

Sarvanis v. Canada, [2002] 1 S.C.R. 921, 2002 SCC 28

Ioannis Sarvanis

Appellant

v.

Her Majesty The Queen in Right of Canada

Respondent

Indexed as: Sarvanis v. Canada

Neutral citation: 2002 SCC 28.

File No.: 27796.

2001: October 10; 2002: March 21.

Present: Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour and LeBel JJ.

on appeal from the federal court of appeal

Crown – Crown liability – Inmate injured while working at federal penitentiary – Inmate received Canada Pension Plan disability benefits out of Consolidated Revenue Fund – Inmate sued Crown in tort – Whether tort action barred by s. 9 of Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50 – Canada Pension Plan, R.S.C. 1985, c. C-8.

While working in a federal penitentiary, an inmate sustained serious personal injuries, many of which appear to be permanent. As a result, he qualified for Canada

Pension Plan (“CPP”) disability benefits, which are paid out of the Consolidated Revenue Fund. The inmate sued the Crown in tort soon after suffering his injuries. The Crown moved for summary judgment claiming that the action was statute-barred by s. 9 of the *Crown Liability and Proceedings Act*, which provides that “[n]o proceedings lie against the Crown . . . if a pension or compensation has been paid or is payable out of the Consolidated Revenue Fund . . . in respect of the death, injury, damage or loss in respect of which the claim is made.” There is a reasonable possibility that the Crown will be found liable should this case proceed to trial. The trial judge found that s. 9 did not apply to the CPP disability benefits received by the inmate. The Federal Court of Appeal allowed the Crown’s appeal.

Held: The appeal should be allowed.

Section 9 of the *Crown Liability and Proceedings Act*, properly construed, does not immunize the Crown from tort liability where an individual has received benefits under the CPP. Although s. 9 uses the phrase “in respect of”, which is of very broad import, that phrase cannot be interpreted without looking to the context in which it is found. Section 9 refers to pensions and compensations made “in respect of . . . death, injury, damage or loss”. Because “in respect of” is tied to specific events to which liability could attach but for the operation of s. 9, an action will only be barred if it is based on the factual basis specified in s. 9. By contrast, the CPP is a contributory plan wherein disability benefits are contingent on the present disabled condition of an otherwise qualified contributor. Since CPP benefits are contingent on a mere disability, not on the factual basis specified in s. 9, they do not fall within its scope. The disability benefit awarded to the inmate does not constitute a pension or compensation for the purposes of s. 9 of the *Crown Liability and Proceedings Act*. This conclusion is also consistent with the French version of the section.

This conclusion is bolstered by the language used in Acts awarding pensions that are caught by s. 9, and by the broader legislative purpose of the *Crown Liability and Proceedings Act* which was to establish Crown liability previously blocked by the common law. It would be surprising if the *Canada Pension Plan* was meant to nullify that increased exposure. Moreover, there is no explicit provision barring tort liability in the *Canada Pension Plan*.

Cases Cited

Distinguished: *Langille v. Canada (Minister of Agriculture)*, [1992] 2 F.C. 208; **referred to:** *Cugliari v. White* (1998), 159 D.L.R. (4th) 254; *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29; *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, [1999] 1 S.C.R. 743; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *Canadian Pacific Ltd. v. Gill*, [1973] S.C.R. 654.

Statutes and Regulations Cited

Act to amend the statute law in relation to veterans' benefits, S.C. 2000, c. 34, s. 42.

Canada Pension Plan, R.S.C. 1985, c. C-8, ss. 42(2)(a) [rep. & sub. c. 30 (2nd Supp.), s. 12], 44(1)(b) [am. *idem*, s. 13; am. 1992, c. 2, s. 1], 108(1), (3)(a).

Crown Liability Act, R.S.C. 1970, c. C-38, s. 4(1).

Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50 [rep. & sub. 1990, c. 8, s. 21], s. 9.

Government Employees Compensation Act, R.S.C. 1985, c. G-5, ss. 4(1)(a), 12.

Merchant Seamen Compensation Act, R.S.C. 1985, c. M-6, s. 13.

Pension Act, R.S.C. 1985, c. P-6, ss. 21(1)(a) [rep. & sub. c. 16 (1st Supp.), s. 2; rep. & sub. 1990, c. 43, s. 8], 111(2) [repl. 2000, c. 34, s. 42].

