

**IN THE DISTRICT COURT  
AT WELLINGTON**

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

**[2024] NZACC 39**

**ACR 2/22**

UNDER

THE ACCIDENT COMPENSATION ACT  
2001

IN THE MATTER OF

AN APPEAL UNDER SECTION 149 OF  
THE ACT

BETWEEN

CARLOS FERRARI ALVES  
Appellant

AND

ACCIDENT COMPENSATION  
CORPORATION  
Respondent

Hearing: On the papers

Appearances: The Appellant is self-represented  
C Hlavac for the Accident Compensation Corporation (“the  
Corporation”)

Judgment: 26 February 2024

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**RESERVED JUDGMENT OF JUDGE P R SPILLER  
[Claim for costs on appeal]**

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**Introduction**

[1] This is a claim for costs and disbursements in relation to an appeal in which Mr Alves was successful.

## Background

[2] On 3 March 2022, in *Alves*,<sup>1</sup> the Court dismissed an appeal by Mr Alves in relation to the Reviewer's decision of 5 March 2021, regarding costs of review. The Reviewer had awarded costs to Mr Alves calculated as follows:

- (a) up to \$1090.84 for a report from Dr McCoubrey (unquantified);
- (b) \$96 for half a day attendance at a specialist examination; and
- (c) \$44 for two hours attendance at the hearing.

[3] Mr Alves challenged the Reviewer's decision as to costs and sought an award of costs of \$1,919.45, comprising the following amounts:

- (a) \$192 lost wages and \$30 petrol costs to see Dr Sarah Beable on 17 June 2020;
- (b) \$192 lost wages and \$40 doctor's fees to see Robert Moore on 13 July 2020;
- (c) \$192 lost wages and \$30 petrol costs for an MRI on 16 July 2020;
- (d) \$192 lost wages and \$30 petrol to see Dr Sarah Beable on 21 July 2020;
- (e) \$96 lost wages and \$53.80 medical fees for a specialist referral on 19 October 2020;
- (f) \$192 lost wages to see Dr Gary McCoubrey on 23 October 2020;
- (g) \$96 lost wages to attend a case conference on 29 October 2020;
- (h) \$480 for research and preparation for review on 10 February 2021;
- (i) \$96 lost wages to attend a conference on 5 March 2021; and
- (j) \$7.65 printing costs on 8 March 2021.

[4] The Court found that the Reviewer correctly exercised his discretion, in terms of the relevant regulations, in not awarding further costs and expenses to Mr Alves.

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<sup>1</sup> *Alves v Accident Compensation Corporation* [2022] NZACC 27.

[5] On 22 November 2022, in *Alves*,<sup>2</sup> the Court allowed Mr Alves' appeal regarding cover for his rotator cuff tear:

[48] In light of the above considerations, the Court finds that Mr Alves' rotator cuff tear was caused or at least contributed to by an accident on 17 September 2019, rather than pre-existing or degenerative-related and brought to light or aggravated by the incident on 17 September 2019.

[49] This appeal is therefore allowed, and the review decision of 10 December 2021 is set aside.

[50] Mr Alves may be entitled to costs/disbursements. If these cannot be agreed within one month, I shall determine the issue following the filing of memoranda.

[6] On 5 December 2023, in *Alves*,<sup>3</sup> the Court dismissed an appeal brought by Mr Alves against a Reviewer's decision dismissing his review application on the basis of lack of jurisdiction. The Court noted, amongst other things:

[28] ... Mr Alves' claim for costs in relation to his previous proceedings involving the Corporation have already been addressed in the appropriate way, at review and on appeal. The Court refers, in particular, to the Reviewers' decisions of 5 March 2021 and 24 May 2023, and this Court's decisions of 3 March 2022 and 22 November 2022.

[7] However, the Court noted, in conclusion:

[32] The Court reiterates, for the sake of completeness, that, in its judgment of 22 November 2022, the Court noted that Mr Alves may be entitled to costs/disbursements in relation to the appeal then determined (ACR 2/22), and, if these could not be agreed within one month, the Court would determine the issue following the filing of memoranda. The Corporation states that it has not received a claim for costs/disbursements in relation to the appeal then determined. The Court notes that Mr Alves has the opportunity to present such a claim, and suggests that, if he chooses to do so, he should act as soon as possible.

