PURSUANT TO S 160(1)(b) ACCIDENT COMPENSATION ACT 2001 THERE IS A SUPPRESSION ORDER FORBIDDING PUBLICATION OF THE APPELLANT'S NAME AND ANY DETAILS THAT MIGHT IDENTIFY THE APPELLANT

IN THE DISTRICT COURT
AT WELLINGTON

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

	[2023] NZACC 30	**ACR 155/22 and ACR 181/22**
UNDER	THE ACCIDENT COMPENSATION ACT 2001	
IN THE MATTER OF	AN APPLICATION FOR LEAVE TO APPEAL TO THE HIGH COURT ON A QUESTION OF LAW UNDER SECTION 162 OF THE ACT	
BETWEEN	KC Applicant	
AND	ACCIDENT COMPENSATION CORPORATION Respondent	

Hearing: On the papers

Appearances: The applicant self-represented
Ms F Becroft for the Respondent

Judgment: 6 March 2023

RESERVED JUDGMENT OF JUDGE C J MCGUIRE
[Leave to Appeal to the High Court: Section 162 Accident Compensation Act 2001]

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[1] The applicant seeks leave to appeal to the High Court against a judgment of the District Court in this matter delivered by Judge PR Spiller on 27 January 2023.[1]

[2] Section 162(1) of the Accident Compensation Act 2001 provides:

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

[3] In this case the applicant, in support of her application for leave to appeal, has submitted the following:

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1 *KC v Accident Compensation Corporation* [2023] NZACC 11.

(a) She submits the complete file for Appeal 160/20 has not been provided to the Judge.

(b) She submits the Judge appears to have overlooked specific important documents relevant to this claim and that it also appears that the Judge has not heard half of the points the applicant pointed out during the appeals court hearing pertaining to the mechanism of injury for these matters.

(c) She submits the Judge failed to identify further mental injuries and physical injury linked to sexual violation, especially the migraine/tension headaches and neck strain which appear to be completely ignored. For these a causal link was provided by Dr Randhawa in his report of 29/12/22.

(d) She submits the Judge appears not to have read or has ignored "Appendix P" pertaining to the mechanism of injury.

(e) She submits the Judge appears not to have read "Appendix U" which describes Dr Page's assessment.

(f) She submits that the Judge appears to have completely ignored Dr Randhawa's and Mr Thuya Sithu's health reports and appears to be only focused on the ACC health advisors' reports.

(g) She says, "this matter has multiple submissions and Appendixes(sic) A…Y, in total of about 300 pages of documents and health reports which appear to have been ignored."

[4] The Applicant has also by email filed a range of documents in support of her submissions.

(a) A 22 page document headed "Submission 1 181/22 and 155/22" containing a variety of medical reports, as well as a list of the costs that the applicant claims arise as a consequence of her claimed injuries.

(b) A document headed "Appendix A" relating to a cyber attack on a Gisborne law firm who acted for the applicant in 2021.

(c) A document headed "Appendix H", being the qualifications of a named psychologist.

(d) A copy of the Injury Prevention, Rehabilitation and Compensation (Code of ACC Compliance Rights) Notice 2002.

(e) A document headed "Submission High Court 2" which included submissions made by the applicant on an earlier appeal to the District Court, ACR 160/20.

(f) A document headed "Submission High Court 3", being a total of 87 pages. It includes what appear to be submissions made in earlier appeals to the District Court, together with a variety of medical reports; a medical article on depression definition; extracts from the Oxford Handbook of Clinical Medicine; two reports from 2021 from a psychologist; reports from other health professionals; a schedule of her ACC claim; copies of ss 7, 8, 9, 26, 27, 28 and 33 of the Accident Compensation Act 2001; and correspondence to and from the applicant's professional governing body.

Respondent's Submissions

[5] In her submissions dated 3 February 2023, Ms Becroft refers to s 162(1) of the Act and submits that an appeal relies only in respect of a question of law and that the question must be one that is serious and arguable.

[6] She sets out the principles relevant to the exercise of her discretion to grant leave, which she takes from the Judge Cadenhead's decision in *O'Neill*.[2]

[7] She submits that although the applicant clearly contends that the District Court decision is wrong, she has not formulated any questions of law or identified what particular issue she takes with the judgment.

[8] Ms Becroft infers from the applicant's communication that the argument is that the factual findings made by the Court were not open to it on the available evidence and that the District Court did not pay enough attention to the evidence relied on by the applicant.

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2 *O'Neill v Accident Compensation Corporation* [2008] NZACC 250.

[9] Ms Becroft submits that in order to succeed in any argument relating to an alleged error in the Court's factual findings, the applicant must show an error in terms of the decision of *Edwards v Bairstow*.[3]

[10] Ms Becroft submits that the threshold for this is high and requires the Court to conclude that the judgment was so clearly untenable that proper application of the law required a different answer.

