

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2022] NZACC 216 ACR 40/22

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

Hearing: 16 November 2022
Held at: Hamilton/Kirikiria

Appearances: A Carlyle for Ms Henderson
 F Becroft for the respondent

Judgment: 23 November 2022

**RESERVED JUDGMENT OF JUDGE P R SPILLER
[Personal injury - s 26(2), Accident Compensation Act 2001]**

Introduction

[1] This is an appeal from the decision of a Reviewer dated 24 February 2022. The Reviewer dismissed an application for review of the Corporation's decision dated 5 March 2021, declining cover for a pelvic fracture or pelvic disruption caused by an accident on 11 February 1982.

Background

[2] Ms Henderson was born in 1970. On 11 February 1982, when she was 11 years old, she was involved in an accident when her bicycle was hit by a car. An x-ray conducted that day noted no boney injury to the hips and pelvis.

[3] On 15 February 1982, Dr D Steed diagnosed abdominal injury following a fall from a pushbike and a haematoma right thigh and buttock. Cover for the 1982 claim was accepted for contusion injuries.

[4] On 18 February 1982, Dr Russell Bouchier, Surgical Registrar, noted that Ms Henderson's injury was probably a mild compression fracture of T12 (that is, the bottom part of the thoracic spine). Dr Bouchier noted that x-rays of her pelvis were unremarkable and that she settled with observation and was walking pain free on discharge.

[5] On 29 December 1998, Ms Henderson was the victim of a domestic assault, when she was pushed downstairs and kicked in the back. She suffered bruising in that accident but no fractures.¹

[6] In early 2001, Ms Henderson contacted the Corporation to seek entitlements on her 1982 and 1998 injury claims. Medical information was obtained by the Corporation, which included several reports from Mr Gordon Howie, Orthopaedic Surgeon, who had treated Ms Henderson from February 2001 onwards.

[7] On 21 May 2001, Mr Howie, having reviewed Ms Henderson's recent MRI scan of her lumbar spine and SI joints, detected no abnormality apart from a left sided pars defect, and was unable to account for her severe pain.

[8] On 31 July 2001 Mr W Taine, Orthopaedic Surgeon, noted that investigations including a CT scan and MRI scan seemed to show no injury in the pelvic region, and the cause of her symptoms remained unclear.

¹ For the facts relating to the 1982 and 1998 incidents, see *Bevins v Accident Compensation Corporation* [2006] NZACC 17, [3]-[12].

[9] On 10 September 2001, Mr D Allen, Orthopaedic Surgeon, could not incriminate any boney lesion in the left posterior pelvis, and was at a loss to know exactly what was causing Ms Henderson' problem.

[10] The Corporation subsequently arranged for an Independence Allowance Assessment by Mr Ian Brown, Orthopaedic Surgeon, who prepared a report on 20 December 2001. Mr Brown provided additional comments on 11 February and 20 March 2002.

[11] On 8 April 2002, the Corporation wrote to Ms Henderson to advise that she was entitled to an Independence Allowance of \$14.56 per week. This was based on a 15% whole person impairment, 5% for the lumbosacral spine, and 10% for the sacroiliac joint. Ms Henderson applied for a review from a subsequent decision in respect to the date from which the Independence Allowance was payable. On 30 May 2003, the Reviewer quashed the Corporation's decision, and determined that Ms Henderson's Independence Allowance was payable from 1 July 1992.

[12] On 3 November 2003, Mr Stewart Hardy, Orthopaedic Surgeon, reported that he was at a loss to explain Ms Henderson's symptoms, particularly in view of the fact that she had been extensively investigated in the past.

[13] On 22 January 2004, Dr John Monigatti, Occupational Physician, could find no conclusive evidence that Ms Henderson fractured her pelvis or subluxed her sacroiliac joint in 1982 or at any other time.

[14] In 2004, the Corporation considered a number of applications for entitlements from Ms Henderson and arranged for a specialist report from Mr Jeremy Hopkins, Orthopaedic Surgeon. On 8 March 2004, Mr Hopkins advised that Ms Henderson's ongoing pain was not attributable to injuries suffered in 1982 or 1998.

[15] On 10 March 2004, the Corporation wrote to Ms Henderson regarding an application for home help and childcare assistance. The Corporation advised that, on the basis of Mr Hopkins' report, the Corporation was not satisfied that Ms Henderson's ongoing pain was due to her 1982 or 1998 injuries.

