

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2022] NZACC 92

**ACR 261/20
and 15/21**

UNDER THE ACCIDENT COMPENSATION ACT
2001

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

BETWEEN WILLIAM CAREY
Appellant

AND ACCIDENT COMPENSATION
CORPORATION
Respondent

Hearing: On the papers

Submissions: D Carey for the Appellant
P McBride for the Respondent

Judgment: 18 May 2022

**DECISION OF JUDGE P R SPILLER
[Leave to Appeal]**

Introduction

[1] This is an application for leave to appeal against a judgment of His Honour Judge McGuire, delivered on 2 February 2022, covering two appeals.¹ The appeals concerned:

- (1) the Corporation's decision of 4 June 2020 awarding Mr Carey interest of \$50,148.39 on backdated weekly compensation (ACR 261/20); and

¹ This Court notes that Judge McGuire's judgment of 2 February 2022 was recalled and reissued on 18 February 2022, and that no application for leave to appeal was filed in relation to the latter judgment. However, the Court proceeds on the basis that the present appeal is intended to relate to the latter judgment, as recorded in *Carey v Accident Compensation Corporation* [2022] NZACC 18.

- (2) the Corporation's decision of 19 May 2020 awarding Mr Carey interest of \$32,803.58 on backdated weekly compensation (ACR 15/21).

[2] The Court dismissed the appeals, for the reasons outlined below.

Background

[3] Mr Carey was born in 1947. In the 1970s, he was a self-employed commercial fisherman.

[4] On an unknown date in 1975, Mr Carey suffered head injuries when the boom attached to the mast of his fishing boat broke. He was rendered unconscious for a period. He also lost hearing ability. He was treated at hospital and discharged.

[5] A few months later, Mr Carey was referred to hospital, as hearing loss remained profound in his right ear. He was placed on a waiting list to undergo a right stapedectomy. This operation took place on 19 May 1978. The procedure failed, and he was left without hearing in his right ear. Mr Carey was without employment from the date of his operation until he commenced employment in October 1987. This employment ended on 23 September 1993, following a knee injury.

[6] On 5 July 2002, Mr Carey was declared vocationally independent, without weekly compensation, and this continued until to 23 November 2013.

[7] On 23 August 2002, Mr Carey claimed medical misadventure arising from the ear surgery of 9 May 1978. On 6 May 2003, the claim was declined, on the basis that there was no evidence of medical error and the claimed injury did not meet the legal test of medical mishap.

[8] On 11 September 2016, Mr Carey lodged a late application for review of the 2003 decision. On 15 June 2017, the Reviewer found that the medical evidence then available established that Mr Carey's treatment in May 1978 met the criteria for cover under the medical mishap provisions of applicable legislation.

[9] On 29 June 2017, Mr Carey advised the Corporation that he wished to claim for weekly compensation.

[10] On 15 August 2017, the Corporation issued a decision declining backdated weekly compensation, noting that the substantial period between the personal injury being sustained and the claim for weekly compensation of 39 years prejudiced its ability to determine the claim. Mr Carey applied to review this decision. On 3 January 2018, the Reviewer quashed the Corporation's decision, noting that it had prematurely declined Mr Carey's application.

[11] On 6 July 2018, the Corporation declined backdated earnings-related compensation, as it was not satisfied that Mr Carey had proved that he suffered a loss of earnings due to incapacity to work. Mr Carey applied to review this decision. On 4 December 2018, the Reviewer found there was insufficient evidence to show that Mr Carey had suffered a loss of earning capacity between 1978 and 1993 due to his personal injury caused by medical misadventure. Mr Carey filed an appeal against this decision.

[12] On 11 October 2019, Judge McGuire found that Mr Carey was incapacitated on account of medical misadventure, and that he was entitled to earnings-related compensation, from 19 May 1978 until he commenced employment in October 1987.²

[13] In accordance with Judge McGuire's judgment, the Corporation based the calculation of backdated earnings-related compensation on the provisions of the Accident Compensation Act 1972. On 29 April 2020, the Corporation paid Mr Carey a sum in excess of \$230,000 for the period from May 1978 until October 1987.

