

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA493/2023
[2025] NZCA 417**

BETWEEN	AMIR FAZAL MALIK First Appellant
AND	TRINITY JOAN WILSON Second Appellant
AND	ZAINULABIDIN SYED Respondent

Hearing: 26 June 2025 (further submissions received 9 July 2025)

Court: French P, Lang and Downs JJ

Counsel: Appellants in person
A Ho for Respondent

Judgment: 20 August 2025 at 3.45 pm

JUDGMENT OF THE COURT

- A The appeal is dismissed and the damages award made in the High Court is confirmed.**
- B The appellants must pay the respondent one set of costs, for which they are jointly and severally liable, calculated as a standard appeal on a band A basis, together with usual disbursements.**
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REASONS OF THE COURT

(Given by French P)

Introduction

[1] Mr Malik and Ms Wilson appeal a High Court decision awarding general and aggravated damages against them in a defamation proceeding brought by the respondent.¹

[2] The appeal is limited to quantum, this Court having declined to allow Mr Malik and Ms Wilson an extension of time to appeal an earlier liability judgment.²

[3] Ms Wilson filed written submissions for the appeal in her own right. She later advised the Court that she would not be appearing at the hearing but authorised Mr Malik to represent her interests in his oral presentation.

Background

[4] Mr Malik and the respondent Mr Syed were business associates. There was a serious falling out. Between 21 October 2016 and 28 December 2017, Mr Malik and Ms Wilson, his wife, were found to have published 20 defamatory statements about Mr Syed.³ The majority of the publications were in the form of emails to a group of recipients. Some were also published on social media, and specifically Facebook. There were also several YouTube videos.

[5] As summarised in the High Court decision under appeal, the defamatory imputations contained in the posts, videos and emails included claims that Mr Syed:⁴

- (a) had misused funds provided for the construction of a mosque;
- (b) was guilty of fraud, perjury, forging documents and signatures, money-laundering, trespass and tax evasion;
- (c) funded and supported terrorist organisations;
- (d) is a criminal who would end up in prison;
- (e) was born out of wedlock;

¹ *Syed v Malik* [2023] NZHC 1676 [judgment under appeal].

² *Malik v Syed* [2024] NZCA 49 [extension of time judgment] at [13]. See also *Syed v Malik* [2018] NZHC 2278 [liability judgment].

³ Judgment under appeal, above n 1, at [11]; and liability judgment, above n 2, at [45].

⁴ Judgment under appeal, above n 1, at [13].

- (f) keeps two wives in Australia against the law;
- (g) is outwardly Muslim but secretly unsympathetic to Muslims and actively sought to undermine their community;
- (h) has made tens of millions of dollars through a combination of various forms of dishonesty or illegal activity; and
- (i) uses fear, intimidation and threats of harm to ensure victims of his unlawful activities remain silent.

[6] In 2018, Mr Syed issued defamation proceedings against Mr Malik and Ms Wilson seeking damages for alleged losses of over \$10 million said to have arisen from the collapse of two business ventures. Mr Malik and Ms Wilson admitted they had defamed Ms Syed and did not plead the allegations were true. In those circumstances, Churchman J granted Mr Syed’s application for judgment on liability.⁵ However, noting that no causal connection between any of the defamatory statements and the claimed losses had been pleaded, the Judge adjourned the question of quantum for later consideration pending the filing of further particulars.⁶

[7] Mr Syed subsequently filed an amended statement of claim seeking “gross damages” in the sum of \$300,000.

[8] There was then a delay of over four years before a three day hearing on quantum was held before another High Court judge, Isac J. In between times, and in breach of a court order, Mr Malik issued two further defamatory publications in the form of group emails, both containing links to YouTube videos which further defamed Mr Syed.

[9] In his subsequent decision (the quantum judgment), Isac J held that the appropriate level of damages was \$225,000, encompassing both general and aggravated damages.⁷ As between Mr Malik and Ms Wilson, the Judge considered that Ms Wilson had played a lesser role in the publication than her husband. He therefore further held that while Mr Malik would be liable for the full amount of the

⁵ Liability judgment, above n 2, at [45].