[16] On 15 September 2004, the Corporation wrote to Ms Henderson in respect to an application for entitlement to Loss of Potential Earnings (“LOPE”). The Corporation determined, on the basis of Mr Hopkins’ report, that Ms Henderson was not entitled to LOPE, as her ongoing pain was not injury related.

[17] Ms Henderson lodged reviews of the Corporation’s decisions of 10 March and 15 September 2004.

[18] On 27 May 2004, the Reviewer dismissed the review application in respect to the home help and childcare decision of 10 March 2004. The Reviewer preferred the opinion of Mr Hopkins, and the contemporaneous clinical records, determining that Ms Henderson’s covered injuries were not responsible for her ongoing problems.

[19] On 26 November 2004, the Reviewer dismissed the review application in respect to the LOPE decision of 15 September 2004. The Reviewer considered the same specialist evidence, including reports from Mr Howie and Mr Taine. The Reviewer noted that the same issue and evidence arose as had been determined in the 27 May 2004 review. The Reviewer determined that the evidence did not support the proposition that Ms Henderson’s covered injuries were responsible for her ongoing condition.

[20] The review decision of 27 May 2004 was appealed to the District Court. On 24 January 2006, Judge Beattie issued a decision dismissing the appeal.² Following an analysis of each of the specialist reports, the Court concluded:

[36] The covered injuries suffered by the appellant were low back injuries of some trauma but without fracture or disc dislocation. At best, the specialists simply identified the appellant’s pain as being mechanical but of unknown origin. I take some significance from the report of Mr Hardy who provided anaesthetic injections into the appellant’s sacroiliac joint, which was considered to be the source of the pain, only to find that this anaesthetic had no effect on the pain the appellant was experiencing and which caused Mr Hardy to conclude that the lumbar sacral area of the appellant’s spine was not the source of pain.

...

² *Bevins* n1 above. Leave to appeal this decision to the High Court was declined by Judge Hole (*Bevins v Accident Compensation Corporation* [2006] NZACC 275).

[39] I have indicated my view before commenting on the reports of Mr Brown, Dr Doube and Dr Hancock, as I find that those reports do not come anywhere near being sufficient to discharge the onus.

...

[45] In the final analysis, my assessment of all the evidence which has been presented leaves me in no doubt that the pain condition with which Ms Henderson presented and which she submitted as her need for the entitlements claimed, cannot be said to be a condition which has a causative link to any covered injury and the respondent, I find, was for that reason correct to decline her application.

[21] In 2017, Ms Henderson made another request for LOPE. On 29 November 2017, the Corporation advised:

On looking at your claim, I note that a decision to decline entitlements was made in regard to Loss of Potential Earnings (LOPE) on 15/9/2004. This was because ACC had considered all the information available and found that you were not entitled to receive this assistance because there is no evidence that your current condition is related to either your 1982 accident (this claim) or the 1998 accident. In fact, specialist medical opinion has ruled out these two accidents as being in any way responsible for your ongoing pain. I understand that you reviewed this decision, and the review was dismissed on 2/12/2004.

I therefore will be closing your claim.

[22] Up to that point, Ms Henderson had been receiving an Independence Allowance. This entitlement came up for re-assessment in early 2018 and Ms Henderson was referred to Dr Stuart Armstrong for assessment.

[23] On 25 January 2018, Dr Armstrong provided an impairment report, assessing Ms Henderson as having a 5% whole person impairment.

[24] On 2 February 2018, the Corporation issued a decision advising Ms Henderson that she was no longer entitled to an Independence Allowance, as her assessed injury related impairment of 5% fell below the minimum 10% level required for payment.

[25] On 13 February 2018, Ms Henderson lodged a review against the Corporation's communication of 29 November 2017. On 23 February 2018, Ms Henderson also lodged a review of the Corporation's decision of 2 February 2018 as to her Independence Allowance.

[26] Ms Henderson then produced, *inter alia*, a report from Mr Richard Willoughby, Orthopaedic Surgeon, dated 2 May 2018. This report advised:

[Ms Henderson] has complex pain symptoms which I think as likely resulting from her car accident in the past. The simplest thing to start with would be to try a ICT guided steroid injection into her sacroillac joint.

[27] On 6 June 2018, the Corporation responded to the further evidence from Mr Willoughby, advising that it would not be revisiting the 2004 LOPE decision.

[28] On 14 June 2018, review proceedings were held in respect of the Corporation's communication of 29 November 2017 regarding Ms Henderson's request for LOPE. On 3 July 2018, the Reviewer issued a decision declining jurisdiction on the basis that there was no new decision and the matter had already been determined by the District Court in 2006. The Reviewer did not think that any of the recent evidence significantly altered the position put to the District Court in 2004.

