



THE HIGH COURT OF NEW ZEALAND TE KŌTI MATUA O AOTEAROA

8 July 2019

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

CALVER V ACCIDENT COMPENSATION CORPORATION
[2019] NZHC 1581

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.

Background

In 2016, aged 45, Deanna Trevarthen died of mesothelioma, a fatal cancer contracted by a small but significant number of New Zealanders each year. In almost all cases mesothelioma is caused by exposure to asbestos. There is no known minimum or “safe” threshold level of exposure below which there is no risk of developing it. The internal changes caused to a person who inhales asbestos stay latent for decades before mesothelioma is triggered. These factors make it impossible to identify which instance, or instances, of inhalation caused the disease.

Before she died, Ms Trevarthen sought cover under the Accident Compensation Act 2001 for a range of entitlements such as treatment costs, weekly compensation, a lump sum and funeral costs. The claim was continued by her estate after her death.

The Act provides cover to persons who have contracted mesothelioma from work-related exposure to asbestos. This did not apply to Ms Trevarthen. She was exposed to asbestos when she was a child in the 1970s through her father who worked as an electrician. She would hug her father in his work clothes after his return from work. She also sometimes played at his work sites. Therefore, she needed to show that her mesothelioma was “a personal injury caused by an accident” under the Act.

The Accident Compensation Corporation (ACC) rejected Ms Trevarthen’s claim on the basis that she was seeking cover for personal injuries caused wholly or substantially by a disease (which is excluded by the Act) and because she could not identify a specific occasion of asbestos inhalation which caused the disease, as required by the Act. That decision was upheld by the District Court.

Finding

In allowing her appeal to the High Court, Mallon J has held:

- (1) It is the condition suffered that constitutes the personal injury for the purposes of the Act. The condition suffered by Ms Trevarthen was mesothelioma. That condition is not caused wholly or substantially by a gradual process, disease or infection. It is caused by inhaling asbestos. If it can be shown that inhaling asbestos is an accident, as defined by the Act, then it will be covered.
- (2) The Act provides that an accident is proven if Mrs Trevarthen inhaled asbestos “on a specific occasion”. It was not necessary to identify the specific occasion of asbestos inhalation which gave rise to her mesothelioma to show that the inhalation was an accident. This is because mesothelioma will only be triggered if a sufficient dose of asbestos has been inhaled. That dose may arise from a single occasion (in which case there has been a “specific occasion” at that time) or from several occasions (in which case the occasion on which the last bit of asbestos is inhaled that constitutes the necessary dosage is the “specific occasion” which gives rise to the accident).

Therefore Ms Trevarthen was entitled to cover under the Act for mesothelioma because this was a personal injury caused by an accident to her.

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