IN THE DISTRICT COURT
AT WELLINGTON

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

[2021] NZACC 29 **ACR 162/18**
ACR 210/18
ACR 384/18

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

Hearing: 26 November 2020
Heard at: Dunedin/Ōtepoti

Appearances: Mr B Van Essen (husband) on behalf of the appellant
Mr I Hunt for the respondent

Judgment: 9 February 2021

RESERVED JUDGMENT OF JUDGE C J McGUIRE
[Issue Estoppel; Causation s 26 Accident Compensation Act 2001]

---

[1] By direction of the Court, dated 23 July 2019, the three appeals filed that are the subject of this hearing were consolidated.

[2] The issue for determination on ACR 162/18 is the correctness of the Corporation's decision dated 31 October 2017 declining the appellant's application for weekly compensation lodged on 29 June 2017 for an injury that occurred on 19 June 2009.

[3] The issue for determination on appeal ACR 210/18 is the correctness of the Corporation's decision dated 5 March 2018, declining to grant cover for regional pain syndrome, as referred to in a report of Dr Michael Anderson, regarding an injury that occurred on 19 June 2009.

[4] ACR 348/18 is an appeal in respect of the Corporation's decisions dated 14 May and 30 May 2018 respectively. By the first decision, the Corporation declined to reimburse the appellant for costs of the purchase of a motor vehicle. This was on the basis the Corporation considered, based on the decision of Judge Powell in *Van Essen v Accident Compensation Corporation,* that there was no causal link between her incapacity and her injury on 19 June 2009.[1] The second decision was the Corporation's decision declining to fund the purchase of a chiropractic bed for Mrs Van Essen. The Corporation considered, based on the decision of *Van Essen v Accident Compensation Corporation,* that Mrs Van Essen's back symptoms were due to degeneration and not a consequence of her covered 19 June 2009 injury.

Background

[5] On 19 June 2009, the appellant suffered injuries diagnosed as a neck sprain and pain in the lumbar spine, as a result of "lifting vacuum cleaner/carrying it on my back and got a sore back and neck".

[6] In a note dated 22 June 2009, Dr Searle, GP, recorded the accident event as taking place at work (Abbotsford School) when the appellant was carrying a vacuum cleaner on her back. Dr Searle recorded:

> Friday at work carrying vacuum cleaning (sic) on back – luxing/cleaning at Abbotsford School – works two and a half days at the school.
>
> Developed low back pain and posterior low neck pain.
>
> No radiation other than briefly into her L shoulder blade when sat up in bed trying to move bowel and bladder ok, no leg pain/tingling.
>
> PHx over 5y ago back problem nil since.

[7] Dr Searle diagnosed a neck sprain and pain in the lumbar spine.

---

1 *Van Essen v Accident Compensation Corporation* [2018] NZACC 27.

[8] The Corporation granted cover for these injuries and the appellant was certified unfit for work from 26 June 2009.

[9] Dr Searle's further notes on 26 June and 1 July 2009 refer to ongoing back pain, although her condition was slowly improving.

[10] On 1 July 2009, Dr Searle certified the appellant as unfit for work from 6 July 2009 for 14 days.

[11] On 16 July 2009, Dr Searle recorded "going well". The appellant was pain free on examination. He concluded that the appellant was fit to return to normal work from 20 July 2009.

[12] A further claim for cover was completed on 10 February 2011, when the appellant lifted a 20 kg bag of rubbish into a skip and felt pain in her left chest wall. A similar event is recorded on 8 December 2011, although on that occasion, the appellant hurt her left neck and shoulder.

[13] On 7 August 2009, physiotherapist, Brian Upsher, wrote to Dr Searle saying:

> Thank you for referring Tania Snelleksz for physiotherapy.
>
> This letter is to inform you that Tania Snelleksz has been treated at PhysioMed for a pain in lumbar spine and has been discharged after four treatments.
>
> Tania Snelleksz has been advised to call us or yourself if there are further problems with this injury.

[14] On 4 December 2014, the appellant tripped and fell down some steps. The Corporation accepted cover for a leg sprain and wrist sprain.

