

60/79

SUPREME COURT OF VICTORIA — FULL COURT

HANDLEY v DATSON and ORS

Young CJ, Menhennitt and Jenkinson JJ

25 June 1979

[1980] VicRp 9; [1980] VR 66; 41 FLR 458; 28 ALR 618

CIVIL PROCEEDINGS – DAMAGES FOR PERSONAL INJURIES – NURSING HOME EXPENSES AND MEDICAL CARE – EFFECT OF NATIONAL HEALTH ACT AND HEALTH INSURANCE ACT – COMMONWEALTH BENEFIT NOT TO BE TAKEN INTO ACCOUNT SO AS TO REDUCE THE AMOUNT AWARDED.

Respondent (plaintiff) was seriously injured in a car accident. For the remainder of her life she would require care of the kind provided in a nursing home, the charges being \$30.95 per day. All three defendants admitted liability. The damages awarded on the trial included substantial amounts for nursing home care and also medical care and physiotherapy.

The primary issue on the appeal to the Full Court was whether the trial Judge's directions to the jury as to the manner of determining those latter amounts were erroneous. The judgment contains a thorough and detailed analysis of the various relevant provisions of the Commonwealth *National Health Act* (particularly those factors relating to the Minister's determination pursuant to s59) and also the *Health Insurance Act* (particularly s18).

All three appellate Court Judges concluded that the trial Judge's directions were correct.

His Honour had directed the jury in these terms:—

"In addition to the matters I have already discussed by way of general principles in relation to damages, in relation to nursing home costs, you are to consider whether the provision of that service is reasonably necessary, and if so, is it reasonably necessary at a cost. In estimating the cost you have regard to the whole of the evidence, but I direct you that you are not to bring into account the Commonwealth Home Nursing Benefit. That is a direction I make as a direction of law and not as a comment of fact. Do you understand the distinction between the two? So in the present case, if you were satisfied that the current rate of \$30.95 per day is reasonable and appropriate and you are otherwise satisfied of the matters I have just referred to, you would adopt that rate subject, of course, to the question of providing the present sum suitably discounted and subject to the question of sustenance. In other words, you would not take into account the Commonwealth benefit so as to reduce the amount awarded in any way."