[14] The Corporation also calculated interest on the compensation paid and did so in terms of s 114 of the Accident Compensation Act 2001 (which governs interest payable on weekly compensation). In a decision dated 19 May 2020, the Corporation advised that Mr Carey was entitled to \$32,803.58 interest covering the

² *Carey v Accident Compensation Corporation* [2019] NZACC 126, at [205].

period from 15 March 2017, the date cover was accepted, to 29 April 2020, the date it paid backdated weekly compensation from 1978 to 1987. Mr Carey applied to review this decision.

[15] Separately, in light of new medical evidence, the Corporation revisited historical weekly compensation from 2002, when Mr Carey was declared vocationally independent. On 19 May 2020, the Corporation advised that he was entitled to backdated weekly compensation for the period from 5 July 2002 to 23 November 2013. This compensation was paid on 21 May 2020. In a further decision, dated 4 June 2020, the Corporation advised Mr Carey that he was entitled to interest of \$50,148.39 on this backdated weekly compensation. The interest covered the period from 15 March 2017, the date at which cover could have been reasonably awarded for the relevant conditions upon the medical mishap claim, to 21 May 2020, the date on which the backdated weekly compensation was paid. Mr Carey applied to review this decision.

[16] On 11 November 2020, the Reviewer quashed the Corporation's decision to pay \$32,803.58 interest for the period 1978-1987, and referred the matter back to the Corporation with a direction to reconsider Mr Carey's eligibility for any payment of interest on the backdated earnings-related compensation, and to make a new decision. The Reviewer rejected Mr Carey's submission that the award of interest should be based on the Interest on Money Claims Act 2016. The Reviewer found that the Corporation had wrongly advised Mr Carey that interest was to be paid on backdated weekly compensation whereas his entitlement was to backdated earnings-related compensation; the date of cover recorded in the decision letter was 15 March 2017 whereas the correct date was 15 June 2017; section 114 of the Act did not apply and the findings of the courts in *Robinson*³ and *McLean*⁴ established that there could not be any interest paid on earnings-related compensation for a period prior to the inception of the 1992 Act. (On 19 March 2021, the Corporation advised Mr Carey that it would not be reassessing the matter of interest on the earnings-related compensation arrears.)

³ *Robinson v Accident Compensation Corporation* [2007] NZAR 193, at [33].

⁴ *McLean v Accident Compensation Corporation* [2008] NZHC 615, at [36].

[17] Also, on 11 November 2020, the Reviewer dismissed the review of the Corporation’s decision to pay interest of \$50,148.39 for the period 2017-2020. The Reviewer rejected Mr Carey’s submission that interest on the backdated weekly compensation should apply from the date on which weekly compensation ceased in July 2002, as this would mean a retrospective deeming of the “all information” date when it was not established until the much later inquiry that Mr Carey did not have the capacity for work from April 2002.

[18] On 8 December 2020, Mr Carey lodged appeals in respect of the Reviewers’ decisions regarding the Corporation’s decision of 4 June 2020 to pay \$50,148.39 interest for the period 2017-2020 (ACR 261/20), and the Corporation’s decision of 19 May 2020 to pay \$32,803.58 interest for the period 1978-1987 (ACR 15/21).

Appeal ACR 261/20: payment of \$50,148.39 interest for the period 2017-2020

Relevant law

[19] Section 114 of the Accident Compensation Act 2001 (the Act) provides:

(1) The Corporation is liable to pay interest on any payment of weekly compensation to which the claimant is entitled, if the Corporation has not made the payment within 1 month after the Corporation has received all information necessary to enable the Corporation to calculate and make the payment.

[20] Section 162(1) of the Act provides:

A party to an appeal who is dissatisfied with the decision of a District Court as being wrong in law may, with leave of the District Court, appeal to the High Court.

[21] In *O’Neill v Accident Compensation Corporation*,⁵ Judge Cadenhead stated:

[24] The Courts have emphasised that for leave to be granted:

...

(iii) Care must be taken to avoid allowing issues of fact to be dressed up as questions of law; appeals on the former being proscribed ...