[15] On 11 September 2015, the Corporation declined cover for an additional diagnosis of back sprain. This decision was not reviewed.

[16] On 8 December 2014, Dr Searle recorded an accident event on 4 December 2014 as follows:

> Fell at work Thursday – tripped and missed a step – going down and put L hand up and sort (sic) L wrist since – all round wrist no one spot sore; also L calf sore.
>
> OE no focal tenderness of wrist, good ROM.
>
> A: sprain reasonable to see how goes.
>
> OE: L calf – Achilles intact, tender middle of biggest part muscle belly.

[17] Dr Searle said it was okay for the appellant to self-mobilise and that she should have physiotherapy treatment if she was not back to normal in the following week.

[18] On 16 December 2014, Dr Ross recorded that the left wrist was fine. The left mid calf remained painful when walking, especially up and down stairs. The appellant was able to walk with a slight limp. Dr Ross said that the appellant should rest from work and expect a gradual improvement.

[19] Her general practitioner's notes of 8 April 2015 record that the appellant had had several months of pain and that lately she had had pins and needles in her feet. The general practitioner thought that the condition could be sciatica.

[20] A further note on 12 May 2015 also referred to ongoing back pain. The GP considered that the condition was not classic sciatica and suggested that the appellant maintain her mobility.

[21] Further notes in 2015 recorded ongoing back pain.

[22] On 15 July 2015 Dr Searle referred to "aching pain in lower back" and pins and needles in both feet and some left calf pain. Dr Searle considered the condition could be due to discogenic pain although with the atypical nerve compression it was hard to say. He concluded in respect of a claim for weekly compensation "in hindsight back pain since injury in December so do ARC18 with add in of back strain". The claim for weekly compensation was therefore made with reference to the December 2014 accident.

[23] A further note made on 22 July 2015 referred to the appellant being unable to manage at work on Monday, so she was off work.

[24] On 18 May 2015 Dr Ben Wilson, Radiologist, reported on an MRI of the lumbar spine with a history of several months of lower back pain and tingling feet. Dr Wilson noted that there was minimal disc space narrowing at the L5/S1 level. Appearances throughout the remainder of the lumbar spine were otherwise normal.

[25] On 8 August 2015, Dr Clive Dreyer, Sports and Musculoskeletal Specialist, set out the history of the accident in December 2014 when the appellant was carrying a vacuum cleaner on her back and fell forwards on all fours. He noted the predominant pain she had at that time was in the back of her left leg. Her lower back was niggly the next day. About five months after the accident, she noticed that she was getting pins and needles in both feet and electic shock feelings in her feet. The lower back pain was also getting worse.

[26] Dr Dreyer referred the appellant for an MRI of the lumbar spine. The MRI was carried out on 18 August 2015. Dr Fulton, Radiologist, reported that there was a minor disc bulge at L4/5 but no significant thecal sac or nerve root compression. At L5/S1 there was a disc bulge abutting the thecal sac but not causing any compression. There were mild osteoarthritic changes in the facet joints at L4/5 and L5/S1. There was no evidence of spinal stenosis.

[27] Dr Dreyer reported on the MRI imaging on 27 August 2015, as follows:

> The results of her MRI reveal minor disc bulges at the levels of L4, 5 and L5/S1. There was no neural compromise. She also had some degeneration of the facet joints at the same levels. My feelings are these represent a progressive degenerative condition and no an acute injury. In addition there is no "MRI visible structural" cause to the dysaesthesia in her feet.

[28] On 9 September 2015, the appellant with Dr Searle completed an injury claim form for:

> Gradual process (N 385.00) confirmed; recent MRI scan shows both disc bulges/strains and degeneration of facet joints at L4, 5 and L5/S1.

[29] The branch medical advisor, Dr Burt, commented on the ACC18 form in which the appellant, through Dr Searle, sought cover for a back sprain caused by her accident on 4 December 2014.

