IN THE DISTRICT COURT
AT WELLINGTON

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

[2022] NZACC 64 **ACR 261/20 and ACR 15/21**

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

Hearing: On the papers

Mr D Carey for the Appellant
Mr P McBride for the Respondent

Judgment: 20 April 2022

COSTS JUDGMENT OF JUDGE C J McGUIRE

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[1] Paragraph 65 of the recalled substantive judgment in this matter of 18 February 2022 recorded:

> The parties seek costs. Costs are reserved. The parties may file memoranda in respect thereof within 30 days.

[2] In accordance with this, Mr Carey on behalf of the appellant filed submissions for costs dated 20 March 2022.

[3] Although Mr McBride on behalf of the respondent indicated in his submissions at the substantive hearing of the District Court appeals on these matters (ACR 261/20 and ACR 15/21) on 10 November 2021 that he was seeking costs, he filed no further

submissions in respect thereof within the 30 days referred to in [1] above. However, in a letter addressed to the appellant's advocate Mr D Carey, dated 3 March 2022 and provided to the Registry by Mr Carey, Mr McBride said inter alia:

> In the event that you do seek to advance the application for leave to appeal, or any appeal in the High Court (in both of which will in any event be opposed), ACC will seek costs against you/your father on these matters…

[4] I find therefore that as at the conclusion of the 30 days from 18 February 2022 allowed for submissions on costs in respect of the District Court's substantive decision on these appeals (on 2 February 2022 and as recalled on 18 February 2022), the respondent's position was that it had not sought costs, nor had it made submissions in respect of the appellant's application for costs.

[5] The appellant's application for costs falls to be determined under Rule 14 of the District Court Rules 2014. Rule 14.1 provides:

> All matters are at the discretion of the Court if they relate to costs…

[6] Rule 14.2 provides:

> (1) the following general principles apply to the determination of costs:
>
> (a) The party who fails with respect to a proceeding or an interlocutory application should pay costs to the party who succeeds;
>
> (b) An award of costs should reflect the complexity and significance of the proceeding; …

[7] The Westlaw Commentary on Rule 14.1 says:

> The new rules are substantially the same as the High Court Rules and therefore more guidance can be sought from the cases on those rules. The Court still has a general discretion, in relation to costs, that overrides all other rules regarding costs. The basic principle is that the court's discretion must be exercised according to what is "reasonable and just and not according to private opinion". *Cates v Glass* [1920] NZLR 37 (CA), reaffirmed by Grieg J in Wellington Reginal Council v Post Office Bank Ltd HC Wellington CP720/87, 5 July 1988.

[8] Westlaw notes that the principles governing the exercise of the general discretion given by Rule 14.1 are now established:

(a) At least since the introduction of the detailed costs regimes in 2000 in the High Court, the discretion has not been unfettered. It is qualified by the specific costs rules rr 14.2 – 14.10 and is exercisable only in situations not contemplated by those specific rules, or which are not fairly recognised by them. The same approach is likely to be taken in the District Court because of the use of the same rules.

(b) The cost regime is of a regulatory nature and it is important that its integrity be maintained.

(c) There is accordingly a strong implication that the Court is to apply the regime in the absence of some reason to the contrary.

(d) Any departure must be a considered and particularised exercise of the discretion.

(e) Although the Court does not need to give reasons for a cost order that applies the regime, reasons (albeit brief) must be given for any departure.

[9] The commentary also refers to the fact that pre-proceeding and post-judgment conduct is relevant. The cases of *Paper Reclaim Ltd v Aotearoa International Ltd*[1] and *Diagnostic Medlab Ltd v Auckland District Health Board*,[2] are referred to.

[10] Mr Carey, advocate, has filed a nine-page memorandum relating to costs. He makes these points:

(a) The appellant was unsuccessful in appeal, however, the appellant was in part held responsible for assembling a bundle of documents by the respondent in a letter dated 4 February 2021. He says that the appellant assembled and provided the bundle of documents for these appeals at a cost.

(b) He submits consideration is required to ensure claimants have representation and while full costs may not be rewarded when unsuccessful, costs in part ensure claimants can access representation in Court, fulfilling the intention of the ACC ethos to provide a fair and sustainable scheme.

[11] Mr Carey's ranged over other matters including defamation, unfounded allegations and blackmail.

[12] He also seeks costs at review and the costs of a Deloitte's accounting report.

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1 *Paper Reclaim Ltd v Aotearoa International Ltd* [2006] 3 NZLR 188.

2 *Diagnostic Medlab Ltd v Auckland District Health Board* HC Auckland CIV-2006-404-4724, 13 June 2007 at [12]

[13] Plainly matters of defamation, unfounded allegations and blackmail beyond the parameters of Rule 14 of the District Court Rules.

[14] Likewise, Mr Carey's claim for costs at review are the subject of a separate regime of regulations made for that purpose. They are not within the jurisdiction of the District Court on appeal.

[15] The appellant's advocate acknowledges that he was unsuccessful on these appeals. Therefore, in terms of the Rule 14.2(1)(a), the principle is that the party who fails should pay costs to the party who succeeds.

[16] In respect of appeals ACR 261/20 and ACR 15/21 this Court reached the conclusion that the Court of Appeal's dictum in *Robinson v ACC* [2007] NZAR 193 (CA) and its binding nature on this Court, stood in the way of the appellant's proposition that interest was payable under the Interest on Money Claims Act 2016. Although the Court of Appeal's dicta in *Robinson* was directed to payments under s 72 of the 1992 Act, this Court concluded it was equally applicable to payments under s 114 of the 2001 Act as affordability and social contract remain hallmarks of the ACC scheme under the 2001 Act.

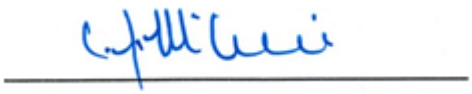
[17] The ACC Act provides for its own interest regime under s 114.

[18] It is acknowledged that the appellant's advocate assisted in the preparation of a bundle of documents for the appeals. However the appeals were dismissed. The underlying principle regarding costs remains therefore that the party who fails should pay the costs of the party succeeds. As the word "should" is used, I conclude that at very least, the party who succeeded will not be faced with paying any of the costs of the party who was unsuccessful except in extraordinary circumstances. None have been identified here.

[19] The appeal decisions being clearly in favour the respondent, there appears to be no sound basis under Rule 14 for the appellant to claim any costs.

[20] As to the submission that when unsuccessful, costs in part to the unsuccessful claimant would ensure claimants can access representation to the Court fulfilling the intention of the ACC ethos to provide a fair and sustainable scheme, that is not a component of the present costs regime in respect of ACC cases. Pursuant to s 150 of the ACC Act, appeals to the District Court are dealt with in accordance with the District Court Rules including the rules relating to costs.

[21] Accordingly, therefore, I must find that the appellant's application for costs is dismissed.



Judge C J McGuire
District Court Judge

Solicitors: McBride, Devonport
James, Wellington