...

(v) A decision-maker’s treatment of facts can amount to an error of law. There will be an error of law where there is no evidence to

⁵ *O’Neill v Accident Compensation Corporation* [2008] NZACC 250.

support the decision, the evidence is inconsistent with, and contradictory of, the decision, or the true and only reasonable conclusion on the evidence contradicts the decision ...

...

[25] Even if the qualifying criteria are made out, the Court has an extensive discretion in the grant or refusal of leave so as to ensure proper use of scarce judicial resources. Leave is not to be granted as a matter of course. One factor in the grant of leave is the wider importance of any contended point of law ...

[22] In *Bryson v Three Foot Six Ltd (No 2)*,⁶ Blanchard J for the Supreme Court stated:

[21] ... the task which the lower Court is engaged upon is the application of the law to the facts before it in the individual case. It involves a question of law only when the law requires that a certain answer be given because the facts permit only one answer. Where a decision either way is fairly open, depending on the view taken, it is treated as a decision of fact, able to be impugned only if in the process of determination the decision-maker misdirects itself in law.

...

[25] An appeal cannot however be said to be on a question of law where the factfinding Court has merely applied law which it has correctly understood to the facts of an individual case. It is for the Court to weigh the relevant facts in the light of the applicable law. Provided that the Court has not overlooked any relevant matter or taken account of some matter which is irrelevant to the proper application of the law, the conclusion is a matter for the fact-finding Court, unless it is clearly insupportable.

[23] In *Miller*,⁷ Stevens J for the Court of Appeal stated:

[41] It is now well established that interest will run from the first date on which it can be said that the Corporation holds “all information necessary”. The focus is not on the date of review or appeal, but rather on the date when it can be said that the Corporation is first in possession of the necessary information to make the same decision as that eventually reached on review or appeal. ...

The Court’s judgment of 18 February 2022

[24] Judge McGuire noted that this appeal was from the decision of a Reviewer dismissing a review of the Corporation’s decision to award interest on backdated weekly compensation for a period from 15 March 2017.

⁶ *Bryson v Three Foot Six Ltd (No 2)* [2005] ERNZ 372 [2005] 3 NZLR 721.

⁷ *Accident Compensation Corporation v Miller* [2013] NZCA 141, [2013] 3 NZLR 312.

[25] Judge McGuire found that, for the purposes of section 114(1) of the Act, the Corporation was liable to pay interest on back-dated weekly compensation from 15 March 2017. The reason for this finding was that 15 March 2017 was the date within one month after the Corporation had received all the information necessary to enable the Corporation to calculate and make payment. Judge McGuire noted that the date of 15 March 2017 derived from the report of an Otolaryngologist, dated 15 February 2017, finding that Mr Carey was unable to perform his normal work. Judge McGuire added that this report was set out in his previous decision involving Mr Carey.⁸ Judge McGuire dismissed the appeal from the Reviewer's decision.

Mr Carey's submissions

[26] Mr Carey submits that the decision to award interest on backdated weekly compensation from 15 March 2017 to date of payment, and not from 5 July 2002, is wrong in law. Mr Carey submits, *inter alia*, that the Corporation carried out an insufficient investigation and had insufficient evidence to support the decision to cease weekly compensation on 4 July 2002, and that the decision to cease Mr Carey's weekly compensation occurred within the period of an active medical certificate. Mr Carey refers to criteria in the Court of Appeal's decision in *Miller*, as to when the Corporation might make a decision to cancel or suspend compensation that is later overturned on appeal.⁹ Mr Carey also refers to the District Court's earlier decision, in July 2013, where it found that "to this point" Mr Carey had not vocational independence.¹⁰ Mr Carey requests interest to be awarded for backdated weekly compensation from 5 July 2002, the day after weekly compensation ceased.

Discussion

[27] To succeed in obtaining leave to appeal, Mr Carey is required to show that Judge McGuire's decision is wrong in law.¹¹ For there to be an error of law arising out of Judge McGuire's treatment of facts, Mr Carey must establish that: there is no evidence to support the decision; the evidence is inconsistent with, and contradictory of, the decision; or the true and only reasonable conclusion on the evidence

⁸ Carey, supra n 2, at [73]-[74].

