



HIGH COURT OF AUSTRALIA

Public Information Officer

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MAREK KULIGOWSKI v METROBUS

The High Court of Australia has cleared the way for a bus driver injured at work to take action against his employer in the District Court of Western Australia.

Mr Kuligowski, now 49, worked for Perth bus company Metrobus. In March 1994 he twisted his left ankle at work and suffered soft tissue injuries. In December 1994 another work accident exacerbated the condition of his ankle. Mr Kuligowski claimed that in April 1995, while shopping, his left ankle gave way and he twisted his left knee. A doctor certified he was unfit for work and Metrobus began paying workers' compensation, but a year later Metrobus lodged with the Conciliation and Review Directorate an application under the Workers' Compensation and Rehabilitation Act disputing Mr Kuligowski's entitlement. A review officer found Metrobus had established a basis to dispute liability to pay compensation but declined to suspend payments pending a further hearing. Another review officer who conducted the later hearing was not satisfied that Mr Kuligowski was incapacitated for work and ordered the weekly payments cease. An appeal to the Compensation Magistrates Court was dismissed.

In June 1998 a District Court deputy registrar granted Mr Kuligowski leave to institute proceedings for damages at common law and dismissed Metrobus's application to have the proceedings struck out on the ground of issue estoppel. Issue estoppel arises when a tribunal makes a final decision so that matters fundamental to the tribunal's conclusion cannot be redetermined. In this case, the second review officer's finding that Mr Kuligowski's injury had recovered left no scope for finding that any later disability which he suffered was caused by the initial accident. He instituted proceedings and alleged the accident was caused by Metrobus's negligence, but in October 2000 Commissioner John Ley of the District Court allowed appeals by Metrobus against the deputy registrar's orders. Mr Kuligowski appealed to the Full Court of the Supreme Court, which held, by majority, that the doctrine of issue estoppel could apply to a quasi-judicial determination of a review officer when the District Court was due to determine a common law action. He then appealed to the High Court.

The Court held that a finding that the original injury had recovered was a different issue from whether in April 1995 Mr Kuligowski had ongoing instability in his left ankle. It would not be inconsistent with the second review officer's findings for the District Court to hold there was ongoing instability in his ankle which caused him to twist and injure his left knee in April 1995. The findings of the review officer would not operate as an issue estoppel. The issues which the officer examined, namely whether Mr Kuligowski's injuries could be characterised as a disability and whether they incapacitated him, were distinct from issues raised in the District Court, including ongoing susceptibility to injury.

The High Court held that the doctrine of issue estoppel does not prevent Mr Kuligowski from pursuing District Court proceedings. It unanimously allowed the appeal and remitted the matter to the District Court for hearing.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*