HIGH COURT OF AUSTRALIA

McHUGH ACJ,
GUMMOW, KIRBY, HAYNE AND HEYDON JJ

VICTIMS COMPENSATION FUND CORPORATION APPELLANT

AND

SCOTT BROWN & ORS RESPONDENTS

Victims Compensation Fund Corporation v Brown [2003] HCA 54
30 September 2003
S162/2003

ORDER

1. *Appeal allowed.*

2. *Set aside paragraphs 1 and 2 of the orders of the Court of Appeal of the Supreme Court of New South Wales made on 28 May 2002 and, in lieu thereof, order that:*

   (a) the record of the proceedings in the District Court be removed into the Court of Appeal; and

   (b) the orders of Phelan DCJ made on 19 March 2001 in proceedings Nos 317/00 and 318/00 be quashed and, in lieu thereof, the determination of the Victims Compensation Tribunal made on 16 May 2000 be affirmed.

On appeal from Supreme Court of New South Wales

Representation:
M G Sexton SC, Solicitor-General for the State of New South Wales with C L Lonergan for the appellant (instructed by Crown Solicitor for New South Wales)

A J Bellanto QC with G C Halsall for the first and second respondents (instructed by Hilton King Solicitors)

No appearance for the third respondent

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

CATCHWORDS

Victims Compensation Fund Corporation v Brown

Criminal law – Victims compensation – Shock – When compensable – Eligibility for compensation only if victim suffers "symptoms and disability" – Whether "and" conjunctive or disjunctive.

Statutes – Interpretation – "Symptoms and disability" – Whether "and" conjunctive or disjunctive.

Words and phrases – "and".

Victims Support and Rehabilitation Act 1996 (NSW), Sched 1, cl 5(a).

1 McHUGH ACJ. I agree that the appeal should be allowed for the reasons given by Heydon J. I also agree with the orders that his Honour proposes.

2 GUMMOW J. I agree with the reasons of Heydon J and the orders his Honour proposes.

3 KIRBY J. I agree in the orders proposed by Heydon J and with his reasons.

4 HAYNE J. I agree with Heydon J.

HEYDON J.

The background

5 On 15 March 1998 the first respondent answered a knock at his front door. He was violently attacked and during a lengthy struggle he was punched, kicked and stabbed in the stomach area with a broken bottle. The second respondent witnessed the attack. The assailant was later convicted of malicious wounding.

6 The first and second respondents claimed compensation pursuant to legislation now known as the *Victims Support and Rehabilitation Act* 1996 (NSW) ("the Act")[1]. The first respondent claimed as a primary victim pursuant to s 7(1) of the Act[2]. He claimed compensation not only for his physical injuries but for "shock". The second respondent claimed as a secondary victim under s 8(1) of the Act[3]. She claimed only for "shock". Section 6 provided that primary and secondary victims of an act of violence were eligible for "statutory compensation". One of the forms of "statutory compensation" for which both primary and secondary victims of an act of violence were eligible was "compensation for compensable injuries received by the victim"[4]. "Compensable injuries" were specified in considerable detail in a Table set out in Sched 1[5].

---

1 At the time they made their claim the Act was known as the *Victims Compensation Act* 1996 (NSW).

2 Section 7(1) provided:

> "A ***primary victim*** of an act of violence is a person who receives a compensable injury, or dies, as a direct result of that act."

3 Section 8(1) provided:

> "A ***secondary victim*** of an act of violence is a person who receives a compensable injury as a direct result of witnessing the act of violence that resulted in the compensable injury to, or death of, the primary victim of that act."

4 See s 14(1) of the Act in relation to primary victims and s 15 in relation to secondary victims.

5 Section 10 provided:

> "(1) The schedule of compensable injuries is set out in Schedule 1.
>
> (2) The schedule specifies those injuries that are ***compensable injuries*** for the purposes of this Act.

(Footnote continues on next page)

That Table identified a standard amount or a range of amounts payable for various classes of compensable injury.

7 Clause 5 of Sched 1 provided:

"The following applies to the compensable injury of shock:

(a) Compensation is payable only if the symptoms and disability persist for more than 6 weeks.

(b) The injury comprises conditions attributed to post traumatic stress disorder, depression and similar conditions.

(c) The psychological symptoms include anxiety, tension, insomnia, irritability, loss of confidence, agoraphobia and pre-occupation with thoughts of self-harm or guilt.

