

**IN THE DISTRICT COURT
AT WELLINGTON**

**I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA**

[2022] NZACC 136 ACR 158/20

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPEAL UNDER SECTION 149 OF THE ACT
BETWEEN	ESTATE OF WILLIAM MARUPO Appellant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing: 28 June 2022

Heard at: Auckland/Tāmaki Makaurau

Appearances: Ms N Te Kani, partner of the deceased
Ms R Roff for the Respondent

Judgment: 19 July 2022

RESERVED JUDGMENT OF JUDGE C J McGUIRE
[Personal injury - s 26(1), (2), (3); Accident Compensation Act 2001]

[1] This appeal arises from a decision of the respondent dated 3 February 2020 declining to approve financial support following the death of Mr William Marupo.

[2] Mr Marupo's estate challenged ACC's decision by way of review. In a decision dated 14 July 2020, the reviewer dismissed the application on the basis that the medical evidence established that Mr Marupo's death was caused by ischaemic heart disease due to coronary atherosclerosis, not accidental death by drowning.

Background

[3] Mr Marupo died on 4 December 2019. He was a way with work mates on an end-of-year social club trip to Hicks Bay.

[4] At around 7 am on 4 December 2019, he entered the water for a snorkel dive watched by his friends, Mr Moeke and Mr Smith, they having decided, at that stage, not to dive. They observed Mr Marupo swimming around and diving under once. He was then seen climbing onto a rock and taking off his fins and dive mask. Mr Smith said in his statement:

We knew something wasn't right.

[5] Mr Smith swam out to him. After some minutes, Mr Smith, with two other friends managed to get Mr Marupo on to a rock by which time it appears he had lost consciousness. They performed CPR on him until the emergency helicopter arrived. Sadly, Mr Marupo was unable to be resuscitated.

[6] A coroner authorised autopsy was undertaken by Dr Shaw who found the death was due to ischaemic heart disease. The autopsy report also included the following:

Principle pathological findings:

- 1 Obstructive coronary atherosclerosis of the left anterior descending artery.

Cause of death:

Part one

- ischaemic heart disease
- coronary atherosclerosis

[7] In a letter dated 22 January 2020, to Ms Te Kani, JP Ryan, Coroner, included the following:

...

[3] You will note from the report that Dr Shaw confirms his diagnosis as to the cause of death, which is ischaemic heart disease due to coronary atherosclerosis. The pathologist's report notes that there was a segment of obstructive coronary atherosclerosis of the left anterior descending artery. It is on this pathological finding that the pathologist concludes the cause of

death was cardiac related, and not drowning. In addition, the pathologist did not find any significant injury to Mr Marupo's head which contributed to his death.

...

[5] Although the cause of death is natural, the circumstances of the death are likely to have been a contributing factor. That is to say, it is likely that Mr Marupo's death was precipitated by him getting into difficulty in the ocean. This would have caused significant additional stress on his cardio vascular system, and likely induced a cardiac arrest.

...

[7] Although it cannot be stated with certainty, it is reasonable to assume that Mr Marupo would not have died that day if he had not been subjected to the significant stress that he suffered as a result of being in the water.

[8] On 3 February 2020, ACC declined to approve the appellant's financial support application on the basis that it did not have any information showing Mr Marupo had passed away from a personal injury caused by accident. Because of this, ACC was unable to cover the claim or provide financial assistance.

[9] In a decision dated 14 July 2020, ACC's decision was upheld on review.

Submissions on behalf of the appellant

[10] In her written submission, Ms Te Kani says:

I submit that the decision to decline for financial aid in February 2020 by ACC is wrong. Therefore I have filed an appeal.

[1] My reason for this is the deceased never had any cardiovascular issues in the 18 years we have been with Gate Pa.

[11] Ms Te Kani produced a letter of confirmation from GP, Dr Esterman, that as a patient at Gate Pa Medical Centre Limited from August 2004, the deceased was not at any stage diagnosed with any cardiac disease.

