

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2023] NZACC 151

ACR 127/21

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

Hearing: 25 August 2023

Heard at: Wellington

Appearances: Ms M Williams, Advocate for the Appellant (via AVL)
Mr L Hawes-Gandar and Ms F Becroft for the Respondent (via AVL)

Judgment: 19 September 2023

**RESERVED JUDGMENT OF JUDGE C J MCGUIRE
(Cover)**

[1] At issue in this appeal are decisions by the Accident Compensation Corporation dated 17 July 2020:

(a) Declining the appellant cover for a labral tear and osteoarthritis of the right hip;
and

(b) Declining to fund hip replacement surgery.

[2] The appellant also appeals against ACC's decision of 23 July 2020 suspending the appellant's entitlements.

Background

[3] The Corporation's decisions at issue in this appeal were made in respect of a claim for injuries resulting from an accident on 3 July 2019 when the appellant stepped into a hole in a rock wall and twisted his right leg and hurt his back.

[4] The claim form completed on 10 July 2019 notes "sprain hip/thigh" and "lumbar sprain right".

[5] However, the appellant has a history of hip and back injuries, commencing when he was 18.

[6] The appellant's advocate also refers to an accident while playing squash in 2014, when he lunged forward and hyperextended his left leg. The appellant believes that he may have damaged his right hip as a result. However, it appears that no claim was made for that accident and it does not appear that the appellant sought treatment at the time.

[7] On 2 April 2018, the appellant felt pain in his right hip and thigh while performing a squat during a stay at work physiotherapy programme for an unrelated claim. So a claim was lodged that same day by his physiotherapist for a sprain to the right hip/thigh, as well as right lumbar sprain.

[8] The Corporation arranged for the appellant to be assessed by Phillip Insull, orthopaedic surgeon, who saw the appellant on 11 July 2018. Mr Insull suggested that the appellant's symptoms were most likely due to degenerative changes, but recommended medical imaging to confirm.

[9] An MRI of his lumbar spine was carried out on 8 August 2018. Under the heading "Conclusion" is this:

Degenerative changes in the lumbar spine. No evidence of neural compromise.

[10] On 29 August 2018, the appellant had an x-ray of his pelvis and hip joints. The report contained the following:

Indication

Osteoarthritis ?

Findings

No acute traumatic or aggressive appearing osseous lesions. There is moderate to severe degenerative change in the right hip joint, with joint space narrowing and subarticular sclerosis. Decreased foraminal head neck offset noted, suggestive of femoroacetabular impingement. Mild degenerative change in the left hip joint, also likely related to femoroacetabular impingement. Visualised sacroiliac joints are normal.

[11] The findings were confirmed by Mr Insull in his report of 30 August 2018.

[12] The Corporation also sought advice from its medical advisor, Dr Jayawardhana, who advised that the appellant's ongoing symptoms were most likely due to non-accident related degenerative changes.

[13] The Corporation issued an initial decision suspending the appellant's entitlement on 4 December 2018, but subsequently agreed that it would reconsider its decision once the appellant had obtained comment from Dr Malloy, musculoskeletal specialist.

[14] In a report dated 4 April 2019, Dr Malloy noted that the appellant wanted to prove that he has suffered a muscle injury, but that it was unlikely to be obvious on MRI imaging.

[15] In a further report, on 22 May 2019, Mr Malloy elaborated:

...

You have my ARTP dated 03/04/19. On that occasion, there was clear clinical evidence of moderately severe osteoarthritis of the right hip, with pain on provocation and restriction of joint range of movement documents. It is not possible to determine, at that stage, whether he had previously had an injury to iliopsoas or other hip muscles. However, it is very likely that an injury to muscle would have resolved at that stage, although not necessary injury to a tendon, which could have persisted for this duration. Improvement with intense physiotherapy would have been possible whether the event caused muscle or tendon injury, or acute exacerbation of pain arising from the osteoarthritic hip.

