

when he settled his compensation claim, s.153(1) meant he was not entitled to have the part of the lump sum attributable to his incapacity for work disregarded.

#### ■ 'Special circumstances'

The AAT took *Krzywak* and *Walsh* into account in considering whether legislative change had caused hardship. It said that if the present legislation had been in force when Stevens accepted the lump sum payment, he might not have done so because the new legislation offered him little or no advantage.

On the other hand, by accepting the lump sum, the operation of s.152(2)(e) accelerated the time when Stevens became eligible for invalid pension. He would become eligible for that pension much earlier than if weekly payments of workers' compensation had continued. If he continued to budget on the same amount as he would have spent had he been in receipt of weekly workers' compensation, he could save some of the lump sum by the time he became qualified for pension. The AAT was thus unable to find that a 'special circumstance' existed by reason of the Act itself.

#### ■ Future medical expenses

The AAT examined the *Workers' Compensation Act 1916* (Qld) and said that, although the uncertainties concerning the nature of compensation settlements in other States did not occur under Queensland legislation, the matters considered in *Cocks* (1989) 48 SSR 622 were relevant. While in this case there was no evidence as to future probable medical expenses, the AAT concluded it was proper, under s.156, to deduct \$300 from the lump sum figure for future medical expenses.

#### ■ Formal decision

The AAT varied the decision under review by remitting the matter to the Secretary with a direction to disregard \$300 of the lump sum payment.

[B.W.]



## Preclusion: looking behind a compensation award

VUCKOVIC and SECRETARY TO  
DSS

(No. 5112)

Decided: 26 May 1989 by R.A. Balmford.

Andrija Vuckovic was injured in an industrial accident in July 1985. In September 1987, the Victorian Accident Compensation Tribunal made a consent award of compensation in his favour under the *Accident Compensation Act 1985* (Vic). Under that award, Vuckovic was paid \$25 000 for future compensation for all injuries arising out of his employment.

In October 1987, Vuckovic claimed an invalid pension for himself and a wife's pension for his wife. The DSS decided that payment of these pensions was precluded for 55 weeks, under s.153(1) of the *Social Security Act*. Following an unsuccessful appeal to the SSAT, Mr and Mrs Vuckovic asked the AAT to review the DSS decision.

#### ■ The legislation

Section 153(1) of the *Social Security Act* provides that, where a person received a lump sum payment by way of compensation, then pension was not payable to the person or person's spouse 'during the lump sum payment period'.

According to s.152(2)(e), a 'lump sum payment period' was to be calculated by reference to 'the compensation part of the lump sum payment'.

According to s.152(2)(c) 'the compensation part of the lump sum payment' was —

'so much of the lump sum payment as is, in the opinion of the Secretary, in respect of incapacity for work'.

#### ■ Elements in the compensation award

In the present case, the DSS had treated all of the compensation payment made to Vuckovic as 'the compensation part of the lump sum payment'. However, Vuckovic argued that a part of that payment had been intended to provide compensation, not for incapacity for work but for pain,

suffering and loss of enjoyment of life — that is, as compensation for general damages which Vuckovic might have recovered in common law proceedings.

This submission was supported by a letter, written by Vuckovic's legal counsel. According to that letter, it had been agreed in negotiations with Vuckovic's employer that 'a figure somewhere in the order of \$10 000 was not unreasonable to allow in respect of pain and suffering and loss of enjoyment of life . . . in order to avoid the cost and uncertainty of common law proceedings.'

However, the AAT pointed out that the *Accident Compensation Act 1985* (Vic.) only allowed the Accident Compensation Tribunal to make payments for a worker's death, for total or partial incapacity for work, for injuries set out in a Table in s.98 of that Act and for medical expenses. There was no provision in the Act for the Tribunal to award compensation for pain and suffering or loss of enjoyment of life.

Moreover, in the present case there had been clear evidence available at the time of the consent award by the Accident Compensation Tribunal that Vuckovic was permanently incapacitated for work. The AAT concluded:

'On that basis I am satisfied that, despite the evidence contained in the letter [from counsel] there is no error apparent which would enable me to ignore the limited jurisdiction of the Accident Compensation Tribunal so as to assume that it is to be taken as having made an award which it has no power to make in respect of a matter beyond its jurisdiction. . . . Accordingly I accept the decision of the Secretary that the whole amount of the compensation award is, for the purposes of [s.]152(2)(c)(ii), "in respect of an incapacity for work".'

(Reasons, para. 14)

The AAT also found that there were no 'special circumstances' to support an exercise of the s.156 discretion to disregard all or part of the compensation payment received by Vuckovic.

#### ■ Formal decision

The AAT affirmed the decision under review.

[P.H.]

