

## **ADCO CONSTRUCTIONS PTY LTD v GOUDAPPEL & ANOR (S201/2013)**

Court appealed from: New South Wales Court of Appeal  
[2013] NSWCA 94

Date of judgment: 29 April 2013

Special leave granted: 11 October 2013

This appeal concerns the operation of transitional provisions pertaining to amendments to New South Wales workers compensation legislation.

Mr Ronald Goudappel was injured while working as an employee of the Applicant. On 19 April 2010 he claimed (and was later paid) workers compensation for lost wages and medical expenses. Mr Goudappel's injury left him with a whole-person impairment that was assessed at 6%.

On 20 June 2012 Mr Goudappel also claimed lump sum compensation, pursuant to s 66 of the *Workers Compensation Act 1987 (NSW)* ("WCA"). On 27 June 2012 s 66 was amended such that lump sum compensation would be available only to persons impaired to a degree greater than 10%. That amendment was contained in Schedule 2 of the *Workers Compensation Legislation Amendment Act 2012 (NSW)* ("Amending Act"). Schedule 12 of the Amending Act added Part 19H to the saving and transitional provisions set out in Schedule 6 of the WCA. Clause 15 of Part 19H is as follows:

### **15 Lump Sum Compensation**

An amendment made by Schedule 2 to the [Amending] Act extends to a claim for compensation made on or after 19 June 2012, but not to such a claim made before that date.

In Schedule 8 of the *Workers Compensation Regulation 2010 (NSW)* ("the Regulation") new provisions which commenced on 1 October 2012 include clause 11:

### **11 Lump Sum Compensation**

- (1) The amendments made by Schedule 2 to the [Amending] Act extend to a claim for compensation made before 19 June 2012, but not to a claim that specifically sought compensation under section 66 or 67 of the [WCA].
- (2) Clause 15 of Part 19H of Schedule 6 to the [WCA] is to be read subject to subclause (1).

On 22 October 2012 the President of the Workers Compensation Commission, Judge Keating, gave the following answer to a referred question of law:

The amendments to Division 4 of Part 3 of the [WCA] introduced by Schedule 2 of the [Amending Act], apply to claims for compensation pursuant to s 66 made on and after 19 June 2012, where a worker has made a claim for compensation of any type in respect of the same injury before 19 June 2012.

This was after Judge Keating had held that the phrase "a claim for compensation" in clause 15 meant a claim specifically for lump sum compensation. Mr Goudappel would therefore be unable to obtain such compensation, as his application for it had been made after 19 June 2012.

On 29 April 2013 the Court of Appeal (Bathurst CJ, Beazley P & Basten JA) unanimously allowed Mr Goudappel's appeal. Their Honours found that the relevant legislation merely provided for claims generally, without requiring a separate claim for lump sum payments. Mr Goudappel's claim under s 66 was therefore an extension of his original claim. The Court of Appeal held that Mr Goudappel's right to compensation pursuant to s 66 arose at the date of his injury (17 April 2010). Their Honours held invalid any transitional regulations which prejudicially affected a right that had accrued prior to their publication, as the power in Part 20 of Schedule 6 to the WCA did not authorise them. Clause 11 of Schedule 8 to the Regulation therefore could not operate to deprive Mr Goudappel of lump sum compensation. The Court of Appeal then substituted the following answer for that given by the Workers Compensation Commission:

The amendments to Division 4 of Part 3 of the [WCA] introduced by Schedule 2 of the [Amending Act] do not apply to claims for compensation pursuant to s 66 which are made before 19 June 2012 in respect of an injury that results in permanent impairment, whether or not the claim specifically sought compensation under s 66 or s 67 of the [WCA].

The grounds of appeal are:

- The Court of Appeal erred in finding that clause 11 of Schedule 1 to the *Workers Compensation Amendment (Transitional) Regulation 2012* (NSW) was invalid, and failing to find that it was validly made pursuant to clause 5(4) of Schedule 12 to the *Workers Compensation Legislation Amendment Act 2012* (NSW), and/or failing to give effect to it.
- The Court of Appeal erred in not finding that the amendments to Division 4 of Part 3 of the *Workers Compensation Act 1987* (NSW) introduced by Schedule 2 of the *Workers Compensation Legislation Amendment Act 2012* (NSW) apply to claims for compensation pursuant to s 66 of the *Workers Compensation Act 1987* (NSW) made on and after 19 June 2012, where the worker has not made a claim specifically seeking compensation under ss 66 or 67 before 19 June 2012 (including the first respondent's claim).