



QIRC denies worker's compensation death benefits to dependants of deceased worker

Date: Sunday March 17, 2024

In Queensland, if a worker dies whilst at work, then it is possible for surviving family members to recover significant compensation because of his or her passing. These claims are known colloquially as "[worker's compensation death benefit claims](#)". An October 2023 decision of the Queensland Industrial Relations Commission ("QIRC") highlights the important things to be considered when dependants of a deceased worker are considering applying for dependency benefits under the Worker's Compensation and Rehabilitation Act. Ultimately, in this case, the surviving family members were unsuccessful in their claim for death benefits.

Background to the worker's compensation death benefits claim

Mr Kibria suffered a fatal heart attack in July 2021 whilst interstate for various shift work stints. His wife and one of his daughters (both reliant and dependent on his income) made applications for worker's compensation death benefits.

Workcover Queensland rejected their application for compensation.

The wife and daughter then asked the Worker's Compensation Regulator to review this decision of Workcover but to no avail.

They then applied to the QIRC to have the Regulator's decision (not to overturn Workcover's determination) set aside, and declaration by the QIRC that their application for worker's compensation death benefits should be accepted.

Unfortunately, they were unsuccessful in their appeal to the QIRC.

The case does provide a very good analysis of the legal and factual matters which need to be considered when dependants apply for worker's compensation death benefits following a work-related death.

Background to the deceased worker's employment and the QIRC case

The deceased worker, Mr Kibria, worked as a maritime engineer with "CPS Services (NQ) Pty Ltd" (CPS). He started with the company on 20 February 2021, but unfortunately suffered his fatal heart attack only some 5 months later, on 28 July, 2021.

Mr Kibria lived in Paramatta, NSW, when he got the job with CPS, but his contract of employment noted he was required to work on "any vessel owned and operated by (CPS)". Over the 5 months he was with CPS, Mr Kibria worked on cruise ships that travelled between the NT and WA.

Mr Kibria's last "swing" involved flying from Sydney to Broome in WA on 23 May 2021, where he boarded the "Coral Adventurer". He sailed then to NT, disembarking at Dawin Port on 24 June, 2021. Mr Kibria then was "rostered off from work" from that date, until he was due to return to work on 4 August, 2021.

This was the time of COVID-19 so, due to various travel restrictions and threats of "lockdowns" (if he was to return to Sydney) etc, he decided he would remain in the NT over this period he was "rostered off".

Importantly, Mr Kibria was not directed and/or encouraged to remain in the NT whilst he was "rostered off". Evidence given by a representative of CPS at the trial confirmed some employees chose to return to their respective home towns/states and risk prospect of lockdown and/or quarantines etc.

As it transpired, Mr Kibria in fact spent some of his rostered period off in WA (until about 23 July) at which point he returned to Darwin booking into the "Argus Hotel". He paid for his accommodation out of his personal funds. Mr Kibria continued to be paid over this "rostered off" period in accordance with his employment conditions.

The legal representatives for the Regulator (who defended its decision not to overturn Workcover's determination to reject the dependants' application for worker's compensation death benefits) led evidence from a representative of the employer, Ms Clarke. Ms Clark was responsible for coordinating the rostering of staff, including dealing with their accommodation issues (especially during what was a difficult period with COVID-related restrictions in place for everyone).

In the end, the dependants of the deceased worker (the Applicants in the appeal) conceded that the medical evidence could not support any suggestion that Mr Kibria's work was a "significant contributing factor" to his heart attack. The medical evidence clearly demonstrated that his heart attack was due to advanced coronary disease.

Therefore, the only basis upon which the dependants could seek to have the QIRC set aside the decision not to accept their application for death benefits was to argue that his injury (heart attack) occurred during "a temporary absence from his place of employment" Alternatively, his injury was sustained during a "journey" between his place of residence and place of employment.

Injury or death due to a temporary absence from place of employment

The first argument relied on the dependants convincing the Commissioner that the Argus

Hotel was an extension of Mr Kibria's "place of employment". This might seem like an odd argument to run. But the worker's compensation legislation in Queensland does allow compensation for certain situations where injury occurs at somewhere other than the worker's ordinary place of employment.

The High Court has considered this type of situation on a number of occasions over the years and essentially has said that if an injured worker (or, in this case, dependants of the deceased worker) is able to establish that if the injured worker was:

"... induced or encouraged to be at the place at which the injury occurred, at the specific request of the employer, then it is possible to make a claim for worker's compensation."

In this case, it was argued by the Applicant (the wife and daughter) that Mr Kibria was induced or encouraged by his employer (namely by Ms Clarke) to stay at the Argus Hotel.

However, the evidence of Ms Clarke (who was accepted by the Commissioner as a reliable and truthful witness) was that she (and therefore the employer) did not at any point, before his death, encourage/induce Mr Kibria to stay at the Argus Hotel.

Other points were argued, but this was the foundational issue that the dependants needed to convince the Commissioner of, and they failed to do so.

Injury or death sustained during a journey between place of residence and place of work

The other basis upon which the dependants sought to convince the Commissioner that worker's compensation death benefits should be paid to the wife and daughter, was that the heart-attack occurred during an "ordinary recess" from work.

This was a very difficult argument to run, as the High Court has made it clear that the term "ordinary recess" (which isn't defined in the Queensland worker's compensation legislation) is to be considered to be:

"...a relatively brief interruption in an otherwise continues period of work".

The commissioner, unsurprisingly found against the dependants on this issue.

Whilst the dependants argued that the law in Queensland directed the Commissioner to assess what was an "ordinary recess" in each particular set of circumstances, the period between Mr Kibria's stay at the hotel and his next shift at work was simply too lengthy to

allow the Commissioner to accept the heart-attack occurred during an “ordinary recess”.

Finally, the dependants tried to argue that the heart-attack occurred during a “journey” between Mr Kibria’s temporary place of residence (the hotel) and his place of work. This didn’t get any traction at all with the Commissioner, needless to say.

Ultimately, both the wife and daughter failed, in all attempts, to receive worker’s compensation death benefits.

Get help from a worker’s compensation lawyer

Many people may think that worker’s compensation death benefit claims would be relatively straightforward. However, as this case demonstrates, there can be a number of factors that can create complexity for a claim.

If you have any issues with your worker’s compensation claim, including a death benefit claim, you should seek advice from an experienced lawyer. This will ensure any compensation you are entitled to, or receive, will be maximised.

Your first interview is free, so it costs you nothing to find out where you stand.

You may also find our earlier blog, [“How to claim workers compensation in Queensland”](#), useful reading prior to lodging any claim.

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.