[16] On 24 May 2019, the Corporation issued a further decision suspending the appellant's entitlement on this claim.

Accident on 25 June 2019

[17] On 10 July 2019, a claim was lodged by the appellant's chiropractor for a sacroiliac ligament sprain said to have occurred on 25 June 2019 when the appellant said he:

Fell into sand hole – when I fell I wrenched my groin and back.

[18] The Corporation granted cover and approved chiropractic treatment, after which there was no further activity on this claim.

[19] On 3 July 2019, the appellant injured himself at work when, as the ACC claim form describes it, he:

Stepped into a hole in the rock wall, twisted his right leg and hurt his back.

[20] Cover was granted by the Corporation on 12 July 2019 and the Corporation began to pay him weekly compensation.

[21] The appellant's GP referred him to orthopaedic surgeon, Erin Ratahi, who saw him on 17 July 2019. He recorded:

This gentleman has had a number of injuries in the past. He was referred to me today on the back of a recent one where, on the above date, he stepped into a hole on a rock wall, twisting his right leg and hurting his back. He also describes a skiing incident 15 or 20 years ago where he injured the lower right side of his back.

...

[22] Mr Ratahi organised an MRI of his lumbar spine and right hip and this was performed on 15 August 2019. The conclusion of the MRI report read as follows:

Moderate right hip osteoarthritis with chondromalacia Grade 3 and subchondral reactive bone marrow oedema. The marginal osteophytosis at the femoral head neck junction could cause femoral acetabular impingement, but there are also large osteophytes at the interior medial aspect of the femoral head.

Thickening of the iliofemoral band with adjacent ganglion cysts could be in keeping with an impingement.

Maceration with complex tear of the labrum from one o'clock to ten o'clock position.

[23] Mr Ratahi referred the appellant to Mr Lyndon Bradley, orthopaedic surgeon. On 17 October, Mr Bradley recorded that:

Essentially there are three pathologies present:

- (1) Early osteoarthritis;
- (2) Large extreme and macerated labral tear; and
- (3) A ganglion lesion around the iliofemoral ligament anteriorly.

...

[24] Mr Bradley recommended a steroid injection into the right hip, which he performed on 24 October 2019. On 7 November 2019, Mr Bradley noted that the steroid injection had given significant relief and concluded that the torn labrum was a source of the appellant's ongoing pain. He recommended against surgical treatment of the labrum due to the presence of underlying osteoarthritis and recommended further steroid injections if symptoms persisted.

[25] The Corporation requested further comment from Mr Bradley in relation to the cause of the appellant's pathology and on 7 November 2019, he advised that:

Obviously the mild osteoarthritis is a result of degenerative wear over time. The labrum itself would have been part of the degenerative process, however the trauma that he sustained that was put down as a hip sprain on 3 July has probably (instigated?) the significant tearing of this tissue, mobilising the labrum and allowing it to impinge.

[26] In relation to what role the accident of 3 July 2019 had played, Mr Bradley said that the accident was:

Likely to have been the instigating event of this current pathology of the massive labral tear. While the labrum would not have been healthy to begin with, nor would this injury have occurred without degenerative present.

[27] In relation to the appellant's capacity for work, Mr Bradley advised that the appellant should return to light duties initially, with a full return to work in six weeks.

[28] The Corporation arranged for an independent medical case review to be carried out by Mr David Lyon, orthopaedic surgeon. In his report of 18 March 2020, Mr Lyon noted that the appellant's current diagnosis was one of osteoarthritis of the right hip. He said:

The labral tear diagnosed on MRI scan is, in my opinion, part of the osteoarthritis and likely to be a degenerative labral tear often seen with the diagnosis of hip osteoarthritis, rather than a specific injury to the labrum.

[29] Mr Lyon went on:

The condition is not caused by the accident event of 2019 or of 2014. These events resulted in an exacerbation of pain from pre-existing osteoarthritis of the hip and therefore the diagnosis was not caused by the injury.

