

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**I TE KŌTI-Ā-ROHE
KI OTAUTAHI**

[2021] NZACC 9

ACR 307/18

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

Hearing: 6 October 2020
Heard at: Christchurch/Ōtautahi

Appearances: Mr Stryder in person
Mr I Hunt for the respondent

Judgment: 12 January 2021

**RESERVED JUDGMENT OF JUDGE C J McGUIRE
[Treatment Injury ss 26(1)(c) 32 and 33 Accident Compensation Act 2001]**

[1] At issue on this appeal is a decision by the Corporation on 28 April 2017 in which it declined Mr Stryder’s claim for cover for a treatment injury.

Background

[2] Mr Stryder has cover for a previous lumbar and ligament sprain sustained on 16 April 2014 when he injured his lower back lifting a tandem trailer.

[3] He was referred to Grahame Inglis, Orthopaedic Surgeon, on 8 May 2014, who diagnosed him with “non specific back pain” and advised there was no surgical

interventions appropriate at the time. Mr Inglis recommended continuing with the fitness programme and analgesics.

[4] A subsequent MRI scan some 18 months later, on 5 October 2015, noted:

Broad based posterior disc bulge at L4/5 combined with posterior element hypertrophy to cause severe left and moderately severe right subarticular recess narrowing.

Type 1 end plate change/marrow oedema.

[5] Mr Stryder was then seen by Dr Boet, Neurosurgeon, who performed an L4/5 anterior discectomy and arthroplasty on 10 March 2016.

[6] Despite surgery, Mr Stryder has ongoing back pain.

Treatment Injury Claim

[7] On 29 August 2016 Mr Stryder's GP, Dr Sia, lodged a claim for cover on Mr Stryder's behalf. It was later clarified by Dr Sia on 23 September 2016, via a treatment injury claim form, that the claim was for "a delayed diagnosis of a disc prolapse at L4/5", said to be a misdiagnosis with consequences leading to chronic disabling pain in Mr Stryder's back.

[8] In considering the treatment injury claim, further comment was sought from Dr Sia. A further report was also sought from Mr Inglis. However by this time Mr Inglis had retired.

[9] The Corporation then sought clinical advice from Mr Peter Robertson, Orthopaedic and Spinal Surgeon. This included further comment from Mr Robertson, after Mr Stryder raised additional questions.

[10] In his report of 2 April 2017, Mr Robertson concluded:

In summary I can see no evidence of a misdiagnosis and certainly no evidence of treatment injury as claimed. It is very clear that Mr Stryder has had significant ongoing back pain and disability and this is a very difficult situation for any patient who has previously functioned at a very high level. Notwithstanding this, the prolonged period of non operative care with a

rehabilitative focus is totally appropriate. The role of surgery is controversial and expectations must be realistic.

Ongoing symptoms are to a degree the norm and it seems to have been borne out in the correspondence available for review.

[11] Mr Stryder had also lodged a complaint with the Health and Disability Commissioner, who after investigating, concluded there had been no departure from the standard of care in Mr Stryder's situation.

[12] All available evidence was considered by the Complex Claims Panel (the Panel) on 27 April 2017. The Panel concluded that:

... having considered all of the clinical facts and opinion (the panel) agree with the recommendation to decline – treatment provided was reasonable and appropriate and there was no injury caused by treatment that meets the remaining criteria for cover.

[13] On 28 April 2017 the Corporation advised Mr Stryder that his claim for treatment injury had been declined because it did not meet the criteria for cover.

The Appellant's Submissions

[14] Mr Stryder's criticism of Mr Inglis was that he failed to provide an MRI; that he provided no treatment and he failed to identify or diagnose his back injury even with a back x-ray showing 6 mm loss of disc height at his L4/L5 disc. Mr Stryder says that Mr Inglis has clearly breached s 33 of the Act because when assessing whether a treatment injury has occurred, treatment includes –

- [a] The giving of treatment.
- [b] A diagnosis of a person's medical condition.
- [c] A decision on treatment to be provided.
- [d] A failure to provide treatment.

The Respondent's Submissions

[15] Mr Hunt notes that following the consultation with Mr Inglis on 8 May 2014 the latter had no further involvement.