[12] Ms Te Kani also noted that the deceased had worked for the port of Tauranga for 12 years in a dangerous job that required a form of physical fitness. Ms Te Kani submitted that the deceased's heart attack was brought on by panic in the water while trying to get to shore in rough conditions.

Respondent's submissions

[13] Ms Roff submits that unfortunately for the deceased's family, it was not a personal injury covered by the Accident Compensation Act that caused the death of the deceased.

[14] Ms Roff refers to the provisions of the Accident Compensation Act 2001 s 20(1) of which provides:

- (1) A person has cover for a personal injury if
 - ...
 - (c) the personal injury is described in any of the paragraphs in subsection (2).

[15] In our context, ss 20(2)(i) and (j) are relevant. Cover is provided for cardiovascular episodes if it is:

- (i) Personal injury that is a cardiovascular...episode that is a treatment injury suffered by the person:
- (j) personal injury that is a cardiovascular... episode that is a personal injury suffered by the person to which section 28(3) applies.

[16] Section 28(3) provides:

Work-related personal injury includes a cardiovascular ... episode suffered by a person, if the episode is caused by physical effort or physical strain, in performing his or her employment, that is abnormal in application or excessive in intensity for the person.

[17] Ms Roff submits that, regrettably for the appellant's family, ACC cover is not provided for death following a cardiovascular episode of the kind suffered by the deceased in the circumstances as they have been described.

[18] She notes that similarly in *The Estate of Wei*,¹ the Court found that a fatal heart attack following an assault by three youths while the deceased was working at a shop, likewise, fell out outside cover provided by the Accident Compensation Act.

¹ *Wei in the Estate of Wei v Accident Compensation Corporation* [2004] NZACC 338.

Decision

[19] Mr Marupo's death at Hicks Bay on 4 December 2019 came completely without warning and caused profound shock and distress to his friends and family.

[20] He had plainly been, until then, a hard-working man with a reasonable level of fitness, and with no history of cardiovascular problems.

[21] In his letter to Ms Te Kani dated 22 January 2020, the coroner said:

[5] Although the cause of death is natural, the circumstances of the death are likely to have been a contributing factor. That is to say, is likely that Mr Marupo's death was precipitated by him getting into difficulty in the ocean. This would have caused significant additional stress on this cardiovascular system, and likely induced a cardiac arrest.

...

[7] Although it cannot be stated with certainty, it is reasonable to assume that Mr Marupo would not have died that day if he had not been subject to the significant stress that he suffered as a result of being in the water.

[8] I noted your comments that family are finding it difficult to accept that Mr Marupo died from heart disease when there is nothing in his GP notes to indicate that he had heart disease. Internet research on MedlinePlus site shows that atherosclerosis usually does not cause symptoms until it severely narrows or totally blocks an artery. Most people do not know they have it until they have a medical emergency.

[22] The coroner also noted that being overweight and a smoker would have predisposed the deceased to developing heart disease.

[23] In the 2001 Act, the Parliament has provided definitions of accidents causing personal injuries that are covered by the Act.

[24] When it comes to cardiovascular episodes, the Act provides cover in two sets of circumstances only. The first of these (s 20(2)(i)) relates to a cardiovascular episode that is a treatment injury suffered by a person.

[25] The other cardiovascular episode that is covered by the Act is where it meets the definition in s 28(3) of a work-related personal injury if the (cardiovascular)

episode is caused by physical effort or physical strain, in performing his or her employment, that is abnormal in application or excessive in intensity for the person.

[26] Unfortunately, in the case of Mr Marupo, the cardiovascular event which he suffered, and which took his life was not one of those for which cover was provided, under the Act.

[27] Therefore, follows that I must find the appellant's estate is not entitled to cover for the unexpected death of Mr Marupo.

[28] I therefore must dismiss the appeal.

[29] There is no issue as to costs.



Judge C J McGuire
District Court Judge