[30] Dr Burt noted that Dr Searle, in his note of 8 December 2014, did not describe any evidence of a low back injury from the accident. Dr Searle did not attribute the appellant's symptoms to an injury in subsequent consultations. Dr Burt notes it was only on 15 July 2015 that Dr Searle attributed the back pain to the accident in December 2014.

[31] Dr Burt concluded:

> Based on the current information on file, there is no evidence to support the client having had an injury to her back caused by the accident of 4/12/14.
>
> I note the GPSI report, following the MRI suggests the client has a progressive degenerative condition and not an acute injury.

[32] The Corporation requested a report from Dr McBride, Occupational Medical Specialist. He reported on 18 December 2015. He referred to the history contained in Dr Dreyer's report, noting a history of physically demanding jobs going back to 1982.

[33] Under the heading "diagnosis", Dr McBride said:

> The structural diagnosis is a mild osteoarthritis of the lumbar spine, the MRI being the objective evidence. This has obviously been present for some time, but seems to have become apparent after she fell on the 4 December 2014. There are explanations for why this may be so, including the initial experience of discomfort, the development of chronic discomfort, guarding, worry about the condition and other psychosocial factors, although the latter are not readily apparent.
>
> She also has the dysaesthetic pain in her foot, which might be due to the disc changes although the nature of the pain would be unusual for nerve root involvement. The quality of the pain is however suggestive of developing pain syndrome.

[34] Dr McBride said that highly repetitive twisting and bending, especially when associated with forceful movement, was associated with adverse effects on the spine. Not everyone with spinal osteoarthritis would, however, experience low back pain, and not everyone with low back pain would have spinal osteoarthritis. Dr McBride said it was not known why some individuals experienced pain and some did not.

[35] Dr McBride noted that highly repetitive twisting and bending had been factors present in the appellant's work since 1982.

[36] With reference to the literature, Dr McBride said that the appellant's occupation was more likely than not to cause her disability through spinal degeneration and the onset of low back pain.

[37] In a report to the Corporation dated 20 April 2016, John Monigatti, Occupational Physician, provided comment on the appellant's claim for a low back injury caused by work process.

[38] Dr Monigatti said that the most influential of the various individual risk factors appeared to be aging, and he gave reasons why this was the case.

[39] He referred to the National Institute of Occupational Safety and Health report of 1997 that featured in Dr McBride's report.

[40] Dr Monigatti said:

> The principle limitation of the research on low back problems is that most of it is based on self reports of back pain as opposed to evidence of back injury. the 1997 NOISH review also cited by Dr McBride exemplifies this. It is a meta-analysis of 48 studies linking occupation to low back disorder, but in more than two thirds of them the "disorder" is back pain or another symptom with no pathology specified. Of the remainder, only two identified the pathology as being degenerative disease. The second problem with the meta-analysis, apart from its age, is that the NIOSH reviewers took into account only the studies that showed positive correlation between work factors and low back disorders, and ignored those of equal quality which found an insignificant or null association.
>
> …
>
> I'm not aware of any studies in the epidemiological literature showing an increased incidence of degenerative lumbar spinal disease (as opposed to low back pain) in cleaners, packers, process workers, panelbeating labourers or even shift fillers. In the light of this I am unable to conclude that the risk of developing this condition is significantly greater in any of the groups Mrs Van Essen has worked in than for workers in a wide range of other occupations. Since increased risk in the person's occupational group is a prerequisite for cover as work related gradual process injury I am of the opinion that the provisions of the Act are not met in this instance. …
>
> A recent genetic model (derived from exposure discordance studies of twins) suggests that heredity rather than age and external insults/influences may play a major role in disc degeneration, and that there is a genetic susceptibility that accelerates progressive age related degenerative processes (Battie et al). Thus individuals with specific gene polymorphisms may develop disc degeneration at an earlier age than those without (Hangai et al).

