

**IN THE DISTRICT COURT  
AT WELLINGTON**

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

[2021] NZACC 25

ACR 90/20

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

Hearing: On the papers

Appearances: Mr B Hinchcliff for the appellant  
Mr L Hawes-Gandar for the respondent

Judgment: 3 February 2021

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

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**Background**

[1] On 5 December 2018 and 6 May 2019, the appellant through his GP sought cover for urethral stricture and damage to the ureter.

[2] On 6 September 2019 ACC declined cover for a treatment injury and in the attached treatment injury report referred to both urethral stricture and damage to the ureter.

[3] On 11 September 2019 the appellant filed a review application following ACC's decision.

[4] On 12 May 2020 the Reviewer dismissed the appellant's application on the basis of insufficient evidence to conclude an injury caused by treatment.

[5] On 13 May 2010 the appellant filed an appeal in the District Court.

[6] On 21 May 2020 ACC issued a new decision approving cover for "right sided, minor ureteric stricture".

[7] On 14 October 2020 the appellant sought costs from ACC upon the withdrawal of his appeal, in the sum of \$2,110.

[8] On 27 October 2020 the appellant received email correspondence from ACC in which ACC declined to pay costs. The following reason was given:

While ACC has granted cover for a treatment injury this was on quite a different basis from the claim for which cover was declined. ACC considers its decision was correct and does not agree to pay costs.

[9] The appellant's computation of costs of 14 October 2020 was made up of .5 of a day for commencement of the appeal being \$955 and .5 of a day for preparation of the case on appeal in the sum of \$950 together with \$200 disbursements.

[10] On 27 October 2020 ACC declined to pay costs. This reason was offered:

While ACC has granted cover for a treatment injury this was on quite a different basis than the claim for which cover was declined. ACC considers its decision was correct and does not agree to pay costs.

[11] On 2 November 2020 the appellant sought costs of \$5,157 being:

Commencement of appeal .5 of a day

Case management .2 of a day

Preparation of case on appeal .5 of a day

Preparation of written submissions 1.5 days

[12] This resulted in a total claim for costs of 2.7 days at a band 2B rate of \$1910 per day resulting in a total of \$5,157 plus disbursements of \$200 making a grand total of \$5,357.

[13] Rule 14.1 of the District Court Rules provides that all matters are at the discretion of the Court if they relate to costs.

[14] Rule 14.2 sets out general principles that apply to the determination of costs. Rule 14.2(1)(a) says:

The party who fails in respect of a proceeding or an interlocutory application should pay costs to the party who succeeds.

[15] The guidance provided by Rule 14.2(1)(a) is as close as the rules come to providing for the situation that the parties in this case find themselves in.

[16] I find that while the ethos of the above rule is applicable in this case, the respondent nevertheless takes the position that as the appellant is withdrawing his appeal it is not appropriate for costs to be awarded.

[17] This is an over simplistic proposition in the context of this case.

[18] It is helpful to consider the timeline of events.

[19] On 12 May 2020 the appellant's review application was dismissed with the Reviewer finding that there was insufficient evidence to conclude it was more likely than not that Mr Singh had a urethral stricture or damage to the ureter that was caused by treatment he underwent on 31 March 2018.

[20] The following day, 13 May 2020 the appellant filed an appeal to the District Court on the grounds:

The Reviewer did not consider the case of *Ambros* when looking at the evidence.

The Reviewer misapplied the case law and Act when considering the stone injury claim.

The Reviewer did not consider all of the evidence of instruments causing an injury and focused on the jurisdictional limitations.

[21] The relief sought by the appellant in the Notice of Appeal was:

Cover for at treatment injury to the ureter; and costs.

[22] It was just eight days later on 21 May 2020 when ACC wrote to the appellant in these terms:

ACC revokes the previous decision issued in a letter dated 18 April 2019 in which cover was declined. The reason ACC is revoking and substituting this decision is because we have additional clinical information.

The decision as of the date of this letter is a fresh decision. This fresh decision dated 21 May 2020 has review rights.

...

Thank you for your patience while we considered your claim. We're pleased to approve cover for the following injury:

- Right sided, minor ureteric stricture.

Your health professional also told us about the following conditions, which we are unable to cover:

- Symptom of right sided pain.
- Kidney stone right side.

[23] On 14 October 2020 the appellant sought costs from ACC in the sum of \$2,110.

[24] On 27 October 2020 ACC declined to meet those costs.

[25] On 2 November 2020 the appellant sought costs of \$5,357.

[26] On 21 January 2021 the appellant discontinues his appeal.

[27] Put simply, cover for the urethral stricture that was declined at review was granted by ACC eight days later.

[28] While it is fair to say that the description of the cover sought by the appellant has varied somewhat over the duration of his dealings with ACC over this claim it is all founded on a claim of treatment injury from 15 May 2018 that effected the appellant's ureter.

[29] In essence, what occurred in this case is no different from that which happens in a large number of similar claims where the essence of the claim is refined over time often on the basis of new medical evidence.

[30] Had the information on which ACC based its decision of 21 May 2020 been available at the review hearing it is extremely likely that the outcome would have been different and the review allowed.

[31] It follows that I do not accept the argument that the cover granted by ACC on 21 May 2020 was in essence different from that which was the subject of the review.

[32] The granting of cover on 21 May 2020 ultimately led to the appeal being discontinued on 21 January 2021.

[33] Given that it is highly likely that no appeal would have been filed had ACC's grant of cover come sooner I regard it as fair that the appellant be awarded costs.

### **Quantum of Costs**

[34] It is not clear from the papers before me just when the appellant incurred the initial tranche of costs of \$2,110 tabulated in the appellant's account to ACC of 14 October 2020. Nor is it clear when the increased costs amounting to \$5,357 set out in the appellant's memo of 2 November 2020 were incurred.

[35] I accept however that at the time of filing the appeal on 13 May 2020 the appellant's counsel would have wished to record the essence of the appellant's argument on appeal. What is surprising is that the claim for costs should increase from \$2,110 to \$5,357 between 14 October 2020 and 2 November 2020.

[36] I agree that the appropriate band of costs is 2B.

[37] Accordingly I find that the appellant is entitled to the following costs in terms of Schedules 4 and 5 to the District Court Rules:

- 21 commencement of appeal .5 of a day.

- 23 case management .2 of a day.
- Preparing of case on appeal .5 of a day.

[38] I am also prepared to allow a further half day for preparing written submissions on the costs issue together with disbursements of \$200.

[39] The total costs to be awarded therefore are:

- 1.7 days at a daily rate of \$1,910 equals \$3,247 plus \$200 disbursements making a total of \$3,447.



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Judge C J McGuire  
District Court Judge

Solicitors: ACC and Employment Law, Ellerslie Auckland for the appellant  
Medico Legal Law Limited, Auckland for the respondent