

**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 87**

**ACR 53/21**

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

Hearing: 18 May 2023

Held at: Wellington/Te Whanganui-a-Tara by AVL

Appearances: K Koloni for the Appellant  
F Becroft for the Accident Compensation Corporation

Judgment: 23 May 2023

---

**RESERVED JUDGMENT OF JUDGE P R SPILLER  
[Claim for mental injury because of physical injury - s 26(1)(c), Accident  
Compensation Act 2001 ("the Act")]**

---

**Introduction**

[1] This is an appeal from the decision of a Reviewer dated 21 December 2020. The Reviewer dismissed an application for reviews of the Corporation's decisions:

- (a) dated 18 December 2018 declining the appellant's entitlement to weekly compensation as a consequence of her physical injury;

- (b) dated 21 May 2019 declining the appellant cover for major depression as a consequence of her physical injury.

## **Background**

[2] The appellant was born in 1972.

[3] In 1998, the appellant was diagnosed with post-traumatic stress disorder (“PTSD”), with an accident date of 29 September 1997, and was granted cover.

[4] From 16 February 1998 to 1 August 2000, the appellant received entitlements, including weekly compensation, on the sensitive claim. She then returned to work, and counselling assistance ended. (She came to be employed as an online teacher for a correspondence school and as a tutor at a university, among other activities.)

[5] In 2012, the appellant received further funding for psychology sessions, the need for which was evidently triggered by endometriosis surgery.

[6] In 2017, further psychology sessions were approved. In August 2017, an early planning report advised that the appellant was presenting for further counselling because she had had a relapse in late 2016 with further psychological distress.

[7] On 31 January 2018, Ms Kirsty Hunter, Clinical Psychologist, having had a series of consultations with the appellant, completed a supported assessment. Ms Hunter noted as follows:

Overall [the appellant’s] scores on the TSI-2 reflected a profile commensurate with someone who has endured significant trauma which has resulted in unhelpful coping strategies such as dissociation, alongside a poorly formed sense of self. [The appellant’s] profile indicated symptoms strongly associated with her experiences of personal abuse (e.g., unpleasant intrusive experiences, anxiety and difficulties with appropriate sexual relations). Given [the appellant’s] reported early aversive experiences of sexual trauma it stands to reason that she remains uncomfortable with close sexual intimacy.

[8] On 9 March 2018, the appellant’s sensitive claim was reviewed by Mr Vas Ajello, Psychology Advisor, who confirmed the diagnosis of PTSD as a result of sexual abuse.

[9] On 30 March 2018, the appellant was cleaning a deck, slipped on the wet deck and fell onto her left leg and back, and bumped her head on the step. Two days later, she hit her head on the 'fridge.

[10] On 6 April 2018, an ACC injury claim form was filed by Dr Jonathon MacColl, GP, for the appellant's injuries suffered in the above accident. The injuries were listed as concussion, contusion of the left knee and lower leg, and contusion of the right elbow or forearm, suffered in the above accidents.

[11] On 10 April 2018, the claim for cover for the injuries on 30 March 2018 was automatically accepted.

[12] On 4 May 2018, cover for PTSD (as noted above in paragraph [3]) was confirmed, and a client well-being plan was drafted with ongoing psychology support from Ms Hunter.

[13] On 6 June 2018, Dr Tamatoa Blaiklock, GP, referred the appellant to a Concussion Clinic for occupational therapy. The referral noted that she had had vertigo and dizziness since the concussion "in April", and that she had residual photophobia.

[14] On 11 June 2018, the Corporation approved concussion services.

[15] On 13 June 2018, Dr Blaiklock noted that the appellant had "ongoing mixture of symptoms". He thought that her anxiety and PTSD-like symptoms which had resulted from her sexual abuse were playing a part. Dr Blaiklock noted that she was having light headaches and dissociative symptoms, which she had before her recent head injury, but that these were "ramping up".

[16] On 22 June 2018, Dr Angela Hancock, GP, provided a medical certificate with the diagnosis of sexual abuse dated 29 September 1997. Dr Hancock certified the appellant as unfit to work (20 June to 20 July 2018), with the reason being "sensitive claim – PTSD S as a result".