[29] Also, on 14 June 2018, review proceedings were held in respect of the Corporation's decision of 2 February 2018 advising Ms Henderson that she was no longer entitled to an Independence Allowance. On 3 July 2018, the Reviewer dismissed the review application and confirmed the Independence Allowance decision, based on Dr Armstrong's assessment.

[30] On 5 July 2018, a treatment injury claim form was filed by Dr Adrian Pett, citing a failure to diagnose a fractured pelvis, causing subsequent long-term pain. The form referred to the 1982 accident.

[31] On 3 August 2018, a further ACC injury claim form was filed by Dr Pett, claiming cover for a fracture/disruption of the pelvis and a closed fracture of the lumbar vertebrae, again referring to "medical misadventure" and the accident in February 1982.

[32] On 16 September 2018, a medical case review was undertaken by Mr Vasudeva Pai, Orthopaedic Surgeon. Mr Pai reviewed the available documentation. He thought it unlikely that Ms Henderson had suffered a fracture, noting the contemporaneous evidence as well as the multiple musculoskeletal

assessments which did not point to any pelvic injury. He considered that Ms Henderson underwent appropriate investigations in 1982 and could not identify any treatment injury, and concluded:

In my opinion, therefore I am unable to confirm that any pelvic fracture has occurred following her injury event, and even considering there was some pelvic injury or lateral compression fracture which are a very stable variety, the recommended treatment would still be non-operative, and early mobilisation would be strongly recommended even in the presence of displaced lateral compression fracture ...

[33] On 26 September 2018, the treatment injury claim of 5 July 2018 was declined. On 2 October 2018, a review application was filed against this decision.

[34] On 30 May 2019, there was a conciliation meeting to discuss Ms Henderson's injury claim. The Corporation agreed to fund a further review with Ms Lisa Hansen, Physiotherapist, and a referral to Dr Quentin Reeves, Radiologist. The Corporation agreed to consider whether Ms Henderson had existing cover for a pelvic injury, on review of the historical records and the earlier appeal/review decisions. The Corporation also agreed, once this process was completed, to issue a new decision on the status of cover for a pelvic injury, with review rights. The treatment injury review was withdrawn thereafter.

[35] On 1 July 2019, Ms Hansen completed a report. She noted a long history of left-sided pelvic pain since the 1982 accident. She thought that the pain fitted the description of central sensitisation, and recommended pain management.

[36] Mr Reeves was not available to provide a further report. On 16 October 2019, Dr Andrew Taylor, Radiologist, provided a radiological report which concluded:

A fracture or traumatic disruption of the pelvis sustained during childhood before skeletal maturity is possible and cannot be excluded.

[37] On 11 November 2019, Mr Carlyle, for Ms Henderson, wrote to the Corporation and, based on the radiological report, asked the Corporation to confirm cover for a pelvic injury.

[38] On 21 November 2019, Dr Scott Burns, BMA, concluded from a file review:

In this case the lack of a contemporaneous presentation consistent with an acute fracture or injury to the pelvis is the most convincing factor in assessing causation.

Based on the reports above it is not possible to support a causal link between the client's pelvic symptoms and the event of 11/2/1982.

[39] On 21 November 2019, the Corporation issued a further decision declining cover for a fracture or disruption of the pelvis in the accident of 11 February 1982. On 24 December 2019, a review application was lodged against the decision. Subsequently the review application was withdrawn because the Corporation agreed to investigate further.

[40] On 10 March 2020, Mr Willoughby provided a further report. He noted that Ms Henderson's pain had recently improved with a CT-guided steroid injection. A surgical remedy (SI joint fusion) was discussed.

[41] On 24 March 2020, Mr Stewart Hardy, Orthopaedic Surgeon, reported to Mr Willoughby, noting Ms Henderson's long-term problem with pain around her left sacroiliac region. Mr Hardy noted that a recent bone scan was normal, but suggested further investigations by way of an x-ray and MRI of the pelvis and the lumbar spine.

[42] On 8 April 2020, a further MRI was undertaken. Dr Kevin Gilbery, Radiologist, reported minor disc height reduction at the central levels with a bulge at L4/5, as well as pars interarticularis defects posteriorly displaced on the right with sclerosis and a left residual defect with mild boney reactive change.

[43] On 15 April 2020, Mr Hardy reported again, and noted that the recent scans documented some minor change. He was not convinced that surgery would help.