> Unlike Dr McBride I am favourably inclined to this model and it does seem to be preferred by the majority of occupational physicians. In my opinion any contribution from work to the development of Mrs Van Essen's lumbar spinal disease is likely to have been modest in comparison to the effects of genetics and early life environmental factors. Her work in a number of occupations may have rendered the changes symptomatic or even hastened them to some degree, but if so, I would consider inborn and pre-work influences still to be the major and predominant (i.e. substantial) causes of her condition. That is to say the degeneration in Mrs Van Essen's lumbar spine would likely have occurred regardless of what she did for a living because they were innately predetermined.

[41] On 20 May 2016, Dr McBride reissued his report of 18 December 2015 to include a response to Dr Mongatti's comment.

[42] Dr McBride disagreed with Dr Mongatti's comment that the NIOSH review did not take into account "negative" studies.

[43] As to the twin study he says:

> Finally the twin studies provide evidence that genetics are more important than external influences in twins. There are however several important points to bear in mind, the first lying in the basic epidemiological premise that results are only generalisable to the population of interest, in this case twins, in which case there is evidence that physical factors account for some of the risk. The other error is that we are, in this case, not looking at population attributable risk (or fraction), simply variability in twins. When looking at causation there are separate risk factors which do not necessarily sum to 100%. Each must be considered separately.

[44] Under the heading "causative employment factors", Dr McBride says:

> These have been described in the occupational assessment. Looking back at the occupational history, LBP risk factors have in fact been present since 1982, meaning that she has had at least 30 years of cumulative low back mechanical exposure. In my view, this is significant and a reasonable explanation for her disc degeneration and the spinal OA (osteoarthritis) changes.

[45] On 30 May 2016 Dr Monigatti commented further. Amongst other things he said:

> … in the twin spine study the authors compared identical twin siblings who differed greatly in their exposure to a suspected risk factor for back problems. They used identical twins to standardise the variables of genetics, age and to a large extent early upbringing, so that they would not obscure the effect of the discordant factors. For example, one of the twins had a sedentary job while the other had heavy occupational physical demands, or one routinely engaged in occupational driving while the other did not. Despite extraordinary differences

> between identical twin siblings and occupational and leisure time physical loading conditions throughout adulthood the authors observed surprisingly little effect on disc degeneration, not only in its degree but also in the spinal levels involved. The findings indicate that while physical loading, - handling heavy loads, bending, twisting and static work in awkward postures – did appear to influence disc degeneration the effects were very modest.

[46] Following his completion of the claim form for a gradual process injury on 9 September 2015, Dr Searle completed a number of ARC18 forms referring to this claim for cover, i.e. a gradual process injury with a diagnosis of spinal degeneration. These were dated 16 September 2015, 18 November 2015, 7 January 2016, 7 June 2016, 6 October 2016, 14 December 2016, 17 March 2017 and 15 June 2017.

[47] On 29 June 2017, the appellant signed an ARC18 medical certificate. The declaration of Dr Searle dated 22 July 2015 certified that the appellant was unfit for work from 21 July 2015 for 91 days. The certificate refers to the accident in 2009 and listed as a complication "continuation/aggravation of original injury such that ended up off work from 21 July 2015".

[48] On 6 July 2017, an ACC Case Manager wrote to the appellant stating that because there was a substantial gap between the date when the appellant was last paid weekly compensation (19 July 2009) and the incapacity on the medical certificate (21 July 2015), the Corporation would need to investigate any entitlement to further weekly compensation payments.

[49] Dr Alistair Wilson, Senior Medical Advisor and Occupational Health Specialist, commented on the question of whether the appellant's incapacity from 21 July 2015 was causally related to the 2009 injury or any other ACC claim. He said:

> I do not agree with Dr Searle's opinion that the client's persisting low back pain, or neck pain, is due to the injuries she sustained in 2009. The accident was essentially a minor soft tissue injury that resolved in 2009 with her being certified fit for work. All investigations since have reported no injury pathology and the diagnoses have been of mechanical low back pain with age related changes on the x-ray and MRI.

[50] He recommended the Corporation decline accepting the ACC18 for work incapacity in 2015 relating to the 2009 injury. An occupational medicine specialist

carried out a medical case review with the appellant on 18 January 2018. With reference to the 2009 accident, the appellant said she returned to work because of financial pressures but she still had pain in her lower back region and over her left shoulder. The pain was aggravated at work by lifting, bending and twisting around with the vacuum pack on her back. She reported she did not go to her GP every time it flared up because of the costs of the visit to the doctor and the physiotherapist, and she could not afford any time off work.

