

**PURSUANT TO S 160(1)(b) ACCIDENT COMPENSATION ACT 2001
THERE IS A SUPPRESSION ORDER FORBIDDING PUBLICATION OF
THE APPELLANT'S NAME AND ANY DETAILS THAT MIGHT IDENTIFY
THE APPELLANT**

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2022] NZACC 72

ACR 389/18

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

Hearing: On the papers

Submissions: S Claver for the appellant
J Sumner and R Williams for the respondent

Judgment: 3 May 2022

**RESERVED JUDGMENT OF JUDGE P R SPILLER
[Claim for costs, Accident Compensation Act 2001]**

Introduction

[1] In this matter, CJ appealed against the decision of a Reviewer dated 26 November 2018. The Reviewer had dismissed an application for review of the Corporation's decision dated 10 October 2017 declining cover for mental injury. In a judgment dated 9 March 2022, this Court allowed the appeal, and set aside the review decision. The Court directed that CJ was entitled to costs, and, if these could not be agreed within one month, the Court would determine the issue following the filing of memoranda.

[2] In the event, the parties did not reach an agreement as to costs. On 7 April 2022 and (in reply) on 22 April 2022, Mr Claver provided submissions claiming costs totalling \$18,799.83 (including disbursements). Mr Claver submits that: the High Court decision in *Carey* (cited below) is not supportive of the Corporation's position on costs and is distinguishable on the facts; he is an admitted and enrolled barrister and solicitor of the High Court; his fees are less than the fees incurred by the Corporation in this matter; and the award of costs sought is fair and reasonable

[3] On 19 April 2022, Mr Sumner and Ms Williams, for the Corporation, provided submissions in support of an award of \$2,322.75. Counsel submit that: Mr Claver is not a lawyer per the Lawyers and Conveyancers Act 2006, and it is irrelevant that he is an enrolled barrister and solicitor. Full-scale costs in the accident compensation jurisdiction are unavailable to any person other than counsel holding a practising certificate; as per the *Carey* judgment. Non-lawyer advocates who assist the Court would usually be awarded a daily rate of 50 per cent, based on category 1. Mr Claver did not assist the Court prior to the hearing, and a number of the steps claimed by him were not undertaken or were undertaken by the Corporation. In addition, disbursements claimed, excluding printing, cannot be claimed if not professionally incurred.

Relevant law

[4] Rule 4.1.1 of the District Court Rules 2009 provides that the award of costs is at the discretion of the Court if they relate to costs of a proceeding, or incidental to a proceeding, or a step in a proceeding.

[5] Rule 4.3 provides for the categorisation of proceedings in relation to costs:

- | | |
|------------------------|--|
| Category 1 proceedings | Proceedings of a straightforward nature able to be conducted by counsel considered junior. |
| Category 2 proceedings | Proceedings of average complexity requiring counsel of skill and experience considered average. |
| Category 3 proceedings | Proceedings that because of their complexity or significance require counsel to have special skill and experience. |

[6] Schedule 3 of the Rules provides for sub-categories A, B and C of the above categories, according to estimated time allocations. Rule 4.5.2 provides that a determination of what is a reasonable time for a step in a proceeding must be made by reference to: band A, if a comparatively small amount of time for the particular step is considered reasonable; band B, if a normal amount of time for the particular step is considered reasonable; or band C, if a comparatively large amount of time is considered reasonable.

[7] Rule 4.6.1(a) provides for the award of actual costs (indemnity costs), but this is subject to Rule 4.6.4 which outlines the exceptional circumstances in which such costs may be awarded.

[8] In *Carey*,¹ Grice J stated:

[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 based on the scale costs. If the Judge has been assisted by the non-lawyer representative in a straightforward case, it would, as a guideline, generally be appropriate to set a daily rate set at 50 per cent 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”.
...

[96] ... The level of qualification and skill of the advocate in ACC law would be a factor to the extent that was evident. The Judge should not be required to scrutinise the qualifications and experience of the non-lawyer representative. If a level of assistance was provided, the appropriate daily rate percentage for the non-lawyer advocate would be 50 per cent of the scheduled daily rate.

Discussion

[9] The issue in this case is the amount of costs that should be awarded to Mr Claver, the advocate for CJ.

[10] This Court acknowledges that Mr Claver has legal qualifications, skills and experience that are valuable to the role of an advocate in the ACC jurisdiction; and, to this end, the Court proposes to allow a higher allocation of costs than to a lay advocate without such qualifications, skills and experience.

¹ *Accident Compensation Corporation v Carey* [2021] NZHC 748.

[11] However, in deciding on the extent of costs to be awarded to Mr Claver, this Court is required to exercise its discretion in terms of the District Court Rules on costs, as noted above, and is guided by the judgment of the High Court in *Carey*.² Having carefully weighed up the submissions of Mr Claver and the submissions of counsel for the Corporation, this Court substantially prefers the latter.

[12] In light of the above considerations, the Court allows the following schedule of costs and disbursements:

Notice of Appeal:	\$952.50
Case Management:	
• Memorandum filed for teleconference 1 October 2021:	\$254.00
• Memorandum filed for teleconference 25 January 2022:	\$254.00
• Preparing affidavit in support of request to call witnesses:	\$318.00
Teleconference 7 October 2021:	\$381.00
Teleconference 4 February 2022:	\$381.00
Preparing Case on Appeal:	\$635.00
Preparation of Written Submissions:	\$635.00
Appearance at Hearing:	\$635.00
Total Costs \$4,445.50 x 60%:	\$2,667.30
Disbursements:	\$100.00
Total:	\$2,767.30

Conclusion

[13] Mr Claver is awarded costs, plus the identified disbursement, totalling \$2767.30.



P R Spiller
District Court Judge

Solicitors for the Corporation: Ford Sumner.

² Above, note 1.