

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2021] NZACC 39

ACR 038/20

UNDER THE ACCIDENT COMPENSATION ACT
2001

IN THE MATTER OF AN APPEAL UNDER SECTION 149 OF
THE ACT

BETWEEN SHALINI GUPTA
Appellant

AND ACCIDENT COMPENSATION
CORPORATION
Second Respondent

Hearing: On the papers

Submissions: A Gupta for the appellant
F Becroft for the Accident Compensation Corporation

Judgment: 19 February 2021

**RESERVED JUDGMENT OF JUDGE P R SPILLER
[Weekly compensation - s 103(2), Accident Compensation Act 2001]**

Introduction

[1] This is an appeal from the decision of a reviewer dated 29 December 2019. The reviewer dismissed an application for review declining an application for weekly compensation, on the basis that there was insufficient evidence of a link between an incapacity in 2019 and an injury suffered in an accident in December 2016.

Background

[2] On 13 December 2016, Ms Gupta attended Dr Amanjeet Toor, who recorded that she “pulled L lower back muscle while doing gardening 2/7 days ago”. In the claim form lodged by Ms Gupta on the same day, it was recorded that, on 11 December 2016, she “hurt lower back while doing gardening”. On 14 December 2016, the Corporation confirmed cover for a soft tissue injury.

[3] Ms Gupta worked as a telephone switchboard operator in a call centre. In the weeks after her injury, the following medical reports were recorded:

- (a) On 20 December 2016, Dr Toor attended Ms Gupta, who noted that she still had back pain, “went to work yesterday, struggled when seated for eight hours”. Dr Toor certified Ms Gupta as fit to work 20 hours per week during 20-23 December 2016, subject to restrictions around lifting, heavy physical work, repetition, and prolonged sitting, walking and standing, because of back sprain “hurt lower back while doing gardening”.
- (b) On 27 December 2016, Dr Toor attended Ms Gupta, who noted that she “had physio last week, ongoing back pain, didn’t help much, worked for 4 hrs/day, sitting job hurts lower back”. Dr Toor certified Ms Gupta as fully unfit for the period 28-30 December 2016, as she was struggling with pain and receiving treatment through a physiotherapist.
- (c) On 31 December 2016, Dr Rajiv Sood attended Ms Gupta, who noted that her “lower back pain is improving, the intensity of the pain is less, pain mainly in the left lumbar region, no radiation of the pain down the left leg, able to work 4 hours a week”. Dr Sood certified Ms Gupta as fit to work 20 hours a week for the period 31 December 2016 to 6 January 2017, subject to physical restrictions, in view of her “improving lower back sprain”.

- (d) On 6 January 2017, Dr “Registrar” attended Ms Gupta who noted that she had “recent back injury whilst gardening, pain ongoing, currently seeing physio, has some radiculopathy down L leg, complaining of back pain and unable to go to sleep”. The doctor certified Ms Gupta as fit to work 20 hours a week for the period 9-23 January 2017, subject to physical restrictions, with no prolonged sitting due to back sprain.
- (e) On 12 January 2017, Dr Toor attended Ms Gupta who noted that she “had injury to lower back, not much improved, ongoing pains, occasional shooting pain down L buttock”. Dr Toor certified Ms Gupta as fit to work 20 hours a week for the period 25-27 January 2017, subject to physical restrictions, because of ongoing pain.

[4] The Corporation calculated Ms Gupta’s weekly compensation, and payments commenced, with abatement.

[5] On 12 January 2017, an x-ray of Ms Gupta’s lumbar spine was taken. The report noted that Ms Gupta had had pain since her injury one month ago. The x-ray showed a normal spine apart from minimal spurring around the margins of L3/4 and L4/5 discs, and no trauma or spondylolisthesis (slipped vertebra) present.

[6] The following medical reports were recorded following medical attendances on Ms Gupta:

- (a) On 21 January 2017, Dr Stevely Gonsalves attended Ms Gupta who noted that her “pain is left lower back radiating to the left lower limb up to the calf muscles”. Dr Gonsalves certified Ms Gupta as fit to work 20 hours per week during 21 January 2017 to 3 February 2017, with physical restrictions, due to “pain in the lower back radiating to the left lower limb”.
- (b) On 2 February 2017, Dr Toor attended Ms Gupta who noted that she “still gets L sciatica up to knee region with back pain, seeing physio,

sore usually after physio, missed work today due to back pain, no back pain red flags”. Dr Toor certified Ms Gupta as fit to work 20 hours per week during 4-10 February 2017, with physical restrictions, due to “pain in the lower back radiating to the left lower limb”, because of ongoing back pain.