[11] Ms Becroft submits that in this case the judgment was not untenable because there was clear evidence supporting each of the factual findings that the Court arrived at.

[12] Ms Becroft also submits that in regard to the Court's treatment of the relevant level provisions, ss 36(1) and 128, the wording of those provisions is so plain and clear that any argument in regard to the Court's interpretation would not be seriously arguable.

[13] Accordingly, Ms Becroft submits that the application for leave to appeal does not raise any seriously arguable question of law and therefore ought to be declined.

Decision

[14] It is important to recall what the issues on appeal were in this case.

[15] Appeal 155/22 was an appeal against the respondent's decision advising that the date of the applicant's injury was 26 May 2015. Appeal 181/22 related to three decisions of the corporation dated 22 May 2022 declining that applicant's applications for rehabilitation assistance and the Corporations decisions dated 1 August 2022 declining additional cover for migraines and headaches as mental injuries.

[16] As Ms Becroft reminds the Court, the principles relevant to the exercise of the discretion to grant leave to appeal were discussed in *O'Neill*,[4] where Judge Cadenhead said:

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3 *Edwards v Bairstow* [1955] 3 All ER 48.
4 *O'Neill* n2 above at [24] and [25].

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

(i) The issue must arise squarely from 'the decision' challenged: ... Leave cannot for instance properly be granted in respect of obiter comment in a judgment …;

(ii) The contended point of law must be "capable of bona fide and serious argument" to qualify for the grant of leave …;

(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 …;

(iv) Where an appeal is limited to questions of law, a mixed question of law and fact is a matter of law …;

(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 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 …;

(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 …

[17] As to appeal 155/22, Judge Spiller from paragraph 47 sets out the relevant provisions of the act relating to the date on which a person suffers mental injury in circumstances described in s21 or s21B and refers to two court decisions, on the issue. He then discusses in paragraphs 51 to 57 the evidence relating to ACC's decision that 26 May 2015 is the correct date. Judge Spiller's analysis is thorough. There is evidence to support his decision and he refers to that evidence. Accordingly, I must find that the applicant has not, in terms of *Edwards v Bairstow*,[5] made out an arguable case that the evidence is inconsistent with and contradictory of, the decision, or the only reasonable conclusion on the decision contradicts the decision.

[18] As to appeal 181/22. There is the issue as to whether the applicant is entitled to rehabilitation assistance in Australia for her covered injuries.

[19] In his judgment Judge Spiller refers to s 128 which essentially prohibits payment by the Corporation of costs incurred outside New Zealand for any rehabilitation.

[20] Given the plain words of s 128, I cannot find that this issue is arguable on appeal.

[21] The other matter under appeal 181/22 is the applicant's claim for cover for migraines and headaches as a mental injury.

[22] Section 26(1)(d) provides that personal injury includes a mental injury suffered by a person, caused by certain criminal acts.

[23] In paragraphs 65 to 68 of his Judgment, Judge Spiller refers to several decided cases dealing with causation and in paragraph 69 he sets out what is required to be established. He then in paragraph 70 summarises the applicant's submissions on the issue. He refers specifically refers to the reports of Mr Thuya Sithu and Dr Randhawa, reports which the applicant submits appear to have been completely ignored by him.

[24] They plainly were not. It follows that I must conclude, in respect of appeal 181/22, I am unable to find that the applicant's submissions in respect of this appeal are capable of bona fide and serious argument.

[25] Finally, the applicant's submissions refer to the fact that the complete file for Appeal 160/20 were not provided to the Judge and some 300 pages of documents and health reports have been ignored.

[26] The parameters of the current appeals 155/22 and 181/22 are set by the decisions appealed from by the applicant. Files relating to earlier appeals are therefore not included.

[27] Here, as Ms Becroft submits, although the applicant contends that the District Court's decision was wrong, she has not formulated any questions of law which she claims to be wrong, nor has she identified what particular issue she takes with the judgment.

[28] Furthermore, if it were to be assumed that the applicant is alleging an error of fact, in order for leave to appeal to be granted, this Court would have to find that it is arguable that there was no evidence to support the District Court's decision, or it is arguable that the evidence is inconsistent with and contradictory of the decision, or that it is arguable that the true and only conclusion on the evidence contradicts the Court's decision.[6]

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5 See n3 *Edwards v Bairstow* at [24] and [25].

6 Supra.

[29] Given what the applicant has put forward in support of her application for leave to appeal, I find that she has not formulated or articulated any coherent grounds that would support an argument that the Judge has erred in his treatment of facts so as to amount to an error of law.

[30] For the above reasons, I find that the applicant has failed to make out grounds for leave to appeal and accordingly, the application is dismissed.

[31] Costs are reserved.

CJ McGuire
District Court Judge

Solicitors: Medico Law Limited, Grey Lynn