(d) The physical symptoms include alopecia, asthma, eczema, enuresis and psoriasis.

(e) Relevant disabilities include impaired work or school or other educational performance, significant adverse effects on social relationships and sexual dysfunction."[6]

---

(3) The schedule specifies, as the standard amount of compensation for a compensable injury, a specified amount or an amount within a range of specified amounts."

Section 17 provided:

"(1) Compensation for compensable injuries is payable in accordance with the schedule of compensable injuries.

(2) Unless the amount of compensation is required or authorised to be reduced by this Act, the amount of compensation payable is the standard amount calculated in accordance with the schedule."

Schedule 1, cl 1 provided: "The injuries specified in column 1 of the table to this Schedule are compensable injuries for the purposes of this Act."

6 This was the applicable provision, since though cl 5 of Sched 1 was omitted by the *Victims Compensation Amendment Act* 1998 (NSW), s 3, Sched 1, cl 19, which came into force on 7 April 1999, by reason of Sched 1, cl 26, which inserted Sched 3, Pt 2, cl 12 into the Act, cl 5 continued to have effect in the case of any person who applied for statutory compensation for the compensable injury of shock

(Footnote continues on next page)

8 The first and second respondents each had "symptoms" of shock which persisted for six weeks, but neither had a "disability". Their entitlement to claim for shock thus rested on the answer to a single question. In cl 5(a), did "and" mean "and" or "or"?

9 The question is posed for this Court in an appeal by the Victims Compensation Fund Corporation ("the appellant") against orders of the New South Wales Court of Appeal[7] (Mason P and McClellan J; Spigelman CJ dissenting). The jurisdiction of the Court of Appeal was that conferred by the *Supreme Court Act* 1970 (NSW)[8] to remove and quash for error of law determinations made by the District Court.

10 The view that "and" meant "and" was taken by a compensation assessor who declined to award the first and second respondents compensation for shock, apparently by the Victims Compensation Tribunal ("the Tribunal") which dismissed an appeal from the assessor and by Spigelman CJ (dissenting from the orders of the Court of Appeal under challenge in this appeal)[9]. The view that "and" meant "or" was taken by Phelan DCJ (who allowed appeals against the Tribunal's order) and by a majority of the Court of Appeal, Mason P and McClellan J, who in large measure dismissed a summons by the appellant seeking review of Phelan DCJ's orders[10]. It is, of course, common for seemingly small points of construction to generate such sharp and evenly held differences of opinion in this manner.

11 Though cl 5(a) of Sched 1 has been repealed and replaced, there are, according to the appellant, many claims turning on the correctness of the answer to the above question.

The conjunctive meaning is preferable

12 *Correctness of the dissenting view*. The question is a narrow one and it is possible to answer it briefly. It could be answered very briefly, merely by stating that the answer propounded by Spigelman CJ was correct for the reasons he

---

before that date. The first and second respondents so applied on 5 May 1998 and those applications were received on 13 May 1998.

7 *Victims Compensation Fund v Brown* (2002) 54 NSWLR 668.

8 Sections 48(1)(iv), 48(2)(d), 69(3), 69(4).

9 *Victims Compensation Fund v Brown* (2002) 54 NSWLR 668 at 673-674 [26].

10 *Victims Compensation Fund v Brown* (2002) 54 NSWLR 668 at 682 [73] and 688-689 [94]-[100].

advanced[11]. In deference to the extremely careful judgments of the majority in the Court of Appeal, however, a longer answer is called for. In the expression "symptoms and disability" the word "and" should be construed conjunctively for the following reasons.

13 *Ordinary meaning.* The ordinary meaning of "and" is conjunctive. On grounds given below, there is no occasion to depart from the ordinary meaning here.

14 *Textual aspects of the rest of the Act.* There is no convincing textual reason emerging from the rest of the Act for departing from the ordinary meaning. The entry in the Table in Sched 1 relating to the relevant injury was:

"**Shock**	**[$]**
Lasting 6 to 13 weeks	2,400
Lasting 14 to 28 weeks	9,600
Lasting over 28 weeks (but not permanent)	18,000
Permanent symptoms and disability	48,000"

It is true that in the last line the use of the word "and" is capable of founding an argument that in the first three lines symptoms without disability, or vice versa, might suffice. That shows only that the drafting has not perhaps been uniform or flawless throughout. But to interpret "and" as having a conjunctive meaning in that context is not inconsistent with the same reading in cl 5(a); the word "and" in the last line does serve to emphasise the need, in the case of permanent shock, for concurrence of both symptoms and disability. And, on the argument advanced for the first and second respondents, it would be necessary to depart from the normal meaning of "and" by reading "and" as "or" at that point as well as in cl 5(a).