[30] On 14 April 2020, the Corporation's clinical advisor, Scott Burns (physiotherapist) recommended suspending the appellant's entitlements on the basis that his ongoing problems were the result of his underlying osteoarthritis, rather than his covered injuries. Mr Burns noted that the appellant's ongoing condition was essentially the same as that for which entitlements had already been suspended in relation to the 2018 accident claim.

[31] On 6 July 2020, Mr Bradley lodged a request for funding for hip joint replacement surgery. The request was lodged in respect of the 3 July 2019 accident. However, in terms of the alleged link between the need for surgery and the appellant's covered injuries, Mr Bradley simply said that the appellant had injured his hip a number of times over the years.

[32] On 17 July 2020, the Corporation issued the decision declining cover for the appellant's right hip osteoarthritis and labral tear, on the basis that these were due to a pre-existing health condition. For the same reasons, the Corporation also declined the request for surgery.

[33] On 23 July 2020, the Corporation issued a further decision suspending the appellant's entitlements.

[34] The appellant applied to review the Corporation's decisions. The appellant's applications were dismissed by the reviewer in a decision dated 13 April 2021.

[35] Subsequent to the review hearing, a letter from Mr Bradley dated 27 July 2020 to the appellant was produced.

[36] In the letter, Mr Bradley noted:

As I have stated in my letters, I believe you probably did tear your labrum in the injuries you described. This does not mean that ACC will automatically fund treatment of it. You have osteoarthritis of the hip. You have cartilage loss, osteophyte formation and degeneration of the shape of the bone – in every case of arthritis, there is also maceration, intermittent tearing and degeneration of the labrum. The degeneration and gradual damage and loss of function of the labrum is part of the arthritic process as much as the wearing down of the cartilage. So, yes, I am sure you

are suffering symptoms from damage to the labrum and it is also likely that the specific incidents causing injury to the labrum. However, you have an underlying process of arthritis that has been present for many years and has gradually been deteriorating your hip (including the labrum). Intermittent further tearing of your labrum or exacerbation of your symptoms with injuries is part of the gradual degeneration process of osteoarthritis.

...

While I attempted to support your case as much as possible and be an advocate for your case, the reality is that the review by Mr David Lyons is accurate and I would find it very difficult to disagree with his findings.

[37] Also produced is a letter from orthopaedic surgeon, Mr Van Niekerk, dated 21 September 2021. In it, under the heading “Diagnosis” is this:

Osteoarthritis right hip, previous bilateral knee replacements and diabetes.

[38] Under the heading “Plan” is this:

...

Thanks for referring Bruce. He is a lovely 61 year old who has osteoarthritis of his right hip. He has been seen by Dave Lyon and Lyndon Bradley. Lyndon has injected his hip twice with very little improvement.

Bruce relates this to injuries at squash, however I have explained to him that certainly from ACC’s point of view, this is not something they would attribute to the development of arthritis.

...

[39] In a brief letter dated 3 February 2022 to the appellant, Mr Bradley says:

I am not able to agree that chronic damage to the labrum was a direct result of specific trauma.

[40] In a letter dated 26 August 2022 to the appellant, Mr Van Niekerk said:

I have gone through the email and I would like to point out that a labrum tear is very common and it causes pain in some hips, but certainly not every hip. The most important point is that there is absolutely no evidence that a torn labrum leads to cartilage damage and arthritis. This is a point that often gets asked in the literature and is very hotly contested, but as of today, there is no evidence of this at all and that is certainly the view from ACC as well. Unfortunately, there is no chance that we can get this through ACC as it simply would not stack up in Court, and the first thing they would say is that there is no evidence for labrum tears causing hip arthritis.

[41] On 29 August 2022, the appellant underwent a right direct anterior total hip replacement, performed by Mr Van Niekerk.

