge refused leave, holding that, although the respondent had received considerable treatment and medication, she had not been an inpatient in any psychiatric institution "nor suffered the more extreme symptoms of psychological trauma".

The respondent appealed to the Court of Appeal contending, inter alia, that the primary judge misdirected himself as to the objective assessment of the severity of her mental disorder by conceiving of severity solely in terms of the extent of treatment necessitated by the disorder. The majority of the Court of Appeal held that although the extent of treatment may cast light on whether the disorder was "severe", it was only one among a range of considerations that needed to be taken into account.

By grant of special leave, the appellant appealed to the High Court on the ground that the majority of the Court of Appeal displaced the part of the narrative test from *Humphries v Poljak* concerning the evaluation of the instant case against the range or spectrum of comparable cases. The High Court unanimously held that the majority of the Court of Appeal did not err in holding that the range as formulated by the primary judge was incomplete because it had regard only to one criterion of the comparative severity of a mental disorder, namely, the extent of treatment. The majority of the Court of Appeal rightly emphasised that, in assessing severity by comparison to the range of comparable cases, a judge must identify and bring to account all of the relevant factors. Accordingly, the majority of the Court of Appeal had not departed from the narrative test. The High Court declined to entertain an alternative contention put by the appellant that the majority of the Court of Appeal had misunderstood the primary judge's formulation of the range.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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