

BETWEEN

AAF and AAG

APPLICANT

AND

ZZU

RESPONDENT

Date of Order:

26 February 2010

Referee:

Referee I Davidson

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the Applicant's claim is struck out for lack of jurisdiction.

Facts

[1] The Applicants sought damages of \$10,000 against the Respondent for negligently providing health care services. The claim included a portion of damages for emotional harm "anxiety and stress" caused to AAF and AAG and family. The claim also included damages for costs of transport on hospital and related visits. The matter has been the subject of an investigation by the Health and Disability Commissioner. The Respondent had followed a recommendation by the Commissioner and refunded the cost of the treatment.

Issue

[4] Does the Tribunal have jurisdiction to hear the claim?

Law

[5] The Disputes Tribunals Act 1988.

Findings

[6] Under s 10 the Tribunal has jurisdiction in respect of: a) A claim founded on contract or quasi-contract; and (b) A claim for a declaration that a person is not liable to another person in respect of a claim or demand, founded on contract or quasi-contract, made against that person by that other person; and (c) A claim in tort in respect of (i) The destruction or loss of any property, (ii) Any damage or injury to any, property, (iii) The recovery of any property.

[7] The Applicants' claim is founded on the tort of negligence that caused personal injury and emotional harm.

[8] The Tribunal's tort jurisdiction is limited to: (i) the destruction or loss of any property; (ii) any damage or injury to any, property; and (iii) the recovery of any property.

[9] The Injury Prevention Rehabilitation and Compensation Insurance Act 2001 gives the Accident Compensation Corporation exclusive jurisdiction over claims for damages arising directly or indirectly from personal injury.

[10] The claim falls outside the jurisdiction of the Tribunal.

[11] The Applicants have requested a refund of the filing fee. That is an administration cost and not subject to my direction.