[7] The Corporation arranged a monitored stay-at-work programme which was overseen by Ms Tammy Giles, an occupational health physiotherapist. On 8 February 2017, Ms Giles reported that Ms Gupta was 8.5 weeks post injury. Ms Gupta stated that the symptoms were getting worse over the last two weeks with leg symptoms commencing; aggravating activities included sitting and walking; and there was reduced sleep quality, and she was waking several times in the night. Ms Giles described Ms Gupta’s work as sedentary and considered that she presented with a functional capacity to complete sedentary to light duties with reduced hours, implementing frequent postural changes.

[8] Also on 8 February 2017, Mr Alastair Hadlow, orthopaedic surgeon, examined Ms Gupta. Mr Hadlow recorded that Ms Gupta had injured her back on 11 December 2016 and developed low back pain which subsequently moved down her left leg; she now had sciatica going down to her foot, which kept her awake at night; and she had never had this problem before. Mr Hadlow advised that the causal link between the proposed treatment and covered injury was that Ms Gupta had injured her back and had left sciatica consistent with a disc prolapse. Mr Hadlow arranged for an MRI scan.

[9] On 15 February 2017, Dr Toor attended Ms Gupta and certified her as unfit to work during 14-17 February 2017, because of ongoing pain.

[10] On 17 February 2017, an MRI scan was undertaken. The scan showed a L4/5 left foraminal annular tear potentially irritating the exiting L4 nerve root, and a shallow L5/S1 central and paracentral disc protrusion without central canal or foraminal compromise.

[11] On 17 February 2017, Mr Hadlow attended Ms Gupta with her MRI scan. Mr Hadlow noted that she had annular tears in the L4/5 and L5/S1 discs, and that she continued to get back pain and leg pain. Mr Hadlow suspected that Ms Gupta's pain was referred from the annular tears. He subsequently referred Ms Gupta for an epidural steroid injection.

[12] On 24 February 2017, Ms Gupta advised that she would return to full-time work. On 25 February 2017, Ms Giles reported that Ms Gupta had been provided with an electric sit-stand desk and that she had the ability to walk frequently around the office as needed for symptom management.

[13] On 26 February 2017, Dr Toor attended Ms Gupta and certified her as fit to work 20 hours a week, with physical restrictions, during 27 February to 12 March 2017.

[14] On 7 March 2017, Ms Gupta's file was reviewed by Dr Peter Thakurdas, branch medical advisor. Dr Thakurdas noted that there was no similar previous injury for Ms Gupta, and that she had been working on reduced hours since the accident, with a "sit to stand desk" at work. In his view, due to the scan findings, a medical case review appeared warranted.

[15] On 8 March 2017, Dr Toor attended Ms Gupta and certified her as fit to work 20 hours a week, with physical restrictions, during 9-19 March 2017, because of ongoing back pains.

[16] On 9 March 2017, Dr Hassan Mubark, rheumatologist, undertook the epidural steroid injection on Ms Gupta. Dr Mubark reported that, clinically, Ms Gupta had mainly L4/5 discopathy pain radiating down the left leg to the lateral aspect of the knee. Dr Mubark noted that the MRI was consistent with history and showed L4/5 left foraminal annular tear.

[17] On 19 March 2017, Dr Toor attended Ms Gupta and certified her as fit to work 25 hours a week, with physical restrictions, during 19-26 March 2017.

[18] On 22 March 2017, Ms Giles provided a further report. She advised that Ms Gupta still reported reduced medical clearance, ongoing discomfort following injury, and reduced tolerance to work beyond four hours. Ms Giles advised that a new gradual return to work programme was needed.

[19] On 26 March 2017, Dr Sood attended Ms Gupta and certified her as fit to work 30 hours a week, with physical restrictions, during 27 March to 2 April 2017.

[20] On 4 April 2017, Dr Mubark saw Ms Gupta and reported that she had less pain and no tenderness or focal neurology. Dr Mubark noted that Ms Gupta told him that she sometimes had left leg pain, but less than before, and so he had referred her for rehabilitation to help her symptoms. Dr Mubark suspected that annular tears required “a while” for healing.

[21] On 15 April 2017, Dr Toor attended Ms Gupta and certified her as fit to work 40 hours a week, with physical restrictions, during 18 April to 1 May 2017, noting that she missed work on 11 April due to back pain.

