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IN THE HIGH COURT OF NEW ZEALAND
(ADMINISTRATIVE DIVISION)
WELLINGTON REGISTRY

M. 139/82

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IN THE MATTER of Section 112 of the
Accident Compensation
Act, 1982

- a n d -

IN THE MATTER of an Appeal against
the decision of the
Accident Compensation
Appeal Authority dated
the 24th day of
December, 1981

BETWEEN WILLIAM McDUGALL
APPELLANT

A N D THE ACCIDENT COMPENSATION
CORPORATION
RESPONDENT

Judgment: 25 June 1984
Hearing: 25 June 1984
Counsel: M.D. Edwards for Appellant
B.S. Paki for Respondent

ORAL JUDGMENT OF CASEY J.

This is an application under what is now s.112 of the Accident Compensation Act, 1982 for leave to appeal to the Court of Appeal by way of Case Stated from my decision of 25th August 1983 rejecting Mr McDougall's appeal against the finding of the Accident Compensation Appeal Authority that he was not entitled to compensation for lung disease. That appeal was brought pursuant to leave granted by the Chief Justice. Under s.112 this Court may grant leave if in its opinion a question of law involved in the appeal is one which by reason of its general public importance or for any other reason ought to be submitted to the Court of Appeal for decision.

The basis of Mr Edward's application concerns the exercise of my discretion to admit further evidence at

the appeal hearing. He wished to tender affidavits in support of Mr McDougall's claim and I granted leave for them to be filed on the morning of the hearing, subject to the Corporation having a right to file affidavits in reply. It was conceded that under the Act I had full discretion to receive such further evidence as I might think fit. Following that decision and the filing of the affidavits, Mr Mines (for the Corporation) presented two affidavits in reply, one of which at least contained reflections on Mr McDougall's credibility. Mr Edwards queried this at the time and pointed out that he had no prior notice of their contents, even though he had sent notice of the ones he proposed filing to the Corporation within the preceding week. He asked for leave to call evidence in reply, but I felt at that stage there had to be an end to the matter at some time, and I declined his request. It is accepted that he did not seek leave to cross-examine the deponents of these two later affidavits.

The question of law which he feels is of importance and should be determined by the Court of Appeal is the Corporation's ability to investigate any matters relevant to the claim without notice to the claimant. He submitted that this virtually unfettered power, associated with its ability to receive virtually any sort of evidence, should be subject to a definitive ruling because of the great importance of this legislation to members of the public and the comparatively short time that it has been in force. I am not at all sure that raises such important questions by itself as to warrant my granting leave to appeal. But what does concern me is the acute sense of injustice from which Mr McDougall clearly suffers and which I feel has been exacerbated by the reflections on his credibility contained in the affidavits under review. In all the circumstances I have reached the conclusion that leave should be granted in order to have the question raised by Mr Edwards submitted to the consideration of the Court of Appeal and I make an order accordingly. Mr Edwards says that he will experience problems in observing the time limits under s.112(5) of fourteen days to state and file the case,

and suggested a period of two months would be more appropriate, particularly as he will be away for some time. There is no objection from Mr Paki and I extend the time for this until 27th August inclusive. Costs reserved.

M. B. Casey

Solicitors:

Dickson & Co., Auckland, for Appellant
Accident Compensation Corporation, Wellington, for Respondent