[51] In 2014, she fell down stairs with a vacuum cleaner. This was accepted as a new injury. Dr Anderson said that with hindsight, this should probably have been seen as a continuation of her original injury in 2009 that had never settled.

[52] Dr Anderson diagnosed a regional pain syndrome involving the low back region in the midline and left side and a regional pain syndrome involving her left shoulder.

[53] As to a causal link Dr Anderson said:

> There is a temporal relationship in as much as she had an injury, she reported it, it was recognised as some form of lumbar sprain and it was managed as such in 2009.
>
> The temporal link continues in as much as the pain never completely went and was regularly exacerbated with activities involving bending, lifting and twisting, particularly with the use of the vacuum back pack. (As a consequence, I would see her further injuries in 2014 as an aggravation of her original injury rather than a new one. This would be consistent with her MRI result which shows facet hypertrophy and degenerative changes involving the L5/S1 facets which would be consistent with changes following injuring them in 2009).

[54] Dr McBride provided a further report to the Corporation on 9 April 2018 following the appellant's unsuccessful appeal to the District Court in respect of the decision of 1 June 2016 declining her claim for cover for a back injury as a result of a work-related gradual process due to her work as a commercial cleaner. He confirmed that the diagnosis was mild osteoarthritis of the lumbar spine with evidence of lumbar disc prolapse. His differential diagnosis was a chronic pain disorder as a result of repetitive injury and degenerative changes to the lumbar spine.

[55] In summary Dr McBride said:

> The physical injury here is prolapse of the intervertebral disc and osteoarthritic changes at the facet joints. This may have occurred in 2009, and probably before this. As the history indicates, there is a definite sequence of further injury events.
>
> The task or characteristic of the work responsible is repetitive forceful twisting and flexion/extension of the spine, increasing the forces on the spinal joints. These factors have been present in different jobs.
>
> I did not elicit any extra occupational factors which could have been responsible.

The Appellant's Submissions

[56] Mr Van Essen told the Court that the appellant had successfully self-rehabilitated to return to employment by participating in fitness exercises and purchasing items. He told the Court that Abbotsford School held the appellant's cleaning position open from the date of injury in 2015 until the end of January 2019 when it was mutually agreed that the employment would cease.

[57] The appellant has since returned to employment in the cleaning industry with a new employer at the beginning of March 2019.

[58] He said the hazardous working conditions as a cleaner that the appellant endured at the school, that were the cause of her injury, are nearly or completely eliminated in her new position as a cleaner at the motel.

[59] He said that since returning to employment over 18 months ago, the appellant is managing her work tasks with no issues whatsoever.

[60] Mr Van Essen said that when the Corporation investigated the claim for cover for gradual process injury lodged in 2015, it released only claim files from December 2014 onwards to the medical assessors. He said the Corporation never provided any party with the files relating back to injury claims of 2002, 2007 and 2009.

[61] He said that after discovery of historically accepted lower back injuries the appellant was advised to go to her GP and have the GP complete a medical certificate

claiming the current symptoms are an aggravation/continuation of the 2009 injury claim.

[62] He submits that degeneration is not a factor in the appellant's inability to return to work during her incapacity period. The appellant has for the last 18 months returned and maintained an employment status without any serious or debilitating effects, therefore any incapacity period the appellant endured can only been seen as injury by accident which has resulted in the onset of chronic pain.

[63] He submits that the best evidence of the appellant's incapacity and its causal relationship with her 2009 covered personal injury is Professor McBride's report of 9 April 2018.

[64] He submits that weight should be given to Professor McBride's evidence because:

(i) He is a specialist in occupational medicine, the very discipline that evaluates the causal relationship between work tasks and incapacity.

(ii) He clinically assessed the appellant when writing his report on the earlier occasion in the context of her gradual process claim.