Statute Revision Act, R.S.C. 1985, c. S-20, s. 6(e), (f).

Authors Cited

Canada. *House of Commons Debates*, vol. 4, 7th Sess., 21st Parl., March 26, 1953, p. 3333.

APPEAL from a judgment of the Federal Court of Appeal (2000), 184 D.L.R. (4th) 124, 252 N.R. 131, [2000] F.C.J. No. 12 (QL), setting aside a judgment of the Trial Division (1998), 156 F.T.R. 265, [1998] F.C.J. No. 1304 (QL). Appeal allowed.

David R. Tenszen, for the appellant.

David Sgayias and *Christopher Rupar*, for the respondent.

The judgment of the Court was delivered by

IACOBUCCI J. --

I. Introduction

1 In this appeal, we must consider whether s. 9 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, operates so as to immunize the Crown from tort liability where an individual has received benefits under the Canada Pension Plan (“CPP”). I conclude that, on the proper interpretation of the statute, it does not. Accordingly I would allow the appeal and dismiss the Crown’s motion for summary judgment.

II. Background

2 The appellant, Ioannis Sarvanis, was an inmate in the Pittsburgh Institution, a federal penitentiary in Joyceville, Ontario. He was working in the hay barn of the prison farm when, on June 16, 1992, he fell through a trap door on the second floor of the barn. The trap door had been concealed by hay. He landed on the first floor of the barn and sustained serious personal injuries, many of which appear from the record to be permanent. These injuries rendered the appellant unable to work. There is a reasonable possibility that liability may be found to lie with the respondent should this case proceed to trial.

3 On September 12, 1996, it was determined by the Government of Canada Income Security Programs that the appellant was disabled and that he qualified for CPP disability benefits. He continues to receive these benefits each month. Retroactive payment was made in November of 1996 to cover the period from October 1994, which was the effective date of the benefit decided on by the Ministry, to the time when the payments began regularly. The appellant has also received Ontario welfare benefits and “family benefits” or benefits under the Ontario Disability Support Program.

4 The appellant initially brought this action in tort on August 21, 1992, about two months after suffering his injuries. The respondent filed a statement of defence on September 18, 1992. On September 15, 1998, a motion by the respondent was granted by MacKay J. of the Federal Court, Trial Division, allowing it to amend its statement of defence. The amended statement of defence claimed that the action was statute-barred by s. 9 of the *Crown Liability and Proceedings Act*. On this basis, the respondent moved for summary judgment.

5 MacKay J. dismissed the motion, finding that s. 9 did not apply to the payments received by the appellant. An appeal was heard and allowed by the Federal Court of Appeal. Sarvanis now appeals to this Court.

III. Relevant Statutory Provisions

6 *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50

9. No proceedings lie against the Crown or a servant of the Crown in respect of a claim if a pension or compensation has been paid or is payable out of the Consolidated Revenue Fund or out of any funds administered by an agency of the Crown in respect of the death, injury, damage or loss in respect of which the claim is made.

9. Ni l'État ni ses préposés ne sont susceptibles de poursuites pour toute perte — notamment décès, blessures ou dommages — ouvrant droit au paiement d'une pension ou indemnité sur le Trésor ou sur des fonds gérés par un organisme mandataire de l'État.

Canada Pension Plan, R.S.C. 1985, c. C-8

42. . . .

(2) For the purposes of this Act,

(a) a person shall be considered to be disabled only if he is determined in prescribed manner to have a severe and prolonged mental or physical disability, and for the purposes of this paragraph,

(i) a disability is severe only if by reason thereof the person in respect of whom the determination is made is incapable regularly of pursuing any substantially gainful occupation, and

(ii) a disability is prolonged only if it is determined in prescribed manner that the disability is likely to be long continued and of indefinite duration or is likely to result in death;

44. (1) Subject to this Part,

. . .

(b) a disability pension shall be paid to a contributor who has not reached sixty-five years of age, to whom no retirement pension is payable, who is disabled and who

(i) has made contributions for not less than the minimum qualifying period,

(ii) has made contributions for at least two of the last three calendar years included either wholly or partly within his contributory period,

(iii) where there are only two calendar years included either wholly or partly within his contributory period, has made contributions for both such years, or

(iv) is a contributor to whom a disability pension would have been payable at the time the contributor is deemed to have become disabled had an application for a disability pension been received prior to the time the contributor's application for a disability pension was actually received;

108. (1) There is hereby established in the accounts of Canada an account to be known as the Canada Pension Plan Account.

