

**IN THE DISTRICT COURT  
AT WELLINGTON**

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

**[2022] NZACC 65**

**ACR 175/18**

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

Hearing: 19 April 2022  
Held at: Auckland/Tāmaki Makaurau

Appearances: J Taiapa for the appellant  
J Sumner for the respondent

Judgment: 21 April 2022

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**RESERVED JUDGMENT OF JUDGE P R SPILLER**  
**[Claim for personal injury - ss 25-26, Accident Compensation Act 2001]**

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**Introduction**

[1] This is an appeal from the decision of a Reviewer dated 3 May 2018. The Reviewer dismissed an application for review of the Corporation's decision dated 24 January 2018, declining Ms Taiapa's claim for cover for a neck injury arising out of an accident on 3 July 2016.

**Background**

[2] Mrs Taiapa was born in 1950.

[3] On 3 July 2016, Mrs Taiapa was closing a gate when a dog pushed her over, causing her injury.

[4] On 10 July 2016, a claim was lodged with the Corporation by Dr Karin Longuet-Higgins. The injury was described as: “she fell on her left side causing injury to the left side of the chest”. The diagnosis was “contusion chest wall left”. On 12 July 2016, the Corporation accepted cover for this injury.

[5] On 11 July 2016, Mrs Taiapa visited Dr Larry Loo, GP, for a bad chest infection with respiratory distress.

[6] On 15 July 2016, Mrs Taiapa was seen by Dr Matthew Lo, GP. The medical notes recorded:

fell on L) side of chest 1 week ago, then developed cold ~ chest infection, went to GP and got Abs ~ Prednisone but getting worse, finding it hard to breathe. Did not tell own GP about fall, no x-ray done at the time. Hx of asthma.

[7] On 7 September 2016, Mrs Taiapa visited Dr Loo, reporting tightness in her muscles. Dr Loo diagnosed polymyalgia rheumatica and prescribed prednisone.

[8] On 2 November 2016, Dr Loo noted that Mrs Taiapa had aches and pains all over her muscles, particularly over her deltoid, trapezius and shoulders, and that she also felt out of balance. Dr Loo referred Mrs Taiapa to a Rheumatologist.

[9] On 4 November 2016, Dr Anthony Gear, Rheumatologist, noted that Mrs Taiapa had developed muscle aches and pains, particularly around her shoulder girdle and pelvic girdle following a chest infection. Dr Gear diagnosed Mrs Taiapa with fibromyalgia syndrome and generalised osteoarthritis.

[10] On 4 September 2017, Dr John Bourke, Physician/Geriatrician, reported that Mrs Taiapa believed that her symptoms began from April 2016, with thigh muscle ache, and progressed to symptoms in her neck, shoulders and both arms. Dr Bourke noted that Mrs Taiapa appeared to have cervical myelopathy with bilateral pyramidal tract signs.

[11] On 4 September 2017, a cervical spine MRI found severe spinal stenosis at multiple levels with chronic cord compressions at those levels. The MRI scan also noted abnormal signal gliosis in the cord, no acute-type focal disc herniation, and a particularly large osteophyte/disc bulge right side C5-6. The MRI also found severe neuroforaminal narrowing bilaterally at a number of levels.

[12] On 2 October 2017, a CT scan of the cervical and upper thoracic spines found multilevel degenerative change. The scan recorded that an ossification in the region of the posterior longitudinal ligament at C5/6 level accounted for the myelomalacia in the right aspect of the cord at this level, and the marked anterolisthesis of C3 on 4 accounted for myelomalacia here also.

[13] On 2 October 2017, a general x-ray of the cervical spine found cervical stenosis at C3/4 and mild to moderate osteopenia. The findings recorded that there was moderate to marked multilevel spondylosis, particularly at the mid/lower cervical levels. No fracture or significant focal lesion of bone was identified and there was no abnormal soft tissue swelling.

[14] On 6 October 2017, Mr Agadha Wickremesekera, Consultant Neurosurgeon, performed a C3 and C6 decompressive laminectomy. On 10 October 2017, the discharge notes recorded that the diagnosis was C3/4 cervical stenosis and severe COPD.

[15] On 22 November 2017, Mr Wickremesekera noted that Mrs Taiapa had recovered well since her surgery. He reported:

Further to our conversation she mentioned her presentation 18 months ago or so. Her symptoms started after she fell over the dog and have slowly progressed. I suspect she had a degree of background osteoarthritis but the equilibrium was tipped after the fall most likely due to disc prolapse that has then led to progressive myelopathy. I have asked her to review her ACC claim and lodge an appeal.

