

## Compensation: lump sum preclusion period; interest on economic loss

**MOURILYAN and SECRETARY TO THE DFACS**  
(No. 2000/1026)

**Decided:** 23 November 2000 by K.Beddoe.

### Background

Mourilyan was injured in a work-related accident in December 1993, and began receiving periodic compensation payments. He lodged a claim for pension and was advised by letter in July 1996 that a preclusion period could apply if he received a lump sum compensation payment. Mourilyan did receive such a payment in August 1998, when he was awarded a total of \$201,620 including \$115,200 in respect of past economic loss and \$16,017 being interest on that economic loss amount. After repayment of moneys to WorkCover, to Social Security (Centrelink), and legal fees, Mourilyan received a net payment of \$82,325.

Centrelink calculated a preclusion period from June 1996 until August 2002, using as a basis for calculation \$131,307 being the sum of the amounts paid in respect of past economic loss (\$115,200) and the interest calculated on that amount (\$16,107). Centrelink subsequently amended the period of preclusion to conclude in June 2000. Mourilyan sought review of this decision but it was affirmed by the SSAT.

### The issue

The principal issue in this matter was whether, in calculating the compensation payment amount on which determination of the period of preclusion is calculated, the interest component of the lump sum should be included. The AAT noted the provisions of s.17(2) of the *Social Security Act 1991* (the Act) which defines 'compensation' to mean (inter alia) '...any other compensation or damages payment ... made wholly or partly in respect of lost earnings or capacity to earn ...'.

### Should the interest component of damages be included as compensation?

Noting the decisions in *Fire and All Risks Insurance Co Ltd v Callinan* (1978) 140 CLR 427, *Cullen v Trappell* (1980) 29 ALR 1 and *Thompson v Faraonio* (1979) 24 ALR 1, the AAT concluded that the amount of interest awarded to Mourilyan could be distin-

guished from damages in respect of lost earnings or capacity to earn. The AAT concluded that:

... damages awarded because a claimant has been kept out of the damages payable on the date of accident by an intervening period of time between the accident and the award of damages, may be distinguished from damages in respect of lost earnings or lost capacity to earn. It is compensation for being kept out of the payment of damages and is made wholly in respect of time lost rather than lost earnings or capacity to earn ... it is a payment to reflect the fact that the damages awarded were not paid on the date of the accident so there is a deemed loss of interest [which is] ... a financial loss caused by and arising out of the delayed payment of damages. It is not related to lost earnings or lost capacity to earn ...

(Reasons, para. 25).

The AAT concluded therefore that the interest awarded in respect of damages for past economic loss was not within the definition of 'compensation' contained in s.17(2) of the Act.

### Formal decision

The Tribunal set aside the decision under review and substituted a decision that the lump sum preclusion period be recalculated taking into account that the interest received was not in respect of lost earnings or capacity to earn, and so the compensation part of the lump sum should be reduced accordingly.

[P.A.S.]

## Compensation: special circumstances; small component for economic loss

**SECRETARY TO THE DFACS and WOOLRICH**  
(No. 2000/943)

**Decided:** 30 October 2000 by J.D. Campbell.

### Background

Woolrich was born in the Phillipines in 1958 and married Mr Woolrich in 1994. She came to Australia later that year bringing a daughter, then aged 10, but leaving a son, then aged 4, with her mother. Her husband died on 21 October 1995. Woolrich was then paid a sole parent pension (SPP), and later parenting payment (PP).

She started a part-time cleaning job earning \$40 a week in July 1996, and three weeks later was involved in a motor vehicle accident receiving multiple injuries. A compensation claim, including \$3680 for economic loss, was settled for \$25,000 by consent order dated 19 March 1999.

Centrelink recovered \$5261.80 from the settlement amount, being the total amounts of SPP and PP paid during a preclusion period of 30 weeks commencing from the date of the accident. It was agreed that Centrelink had correctly calculated the length of the preclusion period by dividing 50% of the lump sum compensation settlement, namely \$12,500, by an 'income cut-out amount'. However, the *Social Security Act 1991* (the Act) also provides:

**1184.(1)** For the purposes of this Part, the Secretary may treat the whole or part of a compensation payment as:

(a) not having been made; or

(b) not liable to be made;

if the Secretary thinks it is appropriate to do so in the special circumstances of the case.

On review the SSAT had found that 'the small amount of the award attributable to economic loss' was a special circumstance, and had exercised this discretion to decide that the recoverable amount should be recalculated after treating \$17,640 of the compensation settlement amount as not having been made. The effect was that the amount Woolrich claimed for economic loss, rather than the arbitrary 50% of the settlement amount as specified in s.17(5) of the Act, would be used to calculate the preclusion period. The Secretary sought a further review by the AAT.

Woolrich told the AAT she had received \$10,746 net from the settlement. She had apparently spent all or most of it, including \$5500 visiting the Phillipines with her daughter and her partner to see her son, and repaying a debt of \$1000 to her partner. Her partner had left three months after she received the compensation. She had worked casually in a shop throughout 1999 earning \$600 a fortnight, and she had started a full-time cleaning job in 2000. Apart from her daughter, who was in Year 10, she had no relatives in Australia and sent \$300 to \$400 every two months to the Phillipines to pay for the care of her son. She suffered from rib pain and reflux for which she took medication, and may have needed a gall bladder operation.

### Special circumstances

At issue was whether there were special circumstances pursuant to s.1184 of the