

Szajna v Australian Postal Corporation [2014] FCA 1136

Key Points

- The Federal Court had to determine whether a heart attack could be defined an injury within the meaning of the SRC Act in circumstances where it was an inevitable consequence of an underlying, non-work related condition.

Background

Mr Szajna was employed by Australia Post. On 7 February 2012, Mr Szajna suffered a ventricular fibrillation (heart attack) and subsequently died. His widow, on behalf of Mr Szajna, sought compensation under the SRC Act for Mr Szajna's death. As liability was denied by Australian Postal Corporation (**Australia Post**), his widow sought review in the Administrative Appeals Tribunal.

There was evidence that prior to Mr Szajna's death, he suffered from an underlying coronary artery condition (**the underlying condition**).

The Law

Section 5A(1)(b) of the SRC Act defines an injury as "*an injury (other than a disease) suffered by an employee, that is a physical or mental injury arising out of, or in the course of, the employee's employment*".

There was no dispute that Mr Szajna suffered something in the nature of '*a disturbance of the normal physiological state*', which met the requirement of an injury under the SRC Act.¹

The question of law to be considered was whether Mr Szajna's heart attack was an inevitable consequence of his underlying coronary artery condition. If so, counsel for Australia Post argued that Mr Szajna's heart attack would then be determined to be wholly attributable to his underlying condition rather than to his employment.

Conclusion

Tribunal decision

The Tribunal heard evidence from two cardiologists, Dr Hossack and Professor O'Rourke, in relation to whether Mr Szajna's heart attack was attributable to his underlying condition. While both doctors accepted that Mr Szajna suffered from the underlying condition, there was dispute regarding the extent to which the disease had advanced.

Dr Hossack gave evidence that the heart attack *may* have been a product of the underlying condition; however other events may have triggered the heart attack, such as stress, exertion, viruses and prescription drugs. Dr Hossack opined that, whilst it is not inevitable that persons with coronary artery disease would experience heart attacks, it is the *most likely* cause of a heart attack.

¹ *Australian Postal Corporation v Burch* (1988) 85 FCR 264, 269.

Contrary to Dr Hossack's evidence, Professor O'Rourke advised that the combination of Mr Szajna's post-mortem examination, which evidenced extensive calcification of his coronary arteries and previous episodes of restricted blood supply to his heart tissue, and strong research indicating that coronary artery disease led to heart attacks, provided a very clear link between Mr Szajna's underlying condition and the heart attack. Professor O'Rourke agreed with Dr Hossack that coronary artery disease does not always result in a heart attack. However, he advised that in Mr Szajna's case, any progression of his underlying condition led to an increased risk that a heart attack would occur at some indeterminate time in the future.

The Tribunal held that, whilst it was clear that Mr Szajna was not destined to suffer a heart attack on a particular date, it was inevitable that he would suffer a heart attack at some point in the future, in the absence of other events. Professor O'Rourke's evidence was accepted due to his clear evidence that the underlying condition had compromised Mr Szajna's heart.

Federal Court decision

On appeal, the Federal Court determined that the Tribunal had made an error of law by misconstruing the word "injury" as having a technical legal meaning, when in fact it bears only its ordinary meaning as a question of fact. The Court found that, although it was an unpopular view, it was open to the Tribunal to find that a condition that was an inevitable consequence of an underlying, non-work related condition could be an injury pursuant to the SRC Act. Accordingly, it was open for the Tribunal to find that Mr Szajna's heart attack was an injury pursuant to section 5A.

On the basis of the error of law, the Court allowed the appeal, and set aside the Tribunal's decision for it to re-hear and determine again.

Lessons Learnt

The decision of the Federal Court confirms that the issue of whether a condition constitutes an injury for the purpose of the SRC Act is a question fact, to be determined on a case by case basis. It also confirms that it is possible for a condition that was an inevitable consequence of an underlying condition to be an injury for the purposes of section 5A.

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