...

(3) There shall be paid out of the Consolidated Revenue Fund and charged to the Canada Pension Plan Account

(a) all amounts payable under this Act as or on account of benefits or otherwise;

IV. Judgments Below

A. *Federal Court, Trial Division* (1998), 156 F.T.R. 265

7

MacKay J. found that CPP benefits were paid out of the Consolidated Revenue Fund. He found that such disability benefits as the appellant received are paid to those who have contributed under the CPP and who are also disabled. He rejected the Crown's argument that the case of *Langille v. Canada (Minister of Agriculture)*, [1992] 2 F.C. 208 (C.A.), applied. That case involved plaintiffs who attempted to sue the government over the destruction of their diseased farm animals, although compensation had already been paid to them with respect to this matter directly out of the Consolidated

Revenue Fund. He also distinguished pensions payable under the *Pension Act*, R.S.C. 1985, c. P-6, and the *Government Employees Compensation Act*, R.S.C. 1985, c. G-5, since these pensions explicitly preclude claims for loss or injury incurred in the course of military or civil service, respectively, replacing such claims with pension benefits.

8 The learned motions judge also noted that CPP disability benefits were not deducted from judicial awards of damages in tort. He referred to the view expressed in *Cugliari v. White* (1998), 159 D.L.R. (4th) 254 (Ont. C.A.), that such payments are not compensatory but are “akin to a private policy of insurance, payable to a qualified contributor under the plan in relation to his or her disability” (para. 11). Similarly, CPP disability pensions are paid to persons who are contributors solely in respect of their disability. Such pensions make no reference to any particular cause of the disability, nor to any further damage or loss that might be the subject of a damage award in a tort action. Although it was often possible, in an historical sense, to relate a disability to an injury, the injury or damage at issue was not the basis of or reason for such payments. Accordingly, he dismissed the motion for summary judgment.

B. *Federal Court of Appeal* (2000), 184 D.L.R. (4th) 124

9 Malone J.A., for the court, focused on the proper interpretation of the words “in respect of” in s. 9 of the *Crown Liability and Proceedings Act*. He found that these words had been given an extremely broad interpretation by this Court and by other courts. In his view, the pension in this case was both paid out of the Consolidated Revenue Fund and was “in respect of” the injury for which Sarvanis sought to bring action (para. 8). Sarvanis’ own application for a CPP disability pension indicated that the cause of his disability was the injury in question. Section 9’s use of the phrase “in respect of” was intended to capture not only compensation, but pensions as well.

10 He therefore allowed the Crown’s appeal and granted the motion for summary judgment.

V. Issue

11 The issue is whether, by receiving a disability pension under the *Canada Pension Plan*, the appellant has been paid a “pension or compensation . . . in respect of the death, injury, damage or loss” in respect of which the claim is brought, so as to bar his action pursuant to s. 9 of the *Crown Liability and Proceedings Act*.

VI. Analysis

A. *Overview of the CPP Disability Scheme*

12 This case involves a very narrow question of statutory interpretation. The crux of the inquiry is, as Malone J.A. found, whether the breadth of the words “in respect of” is sufficient to include the pension granted the appellant. The appellant received a disability pension under the CPP. Section 9 of the *Crown Liability and Proceedings Act* bars any claim against the Crown

if a pension or compensation has been paid or is payable out of the Consolidated Revenue Fund or out of any funds administered by an agency of the Crown in respect of the death, injury, damage or loss in respect of which the claim is made.

pour toute perte — notamment décès, blessures ou dommages — ouvrant droit au paiement d’une pension ou indemnité sur le Trésor ou sur des fonds gérés par un organisme mandataire de l’État. [Emphasis added.]

