

Post-Separation Acquired Property from a Workcover settlement

In **Bryden [2015] FCCA 1489 Judge Phipps** commented that the Wife's Application was unusual in that the property of which she claimed a 30% share pursuant to S79 of the Family Law Act was a modest house acquired by the husband after the separation with the proceeds of his 'Workcover Serious Injury' claim.

The husband who was permanently disabled as a result of a workplace accident proposed that there be no division of the property he had acquired in those circumstances.

The husband was aged 56 and the wife 54, they had been married for 25 years and had one adult child.

As a result of his injuries the husband ceased work about one year after the parties separated and received:

- 4 years after the separation, a net Workcover settlement of about \$260K; and
- 6 years after the separation, a \$60K payment from his disability insurance and superannuation.

Despite the husband receiving the above amounts totalling about \$320K, by the time of the hearing several years later, the only assets available to the couple to divide were those remaining in the husband's name totalling \$152K.

The Judge found that the wife had contributed to the \$60K as the husband had ceased working only a year after the parties separated meaning that a substantial proportion of those specific benefits had accrued during the marriage.

While the Judge found that the wife's contributions during the marriage were marginally greater than those of the husband at 60/40 he was only prepared to apply those proportions against the \$60K payments which he particularised as being an asset of the marriage.

While 60% of \$60K is \$36K, the Judge expressed this in the context of the available pool being the husband's (and the parties') total assets of \$152K by saying that the wife's notional \$36K contribution represented 24% of that pool.

However more importantly for the purposes of providing some relevant guidance about the treatment of post-separation settlements relating to injuries sustained during a marriage, the Judge made the following observations and comments:

- the injury was to the husband's left arm and shoulder which was assessed at a 30% disability;
- the \$260K which the husband received 4 years after separation and 3 years after he ceased work was for 'pain and suffering' and 'loss of earning' caused by the injury;
- a reasonable inference was that since the husband was employed until after separation, in so far as the payment was for loss of income, the substantial majority of the loss of income component must have been for future loss of income. If there was any component of loss of income prior to separation it was so small that it could be ignored;
- accordingly the payment was essentially for pain and suffering and loss of income subsequent to separation.

Having satisfied himself that the components of the settlement were for pain and suffering and loss of income after separation the Judge concluded that the wife had made no contribution to the husband's \$260K Workcover settlement.

However there was a final twist in the tale when the Judge turned to comparing the parties' future financial needs and **reduced** the payment to the wife from \$36K (24% of the pool) to \$30K (19.5%) on the basis that she had secure accommodation provided by her father whereas the husband owned and occupied a very basic home, had no borrowing capacity and the only funds he could access to make a payment to the wife was his remaining \$30K of superannuation.