[65] He submits that any difficulty Professor McBride had in obtaining an accurate claim history from the appellant is explicable because of the effects of the medication with which she was being treated, a point raised by Dr Anderson in his report of January 2018.

[66] He submits that Professor McBride finds a clear and direct causal link between the appellant's covered personal injury of June 2009, aggravation in December 2014, and subsequent incapacity in July 2015.

[67] He notes that Dr Anderson diagnosed the appellant as suffering from chronic regional pain syndrome at the site of her 2009 injury and following temporally from her December 2014 fall down stairs at work.

[68] He submits that Dr Anderson provides a reasonable and common-sense account of the causal relationship between the covered injury and subsequent incapacity after aggravation.

[69] Mr Van Essen submits that Dr McBride and Dr Anderson have the advantage of having physically examined the patient.

[70] Mr Van Essen seeks orders quashing the Corporation's decision and directing them to provide cover and entitlements to the appellant from the date of the incapacity commencing in July 2015 until her return to employment in March 2019.

The Respondent's Submissions

[71] Mr Hunt spoke to prepared written submissions. He spoke of cooperative dealings with Mr Van Essen to better identify the matters at issue on this appeal.

[72] He says that the decision in review 5812086 is squarely in focus, namely whether the appellant is entitled to cover for regional pain syndrome from her 19 June 2009 covered spine injury.

[73] Mr Hunt says here the claim for cover is essentially based on the report of Dr Anderson.

[74] He notes that Dr Anderson says that there is a temporal relationship in as much that the appellant had an injury, she reported it, it was recognised as some form of lumbar sprain, and was managed as such until 2009.

[75] Mr Hunt submits that the evidence does not establish a causal link between the appellant's back condition and the 2009 accident for the following reasons:

[a] The accident event in 2009 was minor. According to the description in the injury claim form, the appellant lifted a vacuum cleaner and carried it on her back and as a result had a sore back and neck.

[b] The injuries were also minor namely a neck sprain and "pain" in the lumbar spine.

[c] The appellant was certified unfit for work from 26 June to 16 July 2009 on which day the doctor recorded that the appellant was "going well" and she was pain free on examination.

[d] By 7 August 2009, the appellant was also discharged from physiotherapy treatment.

[76] Mr Hunt submits that Dr Anderson is incorrect when he says that the 2009 injury was recognised as a lumbar sprain.

[77] Mr Hunt notes that the appellant suffered further minor injuries in 2011 and these were reported to her GP.

[78] He says further that it is obvious from the considerable number of general practitioner visits in 2015 for back pain that the appellant had no difficulty in seeing her GP when she was in pain.

[79] Mr Hunt also points out an error in Dr Anderson's report, namely that the injuries she reported on 8 December 2014 were a painful left wrist and left calf and there is no mention of back pain or back injury.

[80] He submits that Dr Dreyer, the first specialist to have assessed the appellant for her back condition concluded after an MRI of the lumbar spine that the degenerative changes at L4, L5 and L5/S1 represented a progressive degenerative condition and not an acute injury.

[81] Mr Hunt notes that Dr Anderson does not comment on Dr Dreyer's conclusion that the appellant's condition is not due to an injury caused by accident but due to a degenerative spine condition.

[82] He also notes that Dr Anderson does not comment at all on Dr McBride's diagnosis of mild osteoarthritis.

[83] Mr Hunt submits that there is no basis for Dr Anderson's assertion that in hindsight the 2014 injury should have been seen as a continuation of the original injury that never settled in 2009.

[84] Mr Hunt notes that there is a break in the recorded notes of back pain between 2009 and 2015. He says the conclusion is irresistible that the back pain only became symptomatic in early 2015 not before.

[85] He notes that Dr McBride recorded in his report, no doubt based on the history taken from the appellant, that "there have been no previous episodes of low back pain and no prior history of injury" when referring to the 2014 accident event.

[86] Mr Hunt refers to Dr McBride's report of 9 April 2018 where under the heading "summary", he says:

> The physical injury here is a prolapse of the invertebral disc and osteoarthritis changes at the facet joints. This may have occurred in 2009, and probably before this.

