



Supreme Court of New Zealand

9 May 2012

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**ALLENBY v H AND OTHERS
SC 70/2011 [2012] NZSC 33**

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

In 2004 a woman had an operation intended to render her sterile. The operation failed to achieve that purpose. In early 2005 she gave birth to a child. She brought proceedings claiming damages against the surgeon and the District Health Board which employed him. The question before the Supreme Court was whether, on the assumption that the surgeon was negligent, she had cover under the Accident Compensation scheme for personal injury caused by medical misadventure. If she did have cover, that would bar her common law claim. The surgeon and the District Health Board argued that she had cover. The Accident Compensation Corporation argued that she did not. The woman herself took no position, indicating that, depending upon the outcome of the appeal, she would either maintain her damages claim or seek her entitlements under the Accident Compensation scheme.

It was submitted by the Corporation that, since amendments to the scheme in 1992, cover has not been available in the assumed circumstances of this case. The appeal concerned the provisions of the Accident Compensation Act 2001 (then known as the Injury Prevention, Rehabilitation, and

Compensation Act 2001) as they stood in 2004, before a series of amendments.

The Supreme Court has unanimously held that an impregnation resulting from a medical misadventure, in the form of a negligently performed sterilisation operation, was a personal injury for which cover was available under the Act. The 1992 amendments had not changed the law in this respect. The Court has said that cover also remained available in respect of a pregnancy caused by rape because that is a personal injury caused by an “accident” to the rape victim. The term “personal injury” is used in the statute in an expansive way and has a statutory meaning.

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