[22] On 24 April 2017, Ms Giles reported again, noting that Ms Gupta had returned to full hours and duties from 18 April 2017. Ms Giles confirmed her view that Ms Gupta was able to return to all of her pre-injury work tasks.

[23] On 27 April 2017, Mr Dean Mistry, spine and orthopaedic surgeon, examined Ms Gupta. She reported that there had been little improvement in her left sides’ pain, though her central lower back pain had been better, particularly after an epidural injection. She noted that the pain continued to fluctuate, and that lying, standing, sitting and bending over all caused pain. Mr Mistry’s impression was that she had poorly managed lower back pain with somatic referral down to her left leg, and suggested that there was an element of trochanteric bursitis. He directed an MRI scan and referred her to physiotherapy.

[24] On 29 April 2017, Dr Toor attended Ms Gupta and certified her as unfit to work on 28 April, due to pain.

[25] On 9 May 2017, an MRI scan was conducted, showing no definite cause for left gluteal or leg pain.

[26] On 16 May 2017, Mr Mistry reported again on Ms Gupta, confirming damage to the L4/5 and L5/S1 discs with annular tears in the left foraminal aspect and the central posterior aspect, but no neural compression. Mr Mistry stated:

2. I believe her ongoing symptoms and capacity were substantially due to the covered injury.

3. I believe her back injury is substantially due to her injury given the history noted in my clinic note.

4. In my opinion the back injury was caused by the accident that occurred 11.12.2016.

[27] The following medical reports were recorded following medical attendances on Ms Gupta:

(a) On 9 June 2017, Dr Toor attended Ms Gupta and certified her as fit to for work from 10 June to 9 July 2017, subject to physical restrictions, because of ongoing pains.

(b) On 22 June 2017, Dr Tharani Vignakumar attended Ms Gupta and certified her as unfit to for work during 21-23 June 2017, because she had sprained her back again.

(c) On 26 June 2017, Balapitiyage Weeraratne attended Ms Gupta and certified her as unfit to for work during 26-30 June 2017, because of ongoing back pain.

[28] On 20 June 2017, in Ms Giles' completion report for the stay-at-work programme, Ms Gupta recorded fluctuating lumbar and gluteal pain, with random symptoms that were worse at the end of the week. On 3 July 2017, Ms Giles recorded that Ms Gupta demonstrated the ability to stand and walk for short durations and to lift weights with improved technique.

[29] On 12 July 2017, in a completion report for the stay-at-work programme, Ms Giles reported that Ms Gupta confirmed improvements in fitness and sitting tolerance, and that she was again completing full hours and duties at work. Ms Giles advised that Ms Gupta was able to return to all of her pre-injury work tasks and did not need more assistance from the Corporation.

[30] On 16 August 2017, the Corporation issued a decision noting that the medical certification had expired and that, as a result, and given that there was no evidence of any incapacity to work, weekly compensation payments had ceased. The decision noted that any incapacity claimed in the future would need to be investigated.

[31] On 8 November 2017, Dr Kaiwan Driver attended Ms Gupta and recorded that she had injured her back when she fell the previous year and her pain had returned. She was certified as unfit for work from 7 to 10 November 2017.

[32] On 8 November 2017, Ms Gupta applied for weekly compensation for the injury that had occurred on 11 December 2016.

[33] On 14 November 2017, Dr Kevinjit Sandhu attended Ms Gupta and recorded her recurrence of back pain and that she was finding it hard to work, with occasional pain down the back of her left leg worse at night, and pain from her back on forward flexion.

[34] On 16 November 2017, the Corporation wrote to Ms Gupta, advising that it would investigate an entitlement to weekly compensation.

[35] On 15 December 2017, Dr David Scott, general and occupational medicine specialist, reported that Ms Gupta had an annular tear, and that these “do take a long while to heal, or stop causing symptoms”. His opinion was that: it seemed more likely than not that Ms Gupta had recovered sufficiently to return to full-time work by the end of April; the injury could be considered “spent” from 12 July 2017; subsequent short periods of time off work had been certified; and she was having “recurring back symptoms which are common to many people with previous back injuries, but which are not necessarily causally linked to the earlier injury”.

[36] On 15 December 2017, the Corporation issued a decision declining the application for weekly compensation, on the basis that the medical evidence did not show a causal link between the recent period of incapacity and the injury of 11 December 2016.

