



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

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MEDIA RELEASE

AUSTIN v ROCHE PRODUCTS (NEW ZEALAND) LTD

(SC 5/2020) [2021] NZSC 30

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 Judicial Decisions of Public Interest: www.courtsofnz.govt.nz.

Background

The background to this appeal concerns personal injury caused by medical treatment.

For many years, Mr Austin took the prescription drug, Roaccutane, which was distributed in New Zealand by the respondent, Roche Products (New Zealand) Ltd (Roche NZ). Mr Austin claims that Roaccutane caused him to suffer excessive and painful bone growth in his spine. He wishes to sue Roche NZ and other related companies in negligence for his injuries.

Mr Austin has, however, already claimed and received cover under the Accident Compensation scheme (ACC). Under the Accident Compensation Act 2001, a person cannot sue for compensatory damages in respect of personal injury that is covered by the ACC scheme.

Roche NZ therefore applied to strike out Mr Austin's compensation claim on the ground that it is barred by the Accident Compensation Act. It also applied to strike out the entire proceeding as time-barred under the Limitation Act 1950.

Lower court decisions

The High Court refused to strike out Mr Austin's claims.

The Court of Appeal agreed that the proceeding could not be struck out on the ground of limitations, but struck out Mr Austin's compensation claim as barred by the Accident Compensation Act. The Court considered that Mr Austin's injuries were treatment injuries covered by the ACC scheme.

The ground for leave

Mr Austin successfully applied for leave to appeal to the Supreme Court.

He argued that he was not entitled to ACC cover because his injuries were an ordinary consequence of consuming Roaccutane. This meant his claim against Roche NZ should not have been struck out.

The approved question was whether Mr Austin's claim for compensatory damages should have been struck out on the basis that his injuries were not an ordinary consequence of the consumption of Roaccutane.

The issue of jurisdiction

After leave was granted, however, the Accident Compensation Corporation raised two new issues not raised in the Courts below. One of them was whether the Supreme Court has jurisdiction to deal with the appeal at all, given s 133(5) of the Accident Compensation Act.

Section 133(5) provides that if a person has a claim under the Act and has a right of review or appeal in relation to that claim, "no court" may "consider or grant remedies in relation to that matter if it is covered by [the] Act".

The Accident Compensation Corporation suggested that a possible consequence of this was that Mr Austin must challenge his ACC cover via the processes under the Act, not through the courts.

Roche NZ supported this argument.

Mr Austin argued that s 133(5) does not apply to him because he is too late to review or appeal his cover. He therefore does not have a right of review or appeal in relation to his claim.

Decision

The Supreme Court has unanimously dismissed Mr Austin's appeal.

The Court held that s 133(5) does apply to Mr Austin. His challenge that he does not have cover, while unusual, can be made under the dispute resolution scheme under the Accident Compensation Act. The fact that he is out of time to apply for a review or appeal does not mean he can avoid the Act's procedures altogether. He may in any event still make a late application to the Accident Compensation Corporation for review under s 135(3).

The Supreme Court therefore did not have jurisdiction to deal with Mr Austin's appeal.

The Court has ordered the proceeding be struck out one month after the date of judgment unless Mr Austin applies for a review under s 135, and a stay of this proceeding pending completion of that process.

Contact person:

Kieron McCarron, Supreme Court Registrar (04) 471 6921