[17] On 5 July 2018, Ms Raewyn Pepperell, Occupational Therapist, provided a Concussion Services' Client Summary. This noted that the appellant was diagnosed with PTSD in 1998 and from 1999 was working and managing symptoms; and that the appellant had had multiple knocks to the back of the head in February-March-April 2018, with persistent symptoms of headaches, dizziness, neck pain and photophobia. Ms Pepperell added that there was existing PTSD which was complicated by concussions symptoms.

[18] On 20 July 2018, Dr Angela Hancock, GP, provided a medical certificate with the diagnosis of sexual abuse dated 29 September 1997. Dr Hancock certified the appellant as unfit to work (20 June to 20 July 2018), with the reason being "unable to cope with the stress of work at the moment". On 15 August 2018, Dr Nur Hamid, GP, provided a medical certificate with the same diagnosis, certifying the appellant as unfit to work (21 August to 30 September 2018).

[19] On 28 August 2018, Dr Maren Klum, Clinical Psychologist, having attended on the appellant, completed a neuropsychological screening assessment for Concussion Services. The report noted that the appellant advised that, overall, things had improved since her initial injuries. Her main ongoing complaint was bad vertigo with headaches, light sensitivity, problems with executive functioning and low mood. Based on the findings, Dr Klum advised that the appellant was below the DSMIV diagnostic threshold for mild traumatic brain injury ("TBI"). Dr Klum noted that the appellant was well past the suggested recovery period for a mild injury, and that there was no overall decline in cognitive functioning compared to her pre-morbid functioning, although there were difficulties in the areas of attention and concentration. Dr Klum also advised that the appellant met the criteria for a diagnosis of major depressive episode with anxious distress. Dr Klum noted that the appellant had a significant history of depression, on a background of sexual abuse. Dr Klum advised at the end of her report:

Because [the appellant] has a history of PTSD, depression and anxiety, she is pre-disposed to a more complicated recovery from concussion.

[20] On 20 September 2018, the appellant applied for weekly compensation, arising out of the injury on 30 March 2018.

[21] On 27 September 2018, Dr Hancock, GP, provided a medical certificate with the diagnosis of sexual abuse dated 29 September 1997, certifying the appellant as unfit to work (21 August to 30 September 2018).

[22] On 3 October 2018, Ms Pepperell provided a further completion report for Concussion Services. Symptoms were noted as having improved. A recommendation was made for a referral for a Training for Independence programme with Ms Pepperell. The report noted that the appellant had been managing symptoms related to her PTSD and working before her concussion injury, and that, due to her history of PTSD, she was pre-disposed to a “more complicated recovery from concussion”.

[23] On 4 October 2018, the appellant requested funding for visual aids, arising out of the injury on 30 March 2018.

[24] On 4 October 2018, Dr Hancock certified the appellant as unfit to work from 1 July 2018 up to 31 October 2018, and referred to the injuries in the accident of 30 March 2018. The medical certificate advised:

Complex case overlapping with sensitive claim issues – both contributing to inability to work at the present time. Case Manager requesting ARC18 certificate for concussion to compliment those issued for S. claim as both conditions are playing a part.

[25] On 11 October 2018, the Corporation wrote to the appellant advising that it would investigate an entitlement to weekly compensation on the concussion and contusion claim arising from the injury suffered on 30 March 2018.

[26] On 30 October 2018, Ms Hunter advised as follows:

[The appellant] has had PTSD–complex (inc anxiety and depression) for some years that she has managed at times, but conversely has been retriggered at times (such as with her relationship, her Masters degree and teaching pressures). It seems that the concussion has exacerbated the PTSD-complex (including anxiety and depression) and subsequent feelings of inadequacy and powerlessness.

[27] On 6 December 2018, Dr Hancock certified the appellant as unfit to work from 1 November 2018 up to 17 January 2019, and referred to the injuries in the accident of 30 March 2018.

[28] On 17 December 2018, Dr Penny Louw, Branch Advisory Psychologist, reviewed the appellant's file. It was noted that incapacity had been claimed in relation to the sensitive claim from 31 August 2018, whereas the medical certificate on the concussion claimed incapacity from 1 July 2018. Therefore, there was a period of overlap across both claims.

