IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV-2012-485-2692
[2013] NZHC 1004

UNDER	the Accident Compensation Act 2001
IN THE MATTER OF	an application for leave to appeal to the Court of Appeal on points of law under section 163 of the Act
BETWEEN	MAREE HOWARD Applicant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing: 10 April 2013

Counsel: J Howard (with leave to present argument for M Howard)
P McBride for respondent

Judgment: 7 May 2013

RESERVED JUDGMENT OF WILLIAMS J

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[1] Mrs Howard filed three applications consequent on my decision of 15 February 2013 refusing her special leave to appeal against a decision of Judge R Joyce QC refusing leave to appeal against a decision of Judge D A Ongley. The background to the matter is fully set out in my judgment.

[2] Mrs Howard now applies for leave to appeal my dismissal of her application. She also applies pursuant to r 7.49 of the High Court Rules for an order rescinding my initial decision. There is also an informal application pursuant to s 13 of the Interpretation Act 1999 to correct errors in my judgment.

[3] Section 13 of the Interpretation Act cannot apply in these circumstances. The correction sought by Mrs Howard is not minor. It is a reversal of the decision. Section 13 does not contemplate such a wide power in the Court when I have, as in this case, discharged my function on the original application.

[4] As to the application under r 7.49, that too must fail. Although review under this rule is an alternative to appeal, it is not an appeal in disguise. Review will generally be appropriate only where argument was truncated, some relevant point of evidence was overlooked, there has been a material change of circumstances or some other special circumstance has arisen. It is not an opportunity to re-litigate the same issues. Appeal is the appropriate course in those circumstances. Here, the applicant does indeed wish to re-litigate my core conclusions. Rule 7.49 is not a procedure available to her.

[5] Before turning to the crucial application for special leave, I note two preliminary points.

[6] First, I heard this application by telephone conference. This was at Mr Howard's request. He and Mrs Howard (who is, of course, physically unwell) asked to be relieved of the obligation to travel six hours from Ohura to Wellington, with all the attendant costs and discomforts, in order to argue the matter. I accepted that this was appropriate.

[7] Second, as with the original application for special leave to appeal to this Court, I granted Mr Howard leave to argue the case on behalf of his wife.

[8] For the Authority, Mr McBride indicated he would abide both decisions.

[9] On the substantive application before me, Mr Howard filed lengthy and substantive submissions, both in the application itself, a memorandum in response to the Authority's notice of opposition, a memorandum for first call telephone conference and a memorandum in response to various documents filed on behalf of the Authority.

[10] I must say, with no lack of respect, that these documents articulated Mrs Howard's case rather more cogently than had been the position at the hearing on 11 February 2013.

[11] Nonetheless, I take the view that Mr McBride is correct in his submission that the position is covered by the decision of the Court of Appeal in *Lister v Accident Compensation Corporation*.[1] The ratio in that case is that a refusal by this Court to grant leave to appeal is not a determination or a decision for the purposes of s 163 of the Accident Compensation Act 2001.

[12] By the time of the *Lister* decision, the Supreme Court had delivered its decision in *Siemer v Heron*, in which that Court, on different facts and in a different statutory context, took the view that there is an appeal as of right to the Court of Appeal against any interlocutory decision of the High Court without restriction.[2]

[13] The Court of Appeal in *Lister* had this to say:

> Whether this Court may one day be persuaded to reconsider the principle applied in these cases (as a result, for example, of the decision of the Supreme Court in *Siemer v Heron*) is not something on which we need to speculate in the context of the present application.

[14] It follows that, despite *Siemer*, an application for special leave is not "an appeal before the High Court" for the purposes of ss 162 and 163 of the Accident Compensation Act. There is therefore no jurisdiction in this Court to grant leave to appeal to the Court of Appeal under s 163.

[15] It will be for the Court of Appeal to reconsider the matter if that Court is so moved.

[16] The application must be dismissed accordingly.

Williams J

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1 *Lister v Accident Compensation Corporation* [2011] NZCA 625.
2 *Siemer v Heron* [2011] NZSC 133.

Solicitors:
McBride Davenport James, Wellington for respondent

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