



Employment
Relations Tribunal

Decision

Title of Matter: LABOUR OFFICER on behalf of the Dependents of the Deceased, Sumeet Kumar Amrit (Applicant)
v
KOROQAQA & VATUWAQA CARRIERS (FIJI) LTD (Respondent)

Section: Section 6 *Workmen's Compensation Act 1964*

Subject: Compensation for death arising out of accident

Matter Number(s): ERT WC 96 of 2014

Appearances: Ms R Kadavu, for the Labour Officer
Mr S Kumar, on behalf of the Respondent

Date of Hearing: 11 September 2018

Before: Mr Andrew J See, Resident Magistrate

Date of Decision: 12 March 2019

KEYWORDS: *Section 5 Workmen's Compensation Act 1964; Claim for Compensation; Death arising out of accident; Recovery of Compensation for Injury; Arising out of course of employment. Meaning of "Injury by accident".*

CASES CITED:

Fiji Sugar Corporation Ltd v Labour Officer [1995] FJHC39; Civil Appeal No 0010 of 1994, 17 February 1995.
Labour Officer v Past 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 Korolaini Diratu [1994] FJHC 180; (9 December 1994)

Background

[1] This is an application made for worker's compensation in accordance with Sections 5 of the *Workmen's Compensation Act 1964*. The application made on 24 September 2014 is unusual, on the basis that it is an Application purportedly made on behalf of the dependants of the deceased worker, a former employee of the Respondent, yet within the particulars that accompany the Application at Paragraph 9, no such dependants had been identified. It is

unsurprising on that basis, that when the initial Answer in Opposition to the Application was filed by the Employer on 4 October 2014, it was said that the Application should be dismissed for that very reason. That is, that the Application is one that can only be made under the relevant provisions of the Act, where it is made on behalf of a dependant or dependants of the deceased worker.

- [2] This Tribunal is at a loss as to why then, no apparent further step in proceedings occurred until such time as the matter was called back on before it for review on 10 November 2017, in any event from thereon, the matter was advanced in the following way.

Preliminary Objection, Re Defective Application

- [3] When the preliminary arguments were considered before the Tribunal on 16 March 2018, a decision was made to allow the amendment of the Application in relation to the particulars pleaded, on the basis that:-

- It was not regarded as being fatal to the Application being made; and
- That Order 14 of the Magistrates Court Rules 1945 allows for such an event.

- [4] The justification for this is essentially, that if there was a legitimate argument pertaining to whether or not the deceased worker had dependants, then this could be addressed both by the way in which the evidence of the parties was led and also in final submissions. Ultimately after further directions were issued in relation to the disclosure requirements, the matter was set down for hearing on 11 September 2018.

The Case of the Labour Officer

- [5] Within the Applicant's opening submissions, Ms Kadavu for the dependants of the deceased, told the Tribunal that the deceased Worker had been engaged by the Employer as a driver and 'delivery person' during the period 7 February 2011, until his demise as a result of a motor vehicle accident on 9 May 2012. According to Counsel, the worker was making a delivery from Suva to Lautoka, when he was involved in a collision with a truck at Naboro and died at the accident scene.

Labour Officer Anglene Raj

- [6] The first witness to give evidence on behalf of the Labour Officer, was Ms Anglene Raj, a Labour Inspector who told the Tribunal that she had received a report of the death of the worker from the family of the deceased and not the Employer. Ms Raj said in response to this, that on 14 September 2012, she had sent the Employer a request asking that it complete the Form LD C1, *Notice By Employer of Accident Causing Injury/Death TO A Workman or Death of A Workman From Any Cause Whatsoever*¹, as required under Section 14 of the Act. According to the witness, a Notice of Claim was sent to the Employer on 22 October 2012 and this had been prepared reliant on a statement that had been provided from the deceased's father, on 14 August 2012. Ms Raj told the Tribunal that a subsequent calculation of the claim for entitlement was sent to the Employer on 10 July 2013². The witness stated, that she believed

¹ See Exhibit L2.

² See Exhibit L4 (Form LD C6)

that the case was disputed by the Employer, on the basis that it was claimed the accident was the worker's fault. During cross examination, the attention of the witness was brought to the particulars accompanying the Application, where within Part 9 of the form, it had indicated that this section was "Not Applicable". Counsel for the Employer, Mr Kumar, suggested that the dependants would need to be identified at the time of making the Application and if not, then the Application would be invalid. In response, the witness replied that the Ministry of Labour does not pursue cases where there are no dependants. On this point, the Tribunal accepts that this was a defect in the form, that was easily corrected. Who otherwise would the Labour Officer be prosecuting a claim on behalf of, if it was not for the dependents of the deceased?