[29] Dr Louw noted that Dr Klum's assessment tended to speak more of symptoms associated with the sensitive claim. Dr Louw was of the view that Dr Klum found that the injury did not meet the criteria for a mild TBI and that, in any event, any effects of the injury would be expected to have resolved. Dr Louw noted that testing suggested that psychological factors were affecting recovery and cognitive functioning. No cognitive effects of concussion were identified. Dr Louw thought it more likely that the claim for incapacity was related to the sensitive claim, and other personal factors, rather than the physical injury claim. Dr Louw thought it reasonable to conclude that the concussion would have resolved by 20 June 2018 (from when medical certificates related to sensitive claim injuries were submitted), and recommended that ongoing psychological input fall under the sensitive claim.

[30] On 18 December 2018, the Corporation issued a decision declining weekly compensation and the cost of visual aids for the injury on 30 March 2018. This decision was made on the basis that the appellant's incapacity was linked to a different event, and her claim for visual aids required re-assessment by a specialist ACC medical advisor.

[31] On 24 January 2019, Dr Hancock certified the appellant as unfit to work from 24 January 2019 up to 24 April 2019, and referred to the diagnosis of sexual abuse dated 29 September 1997. Dr Hancock gave the reason for unfitness for work as "post traumatic stress – further triggered by head injury and concussion".

[32] On 2 February 2019, Dr Andrew Wilkinson, Psychiatrist, having attended on the appellant, provided a report in respect of her sensitive claim. He confirmed diagnoses of PTSD and major depression as well as “very mild head injuries March/April 2018, concussion resolved”. In regard to the major depression, Dr Wilkinson advised:

The major depression is less clearly linked to the abuse, though the chronic stress from it is an aetiological factor, and she has had a previous episode in different circumstances to the present. Other factors are also implicated; see below. ...

Her major depression was precipitated after her head injuries in March/April 2018, but the low severity of trauma, and lack of unconsciousness and amnesia suggests she has suffered little if any organic brain damage from these, which is also suggested by the report of Maren Klum. The development of depression is related to psychological stress caused by the head injury, and the “Post Concussional” symptoms of poor concentration, muddled thinking and fatigue are the result of depression and anxiety. She may have developed a spell of Benign Positional Vertigo after the initial impact on the deck, but this has resolved, and her present subjective dizziness is a symptom she experienced in the early 2000’s, and is related to mood problems. She has also been under stress from marital issues, financial problems after stopping work after the head injury, difficulty from ACC not accepting her entitlement to benefits, and stress from her family with her parents both developing dementia and needing help.

[33] On 13 March 2019, Dr Wilkinson provided an additional report concluding that the appellant’s main incapacitating problem were major depression, a psychological reaction to the head injury, and other stressors.

[34] On 17 April 2019, Ms Justine Croxson, Psychology Advisor, advised as follows:

Having reviewed the documents that PA would note that due to the temporal distance between the depression discussed in 1998 and the current episode it is difficult to view this as a clear relapse. Dr Wilkinson, describes a clear link between the head injury (and stressors associated with this and other stressors not associated with this), While the mood element of the client’s PTSD and previous episode of depression may have resulted in a vulnerability to further mood difficulties, this cannot be considered a causative factor. As such there is insufficient evidence and/or narrative to materially link the current diagnosis of Major Depressive Disorder to the S.3 events and to this end it cannot be considered a MICA.

[35] On 29 March 2019, Dr Rachael Wilson, BMA, reviewed the matter and concluded that incapacity was not caused by PTSD and was not related to sexual abuse. Dr Wilson thought that incapacity needed to be assessed in terms of a MIPI

on the head injury claim, however it had been stated that the current depression was a relapse of depression in 1998. Dr Wilson noted that depression was mentioned in the early documents but that the causal link was not explored. Dr Wilson recommended referring the claim back for a further opinion on cover for depression.

[36] On 17 April 2019, Ms Croxen acknowledged a tension between the advice from Dr Wilkinson and the earlier advice from Dr Klum, and recommended that they discuss the matter between them.

[37] On 2 May 2019, Dr Klum, having conferred with Dr Wilkinson, reported as follows:

Today Dr Wilkinson and I were able to agree that [the appellant] had had at least one episode of depression prior to the index injury and even though the depression was in remission, there was likely to be a pre-existing tendency to get depressed. It is possible that this is part of her trauma history and diagnosis of PTSD but could also be that this is a personality trait and that her personality has been shaped by life experiences including being bullied when she was a child, her parents separation, parenting style and genetics.

