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INTENT BEHIND PAYMENTS DETERMINES IMPACT ON ASSESSMENT OF DAMAGES

In Zheng v Cai (2009) 261 ALR 481 the High Court had to determine whether voluntary payments made to the appellant by a third party were to be taken into account when assessing a claim for damages for personal injury.

The appellant, a passenger in the respondent’s motor vehicle, was injured in an accident on 11 May 2000 and suffered significant injuries. At trial the respondent admitted to breaching his duty of care and judgment was given for the appellant. Damages were assessed at $300 681.

The respondent appealed, arguing that the assessment of damages was incorrect as the trial judge had failed to take into account income of the appellant. The evidence was that from June 2005, after completing studies at a bible college in Singapore, the appellant performed voluntary work for a church which was part of the Christian Assembly of Sydney. During this time she received fortnightly payments averaging $580 per week from the Assembly. The trial judge held that these payments were to assist the appellant with her living expenses and that she was not an employee of the Assembly. The respondent argued before the Court of Appeal that the money received by the appellant from the Assembly was income from her employment within the Assembly and that the real intent behind the payments was to enable the appellant to perform volunteer work for the Church.

The Court of Appeal accepted the respondent’s submission as to the real intent behind the payments. Referring to National Insurance Co of New Zealand Ltd v Espagne (1961) 105 CLR 569 at 599-600, the court noted that benefits received by an injured plaintiff are not to mitigate their loss if the intent was that they should not diminish any claim for damages. Before the court was a letter from the Assembly stating that it had ‘provided financial support to [the appellant] for her daily living and accommodation expenses to allow her to functions more effectively as a volunteer worker’. The court held that as the real intent of the payments was to enable the appellant to be more effective in her volunteer work for the church, this rendered the payments ‘more analogous to payments for services’ (at [15]). The appeal was allowed and the appellant’s damages were reduced to $17 447.91.

The High Court focussed on the policy of the law. The court noted (at [19]) that Windeyer J in Espagne had reasoned that ‘voluntary gifts should not diminish damages because “they are given for the benefit of the sufferer and not the benefit of the wrongdoer”’. At [20] the court stated:

The ‘intent’ of the donor thus assumed great importance, but it was an intent of a particular character, contrasting an intention to benefit the wrongdoer with an intention to benefit the victim.

If the intention of the donor if that an injured plaintiff is to enjoy the charitable gift in addition to the right to recover damages, effect must be given to the intent, and this intent may be inferred from the surrounding circumstances. The High Court stated that the letter from the Assembly was to be read as a whole to determine the intent of the Assembly in making the payments to the appellant. The court held that it was ‘apparent that the Assembly was anxious to counter any argument that the [appellant] worked as it employee, rather than as a volunteer’ (at [22]). The presence of the collateral benefit to the Assembly – that the appellant be able to be a more effective volunteer for the church – was ‘not substitute for the necessary intention on its part to benefit the respondent by diminishing his liability for damages at the expense of the award recovered by the [appellant]’ (at [24]). The High Court held that to reduce the appellant’s damages without the necessary intention on the part of the Assembly to benefit the respondent ‘would defeat rather than advance the policy of the law in this area’ (at [24]).

The appeal was allowed.

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1 (1961) 105 CLR 569 at 598.
2 National Insurance Co of New Zealand Ltd v Espagne (1961) 105 CLR 569 at 598-599.