[44] On 6 May 2020, Mr Hardy wrote to Mr Willoughby, noting a normal x-ray of the pelvis and an MRI scan confirming an essentially normal spine. At that stage, Mr Hardy thought that it was best to leave Ms Henderson be.

[45] On 23 November 2020, Mr Richard Keddell, Orthopaedic Surgeon, undertook a medical case review for the Corporation. He reviewed the historical reports and acknowledged that the initial injury was significant enough for Ms Henderson to remain in hospital for four days. However, he added:

... had there been a significant lateral pelvic compression injury to Pania at that stage which has caused a structural deformity in her pelvis now, then I would have expected that to be more specifically identified and reflected in the notes in the initial hospital stay and post-operative review. While there appears, however, to be minimal evidence of further investigation of her condition until after the age of 15, from Pania's statement to me her symptoms appear to have, in her recollection, stemmed from this accident. ...

It is clear that Pania had a significant enough injury in 1982 to require a period of 4 days of hospitalisation. Pelvic and lumbar spine x-rays at that time in essence showed no significant abnormality. While suggesting some minor buckling of T12, these changes in this age group may not be traumatic, but if they were traumatic then it would be unlikely there would be long term consequence from that.

[46] Mr Keddell was of the view that Ms Henderson presented with a pain profile. He was unable to find a specific orthopaedic cause for the pain. Nevertheless, he suggested obtaining a SPECT CT scan of the lumbar spine and pelvis to exclude an orthopaedic cause for the pain.

[47] On 17 December 2020, a SPECT CT of Ms Henderson's lumbar spine and pelvis was undertaken. Dr Moses Beh, Diagnostic Radiologist, confirmed a unilateral left L5 pars defect, mild degenerative changes, and a suggestion of bilateral mild sacroiliitis.

[48] On 21 January 2021, Mr Hamish Deverall, Orthopaedic Surgeon, reported to Mr Hardy. He discussed the CT SPECT scan, an earlier plain SPECT scan, as well as the other radiological evidence, and concluded:

I have discussed these imaging findings with Pania and her husband. Pania is adamant that her pain has been relatively constant and consistent for many decades. She feels that she has had many images in the past, particularly in 2002 she is aware of a CT scan which has shown no evidence of changes in the sacroiliac joints.

Pania does not believe that her pain will be related to these changes of arthritis. She feels it is related to a childhood trauma when she was hit by a motor vehicle.

That aside my assessment is of potential changes in the sacroiliac joints.

On the basis of your letter stating that the imaging of the sacroiliac joints was normal I would ask if you see Pania again in regard to the more up-to-date imaging which does tend to show pathology of the sacroiliac joints.

[49] On 5 February 2021, Mr Keddell then reported again, and concluded:

Having reviewed the scans however it would be my opinion that Ms Henderson is more likely to have a mild inflammatory condition of her sacroiliac joints and some mild degenerative changes around her left L5 pars defect. It would be my opinion that the balance of evidence is not supportive of a traumatic cause for these findings and therefore I am of the opinion that her current disability is not directly related to her accident on 11 February 1982.

[50] On 28 January 2021, Dr Paul Noonan, BMA, reviewed the file. He confirmed that there was no accident-related structural explanation for Ms Henderson's symptoms, but added:

There is however a consistent story of pain since the accident of 1982. It is possible that she has an accident related pain syndrome as an explanation. To determine this, I recommend that she has an assessment by a pain management specialist. You could ask:

Pania has cover for contusion back and thoracic sprain as a result of a fall from her bicycle in 1982. She reports ongoing pain since then. A recent review by Mr R Keddell has concluded that her pain cannot be explained by the structural effects of this accident. Could you please assess her and answer the following questions:

What is the explanation for her pain? Does she have a pain syndrome? If so, what is the nature of this? Does it result from the accident of 11/2/1982 or any other accident? Please provide the rationale for your opinion.

Have you any further recommendations regarding treatment of any accident related condition?

If she is considered to have a pain syndrome, then she may possibly benefit from a pain management programme however at this stage she appears to have an inflammatory condition that is not accident related and for which a rheumatological opinion may be helpful.

[51] On 5 March 2021, the Corporation issued a decision, upholding its decision of 21 November 2019, declining cover for a pelvic fracture or disruption due to an accident on 11 February 1982.

[52] Also, on 5 March 2021, the Corporation issued a further decision declining Ms Henderson's request for pain management services and pain specialist appointments, as a result of the accident on 11 February 1982.

