

DISTRICT COURT ACT 1973—RULE

NEW SOUTH WALES



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1. This rule is made by the Rule Committee on 7 April 1992 and has effect on and from 1 July 1992.

2. The District Court Rules 1973 are amended as follows:

(a) Part 1 rule 3

After the matter relating to Part 24B insert the following matter:

PART 24C—MOTOR ACCIDENTS LIST

(b) Part 24C

After Part 24B insert the following Part:

PART 24C

MOTOR ACCIDENTS LIST

Interpretation

1. (1) In this Part, “**action under the Act**” means proceedings commenced on or after 1 July 1992 in respect of a claim within the meaning of Part 5 of the Motor Accidents Act 1988.

(2) This Part applies to an action under the Act notwithstanding anything in these Rules other than this Part.

Motor Accidents List

2. (1) The registrar for each proclaimed place shall maintain a Motor Accidents List and shall enter in that List any action under the Act as soon as the action is commenced.

(2) The statement of claim in an action under the Act shall bear in the heading the words “Motor Accidents List”, and shall contain:

(a) a statement of the date on which the accident the subject of the action occurred;

- (b) a statement that the accident was reported in compliance with section 42 of the Motor Accidents Act 1988, or an indication of what explanation will be offered to the Court for non-compliance;
- (c) a statement that a claim was made in respect of the accident in compliance with section 43 of that Act, or an indication of what explanation will be offered to the Court for non-compliance; and
- (d) where the action is commenced before the time prescribed by section 52 (1), or after the time prescribed by section 52 (3), of that Act, an indication of the grounds on which the plaintiff relies as referred to in section 52 (2), an indication of what explanation will be offered to the Court as referred to in section 52 (3), or a statement that leave of the Court has been granted as referred to in section 52 (4), of that Act.

(3) An action entered in the Motor Accidents List shall not be included in the Individual List Project.

Service of statement of claim (by post or otherwise)

3. (1) The statement of claim in an action under the Act shall be served on the defendant and the defendant's third party insurer within 3 months after the date of commencement of the action.

(2) Service of a statement of claim in an action under the Act may be effected as though the statement of claim were a notice or other document referred to in section 133 of the Motor Accidents Act 1988.

Praecipe for trial

4. (1) The plaintiff in an action under the Act shall, within 6 months after commencement of the action, serve and file a praecipe for trial.

(2) An action under the Act in which no praecipe for trial is filed in compliance with subrule (1) shall be deemed to have been struck out of the list of actions awaiting trial, and shall not be restored to that list except by order of the Court, which may, if made, be made on terms.

Particulars to be supplied when praecipe served

5. (1) In an action under the Act the plaintiff shall, on or before serving the praecipe for trial, serve on the defendant the statement, documents and reports referred to in Part 12 rule 4A (2) relative to the action.

(2) Without limiting the generality of subrule (1), the documents required under that subrule to be served shall, where a claim is made in respect of loss of income, include:

- (a) a letter from the employer (if any) of the plaintiff immediately before the accident the subject of the action, providing particulars of:
 - (i) the dates on which the plaintiff was absent from work due to the accident;
 - (ii) the total nett remuneration lost by the plaintiff in respect of that absence, including overtime;
 - (iii) if the plaintiff returned to work for that employer, the plaintiff's classification and duties, and any alteration in the remuneration paid to the plaintiff, after that return; and
 - (iv) if that employment has been terminated, the date of and reason for the termination;
- (b) where the plaintiff was self-employed immediately before the accident, copies of any accountants' reports or other documents on which the plaintiff intends to rely to establish his pre-accident income; and
- (c) copies of the plaintiff's income tax returns relating to income received during the period of 2 financial years ending immediately before the financial year which included the date of the accident and of any income tax return lodged by the plaintiff since the date of the accident,

and, where any, or any part of any, of the statement, documents and reports required by paragraph (a), (b) or (c) to be served cannot be served, a statement of the reasons why it cannot be served.

(3) Part 12 rule 4A (2B) and (2C) (which relate to the completeness and updating of particulars) apply to the statement, documents and reports required under subrule (1) to be served, but Part 12 rule 4A does not operate to require the statement, documents and reports to be served more than once.