⁶ At [49] and [73].

⁷ Judgment under appeal, above n 1, at [49].

damages, Ms Wilson would be jointly and severally liable for the lesser sum of \$150,000.⁸

[10] Dissatisfied with this outcome, Mr Malik and Ms Wilson sought to appeal both the liability and the quantum judgments. As we have already noted, this Court declined to grant them an extension of time to appeal the liability judgment.⁹ The delay was inordinate and unexplained, and the proposed appeal considered to be without merit. This Court described the judgment on liability as being “inevitable” given that Mr Malik and Mr Wilson admitted publishing the defamatory statements and had not pleaded a defence of truth.¹⁰

[11] Although the appeal against the quantum judgment was also filed out of time, this Court considered the delay in relation to that appeal was short and explicable. Accordingly, leave to appeal was granted.¹¹

Arguments on appeal

[12] Mr Malik and Ms Wilson strongly contest Isac J’s findings and consider themselves to be the victims of a miscarriage of justice.

[13] Although Mr Malik understood that the appeal was limited to the quantum judgment, his wide-ranging submissions to us were predominantly an attempt to re-litigate the issue of whether the defamatory statements were false and hence actionable. He contended the statements were true and that he and his wife could prove it. Mr Malik further claimed they were the victims of fraud at the hands of Mr Syed. He was also highly critical of the police, the Serious Fraud Office and the legal aid system because their respective failings had prevented Mr Syed from being brought to justice, exposed for the wrongdoer he is, and held accountable.

⁸ At [50].

⁹ Extension of time judgment, above n 2, at [13].

¹⁰ At [11]. This Court also declined an application brought by Mr Syed to adduce further evidence: *Malik v Syed* [2024] NZCA 475.

¹¹ Extension of time judgment, above n 2, at [14].

[14] On behalf of Mr Syed, counsel Mr Ho supported the quantum judgment which he submitted was an unimpeachable and orthodox application of the relevant legal principles and caselaw.

[15] After the hearing, it came to our attention that in the quantum judgment the Judge had noted that “aggravated and special damages were not sought”, and described the damages claim as being “limited ... to general damages”, but then described the award he was making as encompassing “both general and aggravated damages”.¹² In light of this apparent inconsistency, we sought and obtained further written submissions from the parties.

Analysis

[16] The logical starting point is first to determine whether the Judge’s various descriptions of the damages claim and his award were simply a matter of terminology and not a matter of substance, or whether they amounted to a significant error.

[17] It is clear that in substance, Mr Syed’s claim was for general damages. In the context of a defamation claim, the purpose of such damages is to compensate for damage to the claimant’s reputation, to vindicate their good name and to provide consolation for a wrong done.¹³ As noted in one Australian decision, the compensation in this context is a solatium (meaning compensation for hurt and suffering) rather than monetary compensation for a harm measurable in money.¹⁴ General compensatory damages can thus be distinguished from special damages which are designed to compensate for specific losses such as the loss of a job caused by the defamation.¹⁵

[18] General compensatory damages are also distinguishable from “punitive damages”. Such damages, as the name suggests, are designed to punish the defendant for particularly outrageous wrongdoing, to deter similar misconduct, and to register the court’s condemnation of the behaviour, rather than to compensate the plaintiff.¹⁶

¹² Judgment under appeal, above n 1, at [3], [24] and [49].

¹³ *Uren v John Fairfax & Sons Pty Ltd* [1966] HCA 40, (1966) 117 CLR 118 at 150 per Windeyer J.

¹⁴ At 150. See also *Cassell & Co Ltd v Broome* [1972] AC 1027 (HL) at 1071 per Lord Hailsham; and *Television New Zealand Ltd v Quinn* [1996] 3 NZLR 24 (CA) at 42–43.