Her current depressive episode was triggered on the background of several stressors, including difficulties in her marriage, stress related to caring for her daughter, stress related to caring for her parents both with dementia and then finally the concussion. This resulted in additional stress, including financial. The concussion, which was on the minor end of the scale, should have resolved a long time ago. Rather than the depression being due to an injury to the brain, the concussion exceeded her ability to cope. During the assessment she agreed that her mood is negatively affected by stress.

[38] On 16 May 2019, Dr Hancock certified the appellant as unfit to work from 25 April 2019 up to 24 July 2019, and referred to the diagnosis of sexual abuse and the date of injury as 29 September 1997. Dr Hancock gave the reason for unfitness for work as “ongoing PTSD interfering with her ability to work”.

[39] On 21 May 2019, the Corporation issued a decision declining cover for major depression as a result of the 30 March 2018 injury. The Corporation referred to the advice from Dr Klum and Dr Wilkinson, and advised that it was unable to approve the appellant’s claim due to insufficient evidence to materially link major depression to her claim. The Corporation also declined cover for major depression under the covered sensitive injury claim of 29 September 1997.



[40] On 27 September 2019, Dr Gil Newburn, Psychiatrist, diagnosed PTSD, major depressive disorder, and mild neurocognitive disorder due to TBI, and personality change. Dr Newburn advised further:

[The appellant] presents with the consequence of two separate injuring events. Firstly, there is the well established history of multiple episodes of sexual abuse, leading to chronic post traumatic stress disorder. This was also associated clearly with the development of major depressive disorder in the 1990s, when she disclosed this more openly, and began to engage in therapeutic interventions for it. ...

However, there was a further significant development of depressive symptoms following the brain injury. This again is common, and reflects an interaction with two issues which can not realistically be teased apart. Firstly, depression is a remarkably common consequence following traumatic brain injury, occurring in up to 77% of individuals (eg. Varney et al 1987). However, it is equally psychologically important that there has been an associated loss of mastery and control because of the symptoms associated with brain injury. This then feeds back into the issues around loss of mastery and control which are at the heart of psychological consequences of abuse, and result in post traumatic stress disorder. Clearly these are additive.

Furthermore, issues are additive at the level of biology. It is now well documented that chronic stress is associated with epigenetic changes influencing in particular the function of the trophic protein brain derived neurotrophic factor. This means that in areas of the brain where the gene for this protein is strongly represented that there is a drop in level of activity, and as a result a reduction in synaptic plasticity. Modern research has shown that in particular, in an area of the brain known as the salience network, there may be tissue loss as much as 10-15% in these regions on good follow up anatomical brain imaging. In this setting, the brain is much more likely to preconsciously make the assumption that stimuli are negative until proven otherwise, leading to avoidant and frequently depressive responses. This reflects the major biological underpinning for depression being associated with post traumatic stress disorder. Brain derived neurotrophic factor also reduces activity following brain injury. Therefore, it is not surprising that in an individual where there is already an alteration in this brain function, that there will be additive effects. This explains why [the appellant] has therefore become much more substantially depressed. It also provides an explanation for ongoing deterioration in the absence of appropriate therapeutic intervention. ...

Arising from the above, it is my strong opinion that her major depressive disorder is a consequence of post traumatic stress disorder (which is a consequence of sexual abuse) and of traumatic brain injury. This interaction has occurred at a biological and psychological level, and it is not possible to tease apart contributing proportions of these factors. Indeed it would be clinically artificial and irrelevant to do so.

It follows from this that she is unable to work. Engagement in vocational activity is reduced by a combination of traumatic brain injury, an exacerbation of post traumatic stress disorder symptoms due to an increased loss of sense of mastery and control, and the development of major depressive disorder. All

these factors have arisen from injury, and again as above, each of the injury factors contributes and these can not be artificially teased apart.

[41] On 8 May 2020, the appellant applied for late reviews of the Corporation's 18 December 2018 decision (declining weekly compensation) and 21 May 2019 decision (declining cover on the physical injury claim). On 11 May 2020, the Corporation confirmed that it agreed to accept the late review applications.

[42] On 29 June 2020, Dr Newburn's report was considered by Dr Peta Levin, Branch Advisor Psychology. She did not think that the Newburn report introduced any new information but noted that there were two new diagnoses that required consideration: mild neurocognitive disorder and personality change. Dr Levin recommended a neuropsychological assessment of the appellant regarding causation of any mental disorders from physical injury or sexual abuse.