[16] On 14 December 2017, Dr Loo lodged a further injury claim for Mrs Taiapa for injury to her face, scalp, and neck, excluding her eyes, right side, resulting from the accident on 3 July 2016. Dr Loo stated that Mrs Taiapa “tripped over dog, landed on back and neck, seen neurosurgeon who thinks injury is ACC”.

[17] On 24 January 2018, the Corporation issued a decision declining cover for the neck injury relating to the accident, noting the delay of over 12 months and the insufficient evidence available to accept that a neck injury was sustained in the accident.

[18] On 21 February 2018, Mrs Taiapa provided a medical certificate to request cover for a neck injury and prolapsed disc to be added under the original claim.

[19] On 28 February 2018, Mr Wickremsekera reported that x-rays conducted on Mrs Taiapa showed previously seen listhesis at C3/4.

[20] On 9 March 2018, Dr Adrian Hindes, Medical Advisor, assessed that there was no evidence to support that Mrs Taiana's accident resulted in an injury to her cervical vertebrae. He reasoned that, although Mrs Taiapa had worsening symptoms over the previous 12-18 months, the radiological findings, the delayed lodgement of the claim, the absence of any cervical spine problem when Mrs Taiapa attended the GP a week after the accident, and the slow, progressive deterioration in symptoms, all supported a long-term degeneration of the cervical spine rather than an accident causing an injury.

[21] On 12 March 2018, the Corporation declined Mrs Taiapa's request to add neck injury and prolapsed disc to the original claim injury.

[22] On 3 April 2018, Mr Peter Hunter, Orthopaedic Specialist, reported that Mrs Taiapa's extensive spinal pathology could not have been caused by a single injury. Mr Hunter also noted that the MRI was over a year after the fall and seemed to exclude a disc herniation and assessed that the degenerative changes became symptomatic over a period of time.

[23] On 5 April 2018, Dr Loo advised the Corporation that Mrs Taiapa did not have any major neck symptoms and had not complained about pain in her shoulders until after her fall. Dr Loo noted that "a lot of people show degeneration on x-rays but do not have symptoms until a critical event arises like trauma". He assessed that the observations that Mrs Taiapa's symptoms in her shoulders and arms had disappeared

after the surgery were clinically more important than what the x-rays and MRI had shown.

[24] On 4 April 2018, review proceedings were held. On 3 May 2018, the Reviewer dismissed the review, on the basis that the radiological findings and lack of detailed explanation by Mr Wickremesekera were insufficient to show that the accident had caused the neck injury. The Reviewer preferred the opinions of Dr Hindes and Mr Hunter that Mrs Taiapa had a slowly progressive condition.

[25] On 30 May 2018, a Notice of Appeal was lodged.

[26] On 15 January 2020, Mrs Taiapa died. On 19 June 2020, Mrs Jodi-Anne Taiapa (the deceased's daughter) confirmed that the family would be continuing the appeal on behalf of Mrs Taiapa as the Estate.

### **Relevant law**

[27] Section 20(2)(a) of the Act provides that a person has cover for a personal injury which is caused by an accident. Section 26(2) states that "personal injury" does not include personal injury caused wholly or substantially by a gradual process, disease, or infection (unless it is personal injury of a kind specifically described in section 20(2)(e) to (h)). Section 25(1)(a)(i) provides that "accident" means a specific event or a series of events, other than a gradual process, that involves the application of a force (including gravity), or resistance, external to the human body. Section 25(3) notes that the fact that a person has suffered a personal injury is not of itself to be construed as an indication or presumption that it was caused by an accident.

[28] In *Johnston*,<sup>1</sup> France J stated:

[11] It is common ground that, but for the accident, there is no reason to consider that Mr Johnston's underlying disc degeneration would have manifested itself. Or at least not for many years.

[12] However, in a passage that has been cited and applied on numerous occasions, Panckhurst J in *McDonald v ARCIC*<sup>2</sup> held:

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<sup>1</sup> *Johnston v Accident Compensation Corporation* [2010] NZAR 673.

<sup>2</sup> *McDonald v ARCIC* [2002] NZAR 970 at [26], citing *Hill v ARCIC* DC decision 189/98, 5 August 1998 at 12–13.

“If medical evidence establishes there are pre-existing degenerative changes which are brought to light or which become symptomatic as a consequence of an event which constitutes an accident, it can only be the injury caused by the accident and not the injury that is the continuing effects of the pre-existing degenerative condition that can be covered. The fact that it is the event of an accident which renders symptomatic that which previously was asymptomatic does not alter that basic principle. The accident did not cause the degenerative changes, it just caused the effects of those changes to become apparent ...”