Mr Amrit Prasad

- [7] Mr Amrit Prasad is a cane farmer and father of the deceased worker, who provided a statement to the Labour Office on 14 August 2012. It was Mr Prasad's evidence that his son had commenced employment with the Employer on 7 February 2011 and passed away whilst working. According to the witness, his son would work seven days per week, from 7pm to 7am. Mr Prasad told the Tribunal that on the day of his son's demise at around 4am on 9 May 2012, he was called by one of his son's workmates advising of the fatality, after his son had left home to transport a delivery from Suva to Lautoka. In cross examination, Counsel for the Employer, questioned the earning capacity of the witness and whether or not he was truly a dependant of the deceased. Mr Prasad responded by indicating that he was dependent on the earnings of his son, as he had suffered an injury to his leg and was also asthmatic, making his own capacity to earn difficult.
- [8] The Tribunal heard that the deceased worker had left home at 19 years age, however would return to visit family members. Mr Prasad was also challenged by Counsel, as to whether or not he was asthmatic, the inference being that it was somehow a guise to making a claim for dependency. In response to this suggestion, Mr Prasad clarified that this was a condition he had suffered from since birth. Mr Prasad said that he "was surviving cutting cane"³ but had retired and claimed that when his son grew up, that he was helping the family⁴.

The Case of the Employer

- [9] The first witness to give evidence on behalf of the Employer, was Mr Jaywan Pratap, who is the Director of Koroqaqa and Vatuwaqa Carriers (Fiji) Ltd. Mr Pratap explained that the Employer had a contract for the delivery of the Fiji Times newspaper, that would involve the distribution of the paper throughout Viti Levu. The witness spoke of the deceased worker's disposition on the day of the accident and said that he had been advised of the accident about half an hour after the event, from one of the supervisors. According to Mr Pratap he contacted the deceased's father whom he claimed said words along the following lines to him:

I am really fed up with him, what am I going to do with his funeral?

- [10] Mr Pratap stated in his evidence, that Mr Prasad asked him if he could arrange for the body of his son to be returned to Labasa, as he did not have any money. The witness said that he came to Labasa with a sum of money that had been donated by the deceased's co-workers and also had brought with him a coffin box that he had purchased and had shipped across by Patterson

³ The impression gained from the witness, was that he was only doing so by necessity of situation and found the work at his age and health, quite arduous.

⁴ The Tribunal understood this to mean, helping them financially.

Shipping. Mr Pratap said that he was surprised not to have been met by a family member upon arrival and when he went to the family home and provided Mr Prasad with two envelopes of cash, one from him and one from the workers, claimed that the deceased's father did not express any gratitude. The Director of the company told the Tribunal that the day following the funeral, he returned back to his home.

- [11] During the giving of his evidence, Mr Pratap stated that whilst sometimes the deceased sent money home to his mother⁵, that he had been advised by the deceased that he would not send money to his father, because "he said my father does not want to see me". The witness claimed that he was never told by the deceased that his parents were dependent upon his earnings. In cross examination, on the day of the Worker's demise. Mr Pratap acknowledged that the deceased was doing the 'western run'. The witness told Counsel that he was not aware that it was the Employer's responsibilities to meet the costs of funeral expenses⁶.

Mr Dalip Singh

- [12] The next witness to give evidence was Mr Dalip Singh, who was involved in the transportation of the deceased's body to Labasa. Mr Singh confirmed the testimony of Mr Pratap, that when arriving at the Lautoka Hospital that there were no family members of the deceased to be located. The witness stated, "it seemed that the relatives were not bothered". Mr Singh told the Tribunal that when he along with others arrived at the family home, that he witnessed Mr Pratap give Mr Prasad two envelopes and that he was aware Mr Pratap had also paid for the funeral costs.

Mr Abhay Chand

- [13] The final witness to give evidence on behalf of the Employer was Mr Abhay Chand, who is a self-employed person and stated that he knew the Director Mr Pratap as a Justice of the Peace. According to Mr Chand, he went to Mr Pratap's home to have his medical papers stamped and said that he arrived at 8.30am this particular morning, after having been advised to come at 9.00am. The witness said that on the day in question, that Mr Pratap was stressed and talking on the phone. Mr Chand told the Tribunal that Mr Pratap had his telephone on speaker and said that he had to wait for the stamping of the document until the phone call was completed. Mr Chand said that in this telephone he had heard Mr Pratap requesting the other party to come to Suva and then said that the phone was cut off. The witness said, "*I remember he said that there was such fathers like this*" and then stated that three minutes later there was a phone call from the other side after which Mr Pratap advised that "ok we will bring the body".
- [14] During cross examination, the witness was asked, who was the other party to that phone conversation? to which he replied, "I thought the boy's father". The witness conceded he did not know or had seen the father, nor heard his voice previously. Mr Chand claimed that Mr Pratap was saying, "your son is dead". When asked by the Tribunal why Mr Chand was having documents certified, he claimed that these were documents from the CWM Hospital, indicating that he had kidney surgery and that this was needed for a Family Court Matter in Lautoka⁷. At

⁵ Ms Chandra Wati, a named dependant within the Amended Application.

