

was not awarded damages for future economic loss; damages for past economic loss were awarded up to her 60th birthday; periodic payments paid to 5 January 2000 were deducted from the gross damages award for past economic loss; and age pension payment commenced on 6 January 2000. Thus, any issue of double payment did not exist. Another consequence of a preclusion period was that Torda was deprived of 124 weeks of age pension payments, during which she received no compensation by virtue of the judgment of June 2002. The AAT concluded that pursuant to s.1184K(1) of the Act, special circumstances existed and determined to treat the whole of the compensation payment as not having been made.

Formal decision

The AAT set aside the decision of the SSAT and substituted a decision that special circumstances existed pursuant to s.1184K(1) of the Act and the whole of the compensation payment was to be treated as not having been made. In the absence of any compensation payment having been made, a preclusion period therefore did not exist and as such compensation-affected payments could not be recovered.

[S.P.]

Compensation: two claims settled together; whether one or two lump sums

SECRETARY TO THE DFaCS and GOODALE
(No. 2004/571)

Decided: 4 June 2004 by E.K. Christie.

Background

Goodale suffered workplace injuries on 28 July 1998 and 26 March 1999. He suffered lower back injuries whilst lifting heavy items. He made separate claims in respect of each event and on 10 December 2002, both claims were settled in one compromise agreement and one payment made to Goodale.

Centrelink calculated a preclusion period on the basis that one lump sum was received. The SSAT, however, decided that in substance, two lump sums were received which, by convenience, happened to be paid by way of one

cheque. The Department disagreed and applied for review at the AAT.

The law

Section 17(2) of the *Social Security Act 1991* ('the Act') provides the following:

17(2) Subject to subsection (2B), for the purposes of this Act, compensation means:

- (a) ... or
- (b) ... or
- (c) a payment (with or without admission of liability) in settlement of a claim for damages or a claim under such an insurance scheme; or
- (d) ...

(whether the payment is in the form of a lump sum or in the form of a series of periodic payments and whether it is made within or outside Australia) that is made wholly or partly in respect of lost earnings or lost capacity to earn resulting from personal injury.

Section 23(b) of the *Acts Interpretation Act 1901* ('the Interpretation Act') provides that unless the contrary intention appears, words in the singular include the plural and words in the plural include the singular.

Section 1184K of the Act provides for some or all of a compensation payment to be disregarded if 'special circumstances' exist.

The issue

The AAT was required to decide whether there were one compensation lump sum or two. A conclusion that the former was correct would result in a compensation charge against Goodale of \$280.

Discussion

The AAT formed the view that the SSAT had incorrectly decided that there were two lump sums. The AAT stated:

Following the course directed in *Blue Metal Industries v Dilley* [1970] AC 827 and in the context of the Act, the central issue becomes whether the legislature intended to exclude its operation where there was more than one lump sum compensation payment made. That is, whether it was intended that the term 'lump sum' should be understood to be limited to a single lump sum and to exclude a plurality of lump sums.

In the Tribunal's view, the legislature had such an intention. That 'lump sum' should be read by excluding the plurality of lump sums is consistent with the operation of section 23(b) of the Interpretation Act ...

(Reasons, paras 15, 16)

The AAT observed the term 'lump sum' was not defined in the Act, and referred to *Secretary, Department of Social Security v Banks* (1991) 20 ALD 19. The AAT commented that the reasoning in that case was consistent with the

intent of the legislation to treat as singular lump sum compensation payments received simultaneously or at different times in relation to one or more injuries arising from the same event. The AAT stated:

The meaning of 'lump sum' by von Doussa J further extends to apply to treat as the singular, a lump sum payment where the total is arrived at by adding amounts for different heads of loss. Moreover, this meaning of 'lump sum' extends to treat as the singular, payments received that consist of the aggregate of several amounts which could have been paid separately or at different times.

(Reasons, para. 16(e))

Having reached that conclusion, and being satisfied that the legislation had been applied as it was intended, the AAT decided that 'special circumstances' within the meaning of s.1184K did not exist to disregard any amount of the compensation payment.

Formal decision

The AAT set aside the decision under review and remitted the matter to the Department with the directions that the amount to be recovered be assessed on the basis of a single lump sum payment.

[S.L.]

Compensation preclusion: inclusion of legal costs

FULLER and SECRETARY TO THE DFaCS
(No. 2004/615)

Decided: 18 June 2004 by Justice G. Downes.

Background

Fuller was injured at work and received compensation payments from Comcare. A settlement was reached between the parties and Fuller received a lump sum. The parties reached an agreement about legal costs, namely a sum of \$13,500, which was included in the lump sum for the purposes of calculating the preclusion period.

The issue

The AAT was essentially required to determine whether the sum of \$13,500, representing legal costs, should be included in the lump sum.