



**Employment
Relations Tribunal**

Decision

Title of Matter: LABOUR OFFICER on behalf of Mohammed Aslam (Applicant)
v
GLASS HOUSE LTD (Respondent)

Section: Section 8 *Workmen's Compensation Act 1964*

Subject: Compensation in the case of permanent and partial impairment

Matter Number(s): ERT WC 01 of 2019

Appearances: Ms Chandra, for the Labour Officer
Mr Yalimaiwai, Mr Wei Qiang Situ and Mr A Bale, for the Respondent

Date of Hearing: 25 June 2019

Before: Mr Andrew J See, Resident Magistrate

Date of Decision: 24 July 2019

KEYWORDS: Section 8 *Workmen's Compensation Act 1964*; Claim for Compensation in case of Permanent and Partial Incapacity .

CASES CITED:

Fiji Sugar Corporation Ltd v Labour Officer [1995] FJHC39; Civil Appeal No 0010 of 1994, 17 February 1995.

Labour Officer v Post Fiji Ltd [2017] FJET 3; ERT WC97.2016 (13 February 2017)

Raiwaqa Buses Ltd v Labour Officer [2011]FJHC174; HBA23.2008 (18 March 2011)

The Labour Officer v Wood & Jepsen Surveyors and Engineers [2013] FJET 4;

Travelodge Fiji Limited Suva v The Labour Officer for Karalaini Diratu [1994] FJHC 180; (9 December 1994)

Background

[1] This is an application made for worker's compensation in accordance with Sections 8 of the *Workmen's Compensation Act 1964*. The application filed on 9 January 2019, claims that in April 2013, the Worker Mr Mohammed Aslam, suffered an injury whilst undertaking grass cutting duties on behalf of his employer, when a stone hit his eye.

[2] A Medical Report prepared by Dr Saha, Consultant Ophthalmologist at the CWM Hospital, stated that as a result of the injury, the Worker developed a perforated corneal ulcer in his right eye

and required surgery to save his eye ball. The report noted that due to complications from his injury and because of the corneal ulcer, that the Worker lost sight in his eye. The report concludes that the Worker has a whole person impairment of 40 percent. Based on the formula contained at Section 8(1) of the Act, the calculated statutory entitlement for such injury, where it arises out of the employment, is \$18,200.00.

The Case of the Labour Officer

- [3] Ms Deepal Prasad is an Assistant Labour Officer with the Ministry of Labour and undertook the investigation that led to the claim in this matter. According to Ms Prasad, the Employer never filled in the LDC1, the *Notice of Injury By Accident*¹, but instead the Worker came to the Labour Office and made a complaint. The Witness advised that after this, the Labour Office requested time and wages records from the Employer and for the Form LDC1 to be completed, but this was not done. The Assistant Labour Officer told the Tribunal that the Worker thereafter went to an eye clinic and was ultimately deemed as suffering from a 40 percent whole person impairment.
- [4] According to Ms Prasad, the Employer was sent a Form LDC6 setting out the claim for payment in the amount of \$18,200.00, but did not respond to the claim. The Witness stated that as a result, the Labour Office commenced proceedings for the recovery of the compensation amount.

Mr Ronal Sharma

- [5] Mr Ronal Sharma is the former supervisor of the Worker and is now self-employed working in Nabua. According to Mr Sharma, on the night before the incident, he had received a call from his Director Mr Situ, who said that he already had organised to have his grass cut at his property at Vesi Street. The Witness told the Tribunal, that he dropped the Worker to the site and that it was morning - before 7.00am. The former supervisor said that "everything was in the company house" and that he "didn't drop (the Worker) with any brush cutter". When asked how he was made aware of the Worker's injury, Mr Sharma stated, that he had heard Mr Aslam discussing his injury with Mr Situ and that the following day an employee had taken Mr Aslam to the hospital for treatment.
- [6] According to the Witness, when Mr Aslam was not working with the company, he had his own business. In cross examination, the witness was shown a document sent to the Labour Officer dated 3 April 2016 (Exhibit L7) purportedly from Mr Sharma. The Witness told the Tribunal that the office staff may have typed the letter, but that the signature on the document was not his².
- [7] In cross examination, Mr Sharma explained the fact that Suva City Council had directed Mr Situ to cut the grass at his compound and that he obtained a quotation from a private contractor for this to take place. The Tribunal heard that Mr Situ thought the quote provided was too expensive and so he then organised with Mr Aslam to undertake the works, although was unaware of the arrangement. The Tribunal wanted to understand from the Witness, at what time did these works take place and Mr Sharma responded by saying that he had dropped Mr Aslam at the compound before 7.00am to undertake this work.

¹ This is a statutory requirement imposed by Section 14(1) of the *Workmen's Compensation Act 1964*

² This is quite concerning if a company has been providing false records to the Ministry in a bid to avoid their responsibility at law.