15 Further, there are strong indications that the legislation employs the word "or" when it is desired to convey a disjunctive meaning. One example is cl 5(e) of Sched 1, set out above. Another is cl 8 of Sched 1 which provided:

> "An injury not specifically mentioned in Column 1 of the table to this Schedule is a compensable injury if, in the opinion of the Tribunal or compensation assessor dealing with the application for statutory compensation:

---

11 *Victims Compensation Fund v Brown* (2002) 54 NSWLR 668 at 672-674 [10]-[27].

(a) the injury is similar to an injury specifically mentioned in the table, and

(b) the injury has caused symptoms or disability lasting for at least 6 weeks.

The standard amount of compensation for the injury is the standard amount for that similar injury."

It may be inferred that when the legislature uses "and" it wishes to convey a conjunctive meaning.

16 After analysing the lengthy Table in Sched 1, Spigelman CJ pointed out[12]:

"Every reference to an injury in the Table is capable of being characterised as a reference to either a physical symptom alone or a physical symptom together with a disability. There is no reference in the Table to recovery for disability alone. There is no reference in the schedule to recovery for *either* symptoms *or* disabilities. All of the references I have set out above require *both* a symptom *and* a disability wherever there is any reference to disability. I see no difficulty in this context, in allowing the word 'and' in cl 5(a) to mean what it says.

The distinction between these two kinds of line items, explains the use of the word 'or' in cl 8(b). That section, quoted above, applies only to an injury that is 'similar to an injury specifically mentioned in the table'. There are injuries in which the symptoms for an injury, to which the injury under consideration must be 'similar', are stated unadorned by any reference to disability. In other cases, both symptoms and disability appear in the relevant line item to which the injury under consideration must be 'similar'. There will, accordingly, be cases in which there need only be 'symptoms' for the purpose of the relevant analogy. There are other cases in which there has to be both a symptom and also a disability. The use of the word 'or' in cl 8(b) is a recognition that there are cases in which no disability is required at all. It is an inelegant shorthand for the phrase 'and if required at all'."

That reasoning is sound.

17 *Background to the legislation*. There is no reason to be found in the background to the Act or in the Second Reading Speech for departing from the ordinary meaning of the word "and" in cl 5(a).

---

12 *Victims Compensation Fund v Brown* (2002) 54 NSWLR 668 at 673-674 [26]-[27] (original emphasis).

18 The relevant statute immediately preceding the Act was the *Victims Compensation Act* 1987 (NSW) ("the 1987 Act"). It was modelled on the *Criminal Injuries Compensation Act* 1972 (Vic). Before the enactment of the 1987 Act there had been limited power since 1900, which widened by degrees over time, to compensate the victims of crime.

19 The *Crimes Act* 1900 (NSW), s 437, as enacted in 1900, provided:

> "Where a person is convicted of any felony the Court in which he was tried, or any Judge thereof, may, on such conviction or at any time thereafter, direct that a sum not exceeding five hundred pounds be paid out of the property of the offender to any aggrieved person, by way of compensation for injury, or loss, sustained through, or by reason of, such felony."

Section 437 was amended several times between its enactment and its ultimate repeal in 1987. Among the more important amendments are these. In 1924, it was extended to misdemeanours[13]. In 1951, the maximum amount of compensation payable was increased from £500 to £1,000[14]. It was increased again in 1974 to $4,000[15]. It was further increased in 1979 to $10,000[16].

20 Section 8(a) of the *Criminal Injuries Compensation Act* 1967 (NSW) ("the 1967 Act") inserted the following new sub-sections at the end of s 437:

> "(2) A direction given under subsection one of this section shall specify the sum, if any, to be paid by way of compensation for injury and the sum, if any, to be paid by way of compensation for loss.
>
> (3) In determining whether or not to give a direction pursuant to subsection one of this section, the Court or Judge shall have regard to any behaviour of the aggrieved person which directly or indirectly contributed to the injury or loss sustained by him, and to such other circumstances as it or he considers relevant (including whether the aggrieved person is or was a relative of the convicted person or was, at the time of the commission of the felony or misdemeanour, living with the convicted person as his wife or her

---

13 *Crimes (Amendment) Act* 1924 (NSW), s 21(b).

