

IN THE EMPLOYMENT RELATIONS TRIBUNAL
AT SUVA

Case No.42/2022

BETWEEN : **THE LABOUR OFFICER** for and on behalf of **NAVITALAI QEREVANUA**

Applicant

AND : **R. MONGOOSE PTE LTD**

Respondent

Appearances:

Ms. V.Raravula (Labour Officer) for Applicant

Date of Judgment/ 17 July, 2025

RULING ON FORMAL PROOF

Cause;

The Labour Officer filed an application on behalf of the Worker (Navitalai Qerevanua) under the Workman's Compensation Act, 1964 to recover FJD 16,598.40 from the Respondent, claiming that the Worker sustained injury 26 November, 2016, due to personal injury by accident arising out of and in the course of his employment with the Respondent- R. Mongoose Pte Ltd.

The claim is made reliant on section 5(1) of the Workmen's Compensation Act (Cap 94), in that is contended that injury was a personal injury by accident arising out of and in the course of (Workers) employment as caused to him.

The employer opposed the application, but Statement of Defense was not filed by the Employer. After several adjournments and non-appearance by the respondent on 4 December, 2023, the matter was fixed for formal proof on 24 January, 2024.

On 24 January, 2024 the matter was called in the morning and there was no appearance by the respondent.

This matter was formally proved on 24 January, 2024.

The applicant called 4 witnesses:

1. Mr. Kelemete Qiodravu (Investigating Officer)
2. Dr. Rauni M. Tikoinayau
3. Mr. Navitalai Qerevanua
4. Mr. Lekini Vasukiwai

Mr. Kelemete Qiodravu, Labour Officer who was the investigating officer in this case gave his evidence. In his evidence the Labour Officer stated that the Employer did not file the LDC Form 1. The Labour Office also stated that LDC Form 2 was sent to the employer which is notice of claim by and on behalf of the applicant. He further stated that on 3 February, 2020 LDC Form 6 was sent to the employer claiming the sum of \$16,598.40 as compensation to the worker.

According to Doctor Semesa Matanaicake, Medical report that the Worker (Navitalai Qerevanua) was admitted for Necrotizing Fasciitis left upper limb and beta-hemolytic septicemia on 26 November, 2016. The worker was having serious medical condition which required Intensive Care and many operations. An infection comes about whenever there is break in the skin and depending on the invading organism and the health of host, this will determine the severity of the infection he will have. The Doctor stated that the Worker was not in a position to give a good history because he was delirious due to the sepsis. The Doctor described it initially as a small wound on the dorsum of left hand and he sought medical attention at Lami Health Centre.

The Dr. Rauni M. Tikoinayau stated that he had provided his medical assessment report based on the report provided by Dr. Semesa Matanaicake and Dr. Wahlen Mortel. Natoba further stated that the Worker had open reduction and fixation on 10 March 2017 and he was discharged on 13 March 2017, then the screws were removed on 1 September, 2017. According to the Doctor the Worker had permanent incapacity suffered and had been assessed to 38%. The worker suffers from necrotizing fasciitis on his left upper limb and beta hemolytic septicemia.

Mr. Navitalai Qerevanua stated that he was employed by Employer (R. Mongooses Pte Limited) as a Labourer. He said that he was paid \$20.00 per week and he had worked 6 days in a week. That I joined the respondent in October, 2016 as labourer and worked from Monday to Saturday. That my role as labourer include blasting activates. He said that these are blasting of rocks, clearing of rocks with the use dynamite. The Worker said that he also assisted with the mixing used for blasting activates. The Worker said that he was not aware of the names of chemicals used except that he knew of diesel which is usually mixed with a white chemical. The Worker further stated that the Employer did not provide any gloves for mixing of chemicals

Mr. Navitalai stated that on 26 November, 2016 he got admitted at the hospital as his hands got swollen. The Worker said that he do not have any chemical history and he believe that the cause of his hand being swollen was from mixing of the chemical at work. He said whilst at work mixing the chemical for blasting, his gloves got torn whereby his fingertips got bruised with blister like appearance. He mentioned that he came into contact with the chemical whilst mixing with torn gloves and he felt an uneasy sensation on my hurt fingers. The Worker stated that when he returned home that Saturday, his wrist started hurting and when woke up the following morning, his left arm was fully swollen from tips of his fingers straight to his shoulder. According to the Worker he was admitted from 26 November, 2016 to 19 January, 2017. No medical expenses was paid by the company including traveling expenses or medication.

