When is an Injury a Disease and Visa Versa?

Zickar v MGH Plastic Industries Pty. Ltd.
71ALJR 32.

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The Full Court of the High Court of Australia considered the circumstances of an appellant who collapsed at work due to the rupture of a cerebral aneurism attributable to congenital weakness. He sustained brain damage and claimed compensation under the Workers Compensation Act 1987 (New South Wales). In the compensation Court of New South Wales he was awarded compensation on the basis that the injury occurred to his brain when the aneurism ruptured and therefore it was an injury that arose out of or in the course of his employment. The decision was reversed in the Court of Appeal where it was considered that the disease provisions governed the situation and therefore displaced the simple injury considerations. In essence the case turned on the question of whether the rupture of the aneurism could be regarded as the end of the disease process or should be regarded as an injury in itself. To put it another way, if injury occurs, does one have to go further and determine whether it was also a disease.

Section 4 of the Workers Compensation Act describes injury as meaning a personal injury arising out of or in the course of employment, and goes on to state that injury includes a disease which is contracted by a worker in the course of employment and to which employment was a contributing factor and the aggravation, acceleration, exacerbation or deterioration of any disease, where the employment was a contributing factor to the aggravation, acceleration, exacerbation or deterioration. Formulations of this basic compensation appear in Statutes all around Australia.

The issue had previously been considered in Victoria in *Accident Compensation Board v McIntosh* [1991] 2VR 253.

A person may faint at work falling, striking their head on the ground sustaining head injury. There is no suggestion that it is necessary to prove that work was a "contributing factor", it is sufficient that the frank injury happened in the course of employment. Is this any different to the same person standing at work and spontaneously developing a rupture of an aneurysm as in the present case or death of heart tissue with coronary occlusion?

Brennan CJ, Dawson and Gaudron JJ. were of the view that the rupture of the aneurysm was the end of the disease process and the appellant must therefore look to the provisions which relate to the disease in the legislation for relief.

The majority Toohey, McHugh and Gummow JJ. in a joint judgment together with Kirby J. in a separate judgment held that the rupture was an injury separate from the morbid condition or disorder or defect that brought Mr. Zickar to the point where the rupture occurred. In the words of Kirby J.: "The sudden tear which caused the hemorrhage and the clot constituted a 'personal injury'. It was no less so because it was internal. It is enough that the 'injury' took place in the course of the employment. It is not necessary to show that it arouse 'out of' such employment."

This case illustrates an important distinction for Plaintiff lawyers between the disease process and the frank or simple injury. Heart attacks and strokes are perhaps the most obvious examples where injury comes at the end of a disease process but there is also degenerative spinal disease resulting in prolapse of a disc or perhaps osteoporosis preceding the breaking of a bone. Where the final event happens at work it may be that Zickar provides an avenue to claim compensation without satisfying the "disease" provision of the Compensation Act.

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