rise to an estoppel there must be the same parties involved. This cannot be said to be the case in the loss of consortium action. Therefore, where a defendant settles an action at an early stage for an injured spouse, this may have the effect of placing a greater onus upon the plaintiff in the loss of consortium action to prove negligence, thereby incurring greater expenses which may be ultimately worth more than what the claim is valued at. Therefore, before separate proceedings are instituted, the prospects of success in respect of liability must be carefully appraised, including the costs of proving that negligence before those proceedings are instituted in another jurisdiction claiming damages for loss of consortium.

This position is being maintained in the present workers compensation legislation - see Section 316 *WorkCover Queensland Act* 1996. ■

Jeffrey Rolls, a barrister from Brisbane, presented the above paper at a recent APLA Queensland Litigation at Sunrise seminar. For more information on loss of consortium claims, contact Jeff, **phone** 07 3236 1211 or **fax** 07 3236 2006.

MS sufferers: can they bring a claim?

Kennedy v London Fire & Civil Defence Association

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For the first time, an English court has decided that a plaintiff's previously undiagnosed and asymptomatic multiple sclerosis (MS) was rendered symptomatic by trauma. The decision in *Kennedy v London Fire and Civil Defence Association*, (as yet unreported but transcript available) by His Honour Judge Kenny, sitting as a High Court Judge, judgment given on 20 June 1997, opens up the possibility that other MS sufferers, whose disease comes to light after trauma may be able to recover substantial damages to compensate them for MS and its financial consequences.

In *Kennedy*, the plaintiff was hit by a negligently driven fire tender at a junction in Central London. He sustained, inter alia, a concussive head injury and soft tissue injuries to his cervical spine. Within days of the accident, he began to experience paraesthesia in the fingers of his left hand which eventually spread to the right hand, facial numbness and dizziness, Extensive investigation, including MRI scans of the cervical spine and immunological examination of cerebrospinal fluid, eventually demonstrated undisputable MS, an incurable disease which intermittently destroys the myelin sheath surrounding the nerve pathways which carry electrical signals to and from the brain.

The plaintiff's case on causation (fought over eight days) was supported by expert evidence from two internationally-renowned professors of neurology whose work in this field has been widely reported in the medical literature. Relying upon the results of research and clinical studies conducted over many years by themselves and others worldwide they became satisfied that it is possible to demonstrate a link between trauma and the onset of MS where the trauma has resulted in a temporary breakdown of the blood-brain barrier such as occurs following a soft-tissue injury to the cervical spinal cord or with concussion.

Their thesis was that if an otherwise healthy patient develops signs or symptoms of MS within about three months of a breakdown in the blood-brain barrier, the onset of the disease can normally be attributed to the trauma causing the breakdown.

In the instant case, the causative link was that the whiplash and/or concussion had caused a breakdown in the blood-brain barrier and a careful scrutiny of the medical records confirmed that within three months of the trauma the plaintiff was exhibiting symptoms referable to MS.

The court rejected the defendants' expert neurological evidence to the effect that available research was insufficient to establish a reliable link between trauma and the onset of MS and the defendant's submissions that any such link could not be made on the evidence in this case.

In reality, the judge was presented with sufficient scientific and other evidence to enable him to conclude on the balance of probability that this plaintiff's MS was "triggered" by his injuries. The judge also accepted that it was unlikely that this plaintiff would have developed MS during his lifetime but for his injuries.

Although the cause of MS remains obscure, the decision may be of profound importance to potential plaintiffs who have sustained minor injury to the neck or head and go on to develop MS.

Total damages were assessed at £450,156, less 25% for agreed contributory negligence. General damages were assessed at £75,000 (which sum reflected other injuries including permanent urinary incontinence and impotence not caused by the MS). In addition substantial sums were awarded for past and future loss of earnings and care.

It is important to note that the decision does not establish that trauma causes MS. It merely decides that in some cases a court may be persuaded that trauma can trigger MS which would not otherwise have affected the individual. The decision raises the possibility that other demyelinating disorders (the group of disease processes of which MS is one), and even other classes of progressive neurological disorders may also be triggered or in clinical terms "caused" by trauma.

Practitioners should be alert to this development. Such potential claims should not be dismissed without further enquiry. ■

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