13 The text of the French version of this provision is worded in a different manner. But the effect is the same, which may reflect the different approaches to drafting in the official languages. It is noteworthy, however, that the previous French version of this section closely mirrored the English text (“... *si une pension ou une indemnité a été payée ou est payable . . . relativement à ce décès, ces blessures, dommages ou autres pertes*”, R.S.C. 1970, c. C-38, s. 4(1) (emphasis added)), while the current version is the product of a modification in the 1985 revision. The conclusion that the meaning must nevertheless be the same is bolstered by the authority of the *Statute Revision Act*, R.S.C. 1985, c. S-20, s. 6(e) and (f), providing that revisions of this sort will not change the substance of the enactment. The present French version of s. 9 immunizes the Crown from a cause of action “. . . *pour toute perte — notamment décès, blessures ou dommages — ouvrant droit au paiement d’une pension ou indemnité . . .*” (“for any loss — in particular, for death, injury or damage — that gives rise to the payment of a pension or compensation”). The question, therefore, is whether a disability pension under the *Canada Pension Plan* is a pension paid “in respect of . . . death, injury, damage or loss in respect of which the claim is made”.

14 The pension in this case was awarded pursuant to the CPP which came into being in 1966. Most salaried Canadians are contributors to the CPP, although eligible persons employed in Quebec subscribe instead to a similar plan, the Quebec Pension Plan. Eligible persons make one half of the mandatory contributions based on their wage, while the person’s employer must pay the other half of the contribution. Contributors are then entitled to apply for benefits, provided they meet the criteria set out in the CPP Act. The quantity of the benefit allowed will vary according to the class of benefit received, the length of time a contributor has made contributions and the total amount of contributions made.

15 Benefits are paid under the CPP in several situations. The most common benefit is the CPP retirement pension. Survivor's benefits are also available to the surviving spouse or children of a contributor. The benefit class with which we are concerned in this appeal is the disability benefit.

16 The CPP pays benefits to disabled persons and their dependent children pursuant to s. 44 of the *Canada Pension Plan*. In order to receive these benefits, a person must apply for them and must generally meet three conditions. First, generally speaking, he or she must be under 65 years of age. Second, he or she must have contributed the minimum qualifying amount to the CPP for the minimum qualifying period. These figures vary according to situation and are subject to some exceptions, but the essential fact is that there is a minimum qualifying contribution and contributory period. Third, he or she must be "disabled".

17 Disability is defined at s. 42(2)(a) of the *Canada Pension Plan*. The section requires that a disability, in order to fulfil this criterion of eligibility for benefits, be both "severe and prolonged". These terms are defined thus in s. 42(2)(a):

(i) a disability is severe only if by reason thereof the person in respect of whom the determination is made is incapable regularly of pursuing any substantially gainful occupation, and

(ii) a disability is prolonged only if it is determined in prescribed manner that the disability is likely to be long continued and of indefinite duration or is likely to result in death.

Thus, the third requirement for receiving disability benefits under the CPP is that the contributor be unable to work, and likely to be unable to work for a long, indefinite period, because of his or her disability.

18 CPP disability benefits are discontinued upon the contributor ceasing to be disabled, or upon the contributor turning 65, at which time he or she is moved to the CPP retirement pension. Thus, these benefits are awarded only so long as the contributor continues to meet the eligibility criteria.

B. *Section 9 of the Crown Liability and Proceedings Act*

19 I turn now to a consideration of the text of s. 9 of the *Crown Liability and Proceedings Act* before moving to the ultimate question, that is, whether the section, properly construed, captures the CPP disability benefit. The crux of the question is whether the section’s description of pensions paid “in respect of . . . death, injury, damage or loss” encompasses the benefit. Within that context, the words of significance here are the words “in respect of”.

20 This phrase, “in respect of”, is clearly a broad one. In urging a broad approach to interpreting that phrase in s. 9, the respondent relies, as did the Federal Court of Appeal, on the following observations of Dickson J. (as he then was), interpreting the *Income Tax Act*, in *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29, at p. 39:

The words “in respect of” are, in my opinion, words of the widest possible scope. They import such meanings as “in relation to”, “with reference to” or “in connection with”. The phrase “in respect of” is probably the widest of any expression intended to convey some connection between two related subject matters.

Dickson J.’s reading of these words has been more recently approved by this Court in *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, [1999] 1 S.C.R. 743, at para. 16, interpreting s. 487(1) of the *Criminal Code*.

