
IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 16/2022

SC 23/2022

BETWEEN

ATTORNEY-GENERAL

Appellant

AND

MARIYA ANN TAYLOR

First Respondent

AND

ROBERT ROPER

Second Respondent

OUTLINE OF ORAL ARGUMENT

4 October 2022



**Te Tari Ture
o te Karauna**
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1. The central issue is whether Ms Taylor's claim for false imprisonment falls inside or outside the accident compensation regime.
2. Ms Taylor has cover under s21 of the Accident Compensation Act 2001 for all mental injury suffered. The mental injury is the same under all heads of claim. The statutory bar applies.

S21 Cover of mental injury caused by certain criminal Acts

3. Analysis of issue:
 - 3.1 Justice French [167] - [169]: Both Edwards J and French J concluded all claims fall inside the scheme, as her claim was undoubtedly in the nature of personal injury by accident. All of Mr Roper's actions were part of a predatory and sexualised course of conduct.
 - 3.2 Majority's view at [205] and [206]: The isolation of two aspects of that conduct (the detention in the car and the tyre cage) is artificial and does not reflect the reality of the case.

Willis v AG Tab 23, 579; ***Green v Matheson*** Tab 11, 572

4. The nature of Ms Taylor's claim arose out of intertwined events.
 - 4.1 Ms Taylor's evidence Tab 58 [301.0003]
 - 4.2 Medical evidence Tab 71 [201.0194]; Tab 77 [301.0009]
 - 4.3 Criteria for post-traumatic stress disorder Tab 77 [301.0010]
5. The various causes of action arise from the same underlying facts. Ms Taylor's mental injury ie her post-traumatic stress disorder originated from Mr Roper's emotional, physical and sexual abuse of her. None of his actions can sensibly be separated out or viewed in isolation.
6. Even if the causes of the injury could be separated out, the substantial cause was the sexual assault and fear of harm to her person.
7. If the damages arise out of both covered and uncovered injury and are quite indivisible, the action is barred.

AB v AG Tab 5 [416]-[418]; ***Wilding v AG*** Tab 11, [11] and [15]

Section 21B

8. Section 21B covers mental injury caused by exposure to a sudden traumatic event in the course of employment. Paradigm examples include:
 - 8.1 A train driver who hits someone on the tracks;
 - 8.2 A bank worker who witnesses a colleague being shot during a robbery;
 - 8.3 A coal miner buried alive for 20 hours.
9. No dispute that Mr Roper's conduct, which occurred during the course of Ms Taylor's employment, could reasonably be expected to cause mental injury to people generally.
10. Key issue is whether Ms Taylor experiences an 'event' for the purposes of s 21B. The definition of 'Event' comprises three parts (which need to be considered as a whole): **s 21B, Tab 2**
 - 10.1 An event that is sudden; or a direct outcome of a sudden event;
 - 10.2 includes a series of events that arise from the same cause or circumstance and together comprise a single incident or occasion,
 - 10.3 excludes a gradual process.
11. Ms Taylor described each incident as a traumatic event. Not an instance of a 'final straw' type of event, or a gradual accumulation of 'minor' events.
12. Events were 'sudden' from Ms Taylor's perspective:
 - 12.1 All that is required is the event is untoward from the perspective of the victim: Absence of foreseeability or warning not necessary (repetitive robberies)
 - 12.2 There needs to be a clear and identifiable point of commencement: Duration does not need to be confined to a single snapshot (5-7min drive)
13. Ms Taylor directly experienced a series of events:
 - 13.1 The fact that the tyre cage and driving incidents occurred at different

times and places does not disqualify cover, e.g. a tour of duty *MC v ACC* [14], and separate events in *Phillips v ACC* [116] and [119]

13.2 A victim of repeated robberies should not be denied cover (*Davis*).

14. In the ACC context, a common-sense and non-technical approach is required. The Court of Appeal's decision creates a lacuna and limits the scope of cover under s 21B.

4 October 2022

Antonia Fisher KC/ Emily Lay/ Anna Piaggi
Counsel for the appellants in SC 23

TO: The Registrar of the Supreme Court of New Zealand.

AND TO: The appellants in SC 16

AND TO: The respondent and cross appellant