[37] On 15 May 2018, Dr Niraj Gunadwar attended Ms Gupta, who reported “on and off” back pain since her injury, with the previous two to three days worse. She was certified unfit for work, for the period 14-18 May 2018, because her back pain was worse.

[38] On 15 November 2018, Dr Priya de Fonseca attended Ms Gupta, who presented with ongoing back pain.

[39] On 16 February 2019, Dr Oruba Khalil attended Ms Gupta, who reported back pain radiating to her left leg down to her middle toe, and that she had had this pain “on and off” since her injury in 2016. She was certified unfit, for the period 13-22 February 2019, because of back pain.

[40] On 16 February 2019, Ms Gupta applied for weekly compensation for the injury that had occurred on 11 December 2016.

[41] On 20 February 2019, the Corporation wrote to Ms Gupta declining weekly compensation, on the basis that there was no evidence of a link between the recent incapacity and the 2016 injury.

[42] On 23 February 2019, Dr Nameer Wadea attended Ms Gupta, who reported ongoing lower back pain. She was certified unfit for work, for the period 23-27 February 2019, because of severe lower back pain.

[43] On 27 February 2019, Dr Nameer Wadea attended Ms Gupta who reported ongoing lower back pain. She was certified unfit for work, for the period 27 February to 1 March 2019, because she was still in pain. She was also certified as fit for 20 hours of work per week, with physical restrictions, from 2 to 13 March 2019.

[44] On 13 March 2019, Dr Nameer Wadea attended Ms Gupta, who reported lower back pain. She was certified as fit for 20 hours of work per week, with physical restrictions, from 14 March to 17 April 2019.

[45] On 15 March 2019, the Corporation declined funding for acupuncture treatment on the basis that Ms Gupta's need for treatment was not linked to the covered injury.

[46] Ms Gupta's GP, Dr Wadea, referred her to a musculoskeletal specialist for review.

[47] On 15 April 2019, Dr Matti, musculoskeletal medicine registrar (under the supervision of Dr Holtzhausen, musculoskeletal medicine specialist), attended on Ms Gupta. Dr Matti recorded that Ms Gupta had been referred for further management of her chronic left low back pain. Dr Matti reported that Ms Gupta's problem was left low back and referred lower limb pain of radicular nature, likely secondary to disc pathology at the L4/5 and L5/S1 levels. Dr Matti noted that the history of the current problem was that she had sustained an injury in December 2016 and subsequently developed pain in her lower left back and thereafter pain down her left leg. Dr Matti prescribed new medication and referred Ms Gupta for an MRI scan.

[48] On 29 April 2019, an MRI scan was undertaken. Dr Ushan de Sliva, radiologist, reported a two-year history of low back pain, left and right lower limb referred pain, L4/5 disc pathology on previous MRI 2017 and ongoing symptoms. It was noted that there had been no significant interval change since the previous scan on 17 February 2017, and stable left far lateral annular tear at L4/L5 and posterior annular tear at L5/S1, with no significant spinal canal or foraminal narrowing.

[49] On 29 April 2019, Dr Matti attended on Ms Gupta. Dr Matti noted that the scan showed that Ms Gupta still had a small left L4/5 disc annular tear and a small paracentral L5/S1 tear, with mild peri-articular oedema of her L4/5 facet joints. Dr Matti noted that Ms Gupta was able to work only four hours a day because of the intensity of her pain. Ms Gupta reported that the new medication had made a small

improvement to her pain. Dr Matti made some treatment suggestions including a further cortical steroid injection.

[50] On 13 May 2019, Dr Matti again attended on Ms Gupta. He recorded that Ms Gupta advised that her back and leg pain were much improved because of the new medication. She did not wish to undergo the injection and planned to increase her work hours gradually over the next couple of months.

[51] On 26 May 2019, Dr Laith Al-Rubiae attended on Ms Gupta and she reported chronic lower back pain post injury in 2016, radiating left lower leg, fluctuating.

[52] On 28 June 2019, Ms Gupta again applied for weekly compensation for the injury that had occurred on 11 December 2016.

[53] On 7 July 2019, Dr Gampalage De Fonseka attended on Ms Gupta and certified her as fit for work for 30 hours a week, with physical restrictions.

[54] On 11 July 2019, Dr Scott again reviewed Ms Gupta's file. He confirmed his view that symptoms from the covered injury, including the annular tears, had resolved by July 2017. He believed that there was pre-existing disc disease, evident in the x-ray and MRI scan taken shortly after the event, and this pathology has not changed significantly according to the radiologist. Ms Gupta's injury was low force. If the annular tears had a causal link to the accident of 11 December 2016, then the symptoms from them had resolved by mid-2017 when Ms Gupta returned to full-time work.