Mr. Lekini Vasukiwai, stated that he was employed by the Employer as a Labourer and worked for them for 1 year and 4 months. He said that he was working with Mr. Navitalai and he was absent from work due to his injury. Mr. Vasukiwai further said that he was mixing Ammonium Nitrate with diesel after lunch hour (12pm), without any gloves. The witness said that Navitalai was injured due to the chemical that he was exposed to and it was quite serious and the chemical was mixed was needed for drilling.

Analysis

Workmen's Compensation Act at Section 2 states:

2-(1) in this act, unless context otherwise requires, the expression "workman" subject to the proviso to this subsection, mean any person who has, either before or after commencement of this Act, entered onto or work 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, the remuneration is calculated by time or by work done and whether by the day, week, month or any longer period:

Provide that the following persons are excluded from the definition of "workmen".

(a) a person whose employment is of casual nature and who is employed otherwise than for the purpose of the employers trade or business , not being a person employed for the purpose 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 Ministry may , by order, declare not to be workmen for the purpose of this Act .

In the case of *Hassan v Transport Workers Union [2006] CBV 0006U of 2005* the test of McCardie J in *Performing Right Society Limited v Mitchell Booker (Palais De Danse) limited (1924) 1KB 762 at 762-768 was highlighted .*

“...the test to be generally applied lies in the nature and degree detailed control over the persons alleged to be servantAn independent contractor is one who undertakes to produce a given result, but so that in the actual execution of the work he is not under the order or control of the person for whom he does it, and may use his own discretion in things not specified beforehand...”

There was insufficient evidence before the Tribunal to make a determination as to the status of the applicant and in the absence of any contradictory evidence from the Respondent, this Tribunal accepts the Applicant's version that he was employed by the Respondent as a Labourer and he was assigned to mix the Ammonium Nitrate with diesel without proper equipment. According to the Worker he was using torn glove whilst engaged in work. The Tribunal finds that the Employer had breached section 8 and 9 of the Health and Safety at Work Act 1996.

Section 5(1) of the workmen's compensation Act (CAP 94) provides as follows:

If any employment personal injury by accident arising out of and in the course of the employment is accused to workmen's, his employer shall, subject as hereinafter provide be liable to pay compensation in accordance with the provision of this Act

Therefore to make a finding under Section 5 (1) this Tribunal must be satisfied that the following requirements are met,

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

The Tribunal has accepted the applicant's version that he was an employee of the Respondent Company as there was no other contradictory evidence before the Tribunal.

The worker stated that the Employer was in the blasting rock activities, clearing of rocks and also mixing chemicals for the activities. Further the workers evidence was that he was required to blasting of rocks, clearing of rocks with the use dynamite. The Worker said that he also assisted with the mixing used for blasting activates.

The initial medical report of Dr. Semesa Matanaicake showed that the worker had Necrotizing Fasciitis left upper limb and beta-hemolytic septicemia on 26 November, 2016. The worker was having serious medical condition which required Intensive Care and many operations. An infection comes about whenever there is break in the skin and depending on the invading organism and the health of host, this will determine the severity of the infection he will have. And Dr. Wahlen Mortel also stated in his report that the Worker had Swelling of left upper extremity with pinkish bullous lesion on his wrist Afebrile Blood Pressure 90/60 and blood sugar 7.7mmol.

On 19 January 2017 the Worker was discharged from CWM Hospital and according to Dr. Tikoinayau had confirmed that it was apparent that the injury was work related and that the

worker had suffered those injury whilst still being engaged with the Employer. And the Worker had suffered permanent incapacity of 38%.

The Tribunal finds that there was no dispute as to the initial medical reports, this court accepts the medical reports as provide.

Orders

1. Therefore the Tribunal orders that the Respondent pay the sum \$16,598.40 as compensation to the worker for the injuries sustained whilst employed by the respondent within 21 days from the date if this order .
2. A copy of the order must be sealed and served on the employer and affidavit of service filled prior to any enforcement proceeding being instituted.

28 days to appeal



Aleem Shah
Legal Tribunal
17 July 2025