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NSW Supreme Court Restores Common Sense for Injured Motorists

Landmark Ruling Recognises the Realities of Accident-Related Surgery.

At the centre of the case was a question that most injured motorists would think has an obvious answer. If a car accident leaves you needing spinal surgery, does the law recognise the consequences of that surgery?

In *Mandoukos v Allianz Australia Insurance Ltd [2026] NSWSC 911*, the NSW Supreme Court confirmed that it can.

The judgment confirms that where surgery is required because of accident-related injuries and results in permanent physical change, those consequences can be recognised as an injury under the Motor Accident Injuries Act 2017 (NSW).

From a Car Accident to the Supreme Court

Mr Nicolas Mandoukos was injured in a motor vehicle accident in January 2019. Like many injured motorists, he hoped treatment would resolve his symptoms. Instead, his condition continued and he eventually required cervical spine surgery to relieve ongoing nerve pain affecting his neck and arm.

The surgery involved the removal of bone from his spine and was accepted as being necessary because of the injuries he suffered in the accident.

The surgery was accepted as reasonable, necessary and directly related to the motor vehicle accident. Despite this, a Personal Injury Commission Review Panel determined that the surgery itself did not amount to an injury for the purposes of the Act.

The Supreme Court disagreed.

Acting Justice Schmidt found that the Panel had focused on matters such as the therapeutic purpose of the surgery, the patient's consent and the fact that the procedure improved symptoms, rather than the physical consequences of the operation itself.

The Court held that the surgical removal of bone and the resulting physiological changes to the spine were capable of constituting an injury under the legislation.

A Victory for Common Sense

Matthew Garling, Principal Lawyer of Garling & Co, said the decision reflects the practical reality faced by injured people every day.

"This case was always about common sense. If someone is injured in a car accident, needs spinal surgery because of those injuries and part of their spine is permanently removed during that operation, most people would expect the law to recognise that reality."

Mr Garling said the earlier interpretation produced an outcome that was difficult for ordinary Australians to understand.

"The suggestion that a person can undergo invasive spinal surgery caused by a motor accident, have their anatomy permanently altered and yet somehow not have suffered an injury simply did not pass the pub test."

"The Supreme Court has confirmed that courts should focus on the physical reality of what has occurred, not artificial distinctions between the original injury and the surgery required to treat it."

Why the Decision Matters

The decision is expected to have significance well beyond Mr Mandoukos' case.

Many people injured in road accidents ultimately require spinal surgery, joint reconstruction, fusion procedures and other operations that permanently alter their bodies. Until now, uncertainty remained about how the consequences of those procedures should be assessed under the NSW motor accidents scheme.

Mr Garling said the judgment ensures injured people are assessed based on the real impact of their injuries and treatment.

"For many people, surgery is not a choice. It is something they undergo because the injuries caused by a motor accident leave them with no reasonable alternative."

"The law should recognise the full consequences of what has happened to them. The Supreme Court has now made it clear that it does."

Restoring Fairness to the Scheme

The decision provides important guidance for future disputes involving accident-related surgery and reinforces that the law should reflect the reality of what injured people experience.

For someone recovering from a motor vehicle accident, surgery is often not the end of the journey. It can involve permanent changes to their body, lengthy rehabilitation and ongoing impacts on their work and daily life. The Supreme Court's decision recognises that reality and confirms that the consequences of necessary

surgery cannot simply be ignored because the procedure was performed to treat an existing injury.

Recognition of Counsel

Garling&Co acknowledges the outstanding contribution of counsel in achieving this important result.

"Cases like this are always a team effort," Mr Garling said.

"We were fortunate to work alongside Dominic Toomey of Senior Counsel and Jnana Gumbert of Junior Counsel, whose skill and advocacy were instrumental in achieving this outcome for our client. Importantly, the decision provides greater certainty for injured motorists and confirms that the law should recognise the real-world consequences of accident-related surgery."

Helping you get back to what matters most.

About Garling&Co Injury Lawyers

Garling&Co is a Sydney-based personal injury law firm acting exclusively for people with serious injuries. The firm represents clients whose lives have been impacted by workplace injuries, medical negligence, motor vehicle accidents, public liability incidents, dust diseases and total and permanent disability claims.

Every lawyer at Garling&Co is an Accredited Specialist in Personal Injury Law, a recognition awarded through peer assessment to practitioners with advanced expertise in this complex area. Each case is handled by a specialist from start to finish, ensuring careful preparation, continuity and accountability throughout the legal process.

Garling&Co adopts a trauma-informed, client-focused approach, recognising the physical, emotional and psychological impact of serious injury. The firm prioritises clear advice, dignity and respectful communication, supporting clients throughout their recovery journey.

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