



HIGH COURT OF AUSTRALIA

22 June 2011

MAURICE BLACKBURN CASHMAN v FIONA HELEN BROWN
[2011] HCA 22

Ms Brown was a salaried partner employed by Maurice Blackburn Cashman ("MBC") in its legal practice in Melbourne. Ms Brown alleged that between January and November 2003 she had been "systematically undermined, harassed and humiliated" by a fellow employee, despite complaints and requests for intervention made to MBC's managing partner, and that, as a result, she had suffered injury, including psychiatric injury.

In December 2005, Ms Brown made a claim against MBC under the *Accident Compensation Act* 1985 (Vic) ("the Act") for compensation for non-economic loss. The Act provided for payment of compensation "in respect of an injury resulting in permanent impairment as assessed in accordance with section 91". Section 91 of the Act prescribed how the assessment of the degree of impairment of a worker was to be made. No compensation was payable if the degree of impairment was less than 30 per cent.

The Victorian WorkCover Authority ("the Authority") was required under the Act to "receive and assess and accept or reject claims for compensation" and to pay "compensation to persons entitled to compensation under" the Act. In February 2006 the Authority accepted that Ms Brown had a psychological injury arising out of her employment with MBC.

Ms Brown disputed the determination of her impairment made by the Authority. The Authority was therefore required by the Act to refer to a Medical Panel, established under the Act, questions relating to the degree of impairment resulting from the injury claimed by Ms Brown and whether she had an injury which was a "total loss". In June 2006 a Medical Panel provided its opinion that there was a 30% psychiatric impairment resulting from the accepted psychological injury and that the impairment was permanent. Under the Act this was deemed to be a "serious injury" which entitled Ms Brown to bring proceedings against her employer at common law.

In 2007 Ms Brown commenced proceedings in the County Court of Victoria against MBC claiming damages for personal injuries she alleged she had suffered as a result of MBC's negligence. MBC denied that she had suffered injury, loss and damage. Ms Brown asserted, among other things, that MBC was precluded from "making any assertion whether by pleading, submission or otherwise" and from "leading, eliciting or tendering evidence, whether in chief or in cross-examination or re-examination" that was inconsistent with the Medical Panel's opinion that she had, as at the date of that opinion, a "serious injury" as defined in s 134AB(37)(c) of the Act, a permanent severe mental disturbance or disorder or a psychological injury arising out of her employment.

The parties asked the trial judge to reserve questions, relating to whether MBC was confined in its defence by the Medical Panel's opinion, for the opinion of the Court of Appeal of the Supreme Court of Victoria. The Court of Appeal answered those questions adversely to MBC. MBC appealed, by special leave, to the High Court of Australia.

In the High Court the central issue was whether, as the Court of Appeal held, MBC was precluded either by the Act or by estoppel from contesting in evidence or argument in the County Court the existence and extent of Ms Brown's injury. The High Court held that MBC was not precluded, either under the Act or as a matter of estoppel, from advancing the relevant contentions. Accordingly, the High Court allowed MBC's appeal.

- *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.*