[13] It is this passage which has governed the outcome of this case to date. Although properly other authorities have been referred to, the reality is that the preceding decision makers have concluded that Mr Johnston’s incapacity through back pain is due to his pre-existing degeneration and not to any injury caused by the accident.

[14] ... I consider it important to note the careful wording in the *McDonald* passage. The issue is not whether an accident caused the incapacity. The issue is whether the accident caused a physical injury that is presently causing or contributing to the incapacity.

[29] In *Ambros*,<sup>3</sup> the Court of Appeal envisaged the Court taking, if necessary, a robust and generous view of the evidence as to causation:

[65] The requirement for a plaintiff to prove causation on the balance of probabilities means that the plaintiff must show that the probability of causation is higher than 50 per cent. However, courts do not usually undertake accurate probabilistic calculations when evaluating whether causation has been proved. They proceed on their general impression of the sufficiency of the lay and scientific evidence to meet the required standard of proof ... The legal method looks to the presumptive inference which a sequence of events inspires in a person of common sense ...

...

[67] The different methodology used under the legal method means that a court’s assessment of causation can differ from the expert opinion and courts can infer causation in circumstances where the experts cannot. This has allowed the Court to draw robust inferences of causation in some cases of uncertainty -- see para [32] above. However, a court may only draw a valid inference based on facts supported by the evidence and not on the basis of supposition or conjecture ... Judges should ground their assessment of causation on their view of what constitutes the normal course of events, which should be based on the whole of the lay, medical, and statistical evidence, and not be limited to expert witness evidence ...

[30] In *Stewart*,<sup>4</sup> Judge Barber stated:

[28] As the issue of causation is essentially a medical question, it must be determined with reference to medical evidence. Evidence provided by the appellant as to her symptoms and experience is, of course, useful and is required by the medical experts in order for them to make the appropriate determination. However, in itself, evidence by the appellant cannot establish

<sup>3</sup> *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR 340.

<sup>4</sup> *Stewart v Accident Compensation Corporation* [2003] NZACC 109.

the required causal link because the appellant is not medically qualified to determine the issue of causation.

[31] In *Sparks*,<sup>5</sup> Judge Ongley stated:

[29] By s26(2) and (4) of the Injury Prevention, Rehabilitation, and Compensation Act 2001, personal injury does not include personal injury caused wholly or substantially by a gradual process, disease, or infection, or by the ageing process. The legal test for entitlements requires sufficient evidence to show that need for assistance arises as a consequence of the covered injury. Where there is an accompanying degenerative or gradual process condition, entitlements will not be available if the personal injury is caused wholly or substantially by that condition. In the present case therefore, the appellant has to be able to point to evidence demonstrating that the condition, as it was when the need for surgery was identified in August 2004, was substantially and effectively caused by the covered injury and not by a pre-existing process.

[32] In *Stewart*,<sup>6</sup> Judge Barber stated:

[33] The cases consistently highlight that the question of causation cannot be determined by a matter of supposition. There must be medical evidence to assist the respondent Corporation, and now the Court, to determine that question. A temporal connection, in itself, will be insufficient. There needs to be a medical explanation as to how the ongoing condition has been caused by the originally covered injury. In this case the evidence does not establish this.

[33] In *Bloomfield*,<sup>7</sup> Judge Joyce noted:

[18] In this case, and when all is rendered down, the extension of cover claims pursued on appeal by Mr Bloomfield rest mainly on the foundation of a temporal connection argument. On occasion, a temporal connection may be of significance in the context of other, helpful to a claimant, evidence. But the mere presence of such a connection will usually do no more than raise the post hoc ergo propter hoc fallacy.

## Discussion

[34] The issue on appeal is whether the Corporation's decision dated 24 January 2018, which declined cover for a neck injury, was correct.<sup>8</sup> In order for the Estate of Mrs Taiapa to obtain cover under the Act, it is required to show that Mrs Taiapa's personal injury was *caused by* an accident.<sup>9</sup> There must be sufficient evidence

<sup>5</sup> *Sparks v Accident Compensation Corporation* [2006] NZACC 45.

<sup>6</sup> See *Stewart* n4 above.

<sup>7</sup> *Bloomfield v Accident Compensation Corporation* [2014] NZACC 1.