[42] In a follow-up letter of 3 November 2022, Mr Van Niekerk says:

I have gone through the report that you have written and I have to say, I agree with everything except the very last paragraph; that there is a causal link between your accident and the hip joint replacement. I feel there is most likely a direct link between your accident and the labral tear, but as the arthritis was already present, the labral tear has not caused the arthritis for you.

[43] Finally, in a letter to ACC dated 28 November 2022, Mr Van Niekerk says:

I am fully aware that Bruce had an x-ray in August that reported moderate to severe degenerative change in his right hip, which from a pathology point of view, most likely would have had a labral tear, but the fact of the matter is, he was a man with a reasonably a-symptomatic hip of which an injury really toppled him into a really difficult situation as such.

Appellant's Submissions

[44] Ms Williams referred to the ACC injury claim form of 28 April 2018, where the description of injury was “during squat felt pain in the R hip”. The diagnosis noted by the physiotherapist in the claim form was:

Right side “sprain hip/thigh” as well as a right lumbar sprain.

[45] She noted the x-ray of the appellant's pelvis and right hip of 29 August 2018. She acknowledges that under the heading “Findings” it was recorded that there were no acute traumatic or aggressive appearing osseous lesions, but there was moderate to severe degenerative change in the right hip joint, with joint space narrowing and subarticular sclerosis.

[46] Then followed the injury of 25 June 2019, when the appellant fell into a sand hole and wrenched his groin and back. The diagnosis on that occasion was sacroiliac ligament sprain.

[47] Then followed the accident of 3 July 2019 when the appellant stepped into a hole in a rock wall, twisting his right leg and hurting his back. One of the diagnoses on that occasion was “right lumbar sprain”.

[48] There is then a referral to Mr Ratahi, orthopaedic surgeon, who ordered an MRI scan of the appellant's right hip, who noted in his report of 12 September 2019 that there was:

Maceration with complex tear of the labrum from one o'clock to ten o'clock position.

[49] She notes that Mr Buckland was unable to work due to his injury.

[50] There was then a referral to orthopaedic surgeon Lyndon Bradley, who noted in his report of 17 October 2019 that there were three pathologies present:

- (1) Early osteoarthritis;
- (2) Large extreme and macerated labral tear; and
- (3) A ganglion lesion around the iliofemoral ligament inferiorly.

[51] She refers to Mr Bradley's further report of 7 November 2019, which includes this question and answer:

Q: What is the cause of the above pathology?

A: Large macerated and severe tear of the labrum of his hip and mild osteoarthritis in the joint.

[52] Mr Bradley says:

Obviously the mild osteoarthritis is the result of degenerative wear over time. The labrum itself would have been part of the degenerative process, however the trauma that he sustained that was put down to a hip sprain on the 3rd of July has probably (instigated ?) the significant tearing of this tissue, mobilising the labrum and allowing it to impinge.

[53] Ms Williams submits that the labrum forms the "works" in the joint and that once damaged, the lubrication leaks out and arthritis begins. She accordingly submits that the labrum tear preceded the arthritis.

[54] Ms Williams refers to a report by Mr Lyon, orthopaedic surgeon, dated 18 March 2020. She submits however that in this report Mr Lyon makes assumptions by reference to the general population when he says that in his opinion, part of the osteoarthritis is likely to be a degenerative labral tear often seen with the diagnosis of hip osteoarthritis, rather than a specific injury to the labrum.

[55] She refers to the assessment report and treatment plan from Mr Bradley dated 6 July 2020 where Mr Bradley records the following:

As per the records (of orthopaedic surgeon Erin Ratahi) he has suffered a number of injuries in the past leading to damage to his hip. He presented on this occasion from a trauma when his foot was planted in a hole and the body twisted above.