[87] He submits that this falls short of the doctor saying that the 2009 injury was causative.

[88] Mr Hunt concludes therefore, that the 2009 accident did not cause an injury linked to any regional pain syndrome and submits the appeal should be dismissed.

The Appellant's Submissions in Reply

[89] In reply, Mr Van Essen emphasises that the appellant had a significant fall with a vacuum cleaner on her back at work in 2014.

[90] Likewise, she injured her back carrying the vacuum cleaner in 2009.

Decision

[91] The ultimate issue in this case is whether the appellant's regional pain syndrome involving her lower back region is causally related to her injury in 2009 and aggravated by her further injuries in 2014.

[92] In his report of 18 January 2018, Dr Anderson, Specialist Physician in Occupational Medicine and Chronic Pain Management, diagnosed that she has a regional pain syndrome involving the low back region in the midline and left side.

[93] As to the causal link, Dr Anderson says:

> There is a temporal relationship in as much as she had an injury, she reported it, it was recognised as some form of lumbar sprain and it was managed as such until 2009.
>
> The temporal link continues in as much as the pain never completely went and was regularly exacerbated with activities involving bending, lifting and twisting, particularly with the use of the vacuum back pack. (As a consequence, I see her further injuries in 2014 as an aggravation of her original injury rather than a new one.
>
> This would also be consistent with her MRI result which shows facet hypertrophy and degenerative changes involving the L5/S1 facets which would be consistent with changes following injuring them in 2009).

[94] Other relevant evidence is an MRI scan of her lumbar spine from 18 May 2015. The radiologist's report of 19 May 2015 mentions a history of several months of low lumbar pain and tingling feet. The radiologist reported:

> There is minimal disc space narrowing at the L5/S1 level. Appearances throughout the remainder of the lumbar spine are otherwise normal. The SI joints are satisfactory.

[95] Further scans were taken in August 2015 which found a minor disc bulge but no significant thecal sac nor nerve root compression at L4/5. At L5/S1 there was disc bulge abutting the thecal sac but not causing any compression. Also, there were mild osteoarthritic changes in the facet joints at L4/5 and L5/S1. There was no evidence of spinal stenosis and the remaining lumbar discs appeared normal.

[96] The limited record of the accident of 19 June 2009 describes it as "lifting vacuum cleaner/carrying it on my back and got a sore back and neck". A doctor's note from 22 June 2009 says this:

> Friday at work carrying vacuum cleaning (sic) on back luxing/cleaning at Abbotsford School … developed low back pain and posterior lower neck pain.
>
> No radiation other than briefly into her L shoulder blade when sat up in bed to move bowel and bladder. Ok, no leg pain/tingling.

[97] On 16 July 2009, Dr Searle recorded "going well" and that the appellant was pain free on examination. He concluded she was fit for work.

[98] She had four physiotherapy treatments for pain in her lumbar spine, and the physiotherapist's report of 7 August 2009 discharges her.

[99] The description of the 8 December 2014 accident recorded by her GP is as follows:

> Fell at work Thursday – tripped and missed a step – going down and put L hand up and sore L wrist since – all round waste no one spot sore; also L calf sore.
>
> OE no focal tenderness of wrist, good ROM.
>
> A: sprain reasonable to see how goes.
>
> OE: L calf – Achilles intact, tender middle of biggest part muscle belly.

[100] No injury to her back was noted on that occasion.

[101] In April 2015, her GP records that she had had several months of pain which her GP thought could be sciatica.

[102] On 15 July 2015, Dr Seale, her GP, noted:

> In hindsight back pain since injury in December so do ARC18 and add in of back strain.

[103] On 18 May 2015, as mentioned, the appellant had undergone a further MRI of the lumbar spine with a history of several months of low lumbar pain and tingling feet. The radiologist, Dr Wilson, noted there was minimal disc space narrowing at the L5/S1 level. Appearances throughout the remainder of the lumbar spine were otherwise normal. Dr Fulton, radiologist, reported on an MRI of the lumbar spine on 18 August 2015 saying there was a minor disc bulge at L4/5 but no significant thecal sac or nerve root compression and at L5/S1 there was a disc bulge abutting the thecal sac but not causing any compression. There were mild osteoarthritic changes in the face joints at L4/5 and L5/S1, but there was no evidence of spinal stenosis.