⁹ Miller, supra n 7, at [47].

¹⁰ Carey v Accident Compensation Corporation [2013] NZACC 330, at [75].

¹¹ Section 162(1) of the Act.

contradicts the decision.¹² Where Judge McGuire is seen to be applying the law to the facts in this case, the conclusion he reaches is a matter for him as the fact-finding Judge, unless his conclusion is clearly insupportable.¹³ Even if Mr Carey is found to have arguable grounds to support his appeal, the Court retains a discretion to refuse leave to ensure proper use of scarce judicial resources, as where there is insufficient wider importance of the contended point of law.¹⁴

[28] Judge McGuire's decision, as to the date from which the interest payment to Mr Carey should be calculated, was clearly one of fact made within the context of section 114(1) of the Act. Judge McGuire's decision was based on supportive evidence, being a report finding Mr Carey unable to perform his normal work, and the Corporation's payment of interest (in terms of section 114(1)) one month after this report.

[29] This Court does not perceive the relevance, to the present enquiry, of the Court of Appeal decision in *Miller*, which concerned the issue of when the Corporation might make a decision to cancel or suspend compensation that is later overturned on appeal. The Court also does not perceive the relevance of the District Court's decision in 2013, made on the facts then at hand.

[30] This Court concludes that it is not satisfied that Judge McGuire's application of section 114(1) to the facts of this case was insupportable, so as to render his decision wrong in law. This Court is also not satisfied that it should exercise its discretion to allow leave, in light of the insufficient wider importance of the contended point of law.

Appeal ACR 15/21: payment of \$32,803.58 interest for the period 1978-1987

Relevant law

[31] Section 3 of the Accident Compensation Act 2001 (the Act) provides:

The purpose of this Act is to enhance the public good and reinforce the social contract represented by the first accident compensation scheme by providing for

¹² *O'Neill*, supra n 5, at [24](v).

¹³ *Bryson*, supra n 6, at [25].

¹⁴ *O'Neill*, supra n 5, at [25].

a fair and sustainable scheme for managing personal injury that has, as its overriding goals, minimising both the overall incidence of injury in the community, and the impact of injury on the community (including economic, social, and personal costs), through—

...

- (d) ensuring that, during their rehabilitation, claimants receive fair compensation for loss from injury, including fair determination of weekly compensation and, where appropriate, lump sums for permanent impairment:

[32] Section 114 of the Act provides:

- (1) The Corporation is liable to pay interest on any payment of weekly compensation to which the claimant is entitled, if the Corporation has not made the payment within 1 month after the Corporation has received all information necessary to enable the Corporation to calculate and make the payment.

- (2) The Corporation is liable to pay the interest—

- (a) for the period from the date on which payment should have been made to the date on which it is made (the liability period); and
- (b) at the interest rate or rates for the liability period.

...

- (4) In this section, interest rate means the base rate plus the premium where—

- (a) the base rate is—
 - (i) for any day on or after 1 July in a year to the close of 30 June in the year that follows, the average of the 6 observations for the retail 6-month term deposit rate most recently published by the Reserve Bank of New Zealand before 30 April in that year; or
 - (ii) if another base rate has been prescribed for the purposes of this section, that base rate:
- (b) the premium is—
 - (i) 0.95%; or
 - (ii) if another premium has been prescribed for the purposes of this section, that premium.

- (5) The interest rate (as defined in subsection (4)) is a per annum simple interest rate.

[33] Section 162(1) of the Act provides:

A party to an appeal who is dissatisfied with the decision of a District Court as being wrong in law may, with leave of the District Court, appeal to the High Court.

[34] Section 72 of the Accident Rehabilitation and Compensation Insurance Act 1992 provides:

Where any payment of compensation based on weekly earnings to which a claimant is entitled is not paid by the Corporation or exempt employer within 1 month after the Corporation or exempt employer has received all information necessary to enable calculation of the payment, interest shall be paid on the amount payable by the Corporation or exempt employer at the rate for the time being prescribed by or for the purposes of section 87 of the Judicature Act 1908 from the date on which payment should have been made to the date on which it is made.

