

**PURSUANT TO S 160(1)(b) ACCIDENT COMPENSATION ACT 2001
THERE IS A SUPPRESSION ORDER FORBIDDING PUBLICATION OF
THE APPLICANT'S NAME AND ANY DETAILS THAT MIGHT IDENTIFY
THE APPLICANT**

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2023] NZACC 145 ACR 253/21

UNDER THE ACCIDENT COMPENSATION ACT
2001

IN THE MATTER OF AN APPLICATION FOR LEAVE TO
APPEAL UNDER SECTION 162(1) OF
THE ACT

BETWEEN DN
Applicant

AND ACCIDENT COMPENSATION
CORPORATION
Respondent

Hearing: On the papers

Submissions: The Applicant is self-represented
C Light for the Corporation

Judgment: 13 September 2023

**JUDGMENT OF JUDGE P R SPILLER
[Leave to appeal to the High Court
Section 162(1) Accident Compensation Act 2001]**

Introduction

[1] This is an application for leave to appeal against a judgment of His Honour Judge McGuire, delivered on 12 May 2023.¹ At issue in the appeal was whether a Reviewer correctly dismissed the applicant's application for review for want of jurisdiction. The Court dismissed the appeal, for the reasons outlined below.

¹ *DN v Accident Compensation Corporation* [2023] NZACC 75.

Background

[2] On 26 February 2011, the applicant suffered a concussion injury and a traumatic amputation of the right finger, for which he received cover.

[3] On 22 April 2011, the applicant suffered a physical injury and post-traumatic stress disorder in a sexual assault.

[4] On 16 January 2013, the applicant claimed for cover for the physical injury suffered in the assault. On 9 May 2013, the Corporation approved exploratory surgery. The Corporation subsequently granted cover for post-traumatic stress disorder.

[5] On 14 November 2013, the Corporation's medical advisor, Dr Dodwell, occupational physician, provided a report on the applicant's claim for cover his physical injury. Dr Dodwell acknowledged that surgery for excision of a polyp had been carried out and "there is little doubt that this was a direct result of the rape". Dr Dodwell also noted that there was underlying pathology and that, if the condition requiring surgery were to recur, "then a formal cover decision would need to be considered at that time, with relevant evidence sought as to the underlying pathology".

[6] On 11 December 2013, the Corporation declined cover for the applicant's physical injury. It did so based on the advice of Dr Dodwell.

[7] In May 2017, the applicant contacted the Corporation. It then again investigated whether cover should be granted for the injury suffered on 22 April 2011.

[8] On 17 October 2018, the Corporation declined cover for anal sphincter damage.

[9] On 22 June 2019, a Reviewer quashed the Corporation's decision of 17 October 2018 and substituted a decision of cover for the applicant's condition.

[10] Following an impairment assessment in 2020, lump sum compensation for the covered injuries on the basis of 39 per cent impairment was paid to the applicant.

[11] On 19 May 2021, the Corporation received a review application from the applicant. The review application did not refer to a decision by the Corporation. The application referred to various issues, including that there was not an appropriate response from the police and the Corporation after he reported the assault, and the medical treatment was delayed and inadequate. The applicant said that he wanted to claim damages against the Corporation, and referred to baseline damages of 3 million dollars.

[12] On 21 May 2021, a Corporation review specialist, Mr Logan McMullen, wrote to the applicant. Mr McMullen pointed out that a Reviewer could consider only a decision made by the Corporation and the review application did not identify a decision made by the Corporation that he wanted to review. Mr McMullen requested the applicant to advise if he wished to review a specific decision and, if so, to provide the date of the decision. No reply to this letter was received.

[13] On 1 October 2021, a review hearing took place. On 7 October 2021, the Reviewer dismissed the application, finding that the applicant's concerns about how his claim was investigated or progressed by the Corporation could be addressed under the Code of Claimants' Rights, if the applicant made a complaint under the Code. However, the review application did not relate to a decision made by the Corporation, and therefore the Reviewer dismissed the application for want of jurisdiction.