[104] Dr Dreyer whose specialty is sport and exercise medicine, examined the appellant on 8 August 2015. His diagnosis was:

> I feel in all likelihood that Tania has mechanical lower back pain, but wonder about the possibility of spinal stenosis given her impulse symptoms and the worsening of her neurological symptoms with walking, with relative improvement with sitting.

[105] Dr Dreyer reported further on 27 August 2015 on the MRI imaging, saying:

> My feelings are these represent a progressive degenerative condition and not an acute injury. In addition there is no 'MRI visible structural' cause of the dysaesthesia in her feet.

[106] In a report of 18 December 2015 Dr McBride, Occupational Medicine Specialist, diagnosed mild osteoarthritis of the lumbar spine. He said:

> This has obviously been present for some time, but seems to have become apparent after she fell on 4 December 2014.

[107] In his final report of 9 April 2018, Dr McBride said:

> Differential Diagnosis
>
> She has a chronic pain disorder, a sequel to repetitive injury and degenerative changes in the lumbar spine. This is not a 'de novo' phenomenon, the injuries are the underlying cause.
>
> Summary
>
> The physical injury here is a prolapse of the intervertebral disc and osteoarthritic changes at the facet joints. This may have occurred in 2009, and probably before this. As the history indicates, there is a definite sequence of further injury events

[108] In his report of 18 January 2018, Dr Anderson said:

> There is a temporal relationship in as much as that she had an injury, she reported it, it was recognised as some form of lumbar sprain and it was managed as such in 2009.
>
> The temporal link continues in as much as the pain never completely went and was regularly exacerbated with activities including bending, lifting and twisting, particularly with the use of the vacuum back pack.

> (As a consequence, I would see her further injuries in 2014 as an aggravation of her original injury rather than a new one.
>
> This would also be consistent with her MRI result which shows facet hypertrophy and degenerative changes involving the L5/S1 facets which would be consistent with changes following injuring them in 2009).

[109] The two reports of the respondent's lead occupational health adviser, Dr Monigatti, dated 20 April 2016 and 30 May 2016 appear directed more towards the issue of back injury caused by work process and therefore are of lesser value on the issue of causation deriving initially from the discrete 2009 injury.

[110] In summary, the evidence leaves us with Dr Dreyer's 'feelings' that the appellant's presentation of a progressive degenerative condition and not an acute injury, whereas Dr McBride's view is that she has a pain disorder as a sequel to repetitive injury and degenerative changes. Dr Anderson also notes the temporal link back to the 2009 injury and that the pain never completely went.

[111] Accordingly, I must conclude on the balance of probabilities that a causal link between her regional pain syndrome and her injuries of 2009 and 2014 has been established, and I therefore allow the appeal. The effect is that the decision of the respondent of 5 March 2018 declining cover for regional pain syndrome is reversed.

[112] This then is the conclusion in respect of appeal ACR 210/18. It was agreed at the hearing that the focus would be on the issue of cover for a regional pain syndrome. Appeal ACR 162/18, relating to the appellant's application for weekly compensation lodged on 29 June 2017 for an injury that occurred on 19 June 2009, not having been pursued is likewise dismissed. Finally, appeal ACR 348/18, relating to a claim for reimbursement for costs of purchase of a motor vehicle, not having been pursued at the hearing is likewise dismissed.

[113] Should any issue of costs arise, the parties have leave to file memoranda in respect thereof.

Judge C J McGuire
District Court Judge

Solicitors: Young Hunter, Christchurch for the respondent

Judgment recalled: 24 February 2021.Appeals ACR 162/18 and ACR 384/18 were dismissed in error. They were not argued. Accordingly, they are reinstated.

Judge CJ McGuire
District Court Judge