[43] On 8 July 2020, a case conference was held before a Reviewer. The suggestion to obtain a further neuropsychological assessment from Dr James Webb was discussed. The appellant did not consent to further assessment.

[44] On 7 September 2020, Mr Evan Brown, Optometrist, provided a neuro-optometric vision assessment. Mr Brown recorded that the appellant reported that, since her concussion in March 2018, she had been unable to recover so as to work to her previous level. Mr Brown noted the visual symptoms that she experienced. Following on from that, the parties agreed to settle the matter relating to visual aids, and that review application was withdrawn.

[45] On 28 September 2020, a further case conference confirmed withdrawal of the review relating to glasses. The conference minute noted that the appellant had previously challenged decisions made on the sensitive claim but had withdrawn those challenges, and instead applied for weekly compensation on the concussion claim.

[46] On 27 November 2020, review proceedings were held. On 21 December 2020, the Reviewer dismissed the reviews, on the basis that: (1) as to entitlement to weekly compensation, the contemporaneous evidence at the time the appellant was

incapacitated did not support that this incapacity was as a result of her concussion; and (2) regarding cover for major depression, the evidence did not support that this was a consequence of the covered physical injury.

[47] On 19 March 2021, a Notice of Appeal was lodged.

[48] On 26 April 2023, Dr Louw having reviewed the appellant's claims, advised that the appellant's major depressive disorder was causally linked to the sexual abuse events, and so there was injury-related incapacity starting in 2018 relating to the sexual abuse claim. Dr Louw commented on the nature of the appellant's depression and the impact of her person injury in 2018:

The client's depressive disorder appears to be recurrent in nature with an episodic waxing and waning, which is a common feature of this condition. Depressive episodes appear to be triggered by an increase in stressors, or significant life events .... The physical injury of 2018 was a precipitator of one such depressive episode, but was not a cause of the depressive disorder as a whole.

[49] On 16 May 2023, the Corporation advised the appellant that she was granted cover for major depressive disorder in addition to the existing cover for post-traumatic stress disorder, with the date of injury determined to be 29 September 1997. The Corporation then began the process of re-assessing the appellant's eligibility for weekly compensation.

### **Relevant law**

[50] Section 26(1)(c) of the Act provides that "personal injury" includes "mental injury suffered by a person because of physical injuries suffered by the person". Section 27 states that "mental injury" means a clinically significant behavioural, cognitive, or psychological dysfunction.

[51] Section 103(2) provides:

The question the Corporation must determine is whether the claimant is unable, because of his or her personal injury, to engage in employment in which he or she was employed when he or she suffered the personal injury.

[52] In *Hornby*,<sup>1</sup> Dobson J held:

[[28] Here, the preferred medical evidence treated the appellant's pre-existing depression as asymptomatic at the time of her physical injury in March 2000. The accident triggered her pre-existing mental injury resulting in it becoming symptomatic. However, that is not sufficient to establish causation, because the mental injury does not result from the physical injury suffered in the accident. To make such a finding is to ignore her pre-disposition to that consequence, arising from the mental injury which she had previously suffered from.

[29] I respectfully adopt the phrase "results from" as used in the Court of Appeal decision in *Harrild* as the appropriate mode of testing the connection. That is consistent with the approach adopted here, and I am accordingly satisfied that the test as to whether the mental injury was suffered because of the physical injuries of March 2000 has been correctly addressed. The specific question of law posed on this further appeal is answered in the negative, namely that a finding of indirect causation is not sufficient to satisfy the requirements for cover.

[53] In *Ghosh*,<sup>2</sup> Judge MacLean stated:

[57] The key issue is that there must be a direct causal link and in that context the severity of the physical injury needs close scrutiny...

[59] Also as explained in *Hornby v Accident Compensation Corporation* where a physical injury simply triggers a pre-existing mental condition so as to exacerbate the condition or cause it to be symptomatic that is not enough.

[60] It is important to focus therefore on the actual injury and not the surrounding circumstances or reaction to it.