14 *Motor Traffic (Amendment) Act* 1951 (NSW), s 4(a).

15 *Crimes and Other Acts (Amendment) Act* 1974 (NSW), s 9(c)(i).

16 *Crimes (Compensation) Amendment Act* 1979 (NSW), Sched 1, cl (1)(a).

husband or as a member of the convicted person's household) and shall also have regard to the provisions of the Criminal Injuries Compensation Act, 1967.

(4) In this section –

'Injury' means bodily harm and includes pregnancy, mental shock and nervous shock.

'Loss' does not include injury."

21 The 1967 Act made two other important alterations. First, s 3 provided that if a direction is made under s 437(1) for payment of "a sum in excess of one hundred dollars to be paid by way of compensation for injury", "the aggrieved person in whose favour the direction has been given may make application to the Under Secretary [of the Department of the Attorney-General and of Justice] for payment to him from the Consolidated Revenue Fund of the sum so directed to be paid". Secondly, s 4 provided:

"(1) On the acquittal of, or dismissal of an information against, a person accused of any felony, misdemeanour or other offence, the Court or Judge before whom that person was tried may, on application by a person aggrieved by reason of the commission of the offence, grant a certificate stating the sum which they or he would have directed to be paid to the aggrieved person by way of compensation for injury had the accused person been convicted of the felony, misdemeanour or other offence and had the application been an application made by the aggrieved person under ... section four hundred and thirty-seven ... of the Crimes Act 1900 ... for the payment of that compensation.

(2) A certificate shall not be granted under subsection one of this section where the sum referred to in that subsection amounts to one hundred dollars or less.

(3) An aggrieved person to whom a certificate under subsection one of this section has been granted may make application to the Under Secretary [of the Department of the Attorney-General and of Justice] for payment to him from the Consolidated Revenue Fund of the sum specified in the certificate."

22 In 1984, s 437 was replaced by a new s 437 which set out the compensation regime in substantially greater detail (*Crimes (Compensation)*

Amendment Act 1984 (NSW), Sched 1 cl 1). That tendency to ever more refinement is also illustrated both by the 1987 Act, and the Act itself[17].

23 The 1987 Act established a Victims Compensation Tribunal. The 1987 Act made four classes of victim eligible to receive "compensation for injury" and other forms of compensation (ss 11-14). "Compensation for injury" in relation to primary or secondary victims meant, inter alia, compensation for pain and suffering and compensation for loss of enjoyment of life (s 10(1)). The 1987 Act, s 19(1)(a), gave that Tribunal power to make "an award of compensation" at large, subject to a threshold limit of $200 (s 19(2)(b)) and a maximum of $40,000 by way of compensation for injury, $50,000 by way of compensation for expenses and $1,000 by way of compensation for loss of personal effects, with the maximum total amount not to exceed $50,000 (s 16). Payments were financed largely from consolidated revenue. The 1987 Act did not adopt the technique of setting out a long list of dollar figures or ranges of dollar figures in relation to specifically described injuries in the manner appearing in the Table contained in Sched 1 of the Act. In that respect the 1996 Act is quite different. There was thus no equivalent to cl 5 in the 1987 Act.

24 According to the Second Reading Speech of the Minister responsible for the Bill which became the Act[18]:

> "[T]he Auditor-General in recent annual reports to Parliament raised serious concerns about the financial viability of the current compensation scheme. The Auditor-General considers that the scheme is presently compensating only a small proportion of eligible victims, and estimates that, given the potential for substantial increases in the number of claims, compensation totalling $2.5 billion could potentially be paid out in victims compensation over the next five years. In the Auditor-General's 1994 report to Parliament the Auditor-General concluded that reform of the current victims compensation scheme needed to be urgently considered if the compensation scheme was to remain financially viable and future compensation payments not cause an unaffordable drain on public funds."