(4) Subrule (1) does not apply to an action under the Act which is maintainable by virtue of the Compensation to Relatives Act 1897, but in any such action the plaintiff shall, on or before serving the praecipe for trial, serve on the defendant's insurer in respect of each person on whose behalf the action is brought:

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- (a) a statement as to:
 - (i) the person's name, address, relationship to the deceased person the subject of the action, marital status and any anticipated alteration to that status; and
 - (ii) whether the dependency of the person on the deceased person is claimed to have been whole or partial, the circumstances in which the person received support from the deceased person, and the quantum of that support during the 12 months' period immediately prior to the death of the deceased person;
- (b) a copy or extract of the person's birth certificate, and, if the person has been married, a copy of the person's marriage certificate;
- (c) a letter from the employer (if any) of the deceased person immediately before the accident the subject of the action, providing particulars of the deceased person's remuneration and prospects of promotion at the date of his death;
- (d) copies of the deceased person's income tax returns relating to income received during the period of 2 financial years ending immediately before the financial year which included the date of his death;
- (e) copies of bank statements, financial records, and any other documents on which the plaintiff intends to rely to establish the extent of the support and other benefit provided to the person by the deceased person, covering a period of not less than 12 months immediately prior to the date of the death of the deceased person;
- (f) copies of all documents, including accounts and receipts, in support of any claim for the cost of a headstone, funeral, monumental mason or other expenses relating to the death of the deceased person; and
- (g) copies of documents evidencing the nett value of the estate of the deceased person,

and, where any, or any part of any, of the statement, documents and reports required by any of paragraphs (a) to (g) to be served cannot be served, a statement of the reasons why it cannot be served.

(5) The plaintiff shall, when filing the praecipe for trial in the action, file a copy of the statement mentioned in subrule (1) or (4)

endorsed with a certificate by the plaintiff or his solicitor to the effect that the statement, documents and reports have been served on the defendant as required by this rule.

Status conference

6. (1) An action in the Motor Accidents List shall be listed before the Court or registrar for a status conference as soon as practicable after a date 3 months after the date of filing of the praecipe for trial in the action.

(2) The registrar shall give to the parties 2 months' notice of the date of the status conference.

(3) Without limiting the operation of rule 5, each party shall serve on every other party, no later than 7 days before the date of the status conference, all medical reports on which the party intends to rely at the hearing of the action, and, where any such report cannot be served, a statement of the reasons why it cannot be served.

(4) At or before the status conference, each party shall file a status sheet, a memorandum of issues, and a certificate as to attempted settlement, any of which may include notice to the Court as to whether or not an offer of compromise has been made.

(5) Subrules (1) to (4) apply subject to any order of the Court made at any time.

(6) At the status conference the action shall be before the Court or registrar for directions.

Directions

7. The Court (or, where it is otherwise within the power of the registrar, the registrar) may at a status conference or at any other time give, in respect of an action in the Motor Accidents List, directions as referred to in section 68A of the Act, and those directions may include, but are not limited to, directions which:

- (a) require a party or parties to the action to:
 - (i) attend a call-over, a pre-trial conference, a status conference or a dispositions hearing;
 - (ii) complete any step within a time specified in the direction, whether or not that time is prescribed in the rules; or
 - (iii) do any thing specified in the direction to ensure that settlement is expeditiously and fully considered or the action is expeditiously prepared for hearing;
- (b) order that the action be referred for arbitration under the Arbitration (Civil Actions) Act 1983;

- (c) award costs, or impose other sanctions, against a party or the party's solicitor if a direction is not complied with;
- (d) strike an action out of the list of actions awaiting trial; or
- (e) where an action is struck out, make orders as to the terms and conditions on which it may be restored to the list.

Non-compliance

8. A defendant may not move the Court to strike out an action under the Act on the ground that:

- (a) the accident the subject of the action was not reported in compliance with section 42;
- (b) a claim was not made in respect of the accident in compliance with section 43; or
- (c) the action was commenced outside a relevant time period as prescribed by operation of section 52,

of the Motor Accidents Act 1988 unless the defendant so moves within 2 months after service on the defendant's insurer of the statement of claim in the action.

EXPLANATORY NOTE

The purpose of the amendments is to make provisions, different from the provisions made in the Government Gazette of 28 February 1992 at p. 1262, establishing a Motor Accidents List. The new provisions are to commence on 1 July 1992, instead of 1 May 1992, and they differ from the previous provisions:

- (a) by allowing a plaintiff up to 6 months after commencement of the action to serve the necessary documents relating to economic loss;
- (b) by allowing the statement of claim in an action under the Motor Accidents Act 1988 to be served by post; and
- (c) in other minor and consequential matters.

E. J. O'Grady
Secretary to the Rule Committee.