<sup>8</sup> The Court notes that reference has also been made in some submissions to the decline of cover (on 12 March 2018) for a prolapsed disc. However, the review was of the Corporation's decision of 24 January 2016 declining cover for a neck injury. Further, the joint memorandum of 5 April 2022, submitted by both parties, stated that the issue on appeal related to the Corporation's decision of 24 January 2018. E;

<sup>9</sup> Accident Compensation Act 2001, s 20(2)(a).

pointing to proof of causation, on the balance of probabilities, for a Court to draw even a robust inference on causation.<sup>10</sup> The fact that Mrs Taiapa suffered a personal injury is not of itself to be construed as an indication or presumption that it was caused by an accident.<sup>11</sup> A temporal connection between an accident and symptoms, without sufficient supportive medical evidence, does not establish causation.<sup>12</sup> Mrs Taiapa's personal injury will not, in principle, attract cover if it was caused wholly or substantially by a gradual process, disease, or infection.<sup>13</sup>

[35] The Estate of Mrs Taiapa submits as follows. There is sufficient evidence that Mrs Taiapa's neck injury was caused by the accident on 3 July 2016. In light of Mrs Taiapa's rapid recovery after surgery on October 2017, the changes identified on the MRI, CT and X-Ray scans are not consistent with long-term arthritis or degenerative changes,. The evidence of Mrs Taiapa's treating surgeon, Mr Wickremsekera, established that Mrs Taiapa suffered a disc prolapse which was successfully repaired during surgery in October 2017, and which was more likely than not caused by the accident. Mrs Taiapa's GP, Dr Loo, supported Mr Wickremsekera's findings regarding causation. The temporal connection between the onset of Mrs Taiapa's symptoms and the date of the accident supported a finding that the changes to Mrs Taiapa's neck were substantially caused by the accident.

[36] The Court acknowledges the above submissions. The Court accepts that there is a possible temporal connection between the onset of Mrs Taiapa's symptoms and the date of the accident (notwithstanding the report of Dr Bourke referring to an earlier onset of symptoms, noted in paragraph [10] above). However, the Court also notes the following considerations.

[37] First, the claim lodged by Mrs Taiapa one week after her accident described her injury in terms that she fell on her left side causing injury to the left side of the chest. The diagnosis of the GP was "contusion chest wall left", and it was this injury that the Corporation covered. Mrs Taiapa again visited GPs within the following

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<sup>10</sup> See *Ambros* n3 above at [70].

<sup>11</sup> Section 25(3).

<sup>12</sup> See *Stewart* n 4 above at [33]; and *Bloomfield* n7 above at [18].

<sup>13</sup> Section 26(2).



days and was recorded as having a chest infection. There is no mention in the medical records of this time of a neck injury.

[38] Second, imaging of Mrs Taiapa's cervical spine in September-October 2017 found: severe spinal stenosis at multiple levels with chronic cord compressions and no acute-type focal disk herniation (MRI scan);<sup>14</sup> multilevel degenerative change (CT scan); and no fracture or significant focal lesion of bone (general x-ray). Mr Wickremesekera, the Consultant Neurosurgeon who performed surgery on Mrs Taiapa, suspected that she had a degree of background osteoarthritis, and the medical notes following the operation recorded that the diagnosis was C3/4 cervical stenosis (as well as severe COPD).

[39] Third, Mrs Taiapa's claim for neck injury was lodged only in December 2017, over 17 months after the accident in July 2016.

[40] Fourth, in March 2018, Dr Hinds, Medical Advisor, assessed that there was no evidence to support that Mrs Taiana's accident resulted in an injury to her cervical vertebrae, and that, instead, the evidence supported a long-term degeneration of the cervical spine.

[41] Fifth, in April 2018, Mr Hunter, Orthopaedic Specialist, reported that Mrs Taiapa's extensive spinal pathology could not have been caused by a single injury, and assessed that the degenerative changes became symptomatic over a period of time.

## **Conclusion**


[42] In light of the above considerations, the Court finds that the Estate of Mrs Taiapa has not established that her neck injury was caused by a covered accident that occurred on 3 July 2016. The weight of evidence points to Mrs Taiapa's worsening symptoms preceding her surgery having been the result of a long-term degeneration of her cervical spine rather than an accident causing an injury. It follows that the Estate of Mrs Taiapa is not entitled to cover for her neck condition.

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<sup>14</sup> Stenosis is the narrowing of space within the spine, commonly caused by aging.

[43] The decision of the Reviewer dated 3 May 2018 is therefore upheld. This appeal is dismissed.

[44] I make no order as to costs.

A handwritten signature in black ink, appearing to read 'P R Spiller', is written over a faint, circular official stamp.

P R Spiller  
District Court Judge

Solicitors: Ford Sumner, Wellington, for the respondent.