21 The Federal Court of Appeal has also relied on Dickson J.’s interpretation in another case interpreting s. 9 (then s. 4(1) of the *Crown Liability Act*, R.S.C. 1970, c. C-38), *Langille v. Canada (Minister of Agriculture)*, *supra*. In that case, a farmer brought an action against the Crown for damages after the Ministry of Agriculture destroyed his diseased farm animals in order to prevent the spread of disease. Compensation was paid to him directly from the Consolidated Revenue Fund in settlement of his losses. The Federal Court of Appeal found that s. 4(1) barred his action. The words “in respect of” were found to catch the compensation paid. Stone J.A. concluded, at p. 213, that:

[T]he broad reach of subsection 4(1) does include the damage or loss for which the respondents here claim on account of their destroyed animals. The compensation was paid “in respect of” “damage or loss” resulting from the destruction of the animals and the claim in the present action is also “in respect of” that same “damage or loss”. The only difference here is that respondents, by way of this action in tort, are seeking to enhance recovery in respect of that destruction beyond the level of the compensation they were paid in 1978 out of the Consolidated Revenue Fund.

22 It is fair to say, at the minimum, that the phrase “in respect of” signals an intent to convey a broad set of connections. The phrase is not, however, of infinite reach. Although I do not depart from Dickson J.’s view that “in respect of” is among the widest possible phrases that can be used to express connection between two legislative facts or circumstances, the inquiry is not concluded merely on the basis that the phrase is very broad.

23 The breadth and ambiguity of the words used to express the connection between the pension or compensation paid and the loss to which the payment relates is equally present in the French version. This is seen most clearly in the verb phrase connecting the loss to the pension, that is, “*ouvrant droit au paiement d’une pension ou*

indemnité” (emphasis added). It is important to keep in mind the distinct manner in which Parliament has chosen to frame the section in the two languages. However, I would note, crucially, that it is the same connection — the link between the pension paid and the loss sustained — that Parliament has rendered somewhat obscure by the use of both “in respect of” and “*ouvrant droit*”. The distinct features of phrasing in each official version do not, in themselves, remedy the central ambiguity with which this appeal is concerned.

24 In both cases, we must not interpret words that are of a broad import taken by themselves without looking to the context in which the words are found. Indeed, the proper approach to statutory interpretation requires that we more carefully examine the wider context of s. 9 before settling on the correct view of its reach. In *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, in discussing the preferred approach to statutory interpretation, the Court stated, at para. 21:

. . . Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

In my view, the nature and content of this approach, and the accuracy of Professor Driedger’s succinct formulation, have not changed. Accordingly, we cannot rely blindly on the fact that the words “in respect of” are words of broad meaning.

25 With this approach in mind, I take note that s. 9 refers to pensions and compensations that are made in respect of “death, injury, damage or loss”. The fact that

the broad phrase “in respect of” is tied to this enumeration of events is of some significance. The ordinary sense of this list of words indicates that they are specific events to which liability could, but for the operation of s. 9, attach. That is, s. 9 envisions pensions and compensation paid because of an event of death, injury, damage or loss. This is consistent with, for instance, the destruction of cattle in *Langille, supra*. The compensation paid by the government in that case was in settlement of the loss of cattle suffered by the plaintiffs. The fact that the plaintiffs sought compensation of the same loss in tort was sufficient to show identity between the subject of the attempted claim and the subject of the compensation.

26 This example is consistent with a reading of the words “in respect of” in the context of the clause in which they appear. The fact that a pension must be in respect of some event of “death, injury, damage or loss” gives us a fuller understanding of the import of the words. What this broad, yet in itself imprecise, phrase means, can be understood by asking what kind of a thing the pension must be in respect of. We will have a different view of the precise scope of the phrase in this context from, for example, the context of the clause which follows in s. 9. The latter clause refers to “death, injury, damage or loss in respect of which the claim is made”. The breadth of the words “in respect of” when attached to the concept of a “claim” may be different from the breadth of the same words when attached to a series of events.

27 This interpretation is also consistent with the French version of the section. Actions that are barred are actions “*pour toute perte*”, or “for any loss”, “*notamment décès, blessures ou dommages*,” that is, “in particular, for death, injury or damage” where such a loss also gives rise to (“*ouvrant droit*”) the payment of a pension or compensation. In both the French and English versions of the statute, the key is to recognize that the loss the recovery of which is barred by the statute must be the same

loss that creates an entitlement to the relevant pension or compensation. The enumeration of events as clearly explicates the meaning of “*perte*” in the French text as it does the meaning of “in respect of” in English.

