18/12

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M.1366/88

BETWEEN: DENNIS VERNON HUNTER of 3 Miro Place, Waiuku, Fitter & Turner

Appellant

2081

AND: APA LIFE ASSURANCE LIMITED a company incorporated in New South Wales and having its principal place of business at 57 Willis Street, Wellington

Respondent

Hearing: 11 December 1989

Counsel: B. Parshotam for Appellant
S.S. Howard for Respondent

Judgment: 13/12/89.

JUDGMENT OF TOMPKINS J

The appellant, the plaintiff in the court below, has appealed against the judgment of Deobhakta DCJ delivered in the District Court at Pukekohe on 12 August 1988, in which he entered judgment for the respondent, the defendant in the court below.

Background

On 23 June 1983 the defendant issued to the plaintiff a policy of insurance that was described as "cash plus hospital plan". In consideration of the premiums set out it provided for the payment of a daily hospital cash benefit to be paid to the plaintiff and other members of his family during hospital confinement.

In December 1985 the plaintiff suffered a thrombotic stroke. On 17 December he was admitted to Middlemore Hospital with a dense left hemiporesis and left facial weakness. For 13 days from that date until 30 December he received medical treatment and nursing care in Wards 10 and 8.

On 30 December 1985 he was transferred to Ward 9 where he received medical treatment, nursing care, physiotherapy and occupational therapy. He was discharged from the ward and from the hospital on 27 March 1986.

Under the terms of the policy, which remained current during the period he was at Middlemore Hospital, he was entitled to a benefit of $40 per day for each day of hospital confinement after an exclusion period of three days. He claimed this benefit for the whole of the time that he was in hospital. The defendant acknowledged its liability to pay the benefit for the period from 17 December to 30 December while the plaintiff was in Wards 10 and 8, but denied liability to pay the benefit during the period from 30 December 1985 to 27 March 1986 while the plaintiff was in Ward 9.

The plaintiff claimed $3,920, being the benefit for the latter period. That claim was dismissed in the District Court. It is against that dismissal that the appellant now appeals.

The Policy

The policy contains certain express definitions. The phrase "hospital confinement" is thus defined.

> "'Hospital confinement' is defined as confinement in a hospital overnight which is necessary for treatment of injury or sickness."

> Crucial to the present appeal is the definition of "hospital," the relevant parts of which are :

> "'Hospital' means an approved hospital as defined in the Hospitals Act 1957 as amended, but shall not include ..... any institution used, other than incidentally, as a place of rehabilitation, rest, for the aged, for drug addicts, or for alcoholics, a mental institution, nursing or convalescent home, a long term nursing unit or geriatrics ward, or as an extended care

facility for the care of convalescent, rehabilitative or ambulatory patients."

The Issue

It is recorded in the agreed statement of facts that Ward 9 was used solely for rehabilitation. Its use is described in more detail in a letter from the Medical Superintendent of Middlemore Hospital that is attached to the agreed statement. She there states that Ward 9 is used for the sole purpose of rehabilitation. Medical patients who require intensive rehabilitation are transferred to this particular ward. It is used solely for this purpose, i.e. patients not requiring rehabilitation are not placed in the ward.

The issue, therefore, is whether Ward 9 was, as the phrase is used in the definition of "hospital" in the policy, "any institution used other than incidentally, as a place of rehabilitation". If it is then in accordance with that definition it is excluded from the meaning of the word "hospital" with the result that the respondent is not liable to make any payment for any period while the appellant was in Ward 9, because that would not be a period of "hospital confinement" as defined in the policy, because that period would not be a period of confinement in "a hospital".

"Any Institution"

I first consider whether Ward 9 can properly be regarded as within the expression "any institution" as used in the definition. It was submitted by Mr Parshotam that Middlemore Hospital is itself an institution; he calling in aid the Hospitals Act 1957 which defines "institution" as "... any hospital or other institution under the control of a hospital board under this Act and ... includes a health centre and a family health counselling centre". He submits that Ward 9 is part of one institution being Middlemore Hospital. The definition of "hospital", he submits, inthe policy does not exclude a part of an institution used for the purposes defined.