¹⁵ See *Siemer v Stiassny* [2011] NZCA 106, [2011] 2 NZLR 361 at [48]–[49].

¹⁶ *Couch v Attorney-General (No 2) (on appeal from Hobson v Attorney-General)* [2010] NZSC 27, [2010] 3 NZLR 149 at [58] per Blanchard J.

[19] However, that does not mean the defendant's conduct is irrelevant when it comes to assessing the quantum of compensatory damages in defamation. It is well established that compensatory damages in defamation may be increased where the defendant has aggravated or compounded the effect of the defamation.¹⁷ The term "aggravated damages" is thus often used to capture the fact of an increase to the award that might otherwise have been made had it not been for the defendant's aggravating conduct.¹⁸

[20] As noted in the leading New Zealand textbook on torts, there has been some discussion in the cases as to whether the factor of aggravation is simply taken into account in assessing the level of general damages or whether aggravated damages and general damages are distinct categories requiring separate awards and needing to be separately pleaded.¹⁹

[21] Although we provisionally consider the better view to be that general and aggravated damages need not be separately itemised, it is unnecessary for us to resolve that debate. That is because the Judge's analysis of the relevant law, including his discussion of the factors to be taken into account when assessing the quantum of general compensatory damages, makes it clear he fully understood the proper function of aggravated damages in the defamation context. The analysis also makes it clear that the Judge's reference to aggravated damages as being part of the award was simply a reference to the fact of an increase based on his view of the appellants' conduct.

[22] It is unfortunate that the Judge stated in an earlier section of the judgment that aggravated damages had not been claimed but, having regard to the judgment as a whole, we consider it is most likely the Judge was using the term loosely in that particular paragraph to denote punitive damages. Regardless, we are satisfied that the appellants have not been prejudiced in any way. They could never have been in any doubt that they were at risk of the damages being increased as a result of their conduct, particularly their conduct after the liability judgment.

¹⁷ *Rookes v Barnard* [1964] AC 1129 (HL) at 1221 per Lord Devlin.

¹⁸ *Siemer v Stiassny*, above n 15, at [51].

¹⁹ See Bill Atkin "Compensatory damages" in Stephen Todd (ed) *Todd on Torts* (9th ed, Thomson Reuters, Wellington, 2023) at [24.2.10].

[23] We turn now to consider the correctness of the award of \$225,000. We first examine the factors the Judge took into account in reaching that figure, and then whether that level of damages is consistent with the authorities.

[24] As many judges have observed, including Isac J in this case, it is notoriously difficult to attach a monetary sum to damage to a person's reputation or feelings of pain and humiliation.²⁰ However, the caselaw does provide some guidance as to the factors that may be taken into account. These include the defendant's reputation prior to the first defamatory statement, the seriousness of the defamatory statements, the extent of the publication and the defendant's conduct.²¹ These factors were all correctly identified as relevant factors by the Judge.²²

[25] What then of the Judge's application of those factors to the facts of this case? As regards Mr Syed's reputation, the evidence before the Judge was that Mr Syed had been a prominent and well-regarded figure in the Australian Muslim community. He had lived in Australia for 30 years and had cultivated a good reputation, including as a successful businessman.

[26] Insofar as the allegations raised by Mr Malik at the hearing before us are relevant to Mr Syed's pre-defamation reputation, and whether that reputation was deserved, they are just that — allegations — without credible evidence.

[27] As regards the seriousness of the defamation, it will be apparent from our summary of the defamatory statements that the statements were, on any view of it, very serious and in the nature of a sustained campaign. We consider it was no exaggeration for the Judge to describe the statements as attacking "every facet" of Mr Syed's life.²³

[28] The statements were not published nationwide. However, we accept, as found by the Judge, that on the evidence it seems likely they reached a relatively wide

²⁰ See, for example, *Siemer v Stiassny*, above n 15, at [48].

²¹ *Craig v Slater* [2021] NZHC 30 at [56]; and *Williams v Craig* [2018] NZCA 31, [2018] 3 NZLR 1 at [31], citing *John v MGN Ltd* [1997] QB 586 (CA) at 607.