[53] On 20 April 2021, Dr Alan Doube, Rheumatologist, provided a report for Mr Carlyle on Ms Henderson's pain symptoms. Dr Doube noted that he had originally met Ms Henderson in March 2004 and provided a report at that time. He understood that Ms Henderson had been in receipt of ACC support regarding the 1982 claim up until recently. Ms Henderson advised him that her symptoms had been getting gradually worse over the years but were unchanged in their essential nature. Dr Doube concluded that Ms Henderson's pain symptoms were causally linked to the 1982 accident, based on Ms Henderson's report of unchanged, increasingly severe symptoms. He also advised that the pars defects documented likely occurred at the time of the injury in 1982 and that Ms Henderson suffered from pelvic instability. He disagreed with the conclusion that there was evidence of an inflammatory arthritic condition.

[54] On 4 May 2021, Mr Carlyle applied for a review of the Corporation's decision of 5 March 2021 and suggested a conciliation. After that, the Corporation made an offer of a further pain assessment, but this was declined.

[55] On 12 November 2021, Mr Keddell provided further advice for the Corporation, noting that Ms Henderson had radiological and clinical evidence of arthritic changes in her SI joints and lumbar spine, and confirming that on the balance of probabilities the changes in her sacroiliac joints and lumbar spine were unlikely to be related to the accident in 1982. There was a follow-up report from Dr Doube on 26 November 2021.

[56] On 27 January 2022, review proceedings were held. On 24 February 2022, the Reviewer dismissed the review, on the basis that Ms Henderson had not established that she sustained a significant pelvic injury in the accident on 11 February 1982.

Relevant law

[57] Section 20(2)(a) of the Act provides that a person has cover for a personal injury which is caused by an accident. Section 26(2) states that “personal injury” does not include personal injury caused wholly or substantially by a gradual process, disease, or infection (unless it is personal injury of a kind specifically described in section 20(2)(e) to (h)). Section 25(1)(a)(i) provides that “accident” means a specific event or a series of events, other than a gradual process, that involves the application of a force (including gravity), or resistance, external to the human body. Section 25(3) notes that the fact that a person has suffered a personal injury is not of itself to be construed as an indication or presumption that it was caused by an accident.

[58] In *Ambros*,³ the Court of Appeal stated:

[65] The requirement for a plaintiff to prove causation on the balance of probabilities means that the plaintiff must show that the probability of causation is higher than 50 per cent. However, courts do not usually undertake accurate probabilistic calculations when evaluating whether causation has been proved. They proceed on their general impression of the sufficiency of the lay and scientific evidence to meet the required standard of proof ... The legal method looks to the presumptive inference which a sequence of events inspires in a person of common sense ...

...

[67] The different methodology used under the legal method means that a court’s assessment of causation can differ from the expert opinion and courts can infer causation in circumstances where the experts cannot. This has allowed the Court to draw robust inferences of causation in some cases of uncertainty -- see para [32] above. However, a court may only draw a valid inference based on facts supported by the evidence and not on the basis of supposition or conjecture ... Judges should ground their assessment of causation on their view of what constitutes the normal course of events, which should be based on the whole of the lay, medical, and statistical evidence, and not be limited to expert witness evidence ...

Discussion

[59] The issue in this case is whether there is sufficient medical evidence to support a fracture or disruption of Ms Henderson’s pelvis having been sustained in her 1982 accident.

³ *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR 340.

[60] Mr Carlyle, for Ms Henderson, submits as follows.

- There is sufficient evidential support for an injury to her pelvis to establish cover. The record evidences fracture or disruption (left-sided pars defect) of the pelvis.
- The Corporation continued to make independence allowance payments, for many years, based on a significant and permanent injury to her pelvis.
- Medical science in the early years after 1982 was not as advanced as at present, and so the early reports and Judge Beattie's judgment should be discounted.
- Dr Doube, Rheumatologist, has consistently assessed that Ms Henderson suffered a significant injury in 1982 and that it was the cause of her ongoing pain problems. Likewise, Dr Hancock, Pain Specialist, also concluded that there was a link between Ms Hancock's pain and the 1982 accident.
- Mr Willoughby, Orthopaedic Surgeon, assessed that Ms Henderson had complex pain symptoms which he thought as likely resulting from her car accident in the past.
- It is not reasonable to declare that Ms Henderson's pain is not related to the accident in 1982, and there is no other symptomatic cause for the pain.

