

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2021] NZACC 128 ACR 46/21

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

Hearing: 22 July 2021

Heard at: Christchurch/Otautahi

Appearances: The appellant in person
 Mr C Light for the respondent

Judgment: 4 August 2021

RESERVED JUDGMENT OF JUDGE C J McGUIRE
[Section 360(1) – Claim for cover under former Acts filed after 1 April 2002
Accident Compensation Act 2001]

[1] At issue on this appeal is a decision dated 26 July 2019 from the respondent declining cover for a nose contusion and broken nose suffered in an accident on 24 December 1982.

Background

[2] On 24 December 1982 the appellant was a victim of an assault while in Australia. At the time she was working in Darwin at Pedro’s Fish Shop. She was aged 17 at the time.

[3] On 14 June 2019 the appellant consulted her GP who submitted an ACC45 claim form for a right sided contusion of her nose as a result of the 1982 assault.

[4] Although the claim form noted that the accident took place in New Zealand, the appellant confirmed in a telephone conversation with ACC on 3 July 2019 that it actually occurred in Australia. The appellant also advised ACC that her nose had been broken in the assault.

[5] The appellant produced a letter from her GP dated 4 March 2021 confirming she has a nose injury from the 24 December 1982 and is having difficulties with snoring and breathing.

[6] The appellant has placed before the Court a considerable amount of information relating to her early travels to Australia including archival arrival and departure records from the Australian National Reference Service and from Mr Brian Pukey with whose family she lived and worked both in New Zealand and Australia in the years preceding 1982.

[7] Suffice it to say that the Court accepts the accuracy of her evidence relating to the assault on her on 24 December 1982.

[8] Section 360 of the Accident Compensation Act deals with claims for cover under former Acts not lodged until on or after 1 April 2002.

[9] The appellant's claim, being lodged on 14 June 2019 for an accident that occurred in Australia on 24 December 1982, falls for consideration under this section.

[10] Section 360(2) provides that a claimant has cover under this Act only:

- [a] If the claimant would have had cover under this Act had the injury occurred on or after 1 April 2002; and
- [b] The claimant would have had cover under the Act that was in force at the time the person suffered the injury.

[11] Section 60 of the Accident Compensation 1972 Act (the 1972 Act) applies to accidents that occur outside New Zealand. Section 60(1) provides that cover under the earners' scheme shall not extend to personal injury by accident in any case where the accident causing the injury to the person happens outside New Zealand unless the person falls within the provisions of s 60.

[12] The relevant provision is s 60(2) of the 1972 Act. To fall within this subsection:

- [a] The person has to have been an earner in New Zealand;
- [b] Cover for personal injury by accident outside New Zealand only extends to an accident that happens within 12 months of the date on which the person left New Zealand;
- [c] In the case of an employee, cover only extends to a person in the case of an employee, if the person, "intends to be absent from New Zealand only temporarily, and exclusive or principally for the purposes of this employment in New Zealand, and while he remains outside New Zealand he continues to derive earnings from that employment.

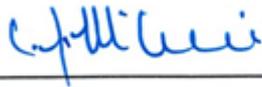
[13] From the Australian archival departure and arrival records it appears that the appellant arrived in Australia on 14 December 1979. This means that the assault causing her injury occurred some three years after her departure from New Zealand. Unfortunately for her s 60(2) of the Accident Compensation 1972 Act provides for cover in certain circumstances to extend to personal injury by accident that happened outside New Zealand within 12 months from the date on which the person last left New Zealand. At the time of the injury the appellant had been absent from New Zealand for some three years.

[14] Were it not for this fundamental obstacle to ACC cover, the appellant has other difficulties in respect of this claim, including that although she had been employed as a housekeeper nanny by the Pukey family both in New Zealand and Australia that

would not satisfy the legislative requirement that she was being employed by a New Zealand based employer.

[15] For these reasons the appellant is unable to claim accident compensation cover for the injury of 24 December 1982 and the appeal therefore must be dismissed.

[16] There is no issue as to costs.



Judge C J McGuire
District Court Judge

Solicitors: Young Hunter, Christchurch for the respondent