[16] Mr Hunt refers to the reports that followed. He refers to the report of Mr Rutherford addressed to the complaints assessment team leader in the office of the Health and Disability Commissioner. In Mr Rutherford's opinion:

Dr Inglis' management of Mr Stryder at this stage was entirely appropriate. The literature is quite clear that MRI examination in this instance is not recommended. There are multiple best practice guidelines which point out that intensive imaging for non specific mechanical back pain in the absence of evidence of systemic disease or neurological compromise creates more cost, does not achieve any improvement of outcomes and frequently leads to more invasive treatments.

[17] Mr Hunt refers to the report of Mr Robertson of 4 April 2017 where he says:

In summary I can see no evidence of a misdiagnosis and certainly no evidence of treatment injury as claimed. It is very clear that Mr Stryder has had significant ongoing back pain and disability and this is a very difficult situation for any patient who has previously functioned at a very high level. Notwithstanding this, the prolonged period of non operative care with rehabilitative focus is totally appropriate. The role of surgery is controversial and expectations must be realistic.

[18] Mr Hunt submits that the appeal fails at the first hurdle that is there is no evidence to show that the appellant actually suffered a personal injury caused by treatment or a failure to provide treatment. He submits that as a result there is no evidence to show that there was a delay in diagnosis which caused a personal injury and the balance of the criteria in ss 26(1)(c), 32 and 33 cannot be established.

[19] In reply Mr Stryder complained that the Corporation has not listened to his GP, Dr Sia, and he referred to the fact that the MRI of May 2016 showed an L4/5 disc bulge.

Decision

[20] Following Mr Stryder's accident injuring his back while lifting a heavy trailer on 16 March 2014 he was referred by Dr Sia to Mr Inglis. Mr Inglis reported on 8 May 2014 as follows:

Examination

Examination today reveals a fit 40 year old man who moves briskly and freely. He has reasonably good range of lumbar motion, fingers to low calf. Extension is good. Heel and toe walks normally. Neurological examination is normal,

plantars are down going, no long tracked signs. Straight leg raise easily to 90 degrees without a lot of pain today. Femoral stretch nor tested.

x-rays:

X-rays of the lumbar spine reveal good spinal alignment, there is marked disc space narrowing at 4/5 level lesser changes probably at 5/S1.

Hips are good, sacroiliac joints are good.

Opinion:

Ivan suffers from non specific back pain. We have had a chat to him about back pain. There is certainly nothing from the surgical point of view we would offer him. He has a compromised 4-5, 5-S1 level. He has already explored most forms of conservative treatment. I have discussed analgesia, physical fitness with him, he is fairly familiar with this. Other than reassurance, encouraging him to continue in his fitness programme there is nothing further I would offer him.

[21] Mr Stryder refers to a letter from Dr Sia dated 6 September 2017 to the Corporation senior medical advisor and the Corporation's medical review doctors.

In it, Dr Sia says:

In my opinion the misdiagnosis by Dr Inglis on 8.5.14 of the severe disc bulge at the L4/5 disc, pressing on Ivan's spinal cord and Dr Inglis' medical advice of no medical treatment or MRI lead to Ivan trying to carry on working in his very physical job as a labourer, landscaper, fencer, gardener for 18 months with incapacitating lower back pain and possibly further permanent damage to his spinal nerves ... it is my medical opinion that Ivan had a misdiagnosis of a severely bulged/prolapsed L4/L5 disc and incapacity from his back injury and resulting incapacity sustained on the 16.04.14. ...

[22] Dr Sia is the only medical professional who supports Mr Stryder's claim of a treatment injury. In support of the proposition that there was no treatment injury is the Corporation's Complex Claims Panel which, after reviewing the opinions of Mr Robertson and Mr Rutherford, concludes:

The panel having considered all of the clinical facts and opinion agree with the recommendation to decline treatment provided was reasonable and appropriate and there is no injury caused by treatment that meets the remaining criteria for cover.

[23] Therefore, the overwhelming weight of evidence in this case is that there was no treatment injury.

[24] Accordingly, I must find that on the balance of probabilities, Mr Stryder has failed to show that Mr Inglis' treatment fell below accepted professional standards and therefore the appeal must be dismissed.

[25] There is no issue as to costs.



Judge C J McGuire
District Court Judge

Solicitors: Young, Hunter, Christchurch for the respondent