[35] Section 3 of the Interest on Money Claims Act 2016 provides:

- (1) The primary purpose of this Act is to provide for the award of interest as compensation for a delay in the payment of debts, damages, and other money claims in respect of which civil proceedings are commenced.
- (2) That purpose is to be achieved by the award of interest in accordance with the following principles:
 - (a) interest is to be awarded on all money claims except those expressly excluded by this Act:
 - (b) interest is to be paid from the day on which the money claim is quantified until the day of payment:
 - (c) the interest rate to be used for the purposes of this Act is to reflect fairly and realistically the cost to a creditor of the delay in payment of a money claim by a debtor and, in particular,—
 - (i) the rate is to be capable of fluctuating in accordance with changes in the retail 6-month term deposit rate published by the Reserve Bank of New Zealand; and
 - (ii) interest is to be compounded so that it yields the per annum simple interest rate over the period of a year; and
 - (iii) interest is to be calculated using a calculator that is publicly available on an Internet site maintained by or on behalf of the Ministry:
 - (d) in special circumstances, a court is to have power to award any interest or compensatory lump sum it may direct, or make no award.

[36] Section 21(2) of the Interest on Money Claims Act 2016, provides:

A court may not award interest under this Act in a money judgment if it would be inconsistent with the provisions of another Act to do so.

[37] In *O'Neill*,¹⁵ Judge Cadenhead stated:

[24] The Courts have emphasised that for leave to be granted:

...

(ii) The contended point of law must be “*capable of bona fide and serious argument*” to qualify for the grant of leave ...

...

(vi) Whether or not a statutory provision has been properly construed or interpreted and applied to the facts is a question of law

[25] Even if the qualifying criteria are made out, the Court has an extensive discretion in the grant or refusal of leave so as to ensure proper use of scarce judicial resources. Leave is not to be granted as a matter of course. One factor in the grant of leave is the wider importance of any contended point of law ...

[38] In *Robinson*,¹⁶ the Court of Appeal was required to consider section 72 of the Accident Rehabilitation and Compensation Insurance Act 1992. One question was set out in paragraph [9] of the judgment: “In the factual circumstances of this case, is there any statutory authority for interest to be paid in respect of the period before 1 July 1992?” Arnold J, for the Court, stated:

[30] Section 62B(1) [of the s 62B of the District Courts Act 1947] authorises the District Court to award interest “in a proceeding for the recovery of any debt or damages”. The Court may include interest in the sum for which judgment is given at a rate not exceeding the prescribed rate. Section 62B(2)(b) says that subsection (1) does not apply “in relation to any debt upon which interest is payable as of right, whether by virtue of any agreement, enactment, or rule of law, or otherwise”.

[31] However, as the Corporation argued, the present proceedings were not concerned with the recovery of a debt. Once the Corporation accepted that the appellant was entitled to the further earnings related compensation which he sought, it paid the appropriate amount. The proceeding before the District Court was to determine when the Corporation had the information necessary to enable it to calculate the amount of the appellant’s claim. The answer to this affected the application of the statutory provisions in the accident compensation legislation which deal with entitlement to interest on late payments.

[32] Further, even if the proceedings could have been characterised as being for the recovery of a debt, we doubt that the District Court had the power to bypass the statutory scheme in the accident compensation legislation by relying on s 62B(1).

[33] Accordingly, the answer to the question set out at [9] above is “no”. The appeal must fail.

¹⁵ *O'Neill*, supra n 5.

¹⁶ *Robinson*, supra n 3.

[39] The second question raised in *Robinson* was whether interest under section 72 of the 1992 Act was to be calculated on a simple or a compounding basis.

[43] As a statutory corporation the Corporation has only those powers which it is given by statute, whether expressly or by necessary implication. Accordingly, the question is whether s 72 authorises (or, more accurately, requires) the payment of compound interest. As we have said, we consider that it does not. ...

