24/86

HIGH COURT OF AUSTRALIA

PARIC v JOHN HOLLAND (CONSTRUCTIONS) PTY LTD

Mason ACJ, Wilson, Brennan, Deane and Dawson JJ

18, 19 September 1985

[1985] HCA 58; 62 ALR 85; (1985) 59 ALJR 844; noted 60 ALJ 301

EVIDENCE – OPINION EVIDENCE OF MEDICAL EXPERT – OPINION BASED UPON HYPOTHETICAL MATERIAL – WHETHER OPINION OF VALUE.

P. claimed workers' compensation for an injury sustained in 1975 whilst employed by JH Pty Ltd. When examined by the doctors, P. made no reference to a serious back injury he suffered in 1978 whilst self-employed. When P.'s claim was made to the Worker's Compensation Commission, the written medical reports did not address adequately P.'s history, and this led to the experts being asked to express opinions on the basis of hypotheses. P. failed in his claim. On appeal—

HELD: Appeal dismissed.
(1) For expert medical opinion to be of value, the facts on which it is based must be proved by admissible evidence, but they need not correspond with complete precision to the proposition on which the opinion was based.
Ramsay v Watson **[1961] HCA 65; (1961) 108 CLR 642; 35 ALJR 301, followed.**

(2) It was a question of fact whether the case supposed was sufficiently like the one under consideration to render the expert's opinion of value. To justify rejection of the opinion there must be a failure in some one or more important data. The matters to which P. referred were not of that character.

THE COURT: *[After setting out the findings made by the Commission, the Court continued]* **[86 ALR]** The Court of Appeal concluded that the evidence was sufficient to sustain the findings of the Commission. The appellant now exercises the right which was available to him at the time of the decision of the Court of Appeal to re-litigate those questions in this court. The first of these matters requires some brief explanation. The appellant denied having suffered an injury in December 1978. He said that while he was on the job on 12 December he got a terrible pain in his back and legs and went to rest in the shed where the cement was stored. There were two bags of cement lying one on top of the other and he pushed one away in order to lie down. He said that the pain was so bad that he screamed for his labourer, Mr Brown, to come and massage his legs. After a time Mr Brown helped him to his car and he left the site. On the other hand Mr Brown, a witness called for the respondent, testified that on the day in question the appellant went into the shed to get a bag of cement. That would ordinarily be the labourer's job but on this occasion Mr Brown was engaged in preparing a mix. The next thing Mr Brown heard after the appellant entered the shed was him screaming out. **[87]** He then entered the shed to find the appellant lying on the ground with a bag of cement, which had been taken off the stack, lying close to him. Mr Brown said that the appellant was screaming in agony and actually said to him that he went to pick up a bag of cement. He was not cross-examined on this evidence. He did not say whether there were more than two bags in the stack.

Judge Langsworth said that Mr Brown appeared to him to be an honest and reliable witness. There was no attack on his credit. His Honour inferred "from all evidence before me" that the appellant did pick up a bag of cement. Elsewhere in his reasons for judgment he described the reasonable and probable inference as being that the appellant went into the shed to get a bag of cement and that in the course of lifting or moving the bag off the stack he developed very severe pains and fell to the floor. Apart from the evidence of Mr Brown, there was medical evidence which pointed to the likelihood of some such occurrence having taken place about that time as an explanation of the severe disc protrusion leading to a *cauda equima* lesion which produced such pain and required such urgent surgical treatment. Counsel for the appellant submits:-

(1) that the Commission was not entitled to find that on 12 December 1978 the appellant suffered a fresh

injury causally unrelated to the injury of 17 June 1975;

(2) that the opinions of the medical witnesses relied upon to support the finding that there was a fresh injury were based on assumptions which were false; and

(3) that by reason of the falsity of the assumptions, the opinions were so deprived of evidential value that the Commission was not entitled to place any weight on them in making the finding which was made.

Our summary of the materials indicates that the evidence of Mr Brown and the appellant, quite apart from the medical evidence, provided a basis for the Commission's finding that there was a fresh injury.

The second and third submissions advanced for the appellant are related to the first. The history which the appellant gave to the doctors who examined him from time to time did not include any reference to a trauma experienced on 12 December 1978 precipitating his hospitalization and surgery. The only incidents to which he referred were the original incident of 17 June 1975 and the onset of pain on 11 November 1978 when he engaged in a perfectly ordinary operation of opening a shed door, a door which opened without effort.

The written medical reports consequently did not address adequately the history which was revealed in evidence, and this led to the experts being asked to express opinions on the basis of hypotheses. The appellant submits that those opinions were of little or no weight and that the judge should not have acted upon them for the reason that the assumptions put to the witnesses did not correspond to the evidence given by Mr Brown and that there was no other evidence to support them.

It is trite law that for an expert medical opinion to be of any value the facts upon which it is based must be proved by admissible evidence (*Ramsay v Watson* [1961] HCA 65; (1961) 108 CLR 642; 35 ALJR 301). But that does not mean that the facts so proved must correspond with complete precision to the proposition **[88]** on which the opinion is based. The passage from *Wigmore on Evidence* cited by Samuels JA in the Court of Appeal (*Wigmore on Evidence*, (1940) 3rd ed. Vol. II, §680, p800; 2 Wigmore, *Evidence* §680 (Chadbourn rev 1979), p942) to the effect that it is a question of fact whether the case supposed is sufficiently like the one under consideration to render the opinion of the expert of any value are in accordance with both principle and common sense. As Wigmore states (at pp941-2, Chadbourn rev), the failure which justifies rejection must be a failure in some one or more important data, not merely in a trifling respect". We are of the opinion, in the light of the acceptance by the Commission of Mr Brown's evidence, that the matters to which the appellant's counsel has referred are not of that character. Whether or not the questions so meticulously argued by Mr Gross for the appellant involve questions of law, in our view, the appeal must be dismissed.