[55] On 6 August 2019, the Corporation issued a decision declining weekly compensation, on the basis that there was no evidence of a link between the recent incapacity and the 2016 injury. On the same day, the Corporation also declined to assist with further treatment. Ms Gupta subsequently applied for a review of the Corporation's decision.

[56] On 20 August 2019, Dr Stevely Gonsalves attended on Ms Gupta. He certified her as fit to work 40 hours a week, with regular breaks for pain management.

[57] On 5 December 2019, review proceedings were held. On 29 December 2019, the Reviewer dismissed the review, on the basis that Ms Gupta's symptoms and incapacity in June 2019 were not related to an injury caused by the December 2016 accident.

[58] On 24 February 2020, a Notice of Appeal was lodged.

Relevant law

[59] Section 103(2) of the Accident Compensation Act 2001 Act ("the Act") sets out the test for incapacity in relation to entitlements to weekly compensation:

The question that the Corporation must determine is whether the claimant is unable, because of his or her personal injury, to engage an employment in which he or she was employed when he or she suffered the personal injury.

[60] In *Johnston*,¹ the High Court observed that "[o]ngoing ACC coverage for incapacity depends upon the present incapacity being linked to an injury caused by the accident".

Discussion

[61] The issue in this case is whether Ms Gupta is entitled to weekly compensation, because of her personal injury in December 2016, in respect of a subsequent incapacity.

[62] The Corporation submits that its decline of weekly compensation is supported by the available medical evidence. Ms Gupta suffered a discrete injury in December 2016, and the early indications were that annular tearing in the immediate aftermath of the accident was likely injury-related. However, by July 2017 that injury had resolved, to the extent that she was no longer seeking medical attention,

¹ *Johnston v Accident Compensation Corporation* [2010] NZHC 1726, [2010] NZAR 673 at [20].

did not do so for an extended period thereafter, and was able to return to her full-time work and duties. It was only at a subsequent point that symptoms re-emerged and at that stage medical evidence confirms that symptoms were not directly causally related to an injury suffered in December 2016. However, the Corporation offered to obtain an independent orthopaedic review to address diagnosis, causation and incapacity further.

The nature of Ms Gupta's injury in December 2016

[63] On 11 December 2016, Ms Gupta injured her left lower back. This injury had significant consequences for Ms Gupta. Over the ensuing seven months she experienced repeated, though fluctuating, back pain and referred pain down her left buttock and leg. Her pain caused her difficulties in sitting and walking during the day and sleeplessness at night. She made repeated visits to her GPs, who certified her repeated absences from and/or limitations on her work. The Corporation paid weekly compensation as a result.

[64] An x-ray of Ms Gupta's lumbar spine, taken in January 2017, showed a normal spine apart from minimal spurring around the margins of L3/4 and L4/5 discs, and no trauma or spondylolisthesis (slipped vertebra) present. On 17 February 2017, an MRI scan showed that Ms Gupta had annular tears in the L4/5 and L5/S1 discs. Mr Alastair Hadlow, the orthopaedic surgeon who attended Ms Gupta on the same day, indicated that Ms Gupta's pain was referred from the annular tears. This view was confirmed on 9 March 2017 by Dr Hassan Mubark, rheumatologist. Dr Mubark reported that, clinically, Ms Gupta had mainly L4/5 discopathy pain radiating down the left leg to the lateral aspect of the knee, and he noted that the MRI showed L4/5 left foraminal annular tear.

[65] On 9 May 2017, a further MRI scan was conducted on Ms Gupta. Following this scan, Mr Dean Mistry, spine and orthopaedic surgeon, who had attended on Ms Gupta, advised that her ongoing back-related symptoms and capacity were substantially due to, and caused by, the accident that occurred on 11 December 2016.

[66] There is an alternative suggestion, as to the cause of Ms Gupta's back-related symptoms, proposed by Dr David Scott, general and occupational medicine specialist. He has at no stage met or examined Ms Gupta, but her file has been referred to him for comment. On 11 July 2019 (some two-and-a-half years after Ms Gupta's accident), Dr Scott believed that Ms Gupta had pre-existing disc disease, evident in the x-ray and MRI scan taken shortly after the event, and that this pathology has not changed significantly according to the radiologist.