25 In March 1993, Mr C Brahe, Deputy Chief Magistrate, published *The Review of the Victims Compensation Act* ("the Brahe Review"). The principal relevant recommendation of the Brahe Review was that common law principles

---

17 For an examination of the earlier legislation in New South Wales and other States, see Westling, "Some Aspects of the Judicial Determination of Compensation Payable to Victims of Crime", (1974) 48 *Australian Law Journal* 428.

18 New South Wales, Legislative Council, *Parliamentary Debates* (Hansard), 15 May 1996 at 974.

of assessing compensation should not apply. Rather there should be a scale, by which the victims of minor injuries would receive $1,000-$5,000, the victims of moderate injuries $5,001-$15,000 and the victims of major injuries $15,001-$50,000[19]. The Brahe Review said nothing about shock. The Table in Sched 1 of the Act as enacted adopted a technique employing much greater detail than the Brahe Review had contemplated.

26 *The 1996 legislation.* In 1995 an election led to a change of government in the State. According to the Second Reading Speech of the Minister responsible for the Bill which became the Act, the government had three matters in mind. One related to the doubts raised in the reports of the Auditor-General in relation to the financial viability of the scheme in force under the 1987 Act. The second was the Brahe Review, which had made many recommendations for changes in the law. The third was an election promise[20]:

> "The Government, in its election policy platform, proposed an overhaul of the victims compensation system to ensure that the genuine needs of victims are met at reasonable cost to the community. It also promised to ensure that offenders pay restitution and to speed the payment of compensation to victims. The Government's election policy platform also indicated its intention to abolish compensation for injuries sustained by a criminal during a crime, to legislate to prevent double dipping in compensation matters, to allow a victim to choose to claim compensation either under the statutory scheme or as part of the sentencing process, to formulate a schedule to set maximum amounts payable for certain injuries and to enable restitution payments to be deducted from an offender's wages."

This "schedule to set maximum amounts payable for certain injuries" was explained in more detail a little later[21]:

> "Both the Brahe review and the Auditor-General have recommended that common law principles of compensation should not apply to determination of awards under the statutory victims compensation scheme. Experience with the present scheme illustrates that common law principles for assessing compensation cannot be properly and evenly

---

19 Brahe, *The Review of the Victims Compensation Act* (1993) at 38.

20 New South Wales, Legislative Council, *Parliamentary Debates* (Hansard), 15 May 1996 at 974.

21 New South Wales, Legislative Council, *Parliamentary Debates* (Hansard), 15 May 1996 at 975-976.

> applied. Significant variations in awards apply and the present regime of awarding compensation lacks consistency and equity.
>
> Victims of crime and the community have a right to expect that victims compensation awards be consistent and equitable. The Government considers that this can most appropriately be achieved by standardising the amounts to be awarded for similar injuries. The reform proposal provides for compensation for injury to be determined according to a comprehensive injury and award schedule. An applicant will receive an award based on the severity of the injury suffered. The schedule of awards published in the bill lists specific categories of injuries to which are assigned specific award amounts."

27 The Minister then said, in a passage relied on by the appellant[22]:

> "The schedule is structured to ensure that compensation is directed toward those victims suffering the most serious injuries. The award amounts proposed in the injury schedule also give greater recognition to the length of time an injury may be suffered and to those injuries where there is continuing disability."

The last sentence does not point decisively towards either of the two possible constructions of cl 5(a) under debate. The Minister proceeded to set out various other advantages perceived by the government in the Table of injuries, but said nothing about shock. The appellant referred to some general remarks by the Minister about the need to direct compensation towards victims suffering from those serious injuries and the importance of addressing the escalating cost of the scheme and of ensuring that the genuine needs of victims were met at a reasonable cost to the community[23]. These remarks shed no real light on cl 5.

28 However, it can be said that the Act as a whole, and its background, point more to a conjunctive construction than a disjunctive construction. The conjunctive construction does have the effect of limiting eligibility to recover compensation for claims which, though they arise from what may have been extremely alarming experiences, are nevertheless relevantly less significant than other claims. Thus, unless particular symptoms are disabilities in themselves, there is no eligibility:

---

22 New South Wales, Legislative Council, *Parliamentary Debates* (Hansard), 15 May 1996 at 976.

23 New South Wales, Legislative Council, *Parliamentary Debates* (Hansard), 15 May 1996 at 974.

(a) if a claimant suffers symptoms for four weeks and then disabilities for a further two weeks;

(b) if a claimant suffers symptoms for a long time but experiences no disabilities (or vice versa);

(c) if a claimant suffers symptoms and disabilities for five weeks and then symptoms only for three weeks.