[8] On 5 December 2023, Mr Alves emailed the Court and counsel for the Corporation claiming costs and disbursements arising out of the Court's judgment on 22 November 2022. Mr Alves' claim was on the same basis as in his appeal which was dismissed in the Court's judgment on 3 March 2022.<sup>4</sup>

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<sup>2</sup> *Alves v Accident Compensation Corporation* [2022] NZACC 215.

<sup>3</sup> *Alves v Accident Compensation Corporation* [2023] NZACC 197.

<sup>4</sup> Above, note 1.

## Relevant law

[9] Rule 14.1(1) of the District Court Rules 2014 provides that the award of costs is at the discretion of the Court if they relate to costs of a proceeding, or incidental to a proceeding, or a step in a proceeding.

[10] Rule 14.12(2) provides that a disbursement may only be included in a costs award to the extent that the disbursement was approved by the Court for the purposes of the proceeding, specific to and necessary for the conduct of the proceeding, and reasonable in amount.

[11] In *London Scottish Benefit Society v Chorley*,<sup>5</sup> Brett MR expressed the primary rule (consistently applied in New Zealand) that a successful litigant in person is entitled to recover disbursements but not costs:

When an ordinary litigant appears in person, he is paid only for costs out of pocket. ... He has to pay the fees of the court, that is money paid out of pocket; but for loss of time the law will not indemnify him.

[12] In *Wood*,<sup>6</sup> Cadenhead DCJ outlined the principles of cause of action estoppel (*res judicata*):

[19] ...

[ii] For there to be cause of action estoppel the cause of action sought to be estopped must be precisely the same as that upon which there has been an earlier adjudication.

...

[vi] ... Cause of action estoppel operates to prevent a party re-litigating a claim he has lost, even if he is now able to show that the earlier decision was wrong.

## Discussion

[13] The issue in this case is whether Mr Alves is entitled to costs/disbursements relating to his successful appeal, which was allowed by the Court on

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<sup>5</sup> *London Scottish Benefit Society v Chorley* (1884) 13 QBD. 872 (30 May 1884). The rule has been applied in *McGuire v Secretary for Justice* [2018] NZSC 116; [2019] 1 NZLR 335, at [55] and [56], *Jamieson v Accident Compensation Corporation* [2022] NZACC 114, at [8], and *St Clair v Accident Compensation Corporation* [2022] NZACC 144, at [10].

<sup>6</sup> *Wood v Accident Compensation Corporation* [2003] NZACC 80.

22 November 2022.<sup>7</sup> Mr Alves has provided statements and documents in support of his claim for costs and disbursements, based on lost wages, petrol costs, medical fees and his time taken for research and preparation of his claim and appeal. This Court notes the following.

[14] First, as a self-represented litigant, Mr Alves is entitled only to disbursements (out of pocket expenses) and not costs such as loss of his time.<sup>8</sup> Mr Alves is therefore not entitled to claim for the time taken for research and preparation of his claim and appeal.

[15] Second, Mr Alves' claim for costs and disbursements is on the same basis as that which was subject to an earlier decision of this Court on 3 March 2022.<sup>9</sup> This Court has already noted that Mr Alves' claim for costs in relation to his previous proceedings involving the Corporation had already been addressed in the appropriate way, in the Court's decision of 3 March 2022.<sup>10</sup> In that Mr Alves' present claim for costs and disbursements is the same cause of action as that upon which there has been an earlier adjudication, he cannot now succeed with his present claim.<sup>11</sup>

### **Conclusion**

[16] In light of the above considerations, the Court finds that Mr Alves has not established that he is entitled to the costs and disbursements which he has claimed.



P R Spiller  
District Court Judge

Solicitors for the Respondent: Young Hunter, Christchurch.

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<sup>7</sup> *Alves v Accident Compensation Corporation* [2022] NZACC 215.

<sup>8</sup> See above, note 5.

<sup>9</sup> See above, note 1.

<sup>10</sup> See above, note 3.

<sup>11</sup> See above, note 6.