

particularly in the case where damages are claimed under many heads, we invite a conclusion that the necessary give and take, and the necessary realism in prediction, was absent, and therefore a conclusion of unreasonableness. But that is not what happened here. I think the defendant made proper, if tending to low, assessments of the outcome.”

The Court's approach to the task of assessing interest in this case highlights obstacles in the path of plaintiffs seeking an award of interest under this statutory scheme. The legal policy theory underpinning an award of interest on damages is that the defendant has had use of funds to which the plaintiff was entitled and the plaintiff should be compensated for being deprived of the funds.

Section 45 of the *Motor Accidents Act* imposes a duty on insurers to endeavour to resolve claims as expeditiously as possible including by settlement. This section has already been considered as having no coercive effect in another case. (*Stubbs v NRMA Insurance Limited*, unreported, NSW Supreme Court, Dowd J, 18 December 1996)

In Mr Thomas' case the defendant's first offer of settlement was made more than 6 years after the plaintiff's injury. Until the *Motor Accidents Act* is amended to provide an appropriate mechanism there is no way plaintiffs or their representatives can require an insurer to make an offer.

Section 76E of the *Supreme Court Act 1970* provides for interim awards of damages but this does not apply to *Motor Accidents Act* claims. (Section 76H) This case also highlights the need for amendment to s76E to include motor accident claims.

In the meantime, plaintiffs waiting for an offer of settlement simply have to wait patiently.

On 12 June 1997 the defendant applied for and was granted a stay pending appeal on condition that a payment of \$4.25M was made within 28 days.

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