But other parts of the Act make it plain that an element in the statutory machinery permitting recovery was to limit recovery for both relevantly insignificant and very significant injuries. Section 19 of the Act created a cap of $50,000 in relation to any one act of violence. Section 20(1) created a monetary threshold for recovery ($2,400). That threshold was a considerable increase on the $200 of the 1987 Act. Schedule 1 cl 4 provided that standard amounts of compensation were to be reduced because of existing conditions. Compensation was not payable for scarring unless it was permanent, and it was not payable for both burns and scarring caused by those burns to a particular part of the body[24].

29 It is accordingly not a decisive argument against the conjunctive construction that it is possible to point to various outcomes of it which might be thought irrational, anomalous or harsh. In legislation which grants compensation, but subjects the grant to numerous restrictions, including restrictions of a threshold character, it is not remarkable that, in the case of shock, compensation can be denied on the ground that symptoms and disability did not coexist for six weeks. The idea that symptoms alone are not enough to attract compensation for shock but must be accompanied by disability, is not harsh, irrational or, in a scheme creating thresholds, anomalous, particularly since non-medical opinion is often very suspicious about claims that shock is causing the degree of harm alleged, and this suspicion has had some influence on the common law[25]. Even if it were considered harsh or anomalous, it could not be said that this would be fatal to the construction urged by the appellant if the text otherwise required that construction. The introduction of caps and limitations upon recovery, usually justified by reference to supposed affordability, has been a relatively common feature of Australian compensation legislation in recent times.

---

24 Schedule 1, cl 7(a) and (b).

25 *Tame v New South Wales* (2002) 76 ALJR 1348 at 1381-1382 [192]-[196], 1385 [207]-[210]; 191 ALR 449 at 495-496, 500-501; Tennant, "Definition of psychological trauma: Psychiatric and legal approaches", (2003) 77 *Australian Law Journal* 369.

30 In any case, the legislation contained a mechanism which could limit some of the injustices alleged by the first and second respondents to flow from the conjunctive construction. The Dictionary defined "injury" as meaning:

> "(a) actual physical bodily harm,
>
> (b) nervous shock,
>
> (c) mental illness or disorder (whether or not arising from nervous shock) …"

An injury in the form of a mental illness or disorder could generate the psychological symptoms described in cl 5(c) and the physical symptoms described in cl 5(d) without generating the disabilities described in cl 5(e). On the other hand, it could generate the disabilities without the symptoms. In either case, the injury would be similar to, but not identical with, the injury described as "shock" in the Table. If it caused symptoms lasting for at least six weeks, or if it caused a disability lasting for at least six weeks, cl 8 would permit the Tribunal or a compensation assessor to conclude that it was a compensable injury and award as the standard amount of compensation the standard amount for shock.

The reasoning of the majority in the Court of Appeal

31 The principal argument in favour of the disjunctive construction which attracted the majority of the Court of Appeal was that the legislation had remedial and beneficial objectives, one of which was, as stated in s 3(a) of the Act, "to give effect to a statutory scheme of compensation for victims of crimes of violence". It may be accepted at once that the legislation did have remedial and beneficial objectives. While at common law the victim of a criminal act of violence can sue the perpetrator for the tort of battery, and, depending on the circumstances, other torts, commonly the criminal will have vanished, or will lack any assets with which to satisfy a judgment.

32 The majority considered it to follow that the legislation should be construed by taking "a liberal approach"[26]. The "injury of shock" comprised "conditions attributed to post traumatic stress disorder, depression and similar conditions" having psychological and physical symptoms and leading to disabilities. This, it was said, supported the interdependence of the five parts of cl 5. Since it would only be a rare case in which symptoms and disabilities did not coexist, there was no reason to construe cl 5(a) as creating "a mandatory cumulative requirement" because this would not "promote the broad and

---

26 *Victims Compensation Fund v Brown* (2002) 54 NSWLR 668 at 681 [67].

beneficial legislative purpose"[27]. It was also said that "symptoms and disability" was a "composite or portmanteau phrase in its context"[28].

