

**IN THE DISTRICT COURT  
AT WELLINGTON**

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

**[2023] NZACC 15**

**ACR 51/22**

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

Hearing: 22 December 2022  
Heard at: Dunedin/Ōtepoti

Appearances: Mr Hristovski, Appellant via Video Link  
Mr T Gee for the Respondent  
Ms V Bocevska, Interpreter

Judgment: 2 February 2023

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**RESERVED JUDGMENT OF JUDGE C J MCGUIRE  
[Interpretation of Decision, s 6 Accident Compensation Act 2001]**

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[1] This is an appeal against a review decision dated 17 February 2022, in which the reviewer dismissed the review application of the appellant for lack of jurisdiction.

**Background**

[2] Mr Hristovski resides in Macedonia.

[3] On 19 August 2009, while in New Zealand, he had an accident. As a result, he has cover for sprain and contusion of the right shoulder and elbow.

[4] After a whole person impairment assessment in 2018, ACC issued a decision on 27 July 2018 advising that the appellant had a whole person impairment percentage rating of

20 per cent. ACC paid Mr Hristovski a lump sum amount in accordance with his whole person impairment percentage rating.

[5] Mr Hristovski lodged two appeals in relation to that assessment – ACR 321/19 and ACR 270/20. Those appeals were heard jointly and dismissed in my decision dated 10 March 2022.<sup>1</sup>

[6] On 17 February 2021, before that judgment issued, the appellant lodged a third review application in respect of a “decision” of the same date.

[7] Submissions from ACC, in relation to appeal ACR 321/19, were dated and filed on 17 February 2021.

[8] The review decision dated 17 February 2022 held that there was no decision to review within the meaning of the word “decision” under the Act.

[9] The reviewer reproduced section 6 of the Act defining what a decision is. The reviewer went on to find that here there was no decision issued on 17 February 2021 and said :

Even if Mr Hristovski had identified a formal decision, what he seeks to do is challenge the per centage impairment. However that aspect has already been the subject of two earlier review decisions and therefore the principle of res judicata would also apply.

### **Appellant’s Submissions**

[10] Mr Hristovski told the Court that his injuries were getting worse and worse and that it was not his fault.

[11] He said he wanted to get help. He said he needed to find a solution and that he just wanted to continue with his life, but everything was “falling apart”.

### **Respondent’s Submissions**

[12] On behalf of the respondent, referred to the factual background set out in my earlier judgment of 10 March 2022, Mr Gee acknowledges that the appellant has problems with

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<sup>1</sup> *Hristovski v Accident Compensation Corporation* [2022] NZACC 33.

anxiety and depression, as well as with walking. He also acknowledges that the appellant has a problem with his hand.

[13] Mr Gee acknowledges the substantial difficulties that the appellant has at present, but says that the Accident Compensation Corporation is limited in what it can do under the Accident Compensation Act 2001.

[14] In this case, ACC's accepted cover for contusion, right elbow area and sprain of right shoulder and upper arm, have resulted in the appellant being assessed at having 20 per cent whole person impairment.

[15] Mr Gee reminds the Court that the whole person assessment of 20 per cent by Dr Meades was peer reviewed by Dr Collier, who agreed with Dr Meads' assessment.

[16] Mr Hristovski told the Court that he could not afford treatment, that his injuries were getting worse and worse, and he just wanted help to continue.

[17] Mr Gee referred to the jurisdictional challenge that Mr Hristovski faces. He notes that the caselaw confirms that confirmation of an earlier decision is not a reviewable decision.

[18] He referred to the decision of Judge Barber in *Butler*<sup>2</sup> where the Court said:

The Court must be careful in deciding what is a decision of the respondent. Otherwise, rights of review could accrue on a never ending basis by an unsuccessful claimant continuously writing to the Corporation and asking it to reconsider a decision which has been through review and, possibly, the appeal process without success. The staff of the respondent must be able to say that such a decision will not be reopened without thereby creating fresh rights of review and appeal. In other words, litigation must come to an end when proper review and appeal procedures have been followed.

### **Appellant's reply**

[19] Mr Hristovski again told the Court of his problems and his lack of money, saying "I just need some help to continue my life as normal as I can".

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<sup>2</sup> *Butler v Accident Compensation Corporation* (2004) NZACC 1 at [9].

## **Decision**

[20] The appellant suffered injury by accident on 19 August 2009 when he slipped over and fell to the floor at a McDonalds restaurant. He injured his right elbow and right shoulder. ACC accepted cover and in 2018, the appellant applied for a lump sum due to permanent disability. He resides in Macedonia. He supplied medical evidence that he was permanently disabled. ACC obtained an impairment assessment report from Dr Meades, which concluded that there was a 20 per cent whole person impairment. On 27 July 2018, ACC issued a decision awarding lump sum compensation on the basis of Dr Meades' assessment of 20 per cent whole person impairment.

[21] The appellant challenged the 20 per cent assessment. ACC obtained a peer review, which endorsed Dr Meads' assessment.

[22] The appellant unsuccessfully sought to review the 20 per cent assessment. He also unsuccessfully appealed against the 20 per cent assessment.<sup>3</sup>

[23] In 2020 ACC refused to reconsider its 2018 decision on the basis that there was no evidence that that decision was wrong and that there was no evidence of any deterioration since the 2018 assessment.

[24] The appellant lodged a review application in respect of the 2020 refusal. That application was dismissed. The appellant then filed a second appeal, ACR 270/20, against that refusal.

[25] Mr Hristovski filed further medical evidence showing that he had deteriorated since 2018, which resulted in ACC agreeing to consider again his whole person impairment.

[26] A fresh assessment concluded that the 20 per cent assessment should remain unchanged, as the deterioration in the appellant's condition since 2018 was not accident related.

[27] Both ACR 321/19 and ACR 270/20, were dismissed in my judgment dated 10 March 2022.

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<sup>3</sup> ACR 321/19.

[28] The present appeal in substance remains the same as the above two appeals already decided, namely the lump sum assessment of 20 per cent covered impairment is incorrect.

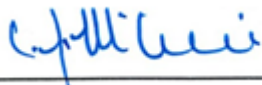
[29] Mr Gee raises the issue of res judicata. That is, that the matter before the court today has already been decided by the court. Res judicata prevents re-opening questions that have been decided by the Court with binding effect and refers to *Shann*.<sup>4</sup>

[30] He is correct in doing so, as the substance of this appeal remains the same as it was in ACR 321/19 and ACR 270/20.

[31] The second reason that this appeal must fail for lack of jurisdiction is because here, there is no decisions to appeal. The “decision” under appeal was not a reviewable “decision” under the Act. What appears to be the subject of this appeal is submissions filed on behalf of ACC in respect of appeal ACR 321/19, on 17 February 2021.

[32] For these reasons therefore the appeal must be dismissed.

[33] There is no issue as to costs.



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CJ McGuire  
District Court Judge

Solicitors: Toby Gee, Barrister, Wellington

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<sup>4</sup> *Shann v Accident Compensation Corporation* (2007) NZACC 171