

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 42/2019  
[2019] NZSC 78

BETWEEN MAREE HOWARD  
Applicant

AND ACCIDENT COMPENSATION  
CORPORATION  
Respondent

Court: Glazebrook, O'Regan and Williams JJ

Counsel: Applicant in person  
P A McBride for Respondent

Judgment: 24 July 2019

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**JUDGMENT OF THE COURT**

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**A The application for leave to appeal is dismissed.**

**B The applicant must pay costs of \$2,500 to the respondent.**

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**REASONS**

[1] The applicant wished to appeal to the High Court against a decision of the District Court dismissing her appeal to that Court against a review decision which had been made under s 134 of the Accident Compensation Act 2001.<sup>1</sup>

[2] She applied to the District Court for leave to appeal against the District Court decision but leave was refused.<sup>2</sup> She then applied to the High Court for special leave to appeal to that Court but special leave was declined.<sup>3</sup> The effect of the High Court

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<sup>1</sup> *Howard v Accident Compensation Corporation* [2017] NZACC 76 (Judge Powell).

<sup>2</sup> *Howard v Accident Compensation Corporation* [2018] NZACC 97 (Judge Christiansen).

<sup>3</sup> *Howard v Accident Compensation Corporation* [2018] NZHC 3342 (Courtney J).

decision was that the applicant was not permitted to commence an appeal to the High Court against the District Court decision.

[3] Nevertheless, the applicant filed an application for leave to appeal to the Court of Appeal. This application was said to be advanced pursuant to s 56(5) of the Senior Courts Act 2016. Section 56 of that Act provides:

**56 Jurisdiction**

- (1) The Court of Appeal may hear and determine appeals—
  - (a) from a judgment, decree, or order of the High Court;
  - (b) under the Criminal Procedure Act 2011;
  - (c) from any court or tribunal under any other Act that confers on the Court of Appeal jurisdiction and power to hear and determine an appeal.
- (2) Subsection (1) is subject to subsections (3) and (5) and to rules made under section 148.
- (3) No appeal, except an appeal under subsection (4), lies from any order or decision of the High Court made on an interlocutory application in respect of any civil proceeding unless leave to appeal to the Court of Appeal is given by the High Court on application made within 20 working days after the date of that order or decision or within any further time that the High Court may allow.
- (4) Any party to any proceedings may appeal without leave to the Court of Appeal against any order or decision of the High Court—
  - (a) striking out or dismissing the whole or part of a proceeding, claim, or defence; or
  - (b) granting summary judgment.
- (5) If the High Court refuses leave to appeal under subsection (3), the Court of Appeal may grant that leave on application made to the Court of Appeal within 20 working days after the date of the refusal of leave by the High Court.
- (6) If leave to appeal under subsection (3) or (5) is refused in respect of an order or a decision of the High Court made on an interlocutory application, nothing in this section prevents any point raised in the application for leave to appeal from being raised in an appeal against the substantive High Court decision.

[4] The application for leave to appeal to the Court of Appeal was rejected by a Deputy Registrar of the Court of Appeal, who informed the applicant by letter dated

1 February 2019 that there was no right of appeal against a decision of the High Court declining leave to appeal to that Court under s 56(5).

[5] The applicant then applied for review of the decision of the Deputy Registrar to refuse to accept her application for leave to appeal to the Court of Appeal. The application for review was dealt with by Miller J. He declined the application for review, upholding the decision of the Deputy Registrar to refuse to accept the leave application for filing.<sup>4</sup> Miller J said it was settled law that a decision refusing leave was not a substantive determination or a decision on an appeal, and that no further right of appeal was available under s 163 of the Accident Compensation Act, citing *McCafferty v Accident Compensation Corporation*<sup>5</sup>, which was affirmed in an earlier decision involving the applicant.<sup>6</sup> Miller J also rejected the applicant's argument that she had a right of appeal under the general appellate jurisdiction contained in ss 56 and 60 of the Senior Courts Act.

[6] The applicant now seeks leave to appeal against the decision of Miller J. She also seeks a leave hearing, but we are satisfied that a hearing is not required, given the matters at issue.

[7] The applicant does not seek to relitigate the law as set out in *McCafferty*. Rather, she wishes to argue that there is a right of appeal against the High Court decision under s 56 of the Senior Courts Act. In order to succeed, the applicant would need to convince the Court that s 56 provides for a parallel appeal process to that contained in the Accident Compensation Act. This would require the Court to accept that the specific appeal provisions in the Accident Compensation Act prevent any appeal being advanced by the applicant but that the general appeal provisions in the Senior Courts Act allow such an appeal. We do not see any realistic prospect of success in such an argument.

[8] The applicant places some reliance on an observation made by this Court when determining a similar issue raised by the applicant prior to the enactment of the Senior

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<sup>4</sup> *Howard v Accident Compensation Corporation* [2019] NZCA 128.

<sup>5</sup> *McCafferty v Accident Compensation Corporation* (2003) 16 PRNZ 843 (CA).

<sup>6</sup> *Howard v Accident Compensation Corporation* [2013] NZCA 617.

Courts Act.<sup>7</sup> In that case, the Court noted that the applicant had argued that a decision of a High Court Judge refusing leave to appeal was subject to a direct appeal under s 66 of the Judicature Act 1908 (the predecessor to s 56(1)(a) of the Senior Courts Act) in accordance with the principles discussed in *Siemer v Heron*.<sup>8</sup> This Court then made this observation:

[9] It may be that the Court of Appeal could have treated the application for leave to appeal as if it were an appeal under s 66 and in this way would have resolved the jurisdiction just referred to.

[9] We do not consider that this was an indication by this Court that it thought an appeal was available under s 66 of the Judicature Act. Rather, it was saying that if the Court of Appeal had treated her application for leave to appeal as if it were an appeal under s 66, it could have made a definitive ruling that there was no jurisdiction for such an appeal, rather than leaving the issue unresolved. In any event, the decision of this Court in *Siemer v Heron* must now be read subject to s 56 of the Senior Courts Act.

[10] We do not consider that the proposed appeal raises any issue of public importance, nor do we consider that any miscarriage of justice will arise if leave is refused. We therefore dismiss the application for leave to appeal.

[11] As the Corporation was required to file submissions in opposition to the application for leave, we award it costs of \$2,500.

Solicitors:  
McBride Davenport James, Wellington for Respondent

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<sup>7</sup> *Howard v Accident Compensation Corporation* [2014] NZSC 31, (2014) 21 PRNZ 815.

<sup>8</sup> *Siemer v Heron* [2011] NZSC 133, [2012] 1 NZLR 309.