The "remedial and beneficial objectives" argument

33 To begin consideration of issues of construction by positing that a "liberal", "broad", or "narrow" construction will be given tends to obscure the essential question, that of determining the meaning the relevant words used require[29]. Although the purpose of the Act is beneficial, it does not follow that recovery is contemplated for every act of violence or every consequence that could be described as an injury. The numerous injuries set out in the Table to Sched 1 (which extends over twelve pages) are identified with considerable precision. The clauses in Sched 1 which precede the Table, too, are drafted with some attempt at precision. The legislation confers benefits, and no doubt it should not be construed restrictively, but in dealing with specific limited words like those of cl 5, it is not open to apply much liberality of construction. It is difficult to state the legislative purpose except at such extreme levels of generality that it is not useful in construing particular parts of the legislative language. As Spigelman CJ said[30]: "The issue before the Court is the determination of the circumstances in which compensation is payable." The legislation has endeavoured to define these circumstances in precise language which does not permit universal recovery; and hence "[t]he Court is not required to give the most expansive possible interpretation of such circumstances"[31].

The "composite or portmanteau phrase" argument

34 The contention that "symptoms and disability" could be treated as being "a composite or portmanteau phrase" is reminiscent of, though perhaps not identical with, a method of avoiding collisions between conjunctive constructions and disjunctive constructions which was raised in oral argument as a possible solution to the present problem. That method turned on construing the expression "symptoms and disability" as a hendiadys — an expression in which a single idea is conveyed by two words connected by a conjunction, like "law and heraldry" to mean "heraldic law". Thus the expression "shall promptly co-

---

27 *Victims Compensation Fund v Brown* (2002) 54 NSWLR 668 at 682 [73].

28 *Victims Compensation Fund v Brown* (2002) 54 NSWLR 668 at 685 [73].

29 See *DP v Commonwealth Central Authority* (2001) 206 CLR 401 at 407-408 [9], 417-418 [41]-[44], 456 [191].

30 *Victims Compensation Fund v Brown* (2002) 54 NSWLR 668 at 672 [11].

31 *Victims Compensation Fund v Brown* (2002) 54 NSWLR 668 at 672 [11].

operate with the Committee and assist to carry out its duties" has been construed to create an obligation of prompt co-operation with the Committee in the area of carrying out its duties[32]. For the first and second respondents the advantage of that approach would be that it would not render fatal the fact that, approaching any limb independently, they had symptoms but no disability. However, sub-cll (c) and (e) of cl 5 proceed on the assumption that "symptoms" and "disability" are distinct entities, not linked integers or elements in a single idea more complex than each taken singly. A composite expression is one which is a compound created out of at least two elements or integers which is different from each of them. A portmanteau expression combines the meanings of two distinct words to create a new expression. The characterisation of "symptoms and disability" as "a composite or portmanteau phrase" did not explain how, short of bluntly reading "and" as "or", the two elements or integers worked together to create a new composite or portmanteau result.

35 The requirement in cl 5(a) that "symptoms and disability" must persist for six weeks is, on the true construction of these words, that both must persist, and that it is not enough that symptoms do but not disability, or that disability does but not symptoms, or that symptoms do for part of the six week period and disability for the rest.

Orders

36 The appellant informed the Court that by arrangement between the parties the appellant would pay the first and second respondents' costs of the appeal. It was appropriate for this position to have been taken up by a party of substance seeking an answer from this Court on a point which may arise on many other occasions affecting that party, but which happens to arise in a particular piece of litigation affecting an opposing litigant without significant means who is unlikely to be affected by it on any other occasion.

37 The appellant sought no order as to costs. The appellant also did not seek to disturb the order of the Court of Appeal that it pay the costs of the first and second respondents in the Court of Appeal. In light of that fact and the reasons set out above, the following orders should be made.

1. The appeal is allowed.

2. Orders 1 and 2 of the Court of Appeal of the Supreme Court of New South Wales made on 28 May 2002 are set aside; in lieu thereof, it is ordered that the record of the proceedings in the District Court be removed into the

---

32 *Traders Prudent Insurance Co Ltd v The Registrar of the Workers' Compensation Commission of New South Wales* [1971] 2 NSWLR 513 at 521.

Court of Appeal and the orders of Phelan DCJ made on 19 March 2001 in District Court proceedings Nos 317/00 and 318/00 be quashed and in their place there be substituted an order affirming the determination of the Tribunal.