[61] This Court acknowledges the above submissions, and that Ms Henderson has had ongoing pain with a diagnosis of a pars defect. However, as to whether there is sufficient medical evidence to support a fracture or disruption of Ms Henderson's pelvis having been sustained in her 1982 accident, the Court refers to the following evidence and considerations.

[62] First, medical records taken shortly after the accident in February 1982 do not indicate an injury to the pelvis of any significance. An x-ray taken of the hip and

pelvis on the day of the accident did not reveal any boney injury to the pelvis. Four days later, Dr Steed diagnosed an abdominal injury with a haematoma of the right thigh and buttocks. Seven days after the accident, Dr Bouchier noted that the injury was probably a mild compression fracture of T12, x-rays of her pelvis were unremarkable and she settled with observation, and she was walking pain free on discharge.

[63] Second, there are no medical records over the next 22 years that confirm an injury to the pelvis of any significance, rather, the records confirm a long history of pain with no clear origin:

- In April 2001, Mr Howie, Orthopaedic Surgeon, having reviewed Ms Henderson's recent CT scan of her lumbar spine, detected no evidence of fracture or subluxation, and concluded that the distortion of the pelvis was developmental/congenital.
- In May 2001, Mr Howie, having reviewed Ms Henderson's recent MRI scan of her lumbar spine and SI joints, saw no abnormality apart from a left-sided pars defect, and was unable to account for her severe pain.
- In July 2001, Mr Taine, Orthopaedic Surgeon, noted that investigations including a CT scan and MRI scan seemed to show no injury in the pelvic region, and the cause of her symptoms remained unclear.
- In September 2001, Mr Allen, Orthopaedic Surgeon, could not incriminate any boney lesion in the left posterior pelvis and was at a loss to know exactly what was causing Ms Henderson's problem.
- In November 2003, Mr Hardy, Orthopaedic Surgeon, reported that he was at a loss to explain Ms Henderson's symptoms, particularly in view of the fact that she has been extensively investigated in the past.
- In January 2004, Dr Monigatti, Occupational Physician, could find no conclusive evidence that Ms Henderson fractured her pelvis or subluxed her sacroiliac joint in 1982 or at any other time.

- In March 2004, Mr Hopkins, Orthopaedic Surgeon, diagnosed that Ms Henderson had a congenital abnormality of the left hemi-pelvis and shape and rotation consistent with a small congenital abnormality in the lumbosacral junction. Mr Hopkins assessed that any changes that were in her pelvis did not have any relationship whatsoever to the accident of 1982.

[64] Third, in December 2005, Judge Beattie, in a judgment on appeal by Ms Henderson, had no doubt that the pain condition with which she presented could not be said to have a causative link to any covered injury. Judge Beattie expressly discounted the contrary views of Dr Doube and Dr Hancock as not coming anywhere near being sufficient to discharge the onus of proof. Judge Beattie concluded that Ms Henderson's covered injuries were low-back injuries of some trauma but without fracture or disc dislocation.⁴

[65] Fourth, in September 2018, Mr Pai, Orthopaedic Surgeon, concluded from a comprehensive review of Ms Henderson's medical reports that he was unable to confirm that any pelvic fracture has occurred following her injury event in 1982. Dr Pai's report was confirmed by that of Dr Burns, BMA, in November 2019.

[66] Fifth, in February 2021, Mr Keddell, Orthopaedic Surgeon, after comprehensively reviewing Ms Henderson's medical reports and recent imaging, concluded that she was more likely to have a mild inflammatory condition of her sacroiliac joints and some mild degenerative changes around her left L5 pars defect. Dr Keddell assessed that the balance of evidence was not supportive of a traumatic cause for these findings and that her current disability was not directly related to her accident in 1982. In November 2021, Mr Keddell provided a further opinion (in response to a report from Dr Doube), noting that Ms Henderson had radiological and clinical evidence of arthritic changes in her SI joints and lumbar spine, and confirming that, on the balance of probabilities, the changes in her sacroiliac joints and lumbar spine were unlikely to be related to the accident in 1982.

⁴ *Bevins*, see above n 2.

Conclusion

[67] In light of the above considerations, the Court finds that there is not sufficient medical evidence to support a fracture or disruption of Ms Henderson's pelvis having been sustained in the 1982 accident. The Court notes, in particular, the evidence of a series of Orthopaedic Surgeons to the contrary. The decision of the Reviewer dated 24 February 2022 is therefore upheld. This appeal is dismissed.

[68] 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 for the Respondent: Medico Law.