[56] Ms Williams refers to the review decision where the reviewer records that the appellant:

... presumed his old claim had been reopened, not that a new claim had been made for his 2019 accident. He was surprised when ACC funded the MRI of his groin, when he had been previously battling for it. The MRI scan confirmed the labral tear which is consistent with the groin symptoms he experienced. Mr Lyon told him that it was quite a common squash injury, particularly at the level he was playing at.

[57] Ms Williams next refers to the reports of Mr Van Niekerk, orthopaedic surgeon, and in his report of 28 November 2022, in a letter to ACC, Mr Van Niekerk says:

I am fully aware that Bruce had an x-ray in August that reported moderate to severe degenerative change in his right hip, which from a pathology point of view, most likely would have had a labral tear but the fact of the matter is he is a man with a reasonably a-symptomatic hip of which an injury really toppled him into a really difficult situation as such.

[58] Mr Williams submits that therefore the appellant should have cover for a labral tear and osteoarthritis of the right hip.

[59] In this regard, she refers to the cases of *Lyth v ACC* and *Singh v ACC*¹.

[60] She also referred to *Cochrane v ACC*² where Judge Miller stated that at the end of the day, causation is a question for the Court and that temporal considerations may enter into it, as may issues of credibility and these cannot be delegated to experts.

[61] She also refers to *Ambros* [2008] 1 NZLR 340³ where the Court of Appeal noted that a Court's assessment of causation can differ from the expert opinion and Courts can infer causation in circumstances where the experts cannot.

¹ *Lyth v ACC* [2010] NZACC 198 and *Singh v ACC* [2010] NZACC 38

² *Cochrane v ACC* (CIV-2003-485-2009)

³ *Ambros* [2008] 1 NZLR 340

[62] In our case, Ms Williams submitted that Mr Buckland sustained a number of injuries over the years, all of which were covered by ACC, and that with his July 2019 injury, when he fell down a hole and hurt his hip/groin and other parts of his body, the pain was sudden and it got progressively worse. An MRI showed a complex tear of the right labrum from one o'clock to ten o'clock.

[63] She submits that even though there is a mild amount of degenerative change, this does not preclude Mr Buckland being covered by ACC when he has an accident.

[64] She is critical of Mr Burns, the ACC advisor, as he is not a surgeon.

[65] She refers to what Mr Buckley said a year after the covered accident regarding the link to the accident and previous trauma accidents:

...

Patient has deteriorated and is now no longer able to work and is off work on ACC. The patient has requested an ART application to fund the required total hip replacement. As per the records of orthopaedic surgeon, Erin Ratahi, he has suffered a number of injuries in the past leading to damage to his hip. He presented on this occasion with a trauma when his foot was planted in hole and his body twisted above. There was also a described skiing injury 15 years ago. The joint replacement is requested as treatment for the torn labrum and degenerative changes that have resulted.

[66] She also refers to Mr Van Niekerk, orthopaedic surgeon, whose opinion was that even though there was osteoarthritis in the joint, the reason for the surgery was because of the accident when on balance the tear occurred.

[67] She concludes by saying that in this case, on the balance of probabilities, Mr Buckland has had accidents/trauma and now needs to be rehabilitated. She submits that ACC should pay for this rehabilitation and also entitlements, so that he can return to his previous pre-injury life.

Respondent's Submissions

[68] Mr Hawes-Gandar submits that the three decisions under appeal all turn on whether the appellant's hip condition was as a result of the accident of 3 July 2019.

[69] He submits that the appellant's osteoarthritis pre-dates the accident and that:

- (a) There is clear evidence of long standing degeneration of the hip;
- (b) There is a long history of symptoms;
- (c) The appellant himself has linked the problem to earlier times;
- (d) The tearing of the labrum was expected, given his osteoarthritis;
- (e) The nature of the tear, a macerated tear, is consistent with age related degeneration, rather than accident.