[49] It is clear from s 72 that Parliament wished to compensate those who did not receive a payment within a month of the time at which they should have received payment. It is also true that payments based on compound interest will be more generous or advantageous to recipients than payments based on simple interest. But that does not mean that Parliament intended that payments under s 72 should be based on compound interest. The accident compensation legislation does not have as its principle purpose being generous to claimants. Rather it reflects a range of competing interests, one of which is affordability. To the extent that the accident compensation legislation reflects a social contract, we note that compound interest was not a feature of the common law action for negligence causing personal injury, which the accident compensation legislation has replaced.

[40] In *McLean*,¹⁷ Stevens J confirmed that the payment of interest prior to 1 July 1992 was not possible. In *Morgan*,¹⁸ Judge Cadenhead adopted Stevens J's conclusion.

The Court's judgment of 18 February 2022

[41] Judge McGuire noted that this appeal was from the decision of a Reviewer quashing the Corporation's decision to award interest on backdated "weekly compensation" for a period from 1978 to 1987.

[42] Judge McGuire noted that, since 1972 when it commenced, the ACC regime had been the subject of periodic review and adjustment to fulfil the purposes of the accident compensation scheme. Judge McGuire observed that the purposes of the legislation were presently set out in section 3, being, in essence, to provide for a fair and sustainable scheme for managing personal injury. Judge McGuire referred to the judgment of the Court of Appeal in *Robinson*, to the effect that the accident compensation legislation reflected a range of competing interests, one of which was

¹⁷ *McLean*, supra n 4, at [36].

¹⁸ *Morgan v Accident Compensation Corporation* [2010] NZACC 12, at [38].

affordability, not encompassing compound interest payments.¹⁹ Judge McGuire stated that the Court of Appeal's *dicta* were a powerful statement on the issue. Judge McGuire found that, although directed at payments under section 72 of the 1992 Act, the *dicta* were equally applicable to payments under section 114 of the 2001 Act, as affordability and social contract remained hallmarks of the ACC scheme under the 2001 Act.

[43] Judge McGuire also referred to section 21(2) of the Interest on Money Claims Act 2016, and found that the award of interest under this provision would be inconsistent with the provisions of the Accident Compensation Act 2001. Judge McGuire noted that Parliament had plainly turned its mind to the issue of interest in respect of late payments of benefits payable under the Act, and had or had not made provision for interest to be paid as it saw fit. Judge McGuire further noted that the District Court's decisions in *Morgan*²⁰ and *McLean*²¹ were to similar effect, emphasising that the Corporation was a creature of statute and that its powers and obligations were prescribed by the relevant statute in force.

Mr Carey's submissions

[44] Mr Carey submits that Judge McGuire's decision, that the Interest on Money Claims Act 2016 did not apply to an award of weekly compensation under the 2001 Act, is wrong in law for the following reasons. Judge McGuire incorrectly prioritised the *dicta* in *Robinson* over the statutory criteria within the Interest on Money Claims Act 2016, which requires interest on all money claims to be awarded as per this Act unless expressly excluded within the Act, which it does not do in relation to the 2001 Act. Interest on backdated earnings calculated under the 1972 Act, and paid via the 2001 Act, is not restricted by the 2001 Act, or any previous version of the Act. No authority inhibits Mr Carey's statutory right to interest on backdated earnings calculated under the 1972 Act and paid via the 2001 Act. The statutory mechanism for calculating and awarding interest on earnings calculated under the 1972 Act, and paid via the 2001 Act, is the Interest on Monies Claims Act 2016. Mr Carey submits that the Corporation is liable to pay him an additional

¹⁹ *Robinson*, supra n 3, at [49].

²⁰ *Morgan*, supra n 18, at [36].

²¹ *McLean v Accident Compensation Corporation* [2007] NZACC 142, at [49].

\$4,793,000 by way of compounding interest that arose under the Interest on Money Claims Act 2016.