[14] On 22 May 2023, the applicant sought leave to appeal the Court's decision. Submissions were subsequently provided by the applicant and the Corporation.

[15] On 12 September 2023, the appeal was forwarded to this Court for a decision.

Relevant law

[16] 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.

[17] In *O'Neill*,² 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

[18] In *Cullen*,³ 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.

² *O'Neill v Accident Compensation Corporation* [2008] NZACC 250.

³ *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 12 May 2023

[19] Judge McGuire acknowledged that the applicant had greatly suffered physically and mentally since his experience in 2011. However, His Honour noted that the jurisdiction of the District Court was limited to considerations of decisions made by the Corporation on a claim before it, either for cover or entitlements, that decision having first been the subject of a review hearing under the provisions of the Accident Compensation Act 2001. Furthermore, the entitlements that a claimant may obtain are defined by the Accident Compensation Act 2001.

[20] Judge McGuire referred to Winkelmann J's judgment in *Algie*.⁴

[28] The benefit, monetary and otherwise, which an accident victim will now receive for his injuries is restricted by the terms of the legislation. The restriction is the price paid for having comprehensive cover available to all, regardless of fault, in place of full restitution available only for the few who can prove negligence. ...

[38] The Court could not mitigate this harm by adopting an interpretation ... that was unsupported by its [the Accident Compensation Act 2001] language and purpose.

[21] Judge McGuire agreed that, from the applicant's perspective, the harm done to him has not been adequately remedied. However, His Honour stated that he had no power to start afresh to reinvestigate what happened to the applicant in 2011. The Judge's jurisdiction was confined to hearing an appeal against a review decision as set out in section 149(1)(a) Accident Compensation Act 2001.

[22] Judge McGuire noted that, in this case, the Reviewer had found that the applicant's review application of 6 May 2021 was not in respect of a reviewable decision under the Accident Compensation Act 2001:

He felt ACC and the police had not fully appreciated or investigated the circumstances and he felt let down. ACC had also failed to provide him with prompt and appropriate treatment.

He wanted those circumstances investigated properly and his legal rights provided for and respected.

⁴ *Accident Compensation Corporation v Algie* [2016] NZCA 20.

[23] Judge McGuire noted that, in essence, the applicant had asked the Reviewer, and now this Court, for remedies that neither had the power to provide. Accordingly, the outcome of this appeal was that it was dismissed. Judge McGuire suggested that the way forward would be for the applicant to lodge a claim or request with the Corporation for counselling, through his GP.

The applicant's submissions

[24] The applicant submitted a number of emails that outlined his unhappy situation and complaining of his treatment by the Corporation, the police and other bodies.

Discussion

[25] This Court reiterates Judge McGuire's acknowledgement of the applicant's physical and mental suffering relating to his experience in 2011 and its consequences.

[26] However, as Judge McGuire also noted, this Court is limited in its jurisdiction by the provisions of the Accident Compensation Act 2001. Section 149(1) of the Act provides that a claimant may appeal to the District Court against a review decision or a decision as to an award of costs and expenses. Section 134(1)(a) of the Act, in turn, provides that a claimant may apply to the Corporation for a review of any of its decisions on the claim.

[27] The difficulty faced by the applicant in pursuing the present appeal is that he has not identified any specific decision of the Corporation that he wished to be reviewed. In light of section 134(1)(a), the Reviewer had no option but to dismiss the applicant's review application for want of jurisdiction. Judge McGuire therefore correctly dismissed the applicant's appeal against the Reviewer's decision, again for want of jurisdiction.

The Decision

[28] In light of the above considerations, the Court finds that the applicant has not established sufficient grounds, as a matter of law, to sustain his application for leave to appeal, which is accordingly dismissed. The applicant 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.

[29] Costs are reserved.

A handwritten signature in black ink, appearing to read 'P R Spiller', written in a cursive style.

Judge P R Spiller,
District Court Judge