[70] He notes that the appellant's previous accident on 2 April 2018, while doing a squat at a physiotherapy appointment, was investigated by Mr Insull, orthopaedic spine surgeon, in advice to ACC following receipt of a letter dated 18 September 2019, said:

The client's ongoing symptoms recorded in the "work ready strengthening programme reporting document" (included with your letter) substantially relate to degenerative process in the client's right hip and lower back (confirmed on MRI) rather than pathology caused by accident. As the client's accident was in April 2018, sufficient time has now passed for any ongoing effects of his accident ("sprain") to now be spent, in my opinion. More prolonged effects than this are most likely substantially due to aggravation of pre-existing gradual/degenerative process in the right hip and lower back. Any ongoing symptoms are substantially attributable to pre-existing gradual degenerative processes in my opinion.

[71] Mr Hawes-Gandar notes that the letter from ACC of 24 May 2019 declining to pay weekly compensation in respect of the accident of 2 April 2018 was not reviewed.

[72] He notes that following the 3 July 2019 accident, the MRI carried out on 15 August 2019 contains no identification of any traumatic features, with the conclusion as follows:

Moderate right hip osteoarthritis with chondromalacia Grade 3 and subchondral reactive bone marrow oedema. The marginal osteophytosis at the femoral head neck junction could cause femoral acetabular impingement, but there are also large osteophytes at the interior medial aspect of the femoral head.

Thickening of the iliofemoral band with adjacent ganglion cysts could be in keeping with an impingement.

Maceration with complex tear of the labrum from one o'clock to ten o'clock position.

[73] Mr Hawes-Gandar refers next to the report of orthopaedic surgeon, Mr Bradley, of 9 November 2019, which he describes as the “high tide” of the appellant’s case when he acknowledges the degenerative process in the appellant’s right hip, but says:

However the trauma that he sustained that was put down as a hip sprain on 3 July has probably (instigated?) the significant tearing of this tissue, mobilising the labrum and allowing it to impinge.

[74] In the assessment report and treatment plan dated 6 July 2020, Mr Bradley says:

He presented on this occasion with a trauma when his foot was planted in hole and his body twisted above. There was also a described skiing injury 15 years ago. The joint replacement is requested as treatment for the torn labrum and degenerative changes that have resulted.

[75] Mr Hawes-Gandar submits that the words Mr Bradley uses indicate that he is not convinced that there is a causal link.

[76] The report that ACC obtained from orthopaedic surgeon, David Lyon, dated 18 March 2020 includes this:

The labral tear diagnosed on MRI scan is, in my opinion, part of the osteoarthritis and likely to be a degenerative labral tear often seen with the diagnosis of hip osteoarthritis, rather than a specific injury to the labrum.

[77] Mr Hawes-Gander then refers to Mr Bradley’s further report to the appellant of 27 July 2020 where he says:

While I attempted to support your case as much as possible and be an advocate for your case, the reality is that the review by Mr Lyons is accurate and I would find it very difficult to disagree with his findings.

[78] Mr Hawes-Gandar next refers to orthopaedic surgeon, Mr Van Niekerk’s, letter of 3 February 2022 to the appellant, where he says:

I am not able to agree that chronic damage to the labrum was a direct result of specific trauma.

[79] Mr Hawes-Gandar accordingly submits that the Corporation’s position that the tearing of the labrum was not injury related is correct.

Decision

[80] The appellant appealed against ACC's decisions of 17 July 2020 declining cover for labral tear and osteoarthritis of the right hip and declining to fund hip replacement surgery. He also appeals against the further decision of 23 July 2020 suspending entitlements.

[81] As is set out in the background section of this judgment, the appellant suffered a number of accidents during his active life, including a sprain to his right hip/thigh on 2 April 2018 when he felt pain in his right hip while performing a squat during a physiotherapy programme. He had a further accident on 10 July 2019, when he stepped in a hole in a rock wall, twisting his right leg and hurting his back. It is that accident that is the focus of this appeal.