⁶ The correct question here would have been, was the Employer aware that the Labour Officer may seek to make a claim for funeral expenses, as no automatic right would appear to exist in the case where it is claimed that there are dependants remaining.

⁷ The witness elaborated and said that this was a Family Maintenance Case involving Ms Maureen Devi.

that juncture, the Tribunal adjourned proceedings, in order that the case file in that matter could be retrieved and the dates of the documents that had been stamped verified. It is a matter of record that the Case File /09/LTK/0031, reveals that the admission date for the surgical intervention referred to by Mr Chand was 21 February 2013, with a discharge date of 22 February 2013. Given that the employee died at the scene of the accident on 9 May 2012 and was returned to Labasa several days later, renders the account by Mr Chand a complete fabrication.

- [15] Directions were subsequently issued to the parties requesting that final submissions be provided. The Employer's Representative subsequently advised registry staff, that it will not be submitting any additional material, but relying on what is presently before the Tribunal. As an overall impression, the Tribunal prefers the evidence of the deceased's father, to that of Mr Pratap and the other Employer witnesses. The fact that the Employer did not report the fatality to the Ministry, sought to thereafter lay blame for the accident on the Worker and then challenged the standing of the deceased's father at trial, is suggestive of a deliberate and concerted effort to distance itself from the obligations imposed under the Workmen's Compensation law. The evidence of Mr Chand is also suggestive of a concerted effort by the Employer to deliberately seek to defeat the Application by whatever means possible, whether honest or otherwise.

Was the Deceased a Workman for the Purposes of the Act?

- [16] Section 2 of the *Workmen's Compensation Act 1964* defines workman 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.

- [17] The Tribunal is satisfied that the deceased was a workman for the purposes of Section 2.

Was the Respondent the Employer of a Deceased Workmen?

[18] 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;

[19] There is no doubt that the Employer was captured by the definition at Section 3 of the Act.

Did the Worker Suffer a Compensable Injury?

[20] 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

[21] It appears well accepted that there are three requirements to satisfy Section 5(1) of the *Workmen's Compensation Act 1964*.⁸ 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?

[22] Pathik J in *The Fiji Sugar Corporation Limited v Labour Officer*⁹ set out in detail what was to be meant by the expression "injury by accident". The deceased worker suffered from a ruptured heart caused by a motor vehicle accident. This first limb is satisfied.

Was the Worker's Death by Accident Arising Out of Employment?

[23] Pathik J in *Travelodge Fiji Limited Suva v The Labour Officer for Karalaini Diratu*¹⁰, 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*¹¹ 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

⁸ *Raiwaqa Buses Ltd v Labour Officer* [2011]FJHC174; HBA23.2008 (18 March 2011)

⁹ [1995] FJHC 39; Hba0010j.94b (17 February 1995)

¹⁰ [1994] FJHC 180

¹¹ [1917] AC 352 at 372

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.

[24] 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.

[25] The Worker died while driving his Employer's vehicle and undertaking his tasks as a delivery driver, en route to Lautoka. This second limb is satisfied.

In the Course of Employment

[26] 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"

[27] The Tribunal is satisfied based on the strength of the police report provided on 4 June 2012 and the death certificate of the deceased, that he died at the scene of the accident, whilst employed and undertaking his duties as an employee transporting goods from Suva to Lautoka. The deceased Worker was engaged in a shift at that time and he was authorised to drive the vehicle for that purpose. This third limb is satisfied.

Conclusions

[28] The Tribunal finds that Mr Amrit Prasad and Ms Chandra Wati were at the time of the Worker's demise, his dependants. The case of the Applicant is made out and the dependants entitled to the maximum compensation payable in the amount of \$24,000.00. A further adjustment to this amount is to be made, for interest to be calculated from the date of the Amended Application, that is 3 December 2014 at the rate of 5% per annum¹².

[29] The revised amount to be paid is **\$29,444.00**

¹² See Order XXXII Rule 8 of the *Magistrates Court Act 1945*.

Decision

[30] It is the decision of this Tribunal that;

- (i) The Respondent pay compensation to the Labour Officer on behalf of the dependants of Sumeet Kumar Amrit in the amount of \$29,444.00, within 30 days hereof.
- (ii) The Labour Officer is at liberty to make an application for costs within 21 days hereof.



Mr Andrew J See
Resident Magistrate