[67] It is noteworthy that, when Dr Scott previously reviewed Ms Gupta's file on 15 December 2017, he made no such assessment, and in fact referred to Ms Gupta having had symptoms from an annular tear. Given the disparity between Dr Scott's later suggestion and the considerable weight of medical evidence to the contrary, I find that little weight can be attached to this view. It is clear, from the evidence of the medical specialists who attended on Ms Gupta in the months following her accident, that her ongoing, significant back-related symptoms and capacity were due to, and caused by, the accident that occurred on 11 December 2016.

Whether Ms Gupta's symptoms since July 2017 are causally related to her injury

[68] By 12 July 2017, Ms Gupta's condition had improved to the extent that she was again completing full hours and duties at work and she no longer needed assistance from the Corporation. On 16 August 2017, the Corporation advised Ms Gupta that, given that there was no evidence of any incapacity to work, weekly compensation payments had ceased.

[69] In November 2017, Ms Gupta applied for weekly compensation for her injury, in respect of subsequent incapacity. The Corporation (as noted above) referred the matter to Dr Scott, who considered that Ms Gupta's injury could be considered "spent" from 12 July 2017. In light of this view, the Corporation declined Ms Gupta's application for weekly compensation, on the basis that the medical evidence did not show a causal link between the recent period of incapacity and the injury of December 2016. In February 2019, Ms Gupta again applied for weekly compensation for her injury, in respect of subsequent incapacity, but her application was declined on the same basis as before.

[70] In June 2019, Ms Gupta once again applied for weekly compensation for her injury, in respect of subsequent incapacity. The Corporation referred the matter to Dr Scott, who again considered that Ms Gupta's injury could be considered resolved by 12 July 2017. In light of this view, the Corporation again declined the application for weekly compensation, because of the absence of a causal link with the injury of December 2016.

[71] It is acknowledged that there was a gap in time between 12 July 2017 and 8 November 2017. This was the date when Ms Gupta attended a GP and advised that she had injured her back the previous year and that her pain had returned, and the GP then certified her as unfit for work from 7 to 10 November 2017. However, this evidence is counterbalanced by the following considerations.

[72] First, from 8 November 2017 through to August 2019, Ms Gupta attended medical practitioners on 14 occasions with the same symptoms that had surfaced in the seven months after her injury. The common characteristics were chronic, though fluctuating ("on and off"), pain in her lower left back and down her left leg.

[73] Second, there is medical evidence that the nature of Mr Gupta's injury meant that she could expect symptoms to continue for an extended time. In April 2017, Dr Mubark, the rheumatologist who attended on Ms Gupta, suspected that annular tears required "a while" for healing. In December 2017, Dr Scott, the general and occupational medicine specialist who reviewed Ms Gupta's file, acknowledged that recurring back symptoms which were common to many people with previous back injuries.

[74] Third, there is medical evidence that Ms Gupta's ongoing symptoms were causally related to her injury in December 2016. Dr Matti, the musculoskeletal medicine registrar who attended on Ms Gupta in April 2019, reported that Ms Gupta's problem was left low back and referred lower limb pain of radicular nature, likely secondary to disc pathology at the L4/5 and L5/S1 levels. Dr Matti noted that the history of the current problem was that she had sustained an injury in December 2016 and subsequently developed pain in her lower left back and thereafter pain down her left leg. The MRI scan undertaken in April 2019 showed that there had

been no significant interval change since the previous scan on 17 February 2017, and there was still a stable left far lateral annular tear at L4/L5 and posterior annular tear at L5/S1.

[75] In light of the above considerations, I am satisfied that Ms Gupta's incapacity subsequent to July 2017 is sufficiently linked to her injury caused by her accident of December 2016.² She has therefore been unable on occasions, because of her personal injury, to engage in employment in which she was employed when she suffered the personal injury, and so is entitled to weekly compensation payments.

Conclusion

[76] In light of the above considerations, Ms Gupta is entitled to weekly compensation, because of her personal injury in December 2016, in respect of her subsequent incapacity.

[77] The appeal is therefore allowed, and the review decision of 29 December 2019 is set aside.

[78] Ms Gupta is entitled to costs and/or disbursements. If these cannot be agreed within one month, I shall determine the issue following the filing of memoranda.



P R Spiller
District Court Judge

Solicitors: Medico Law, Auckland for the respondent.

² *Johnston v Accident Compensation Corporation* above n1, at [20].