Mohammed Aslam

- [8] Mr Aslam told the Tribunal that he was engaged as a caretaker with the Employer at the relevant time. He stated, that he had initially commenced with the Employer in 2008 and then resigned from that employment in 2011, until he resumed in 2013. In his evidence, the Worker stated that his hours of work as a caretaker were from 4.45pm when the factory closed until 8.00am when the factory opened and he would wait for staff to arrive. According to the Witness, as part of his duties, he would wash the company vehicle, clean the yard and look after the property and for this was paid \$25 a day.
- [9] The Worker was asked to recall the day of the injury. In his evidence he stated that the company provided him with transport to cut the grass at the Director's residence. Mr Aslam said after the accident occurred, he advised Mr Situ who provided him with eye drops to use twice and then said that he needed to find himself a private doctor. Mr Aslam was of the view that the accident took place at around 6.45am in the first week of April 2013. According to the Witness, this was the second time that he had cut the grass at his Director's home. Mr Aslam told the Tribunal that on the first occasion, he had been paid separately and on the second occasion, he was not paid and had used the company's grass cutting machine. The Worker stated, that after the incident when a stone flew up and hit him in the eye, because of the injury, he had to leave his job after a couple of days and finally lodged a report in relation to the incident, once he had received a medical opinion.
- [10] In cross examination, Mr Situ put to the Worker that he had been using a vacuum cleaner on his eye to remove the pain, to which Mr Aslam subsequently clarified, that he was using the vacuum to blow cool air onto the eye ball.

Mr Wei Qiang Situ

- [11] Wei Qiang Situ gave evidence on behalf of the Employer. Mr Situ told the Tribunal that the Worker was not honest and that his hours of work were only from 8.00pm to 5.00am. The Company Director stated that his former supervisor Mr Sharma had also been dishonest and that he had made a complaint against him to the Totoga Police Station, on the basis of his fraudulent activities. In cross examination, Mr Situ was not able to say whether or not the brush cutter that was being used was the Worker's or belonged to the company. According to the Witness, the Worker had been paid \$40 for the grass cutting. The Witness was not able to recall whether this was the first or second time that the Worker had cut his grass.
- [12] The Tribunal asked Mr Situ, Who had provided the letter purportedly signed by Mr Sharma to the Labour Office, dated 3 April 2016? At this point in time, Mr Situ had given the impression he had no knowledge of the letter and indicated that a Mr Yalimawai, who had previously appeared in the Tribunal in relation to this matter, may have knowledge of its origins.

Mr Marika Yalimawai

- [13] As Mr Yalimawai had previously represented the company in proceedings, the Tribunal requested that he attend to give evidence. Mr Yalimawai, who holds an Information Technology position with the Employer, indicated that the letter along with other documents were provided by the Accounts Officer Ms Farah Naaz and Mr Sharma, when they met with the

Labour Office. For the sake of clarity, Mr Sharma was recalled and asked who had brought documents to the meeting he attended with Ms Naaz at the Labour Office. The former supervisor indicated that firstly the meeting which he attended was not about the workers compensation issue, but a non-related wages complaint. Secondly, Mr Sharma made clear that he had never previously seen the letter that bore his name and reconfirmed that the signature on the document was not his. Following this, Mr Situ, appeared to change his position and then suggested that he was aware of a letter being prepared along these lines.

Was Mr Aslam a Worker for the Purposes of the Act?

[14] Section 2 of the *Workmen's Compensation Act 1964* defines workman (Worker) to mean:

any person who has, either before or after the commencement of this Act, entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, or otherwise, whether the contract is expressed or implied, is oral or in writing, whether the remuneration is calculated by time or by work done, and whether by the day, week, month or any longer period:

Provided that the following persons are excepted from the definition of "workman":-

(a) a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, not being a person employed for the purposes of any game or recreation and engaged or paid through a club;

(b) an outworker;

(c) a member of the employer's family dwelling in the employer's house or the curtilage thereof; or

(d) any class of persons whom the Minister may, by order, declare not to be workmen for the purposes of this Act.

[15] The Tribunal is satisfied that at the time of the injury, Mr Aslam was undertaking work as an employee of the Employer. The work undertaken by Mr Aslam was of a wide ranging nature, including car washing, cleaning the compound and guarding the premises. On the day of the incident, Mr Aslam had been driven in a company vehicle to the Director's premises and utilised company equipment to grass cut the compound.

Was the Respondent the Employer of the Workman?

[16] Section 3 of the Act, reads:

"employer" includes the Government and any body of persons corporate or unincorporate and the personal representative of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person; and in relation to a person employed for the purposes of any game or recreation and engaged or paid through a club, the manager, or members of the managing committee of the club shall, for the purposes of this Act, be deemed to be the employer;

[17] Glass House Ltd is the Employer for the purposes of Section 3 of the Act.

Did the Worker Suffer a Compensable Injury?