[82] The ultimate issue is whether cover and entitlements that the appellant claims are causally related to this injury.

[83] In this case, we are assisted in this inquiry by the fact that there are in effect "before and after" MRI scans of his right hip.

[84] The scan of 29 August 2018, following the physiotherapy accident of 2 April 2018, revealed the following findings:

No acute traumatic or aggressive appearing osseous lesions. There is moderate to severe degenerative change in the right hip joint, with joint space narrowing and subarticular sclerosis. Decreased foraminal head neck offset noted, suggestive of femoroacetabular impingement.

[85] This then is to be compared with the MRI findings of 15 August 2019 following the 3 July 2019 accident.

[86] It is noted that in the report of 15 August 2019, under the heading "Findings" is this:

Correlation is made with previous radiographs on 29/08/2018.

[87] Under the heading "Conclusion", as referred to earlier, is this:

Moderate right hip osteoarthritis with chondromalacia Grade 3 and subchondral reactive bone marrow oedema. The marginal osteophytosis at the femoral head neck junction could cause femoral acetabular impingement, but there are also large osteophytes at the interior medial aspect of the femoral head.

Thickening of the iliofemoral band with adjacent ganglion cysts could be in keeping with an impingement.

Maceration with complex tear of the labrum from one o'clock to ten o'clock position.

[88] Although plainly the 2019 MRI report is more detailed than that of 2018, I conclude that the comment in the 2018 report of:

... moderate to severe degenerative change in the right hip joint, with joint space narrowing and subarticular sclerosis ...

is very significant.

[89] In orthopaedic surgeon, Mr Bradley's, report of 7 November, he acknowledges mild osteoarthritis as a result of degenerative wear over time. He then says:

The labrum itself would have been part of the degenerative process, however the trauma that he sustained that was put down as a hip sprain on 3 July has probably (instigated?/caused?) the significant tearing of this tissue, mobilising the labrum and allowing it to impinge.

[90] However, in his letter to the appellant dated 3 February 2022, Mr Bradley says:

I am not able to agree that chronic damage to the labrum was a direct result of specific trauma.

[91] In other words, the surgeon is resiling from his earlier view that the trauma sustained by the appellant on 3 July 2019 (caused/instigated) the significant tearing of this tissue, mobilising the labrum and allowing it to impinge.

[92] Orthopaedic surgeon, Mr Van Niekerk, in his report to the appellant of 26 August 2022, says:

The most important point is that there is absolutely no evidence that a torn labrum leads to cartilage damage and arthritis. This is a point that often gets asked in the literature and is very hotly contested, but as of today, there is no evidence of this at all and that is certainly the view from ACC as well. Unfortunately, there is no chance that we can get this through ACC as it simply would not stack up in Court.

[93] In his further report to ACC of 28 November 2022, Mr Van Niekerk said:

I am fully aware that Bruce had an x-ray in August that reported moderate to severe degenerative change in his right hip, which from a pathology point of view, most likely would have had a labral tear, but the fact of the matter is, he was a man with a reasonably a-symptomatic hip of which an injury really toppled him into a difficult situation as such.

[94] What is clear from the medical records in this case is that the medical professionals have supported the appellant's position as much as they were able. The accident of 3 July, on the evidence, rendered his degenerative right hip symptomatic and this then resulted in the need for hip replacement surgery.

[95] However, as the MRI scan taken on 29 August 2018 shows, there was already moderate to severe degenerative change in his right hip joint.

[96] Ultimately, therefore, I must find that ACC was correct in its decision of 17 July 2020 declining cover for labral tear and osteoarthritis of the right hip and declining to fund hip replacement surgery.

[97] It follows from these findings that ACC was correct in its decision of 23 July 2020 suspending the appellant's entitlements.

[98] Accordingly, therefore, I must dismiss this appeal.

[99] Costs are reserved.



C J McGuire
District Court Judge

Solicitors: Medico Law Limited, Grey Lynn