[54] In *W*,<sup>3</sup> Collins J stated:

[65] The present case illustrates how, in complex cases, there may be multiple contributing causes to a claimant's mental injury. In such cases it may be helpful to assess the extent to which a claimant's mental injury has been suffered because of their physical injuries. The physical injuries do not have to be the sole cause of the mental injury. It is sufficient that the physical injury materially contributes to causing the mental injury. This means that to satisfy s 26(1)(c) of the Act, the physical injury must be the cause of the mental injury in some genuine or meaningful way, rather than just in a trivial or minor way. ...

[76] In summary, the answer to the first question posed in [5] is that the ambit and meaning of the words "because of" in s 26(1)(c) of the Act depends on the context in which the claim for cover is made. In most cases, s 26(1)(c) of the Act will require that the claimant's physical injuries are both a factual and legal cause of his or her mental injuries. These requirements will usually be satisfied where two tests are met. First, subject to the possible exceptions outlined in

---

<sup>1</sup> *Hornby v Accident Compensation Corporation* [2008] NZHC 1427.

<sup>2</sup> *Ghosh v Accident Compensation Corporation* [2015] NZCA 208.

<sup>3</sup> *W v Accident Compensation Corporation* [2018] NZAR 829.

[63], the “but for” test must be satisfied. Second, the physical injury must “materially contribute” to the claimant’s mental injury.

[55] In *Comerford-Parker*,<sup>4</sup> Gendall J discussed the need for a direct causal connection between a physical injury and a mental injury in the context of a post-traumatic stress disorder:

[21] ... it is clear from the legislative history that Parliament has intended there to be some initial physical injury to that person which results, in addition, to a consequent mental injury. ...

[25] Whether “perpetuating causes” are outcomes from a physical injury so as to lead to mental injury, may well depend upon the type of mental injury, and type of physical injury under consideration. For example, causes of depression may be continuing perpetuating occurrences. But PTSD is, by definition, caused by the life threatening event and once it exists, later symptoms will be effects which result from it. That is the condition. But Mr Miller’s argument appears to be based on the proposition that the effects of injury (pain, and prompting of memory) lead to the resulting mental injury. This may fail to distinguish between “results” of an injury and “effects” of it. The physical effects of the physical injury result from it. But conversely the mental injury, already present, does not result from those physical effects. Results are not necessarily the same as “effects”. There will be a causal connection between the physical injury and the alleged outcome (the PTSD) if as a matter of fact, medical and other evidence, there is a resulting, consequential logical connection between the PTSD and the physical injury. ...

[35] ... It will be a question of fact in every case whether the ultimate condition (the mental injury) is in fact an outcome or result of physical injury, and whether the “perpetuating cause” is but an effect of the physical injury, rather than something that results in a mental injury ...

## Discussion

### *Corporation’s decision of 21 May 2019*

[56] The issue here is whether the Corporation’s decision of 21 May 2019, which declined the appellant cover for depression as a consequence of a physical injury, is correct. In terms of section 26(1)(c) of the Act, the appellant must establish that she suffered mental injury because of a physical injury. This means that, in principle, she must establish that, but for her head injury on 30 March 2018, she would not have her mental injury of depression, and that her physical injury materially contributed to her depression.<sup>5</sup> Causation is not established if the appellant’s

---

<sup>4</sup> *Comerford-Parker v Accident Compensation Corporation* (HC) Wellington, 26/5/2011 [2011] NZAR 481.

<sup>5</sup> *W*, above note 3, at [76].

accident triggered her pre-existing mental injury, resulting in it becoming symptomatic, as indirect causation is not sufficient to satisfy the requirements for cover.<sup>6</sup>

[57] Mr Koloni, for the appellant, provides the following written and oral submissions. The Corporation did not process the appellant's claim for cover properly and efficiently, and showed bad faith conduct. All specialists agree that the appellant suffered a significant injury when she fell and hit her head on the wet deck. Medical evidence is supportive that the symptoms she is experiencing can occur from the accidents she has experienced. Dr Wilson, BMA, thought that incapacity needed to be assessed in terms of a MIPI on the head injury claim. All the specialists diagnose her with major depressive disorder. Dr Newburn's report should be preferred as he was acting entirely independently, examined the appellant and took an extensive history. He offers a perfect rationale on how the injury was caused and her present incapacities and limitations. Mr Brown's report is proof of the scientific impact of the brain injury accidents on her vestibular perceptions.

