IN THE DISTRICT COURT
AT WELLINGTON

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

[2023] NZACC 100 ACR 51/22

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPLICATION FOR LEAVE TO APPEAL UNDER SECTION 162(1) OF THE ACT
BETWEEN	MARJAN HRISTOVSKI Applicant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Submissions: The Appellant is self-represented
T Gee for the Respondent

Hearing: On the papers

Judgment: 27 June 2023

JUDGMENT OF JUDGE P R SPILLER
[Jurisdiction – s 6(1), Accident Compensation Act 2001 ("the Act")]

Introduction

[1] This is an application for leave to appeal against a judgment of His Honour Judge McGuire, delivered on 2 February 2023.[1] At issue in the appeal was the principle of *res judicata* and whether that there was a decision to review within the meaning of the word "decision" under the Act. The Court dismissed the appeal for lack of jurisdiction, for the reasons outlined below.

---

1 *Hristovski v Accident Compensation Corporation* [2023] NZACC 15.

Background

[2] Mr Hristovski resides in Macedonia.

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

[4] In January 2018, Mr Hristovski applied for a lump sum due to permanent disability. He supplied medical evidence from countries including France and North Macedonia indicating that he was permanently disabled.

[5] On 17 July 2018, Dr Obednikovski, Orthopaedic and Trauma Specialist, provided a report. In reliance on that report, the Corporation confirmed Mr Hristovski's eligibility for a lump sum payment. A whole person impairment assessment of Mr Hristovski was then conducted by Dr Meades.

[6] On 27 July 2018, the Corporation issued a decision advising Mr Hristovski of the whole person impairment percentage rating of 20 per cent. The Corporation paid Mr Hristovski a lump sum amount in accordance with his impairment rating. He challenged the decision, contending that he was at least 80 per cent disabled. The Corporation obtained a peer review of Dr Meads' assessment from Dr Collier, senior peer reviewer, who recommended that Dr Meads' report be accepted. Mr Hristovski's review was dismissed. Mr Hristovski lodged an appeal in relation to the Corporation's decision of 27 July 2018 (ACR 321/19).

[7] Mr Hristovski later asked the Corporation to reassess his whole person impairment. On 18 and 25 August 2020, the Corporation advised Mr Hristovski that he was not eligible for reassessment without medical evidence of a change in his level of physical functioning, and because he could not have his impairment reassessed more than once in a 12-month period. Mr Hritovski applied to review this decision. On 26 November 2020, a Reviewer dismissed the review. Mr Hristovski lodged a further appeal (ACR 270/20).

[8] On 17 February 2021, submissions from the Corporation, in relation to appeal ACR 321/19, were filed. Also on 17 February 2021, Mr Hristovski lodged a third review application in respect of a "decision" of the same date.

[9] On 26 May 2021, Mr Hristovski filed further medical evidence including a report advising that his condition had deteriorated since his assessment in 2018. As a consequence, the Corporation voluntarily obtained a reassessment of Mr Hristovski's whole person impairment.

[10] On 3 August 2021, Dr Meads concluded that Mr Hristovski's whole person impairment had deteriorated to 35 per cent, but that the deterioration was due, not to his covered injuries, but to independent degenerative conditions. Accordingly, his covered impairment remained at 20 per cent. The Corporation obtained a further report corroborating this conclusion, from Dr Drewry, Principal Clinical Advisor.

[11] On 17 February 2022, a Reviewer held, in relation to Mr Hristovski's third review application, that there was no decision to review within the meaning of the word "decision" under the Act. Mr Hristovski lodged the present appeal (ACR 51/22).

[12] On 10 March 2022, Mr Hristovski's first two appeals (ACR 321/19 and ACR 270/20) were heard jointly and dismissed.[2] Judge McGuire considered the whole person assessments of Dr Meads (including the assessment of 3 August 2021) and found:

> [62] I accept that the appellant presently suffers a great deal and that this is in part as a result of his accident. However in terms of lump sum payments deriving from an impairment assessment report this Court is unable to accept that the assessment reports carried out in respect of him are wrong and that as a consequence the lump sum payment made to him is less that what the Act provides for.