Discussion

[45] As noted above, to succeed in obtaining leave to appeal, Mr Carey is required to show that Judge McGuire's decision is wrong in law.²² The contended point of law in Judge McGuire's decision must be capable of *bona fide* and serious argument to qualify for the grant of leave.²³ Even if Mr Carey is found to have arguable grounds to support his appeal, the Court retains a discretion to refuse leave to ensure proper use of scarce judicial resources, as where there is insufficient wider importance of the contended point of law.²⁴

[46] Judge McGuire's decision, as to whether the Corporation's decision awarding Mr Carey interest of \$32,803.58 on backdated weekly compensation/earnings-related compensation, was one of law. Judge McGuire's essential finding was that, despite the key submission of Mr Carey, the Interest on Money Claims Act 2016 did not apply to the award of interest by the Corporation, in that this Act was inconsistent with the provisions of the Accident Compensation Act 2001. Judge McGuire supported his finding by referring to the Court of Appeal judgment in *Robinson*, and other Court pronouncements in *Morgan* and *McLean*.²⁵ On this basis, Judge McGuire dismissed the appeal against the Reviewer's decision to quash the Corporation's award of interest.

[47] This Court acknowledges the extensive submissions made by Mr Carey, centred on the claim that he should be awarded interest on backdated earnings-related compensation, based on the Interest on Money Claims Act 2016. However, the Court notes the following considerations.

[48] First, the 2016 Act provides for the award of interest as compensation for a delay in the payment of debts, damages, and other money claims in respect of which

²² Section 162(1) of the Act.

²³ *O'Neill*, supra n 5, at [24](ii).

²⁴ *O'Neill*, supra n 5, at [25].

²⁵ Supra ns 3, 20 and 21.

civil proceedings are commenced.²⁶ There are serious questions as to whether a challenge to the award of interest by the Corporation is intended to be brought within the purview of the Act.²⁷

[49] Second, the 2016 Act stipulates that a Court may not award interest under this Act in a money judgment if it would be inconsistent with the provisions of another Act to do so.²⁸ The balanced nature of New Zealand's accident compensation legislation is reflected in the expressed purpose of the Accident Compensation Act 2001, as being to provide a fair and sustainable scheme for managing personal injury.²⁹ As Judge McGuire emphasised, the Court of Appeal in *Robinson* clearly indicated the inappropriateness of the kind of interest (compound interest) envisaged by the Interest on Money Claims Act 2016, for accident compensation claims. The Court of Appeal's reference to the range of competing interests reflected in accident compensation legislation, including affordability rather than being generous to claimants, is out of kilter with Mr Carey's claim for an additional \$4,793,000 by way of compounding interest based on the Interest on Money Claims Act 2016.³⁰

[50] Third, as noted by the Reviewer whose decision was upheld by Judge McGuire, there is in fact no statutory authority for interest to be paid by the Corporation on earnings-related compensation in the period before 1 July 1992. The reality that the payment of interest under accident compensation legislation, prior to 1 July 1992, is not possible, is noted by the Court of Appeal in *Robinson*,³¹ by the High Court in *McLean*,³² and by the District Court in *Morgan*.³³

[51] In light of the above considerations, this Court is not satisfied that Mr Carey's contention that Judge McGuire's decision was wrong in law is capable of *bona fide* and serious argument to qualify for the grant of leave. The conclusion reached by both the Reviewer and Judge McGuire, that the Interest on Money Claims Act 2016 does not apply to the award of interest by the Corporation, is one founded securely in

²⁶ Section 3(1).

²⁷ *Robinson*, supra n 3, at [31].

²⁸ Section 21(2).

²⁹ Section 3 of the Act.

³⁰ *Robinson*, supra n 3, at [49].

³¹ *Robinson*, supra n 3, at [33].

³² *McLean*, supra n 4, at [49].

³³ *Morgan*, supra n 18, at [36].

the law. This Court further deduces that, in its exercise of discretion, leave to appeal to the High Court should be denied on the basis that there is insufficient wider importance of the contended point of law.

The Decision

[52] In light of the above considerations, the Court finds that Mr Carey has not established sufficient grounds to sustain his application for leave to appeal, which is accordingly dismissed.

[53] I make no order as to costs.

A handwritten signature in black ink, appearing to read 'P R Spiller', written in a cursive style.

P R Spiller
District Court Judge

Solicitors: McBride Davenport James for the respondent