[58] This Court acknowledges Ms Koloni's submissions. The Court accepts that there has been an extended time since the appellant lodged her claim for cover and that this claim could have been better handled. However, the focus of the present appeal here is on the correctness of the Corporation's decision of 21 May 2019, declining the appellant cover for depression as a consequence of a physical injury.

[59] This Court notes Dr Wilson's opinion, but observes that this was not a concluded finding and was in the nature of a query requiring referral for further medical report. The Court acknowledges Dr Newburn's report, although this is later in time than the other reports referred to below, and he acknowledges the causative impact and exacerbation of post-traumatic stress disorder as a consequence of sexual abuse. The Court places limited weight on the neuro-optometric vision assessment by Mr Brown, Optometrist, in light of the more relevant evidence below.

[60] The Court also points to the following considerations.

---

<sup>6</sup> *Hornby*, above note 1, at [28]-[29].

[61] First, as is conceded by Ms Koloni, the appellant had depressive disorder prior to the accident on 30 March 2018, as is evident from substantial medical evidence including the following:

- (a) On 31 January 2018, Ms Hunter, Clinical Psychologist, having had a series of consultations with the appellant, reported on her symptoms arising out of her significant PTSD. These symptoms included dissociation, a poorly formed sense of self, unpleasant intrusive experiences, anxiety and difficulties with appropriate sexual relations. On 30 October 2018, Ms Hunter advised that the appellant had had PTSD—complex, including anxiety and depression, for some years.
- (b) On 28 August 2018, Dr Klum, Clinical Psychologist, having attended on the appellant, advised that she had a significant history of depression.
- (c) On 27 September 2019, Dr Newburn, Psychiatrist, having attended on the appellant, recorded her development of major depressive disorder in the 1990s, when she disclosed this more openly.

[62] Second, there is substantial medical evidence that the appellant's subsequent depression was not materially caused by, but was instead triggered by, the accident on 30 March 2018:

- (a) On 13 June 2018, Dr Blaiklock, GP, noted that the appellant had “ongoing mixture of symptoms”; thought that her anxiety and PTSD-like symptoms which had resulted from her sexual abuse were playing a part; and noted that she was having light headaches and dissociative symptoms, which she had before her recent head injury, but that these were “ramping up”.
- (b) On 22 June 2018, Dr Hancock, GP, provided a medical certificate certifying the appellant as unfit to work (20 June to 20 July 2018), with the reason being her PTSD as a result of sexual abuse on 29 September 1997. Subsequent medical certificates, by Dr Hancock on 5 July 2018 and 27 September 2018, and Dr Hamid, GP, on 15 August 2018, certified unfitness for work with the same diagnosis. On 4 October

2018, Dr Hancock certified further unfitness for work on the basis of both the accident of 30 March 2018 and the sensitive claim issues as contributing factors. On 24 January 2019, Dr Hancock's certification was based on "post traumatic stress - further triggered by head injury and concussion". On 16 May 2019, Dr Hancock's certification was based on "ongoing PTSD interfering with her ability to work".

- (c) On 5 July 2018, Ms Pepperell, Occupational Therapist, noted that the appellant had existing PTSD which was complicated by concussion symptoms. On 3 October 2018, Ms Pepperell advised that, due to the appellant's history of PTSD, she was pre-disposed to a more complicated recovery from concussion.
- (d) On 28 August 2018, Dr Klum, Clinical Psychologist, advised that the appellant was below the DSMIV diagnostic threshold for mild traumatic brain injury; that she was well past the suggested recovery period for a mild injury; and that, because of her history of PTSD, depression and anxiety, she was pre-disposed to a more complicated recovery from concussion.
- (e) On 30 October 2018, Ms Hunter, Clinical Psychologist, assessed that the appellant's concussion had exacerbated the PTSD-complex (including anxiety and depression) and subsequent feelings of inadequacy and powerlessness.
- (f) On 17 December 2018, Dr Louw, Branch Advisory Psychologist, thought it reasonable to conclude that the appellant's concussion would have resolved by 20 June 2018, and that it was more likely that the claim for incapacity was related to the sensitive claim, and other personal factors, rather than the physical injury claim.
- (g) On 2 February 2019, Dr Wilkinson, Psychiatrist, having attended on the appellant, reported that her major depression was precipitated after her head injuries in March/April 2018, but that the low severity of trauma, and lack of unconsciousness and amnesia suggested that she suffered little if any organic brain damage from these.



