

IN THE HIGH COURT
OF AUSTRALIA.

B E T W E E N:

MARY PATRICIA McMAHON

Applica nt
(Appellant)

- and -

FREMANTLE HARBOUR TRUST
COMMISSIONERS.

Respondents.
(Respondents)

J U D G M E N T -

Transcript by:
Hales Reporters,
23 Barrack St.
PERTH. W.A.

8 September 1948

IN THE HIGH COURT
OF AUSTRALIA.

WESTERN AUSTRALIAN REGISTRY

ON APPEAL from the Full
Court of the Supreme Court
of Western A ustralia.

APPEAL NO. 5 of 1948

B E T W E E N :-

MARY PATRICIA McMAHON

(Applicant)
Appellant.

- and -

FREMANTLE HARBOUR TRUST COMMISSIONERS.

(Respondents.)
Respondents.

WEDNESDAY, 8th SEPTEMBER 1948.

Coram:- LATHAM, C.J.
RICH, J.
OWEN-DIXON, J.
McTIERNAN, J.

LATHAM, C.J.: This is an appeal from an order of the Full Court of the Supreme Court setting aside an order in favour of the dependant of a worker who died on the 18th June, 1947. The claim under the Workers Compensation Act was based upon the happening of an accident to the worker on the 25th April, 1946. He was a wharf lumper and on that day in the course of his work incurred a strain in the shoulder, and apparently a rib was broken. He was unable to work, and weekly payments were made to him for a period of six months. The evidence of one of his daughters showed that he fell into a state of acute depression, Proposals were made for a settlement of his claim, and on the 17th June, 1947 an

offer of £124, or thereabouts, in full settlement of his claim was received. His daughter gave evidence that the receipt of this letter and the offer of so small a sum affected him profoundly. He died on the 18th June. An award was made by the Local Court on the basis of death being due to the accident in April, 1946.

There was much medical evidence with respect to the condition of the deceased worker. It is conceded that the onus is upon the claimant to establish that death was due to the accident. The accident in itself produced but small physical damage, but it is sought to attribute the death to the accident through the psychological state of the worker which was said to be such that when the letter was received there was an emotional shock which brought about death.

The claimant depended very largely upon the evidence of Dr. Williams. Dr. Williams was asked to advise if the death of the deceased could in any way be associated with the condition of neurosis and he said that death "could be attributed" to the neurosis. In his opinion the letter offering the small amount in settlement "could have precipitated" a circulatory crisis which "could have led to his demise." He gave evidence that a person suffering from a neurosis "could be" in a highly emotional state. Dr. Williams referred to the post-mortem report which said that an anxiety neurosis "could not be ruled out" as a cause of death.

It will be observed that this evidence, which is the mainstay of the applicant's case, all speaks in terms of possibility; that it is possible that an emotional crisis brought about what is called a circulatory crisis, (though that phrase is not explained) which involved a stoppage of the heart and therefore death.

The Full Court, of the Supreme Court held that the onus of proof resting upon the claimant had not been discharged, and I agree with that view of the evidence. The worker was examined by some six doctors and there was a great difference of opinion. There was a suggestion that his state was due to tuberculosis, that it was due to a malignant disease of the prostate gland, that there

was some heart trouble and the like. Reference was made to a medical referee, and the report made by the medical referee in March, 1947 was to the effect that what is described as a compensation neurosis had developed and that the pain was due to the compensation neurosis. It was suggested that the prostate gland was almost certainly the seat of a malignant disease, but this suggestion was not supported by the post-mortem examination when made.

There was an appeal to a medical board. The board reported that the worker was physically fit but psychologically unfit, and that his present condition, which was that of incapacity for work, was attributable to the accident. The post-mortem report set forth the state of the body as examined after death; the conclusion as to the cause of death was that death was the result of a dilatation of the right heart associated with some degree of vascular degeneration and that a degree of anxiety neurosis "could not be ruled out" as having some causative effect in connection with his sudden death.

The result of the evidence, even the evidence for the claimant, is only to show that there is a possibility that the death was caused by an emotional crisis, connected with the accident, producing a physiological disturbance. There is, however, no evidence which establishes, or can by reasonable inference be held to establish, that that suggested cause was in fact the cause of the death of the worker. Accordingly in my view the claimant has established only the possibility of death having being caused by the accident and has not adduced evidence which supports the finding of the Local Court or which would have justified the Full Court upon the re-hearing of the case in reaching a conclusion favourable to the claimant. Accordingly in my opinion the decision of the Full Court was right and the appeal should be dismissed.

Mr. Dunphy has submitted every consideration and every argument that could be suggested in favour of this client, but we are of opinion that the appeal, for the reasons which I have stated, should be dismissed. The appeal shall therefore be dismissed with costs.

JUDGMENT ACCORDINGLY