28 In my view, the language in s. 9 of the *Crown Liability and Proceedings Act*, though broad, nonetheless requires that such a pension or compensation paid or payable as will bar an action against the Crown be made on the same factual basis as the action thereby barred. In other words, s. 9 reflects the sensible desire of Parliament to prevent double recovery for the same claim where the government is liable for misconduct but has already made a payment in respect thereof. That is to say, the section does not require that the pension or payment be in consideration or settlement of the relevant event, only that it be on the specific basis of the occurrence of that event that the payment is made.

29 This breadth is necessary to ensure that there is no Crown liability under ancillary heads of damages for an event already compensated. That is, a suit only claiming for pain and suffering, or for loss of enjoyment of life, could not be entertained in light of a pension falling within the purview of s. 9 merely because the claimed head of damages did not match the apparent head of damages compensated for in that pension. All damages arising out of the incident which entitles the person to a pension will be subsumed under s. 9, so long as that pension or compensation is given “in respect of”, or on the same basis as, the identical death, injury, damage or loss.

30 Although such comments are not determinative, I note that this view is consistent with comments made by the Minister of the day in debating the original *Crown Liability Act* in 1953. The Minister likened the type of pensions the receipt of which was intended to bar other actions to provincial worker’s compensation legislation,

in which the right to sue was exchanged, as it were, for comprehensive administrative compensation (*House of Commons Debates*, vol. 4, 7th Sess., 21st Parl., March 26, 1953, at p. 3333).

C. Application to the Canada Pension Plan

31 Keeping in mind that s. 9 refers to pensions and compensations “in respect of” particular kinds of events, I am of the opinion that disability benefits under the CPP do not fall within its scope on the ordinary meaning of the words. I concede that the words “in respect of” may encompass more than direct compensation for loss. However, I do not believe that the CPP makes its payments on the same basis as s. 9 seems to require. That is, s. 9 contemplates payment in some manner contingent on the occurrence of an event of “death, injury, damage or loss”. A CPP disability benefit, by contrast, is not contingent on events at all, but on the present disabled condition of a qualified contributor under 65 years of age who makes an application for payment. Whether or not the present serious and long-term disability that entitles an otherwise qualified contributor to receive CPP disability benefits happens to be the result of “death, injury, damage or loss” is not relevant to the determination of eligibility. The only relevant question, assuming a person has met the conditions of eligibility with respect to age and contribution status, is the status of the applicant as disabled at the time the application is made.

32 The respondent argued that the pension is “in respect of” the injury that is the subject of the action in tort, since it is only “because” of the injuries suffered that the appellant was eligible for CPP disability benefits. This follows on the Federal Court of Appeal’s observation in this case that “in his own application for the CPP disability pension [Sarvanis] identified the cause of this injury as the accident which he suffered

on that date” (para. 8). I disagree that this is a relevant fact to our understanding of the nature of the CPP benefit. Sarvanis’ explanation of the cause of his disability was only relevant as evidence for the determination by the government as to whether or not he actually was disabled at the time of the application, as well as in establishing the date on which he became eligible for benefits. It implies nothing about the contingency of such payments on an event of injury. It simply reveals that, in this case, the requisite disabled status of Sarvanis happened to be caused by an injury, rather than, for example, genetic factors.

33 This conclusion is bolstered by the context both of the CPP and other Acts awarding pensions that are caught by s. 9. To look first at the CPP, the clear purpose of the CPP disability benefits is to supplement the incomes of disabled Canadians who have difficulty meeting day-to-day expenses because of their inability to work, that is, their status as disabled. For this reason, it has already been held by this Court that CPP disability payments are not to be considered indemnity payments, and therefore that they are not to be deducted from tort damages compensating injuries that factually caused or contributed to the relevant disability. See *Canadian Pacific Ltd. v. Gill*, [1973] S.C.R. 654, at p. 670; *Cugliari, supra*. This rule is premised on the contractual or contributory nature of the CPP. Only contributors are eligible, at the outset, to receive benefits, provided that they then meet the requisite further conditions.