- (h) On 2 May 2019, Dr Klum, having conferred with Dr Wilkinson, reported that the appellant had, prior to the 30 March 2018 accident, a pre-existing tendency to get depressed; her current depressive episode was triggered against the background of several stressors, including the concussion; this was on the minor end of the scale, and should have resolved a long time ago; and, rather than the depression being due to an injury to the brain, the concussion exceeded her ability to cope.
- (i) On 26 April 2023, Dr Louw, having reviewed the appellant's claims, advised that the physical injury of 2018 was a precipitator of a depressive episode, but was not a cause of the depressive disorder as a whole

[63] In light of the above considerations, this Court finds that the Corporation's decision of 21 May 2019, declining the appellant cover for depression as a consequence of her physical injury, was correct.

*Corporation's decision of 18 December 2018*

[64] The issue here is whether the Corporation's decision of 18 December 2018, declining the appellant's entitlement to weekly compensation as a consequence of her physical injury, is correct. In terms of section 103(2), the Corporation was required to determine whether the appellant was unable, because of her personal injury on 30 March 2018, to engage in employment in which she was employed when she suffered the personal injury.

[65] Mr Koloni, for the appellant, provides the following written and oral submissions. The Corporation did not process the appellant's claim for weekly compensation properly and efficiently, and showed bad faith conduct. The appellant's incapacity (including depression) is related to the effects of her covered injuries in 2018. Some of Dr Hancock's certificates in support of unfitness referred to the injuries in the accident of 30 March 2018.

[66] This Court acknowledges Ms Koloni's submissions. The Court again accepts that there has been an extended time since the appellant lodged her claim for weekly

compensation and that this claim could have been better handled. However, the focus of the present appeal here is on the correctness of the Corporation's decision of 18 December 2018, declining the appellant's entitlement to weekly compensation as a consequence of her physical injury.

[67] The Court accepts that Dr Hancock's certificates of 4 October and 6 December 2018 refer to the appellant's injuries in the accident of 30 March 2018. However, this Court notes the repeated certifications by Dr Hancock, prior to and following these certificates, that the appellant's unfitness for work was the result of PTSD. The Court also notes the substantial medical evidence referred to in paragraph [62] above, to the effect that the appellant's depression was not materially caused by the accident on 30 March 2018. This evidence is to the effect that the appellant's physical injury on 30 March 2018 likely resolved within a short period, and that her incapacity to work was related to other factors. In particular, the Court refers to the opinions of the clinical psychologists, Dr Klum and Dr Hunter, and the psychiatrist Dr Wilkinson, all of whom attended on the appellant.

[68] This Court finds, therefore, that the weight of medical evidence supports the Corporation's decision of 18 December 2018, declining the appellant's entitlement to weekly compensation as a consequence of her physical injury.

### **Conclusion**

[69] In light of the above considerations, the Court finds that the appellant has *not* established that:

- (a) the Corporation's decision dated 18 December 2018, declining the appellant's entitlement to weekly compensation as a consequence of a physical injury, was incorrect;
- (b) the Corporation's dated 21 May 2019, declining the appellant cover for major depression as a consequence of a physical injury, was incorrect.

[70] The decision of the Reviewer dated 21 December 2020 is therefore upheld.

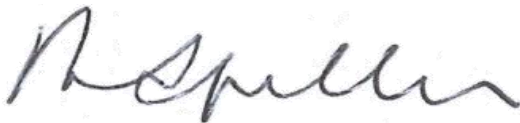
[71] The appeal is dismissed.

[72] I make no order as to costs.

[73] This Court notes, however, that the Corporation has now granted the appellant cover for major depressive disorder, in addition to the existing cover for post-traumatic stress disorder, with the date of injury determined to be 29 September 1997. As a result, the Corporation is now in the process of re-assessing the appellant's eligibility for weekly compensation. The Court hopes that this process will bring to a close the extended proceedings relating to the matters involved in this appeal.

### **Suppression**

[74] The Court considers it is necessary and appropriate to protect the privacy of the appellant. This order, made under s 160(1) of the Accident Compensation Act 2001, forbids publication of the name, address, occupation, or particulars likely to lead to the identification of the appellant. As a result, this decision shall henceforth be known as *JD v Accident Compensation Corporation*.

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.