[13] On 2 February 2023, Mr Hristovski's present appeal was dismissed by Judge McGuire. On 11 February 2023, Mr Hristovski sought leave to appeal this decision.

---

2 *Hristovski v Accident Compensation Corporation* [2022] NZACC 33.

Relevant law

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

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

[15] In *O'Neill*,[3] Judge Cadenhead stated:

> [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 … .

[16] In *Cullen*,[4] the Court of Appeal stated the following principles applying to the grant of special leave to appeal:

> [5] … The Court will exercise this power if satisfied that there is a serious question of law capable of bona fide and serious argument in a case involving some interest, public or private, of sufficient importance to outweigh the cost and delay of a further appeal. Other relevant considerations include the desirability of finality of litigation and the overall interests of justice. The primary focus is on whether the question of law is worthy of consideration.

---

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

4 *Cullen v Accident Compensation Corporation* [2014] NZCA 94, affirmed in *Accident Compensation Corporation v Anderson & O'Leary Ltd* [2023] NZCA 198, at [18].

The Court's judgment of 2 February 2023

[17] Judge McGuire outlined the history of Mr Hristovski's injury and the proceedings which followed.

[18] Judge McGuire noted that the present appeal in substance remained the same as the two appeals already decided, namely, Mr Hristovski's claim that the lump sum impairment assessment of 20 per cent was incorrect. His Honour observed that *res judicata* prevented re-opening questions that had been decided by the Court with binding effect, and referred to the decision in *Shann*.[5]

[19] Judge McGuire stated that the second reason that this appeal had to fail for lack of jurisdiction was because there was no decision to appeal in this case. The "decision" under appeal was not a reviewable "decision" under the Act. What appeared to be the subject of this appeal were submissions filed on 17 February 2021, on behalf of the Corporation, in respect of appeal ACR 321/19.

[20] For the above reasons, Judge McGuire dismissed Mr Hristovski's appeal.

The appellant's submissions

[21] Mr Hristovski submits that he needs help as he is disabled for life. The amount he receives from the Corporation is not enough for his needs. He would like to continue his life as a normal person as much as possible. He has had further injuries after his accident and needs money to continue his medical treatment. The Corporation earlier assessed his whole person impairment as 20 percent and it now assesses his whole person impairment as 35 percent.

Discussion

[22] This Court notes that the issue before the Court in the present matter (ACR 51/22) is the same issue that was decided by Judge McGuire in relation to two previous appeals (ACR 321/19 and ACR 270/20). In all these appeals, Mr Hristovski has submitted that he continues to suffer a great deal from the

---

5 *Shann v Accident Compensation Corporation* (2007) NZACC 171.

consequences of his accident, and he needs further financial support from the Corporation.

[23] This Court notes that, in relation to the two previous appeals, Judge McGuire expressly found that, notwithstanding Mr Hristoski's continued suffering, the Court was unable to accept that the assessment reports carried out in respect of him were wrong and that, as a consequence, the lump sum payment made to him was less that what the Act provided for. There was no successful appeal taken against this decision. The present appeal focusses on the same issue. As Judge McGuire pointed out, the principle of *res judicata* prevents re-opening questions that have been decided by the Court with binding effect.

[24] There is also the issue that Mr Hristovski does not appear to be reviewing and appealing a further decision made by the Corporation, as defined by section 6 of the Act. Instead, his present appeal relates to submissions filed by the Corporation in relation to an earlier appeal. In *Butler*,[6] Judge Barber correctly stated:

> [9] 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.

The Decision

[25] In light of the above considerations, the Court finds that Mr Hristovski has not established sufficient grounds, as a matter of law, to sustain his application for leave to appeal, which is accordingly dismissed. Mr Hristovski has not established that Judge McGuire made an error of law capable of *bona fide* and serious argument. Even if the qualifying criteria had been made out, this Court would not have exercised its discretion to grant leave, so as to ensure the proper use of scarce judicial resources and the finality of litigation. This Court is not satisfied as to the wider importance of any contended point of law.

---

6 Butler v Accident Compensation Corporation (2004) NZACC 1 at [9].

[26] Costs are reserved.

Judge P R Spiller,
District Court Judge