²² Judgment under appeal, above n 1, at [38].

²³ At [42].

audience, particularly in the Australian Muslim community, given the number of statements and their targeted dissemination. Their adverse effect was also significant. There was evidence that the statements had caused Mr Syed profound distress and embarrassment, tarnished his former standing within the Australian Muslim community generally, damaged his livelihood and put an end to his political aspirations. That evidence was accepted by the Judge and on appeal we are unable to discern any cogent reason why he was not entitled to accept it.

[29] As indicated, a defendant's conduct can significantly increase the amount of a damages award in the defamation context. The aspects of the appellants' conduct relied upon by the Judge as "seriously aggravating" included the continued publication of untrue and defamatory material in the face of requests by Mr Syed's lawyers to stop, as well as court orders to desist.²⁴ The Judge also referred to the appellants' use of the hearing to repeat their allegations despite the liability judgment and a "complete failure" to provide any credible evidence to support them.²⁵

[30] We consider that all of those factors are capable in law of amounting to aggravating factors and were present in the current case.

[31] As submitted by Mr Ho, we also accept that the amount of the award is consistent with other cases involving comparable situations. That is supported by the summary of damages awards made in various defamation cases attached as an appendix to the 2019 Supreme Court decision of *Craig v Williams*.²⁶

[32] Significantly for present purposes, the cases listed in that appendix include two decisions involving publications of defamatory allegations similar to those made in this case, and also similarly aimed at a particular ethnic community. In one of those cases, *Lee v The New Korea Herald Ltd*,²⁷ the plaintiffs were awarded \$250,000 in compensatory damages arising from the publication of eight defamatory articles in a

²⁴ At [46].

²⁵ At [46].

²⁶ *Craig v Williams* [2019] NZSC 38, [2019] 1 NZLR 457 at appendix.

²⁷ *Lee v The New Korea Herald Ltd* HC Auckland CIV-2008-404-5072, 9 November 2010. Although the defendant in that case appealed to this Court, and was successful in obtaining an order for a rehearing, there was no adverse comment on the appropriateness of the damages award: *Kim v Lee* [2012] NZCA 600, (2012) PRNZ 395.

Korean language newspaper with a circulation of approximately 3,000 readers. In the other case, *Karam v Parker*,²⁸ the total award was \$535,000, apportioned between two defendants.

[33] The scale of the defamation in *Karam* — in terms of its reach, and the number of publications across Facebook and another website — was greater than in this case, and, although the Judge rightly in our view considered that this case fell somewhere between *Karam* and *Lee*, he nevertheless awarded less damages than in both of those decisions.²⁹

[34] Having regard to all of the above, we conclude that appellate intervention in this case is not justified. In our view, the Judge’s factual findings were supported by the evidence and he correctly identified and applied the relevant legal principles. We agree with the conclusions he reached and are not persuaded there is any basis for disturbing the amount of the damages award.

Costs

[35] As regards costs on the appeal, the usual rule is that the successful party is entitled to costs from the losing party.³⁰ There is, in our view, no reason why that rule should not apply in this case. We therefore order that Mr Malik and Ms Wilson must pay one set of costs to Mr Syed calculated on the basis of a standard appeal, band A together with usual disbursements. For the avoidance of doubt, their liability for costs is joint and several.³¹

Outcome

[36] The appeal is dismissed and the damages award made in the High Court is confirmed.

²⁸ *Karam v Parker* [2014] NZHC 737.

²⁹ Judgment under appeal, above n 1, at [48]–[49].

³⁰ Court of Appeal (Civil) Rules 2005, r 53A(1)(a).

³¹ Rule 53I.

[37] The appellants must pay to the respondent one set of costs, for which they are jointly and severally liable, calculated as a standard appeal on a band A basis, together with usual disbursements.

Solicitors:
Crimson Legal, Auckland for Respondent