

**IN THE DISTRICT COURT  
AT WELLINGTON**

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

**[2022] NZACC 36**

**ACR 118/20**

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPEAL UNDER SECTION 149 OF THE ACT
BETWEEN	ANDRE SOULSBY Appellant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing: On the papers

Appearances: Mr J Robinson, advocate for the appellant  
Ms F Becroft for the respondent

Judgment: 11 March 2022

---

**RESERVED JUDGMENT AS TO COSTS OF JUDGE C J McGUIRE**

---

[1] This is a judgment as to costs following the substantive judgment in this matter dated 5 November 2021 which allowed the appellant's appeal.

[2] This Court is bound by the High Court decision in *ACC v Carey*<sup>1</sup>.

[3] At paragraph [91] of that decision the Court said:

[91] Non lawyer advocates will vary in their expertise and experience. The Judge should not have to go into detail in each case analysing expertise and experience and then move on to consider the assistance, which has or has not been provided. Instead a Judge should be entitled to start with a percentage of the scale costs, if the Judge has been assisted by the non lawyer representative

---

<sup>1</sup> *Accident Compensation Corporation v Carey* [2021] NZHC 748.

in a straightforward case it would, as a guideline, generally be appropriate to set a daily rate at 50% of the daily lawyer rate based on category 1. Under the District Court Rules category 1 relates to proceedings of a straightforward nature able to be conducted by counsel considered junior.

[4] In our case the issue was the appellant's incapacity or not prior to his last day of being an earner.

[5] In Mr Soulsby's case he was in jail at that time.

[6] The Court found that the appellant's incapacity caused by injury was present on 14 April 2018 that is 28 days after he ceased work due to his incarceration.

[7] The Court was persuaded that this was so for reasons other than those put forward by the appellant's advocate.

[8] In all of the circumstances of the present case I conclude that the High Court's guideline set in *Carey* of 50% of the daily lawyer rate based on category 1 is appropriate. Indeed, if anything, the issues to be decided in *Carey's* were more complex than the sole issue that had to be determined in the present case.

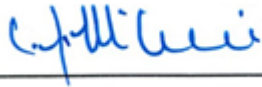
[9] Accordingly, I conclude that a daily rate set at 50% of the daily lawyer rate based on category 1 under the District Court Rules is appropriate.

[10] At paragraph 2.13 of Ms Becroft's submissions she quantifies reasonable costs in line with the *Carey* decision.

[11] I agree with her quantification which results in a cost award to the appellant of \$3,048.

[12] I acknowledge what Ms Becroft says in her submission relating to the obtaining of further evidence by way of an affidavit of the appellant's accountant and a report from occupational specialist Dr Burgess. The allocation of one day to enable these steps to be taken is reasonable.

[13] I also note that the difficulties that Mr Robinson raises in terms of the post decision phase with the Corporation's implementation of the decision is outside the parameters of costs that are provided for under the District Court Act and Rules. Accordingly, I have no jurisdiction in regard to them.



Judge C J McGuire  
District Court Judge

Solicitors: Medico Law, Auckland for the respondent