

“Arrogant and argumentative but not a pathological liar” – bikie awarded \$164K in CTP claim

Mashaghati v Anderson & Allianz [2016] QDC 245

Key Point

- Although under appeal, *Mashaghati* is a reminder that even if there are strong reasons to impugn a Plaintiff’s credibility, unless that evidence is directly on point it is open to a trial judge to accept a Plaintiff’s evidence.

Background

On 1 May 2011 the plaintiff suffered multiple injuries including a lumbar spine, head, dental and psychological injuries when he hit a parked car whilst taking evasive action to avoid a collision. Other than broken teeth, there was no clinical evidence such as medical imaging to corroborate any long term complaint.

As the trial judge put it, the insurer’s case was that the plaintiff was “a liar and convicted perjurer who has no credit and who has sustained a minor injury, exaggerating its effect to pay off debts to the Hell’s Angels”. The defendant had a fair bit of ammunition including:

- Unrefuted evidence that the plaintiff had convictions for collaborative assault and battery, embezzlement, fraud, perjury and importing narcotics to Germany.
- A post-incident arrest for breaching a domestic violence order.
- That he associated with convicted drug traffickers.
- Failing to disclose injuries on the claim form despite having a back operation in the 1990s and telling a chiropractor the year before the incident that he had “unbearable lower back pain with sciatic pain down his left leg and had many broken bones/fractures”.
- Having a personnel file that indicated personality issues, alleged bullying and harassment and doing competing work.
- That he gave evidence the trial judge accepted was arrogant and argumentative.
- While not accepted by the judge, the insurer asserted an attempt at fraud by signing an employment contract with an associate for a salary of \$66,000.
- The plaintiff reported to medical practitioners that he held a Masters of Mechanical Engineering and was a research officer at the University of Queensland in circumstances where he was merely a trade-qualified mechanic.



The Decision

Unfortunately for the insurer, the court found there was “insufficient evidence to draw an inference that the plaintiff had a predilection or motive to lie and even less so, that the plaintiff was dishonest in relation to this case”. Further, that it was “too great a leap and speculative to tar the plaintiff with guilt by association”.

Despite the demonstrably untrue statement in relation to previous injuries in the claim form, his Honour found that much of the insurer’s attack on the plaintiff’s credit relied upon collateral matters. While finding that the plaintiff’s credit was “diminished”, and that there was inaccurate reporting to medical practitioners, he found that he was not shown to be a “notorious” or “pathological” liar.

Given the insurer’s failure to fully erode the plaintiff’s credit, the court accepted the plaintiff’s medico-legal evidence including that of Dr Todman who despite accepting that neuropsychological tests were inconclusive, assessed a 10% impairment over the insurer’s medico-legal evidence which either concluded that the plaintiff did not have a permanent impairment or that the cause of his problems was multifactorial. In the end the Plaintiff was awarded \$164K in damages.

Lessons Learnt

As identified by the trial judge, the assessment of damages for personal injury depends to a very large extent on a plaintiff’s honest reporting of his or her symptoms. As insurers are painfully aware, even in the case of invisible injuries it is exceedingly difficult to prove that a plaintiff is not telling the truth.

In this case the judge formed the view that the collateral evidence was too speculative to not accept the plaintiff’s evidence. Particularly given the plaintiff appeared to treat the entire process with disrespect and materially lied in respect of the claim itself, we would respectfully ask the question whether there was any reason to believe the plaintiff.

We understand that this matter has recently been appealed and insurers would no doubt be hopeful of a more favourable result on appeal. More to come.

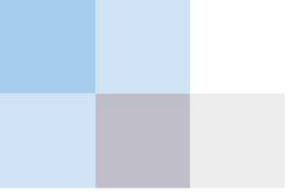
Contact

For more information on this article, please contact:

Chris Murphy
Partner
T: +61 (0) 7 3307 5504
chris.murphy@hbalegal.com

Visit www.hbalegal.com for more case articles and industry news.





Disclaimer: This article is intended for informational purposes only and should not be construed as legal advice. For any legal advice please contact us.