Mr Howard submitted that although the ward in question forms part of Middlemore Hospital that does not detract from the conclusion that it is a separate "institution:" in terms of the plain and ordinary meaning of the word in the context of the definition. He refers to the dictionary definition of the

word in Collins' Dictionary of the English Language, 2nd Ed., as *inter alia* "an organisation or establishment founded for a specific purpose".

In its ordinary meaning the word is regarded, when used in conjunction with, e.g. a mental institution or a nursing home, as being a place that is physically and geograpically identifiable as a separate place. Thus in the Shorter Oxford English Dictionary one of the meanings is given as:

> "An establishment, organisation or association instituted for the promotion of some object, especially one of public utility, religious, charitable, educational, etc. The name is often popularly applied to the building appropriated to the work of a benevolent or educational institution."

On that approach the concept of one ward in a hospital building being regarded as an institution separate from other wards in the same building would seem inappropriate.

However, I am satisfied that in the context of the definition and the policy as a whole, it is not intended that the word should be interpreted to refer only to a building or place that is geographically and physically separately identified. I am brought to that conclusion for two principal reasons.

First, it is clear from a reading of the definition in the context of the whole policy that the intention was to exclude from the benefits conferred by the policy, confinement for the purpose of rehabilitation as distinct from confinement for the purpose of medical treatment resulting from sickness or injury. That object is not achieved if the word is given a narrow meaning. I consider that in its context it would cover any place where the insured is for the purpose of rehabilitation. On that approach it would include Ward 9.

Secondly, support for that approach is obtained from the other places referred to in the definition. Most notably there is excluded a geriatric ward, yet such a ward is commonly part of a general hospital. So if, as is clearly the case, the definition intends that a geriatrics ward be regarded as an institution, it would be consistent for a rehabilitation ward also to be regarded as an institution.

"Other Than Incidentally"

It was Mr Parshotam's submission that this phrase in the definition created an exception to the exclusion. He submitted that if an institution within a hospital is used incidentally as a place of rehabilitation then the exclusion does not apply. He submitted that Ward 9 was used incidentally as a place of rehabilitation.

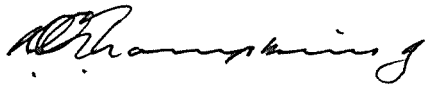
I do not accept that submission. In my view the phrase is intended to qualify the verb "used". It is the use to which the place is put that must be considered. If the place is used only incidentally as a place of rehabilitation then the exclusion will not apply. But if the place is used other than incidentally, in other words principally, as a place of rehabilitation, then the exclusion will apply. Thus, if a patient were in a medical ward where he received physiotherapy to assist in his rehabilitation that would not be within the exception because the rehabilitation would only be an incidental use in that ward. But if the patient were in a rehabilitation ward then, even though treatment not directed towards rehabilitation may be given, that would still be within the exception because that would be a place used other than incidentally as a place of rehabilitation.

On the facts in the present case there can really be only one conclusion. The Medical Superintendent stated, as I have already indicated, that Ward 9 is used for the sole purpose of medical patients who require intensive rehabilitation. Patients not requiring rehabilitation are not placed in the ward, so although the appellant remained under the same acute medical team and active medical treatment continued, it is clear that the place where he was was used, other than incidentally, as a place of rehabilitation. It follows that Ward 9 is within the exclusion so that while he was there he was not undergoing "hospital confinement" as defined in the policy. It follows from that, that the defendant is not liable to pay the benefits under the policy during the period that the plaintiff was in Ward 9.

Conclusion

For these reasons I am satisfied that the judge was correct in his conclusion that the plaintiff's claim to recover benefits under the policy for this period must fail. The appeal is dismissed.

On the issue of costs there are two relevant considerations. First, from the respondent's point of view I imagine that this case would be regarded as something in the nature of a test case that would be of relevance in considering other claims under its cash plus hospital plan policy. Secondly, one cannot help but feel some sympathy for the position of the appellant. Whilst I am left in no doubt as to the correctness of the conclusions I have reached, I could understand that a lay person reading the policy may well think that if he were moved from one ward to another in order to treat the sickness from which he was suffering, even when that treatment took the form of physiotherapy, that the policy would continue to apply. Having regard to these considerations I make no order as to costs.



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