[18] Section 5(1) of the *Workmen's Compensation Act* 1964 provides as follows:

If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workmen, his employer shall, subject as hereinafter provided be liable to pay compensation in accordance with the provisions of this Act

[19] There are three requirements to satisfy Section 5(1) of the *Workmen's Compensation Act* 1964.³ These are:-

- (i) Personal injury by accident;
- (ii) Arising out of employment;
- (iii) In the course of employment.

Did the Worker Suffer A Personal Injury by Accident?

[20] Pathik J in *The Fiji Sugar Corporation Limited v Labour Officer*⁴ set out in detail what was to be meant by the expression "injury by accident".

[21] The medical report provided by the CWM Hospital dated 10 March 2015 shows, that the worker sustained an injury to his right eye that ultimately gave rise to a complication and ulcer that caused blindness. Mr Aslam has been assessed with 40 percent whole person impairment.

Was the Worker's Accident Arising Out of Employment?

[22] Pathik J in *Travelodge Fiji Limited Suva v The Labour Officer for Karalaini Diratu*⁵, sets out the relevant considerations when determining whether or not a worker suffered an accident arising out of employment. His Honour relied on Lord Sumner's characterisation in *L & YR v Highley*⁶ to apply the following test:

".... Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury? If yea, the accident arose out of his employment. If nay, it did not, because what it was not part of the employment to hazard, to suffer, or to do cannot well be the cause of an accident arising out of the employment. To ask if the cause of the accident was within the sphere of the employment, or was one of the ordinary risks of the employment, or reasonably incidental to the employment, or, conversely, was an added peril and outside the sphere of the employment, are all different ways of asking whether it was a part of his employment that the workman should have acted as he was acting, or should have been in the position in which he was whereby in the course of that employment he sustained injury.

³ *Raiwaqa Buses Ltd v Labour Officer* [2011]FJHC174; HBA23.2008 (18 March 2011)

⁴ [1995] FJHC 39; Hba0010j.94b (17 February 1995)

⁵ [1994] FJHC 180

⁶ (1917) AC 352 at 372

[23] As his Honour further stated:

The expression is not confined to the mere "nature of the employment" as formerly held in several cases, but it "applies to the employment as such - to its nature, its conditions, its obligations, and its incidents.

[24] The Worker was a caretaker involved in general duties. The work of grass cutting in the context of his role, that included washing cars, cleaning the compound and acting as security, can be seen as incidental or peripheral to the main task of caretaking. The Tribunal is satisfied that this limb is established.

In the Course of Employment

[25] In *Travelodge*, Pathik J stated:

The two conditions which must be fulfilled before an accident can be said to have occurred "in the course of employment" are:

(a) the accident must have occurred during the employment of the workman and

(b) it must have occurred while he was doing something which "his employer could and did, expressly or by implication, employ him to do or order him to do"

[26] The Tribunal is satisfied that these two elements have been met. The Worker was dropped off at the premises prior to 7.00am. The Worker gave evidence that ordinarily he would work until 8.00am. The Tribunal prefers the evidence of the Worker to that of the Employer in relation to his starting and finishing times. Further, the Worker was undertaking something that he was specifically directed to do and that was entertained within the confines of the employment contract. The Tribunal does not accept that the Worker was to be paid separately for this Work, particularly given he was dropped to the premises in working hours and was utilising company equipment to undertake the task. The Employer has not established any defense so as to avoid liability.

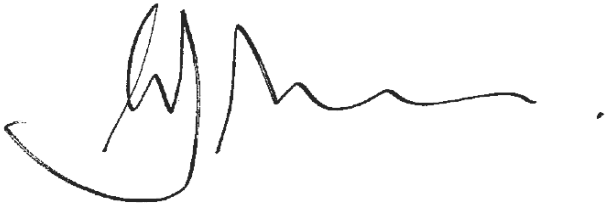
[27] The Worker was injured while undertaking work for his Employer. He could have been provided with safety glasses that may have avoided injury, but there was no evidence of that. The Employer has conducted and responded to this matter, in a less than co-operative manner. It failed to respond to requests for information, it seems to have manufactured a letter on behalf of the former supervisor and attempted to mislead the Tribunal as to how it came about and was produced to the Ministry.

[28] The case of the Labour Officer is made out. The Employer must pay the Labour Officer on behalf of the Worker, the amount of \$18,200.00. Further, the Tribunal will summarily assess costs to be awarded to the Ministry in the amount of \$1,500.00. An Order to give effect to this decision will be issued to the parties.

Decision

[29] It is the decision of this Tribunal that:

- (i) The Respondent pay compensation to the Labour Officer on behalf of the injured Worker, in the amount of \$18,200.00, within 28 days hereof.
- (ii) The Respondent pay costs to the Labour Officer, summarily assessed in the amount of \$1,500.00, within 28 days hereof.



Mr Andrew J See
Resident Magistrate