34 It is useful to contrast other statutes providing pensions or compensations that are clearly foreclosed by s. 9 of the *Crown Liability and Proceedings Act*. One example, already noted above, is the *Pension Act*. The *Pension Act* provides for pensions payable to members of the Canadian Forces who are injured in the line of duty. The current version of the *Pension Act* specifically refers to s. 9 at s. 111(2), referring to “action[s] that [are] not barred by virtue of section 9 of the *Crown Liability and*

Proceedings Act” (S.C. 2000, c. 34, s. 42). The former version of the *Pension Act*, also at s. 111, provided simply that:

No action or other proceeding lies against Her Majesty or against any officer, servant or agent of Her Majesty in respect of any injury or disease or aggravation thereof resulting in disability or death in any case where a pension is or may be awarded under this Act or any other Act in respect of the disability or death.

Similarly, the *Government Employees Compensation Act* provides, at s. 12:

Where an accident happens to an employee in the course of his employment under such circumstances as entitle him or his dependants to compensation under this Act, neither the employee nor any dependant of the employee has any claim against Her Majesty, or any officer, servant or agent of Her Majesty, other than for compensation under this Act.

The *Merchant Seamen Compensation Act*, R.S.C. 1985, c. M-6, contains a similar provision at s. 13.

35 The key difference among all three of these examples of pensions which, upon receipt or eligibility, do foreclose an action pursuant to s. 9 of the *Crown Liability and Proceedings Act* is not simply the fact that the bar is repeated in each particular statute. Rather, it is that in each case the crucial condition of eligibility is the occurrence of “death, injury, damage or loss”, and that it is because of that occurrence that the pension is received. For example, s. 21(1)(a) of the *Pension Act* provides that a pension is granted only “where a member of the forces suffers disability resulting from an injury or disease . . . that was attributable to or was incurred during . . . military service . . .” (emphasis added). Similarly, the *Government Employees Compensation Act* at s. 4(1)(a) provides benefits only where an employee:

(i) is caused personal injury by an accident arising out of and in the course of his employment, or

(ii) is disabled by reason of an industrial disease due to the nature of the employment;

That is, these pensions are paid on the same basis as a tort claim is, while the CPP is paid on the same basis as an insurance claim.

36 The interpretation adopted here is further bolstered by considering the context of the broader legislative purpose of the *Crown Liability and Proceedings Act* as a whole. This Act was passed in order to establish Crown liability, which had hitherto been blocked by the common law. Although it was passed prior to the establishment of the CPP, it would be surprising indeed if the *Canada Pension Plan*, and the quasi-contractual insurance scheme it created, were meant to nullify the increased exposure of the Crown liability legislation. Put another way, why would the *Crown Liability and Proceedings Act* explicitly give so much by removing the common law obstacle, yet tacitly take almost all of it away by the construction of the *Canada Pension Plan* advanced by the Crown? Given the mandatory nature of contribution to the CPP, such would be the effect of the reading of s. 9 urged by the respondent.

37 That Parliament most likely did not intend this outcome is also consistent with the absence of any explicit provision suggesting so in the *Canada Pension Plan*, measured alongside the clear provisions citing to, or replicating in substance, s. 9. Unlike the *Canada Pension Plan*, the Acts which do reproduce the bar of actions are comprehensive schemes designed to ensure the efficacious compensation of persons for their injuries and losses incurred in the public service.

38 Simply put, s. 9 of the *Crown Liability and Proceedings Act* establishes Crown immunity where the very event of death, injury, damage or loss that forms the basis of the barred claim is the event that formed the basis of a pension or compensation award. The CPP, a contributory plan not contingent on death, injury, damage or loss, but rather on physical condition and on adequate quantum and duration of contribution, is a significantly different animal.

VII. Conclusion

39 For all of these reasons, I find that a disability benefit awarded under the *Canada Pension Plan* does not constitute a pension or compensation “in respect of . . . death, injury, damage or loss” for the purposes of s. 9 of the *Crown Liability and Proceedings Act*. Accordingly the appeal is allowed, the order of MacKay J. is restored, and the respondent’s motion for summary judgment is dismissed. The appellant should have his costs in this Court and in the courts below.

Appeal allowed with costs.

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Ottawa.*