

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

APPELLATE JURISDICTION

CASE NUMBER:

ERCC 22 of 2015

BETWEEN:

MIDWSET TRACTORS (FIJI) LIMITED

APPELLANT

AND:

THE LABOUR OFFICER for and on behalf of the dependents
of the deceased workman Michael John Mc Aulifee

RESPONDENT

Appearances:

Mr. Roopesh Singh for the Appellant.

Mr. John Pickering for the Respondent.

Date/Place of Judgment:

Monday 22 November 2021 at Suva.

Coram:

Hon. Madam Justice Anjala Wati.

JUDGMENT

A. Catchwords:

Workmen's Compensation Act 1964– Workman dies of Ischemic Heart Disease – Did the Tribunal properly assess the evidence to arrive at a proper conclusion that the worker's death as a result of the disease was accelerated by his work and that the death was work related – competing medical evidence – was it open to the Tribunal to come to the conclusion it did – basis on which the Tribunal's assessment and acceptance of the medical evidence is flawed.

Cause and Background

1. The employer appeals against the decision of the Employment Relations Tribunal ("*Tribunal*") of 20 November 2015 when upon hearing the application for a claim under the WCA, it found that the worker's death was work related and that the employer ought to pay compensation to the dependents in the sum of \$24,000.
2. The worker Michael John Mc Aulifee had been employed by Midwest Tractors since 1997. On 26 February 2009, he collapsed in the office washroom. He was immediately taken to the Nadi hospital where he was pronounced dead on arrival. He was 68 years old at the time of his death.
3. The post mortem report dated 27 February 2009 shows that he died of Ischemic heart Disease. The estimated time of death was 10.00am. The other material matters in the report are that the "*Lung Shows Bilateral Pulmonary Edema. Heart is enlarged. Right and Left Coronary Arteries Show more than 70% Occlusion. Concentric Hypertrophy of the Left Ventricle is noted. Inferior and Septal Infarcts (old) are noted. Liver is congested. Spleen Shows Senile Atrophy. Kidneys are congested*".

Issue on Appeal

4. The Appellant raised 7 ground of appeal and it all boils down to one main issue and that is whether the death of the deceased was work related or in other words whether his ischemic heart decease was exacerbated or accelerated by his work conditions.

Analysis

5. There were two doctors who gave evidence in Court. The doctor who was called by the plaintiff was Dr. Tupou Raqona. He presented two reports to the Court. The first was dated 22 February 2010 and the second was dated 15 November 2011.

6. The first report only stated that *"after reviewing the case reports you submitted, it is my opinion that the nature of his work accelerated to the disease which subsequently lead to his death"*.

7. The second report in its material parts states as follows:

"...

Social History

1. *Smoked cigarettes (2 packets/day).*
2. *Drank grog socially.*

Work History

1. *Worked for 12 years.*
2. *Worked for 12 hours weekdays and 6 hours on weekend according to his wife. According to his workmate, 9 hours on weekdays and 4 hours on weekends.*
3. *Engineer by trade, CEO, Sales representative for property and procured tenders for construction and hire of vehicles.*
4. *In 3 years prior to his demise, he took a total of 36 days annual leave.*

....

Summary:

Given the above history, it can be deduced that Mr. Mc Aulifee had suffered from Ischemic Disease and this caused his death. Ischemic Heart Disease is usually a long term of chronic disease. His post-mortem shows signs of previous inferior and septal infarcts. In Ischemic Heart Disease the coronary arteries harden due to the build up of plaque. When arteries that bring blood and oxygen to the heart are blocked or narrow over time, the heart muscle will be affected. It becomes unable to pump blood to the body. The narrowing of the coronary arteries is usually caused by atherosclerosis. An enlarged heart is also a consequence of Ischemic Heart Disease where muscular walls increase in thickness resulting in abnormal large size hearts. This finding is also evident in the post mortem results.

The risk factors for Ischemic Heart Disease are:

- 1. Age – Risk increase as you age or get older.*
- 2. Gender – Risk increases in males compared to females.*
- 3. Genes or family History.*
- 4. Smoking.*
- 5. Increased blood cholesterol.*
- 6. History of Diabetes or Hypertension.*
- 7. Obesity.*
- 8. Inactivity – no exercise.*
- 9. Alcohol.*
- 10. Stress.*

As people get older, the body too goes through the aging process. Our patient is 69 year old, with no medical examination requested by his employer to prove that he was medically fit to perform his duties. The autopsy report clearly states that Ischemic

Heart Disease with pulmonary oedema and occluded arteries. This is evidence that heart disease was already present in our patient's life.

Thus, we have an old man who has heart disease with the responsibilities of running a company, an engineer and arranging tenders and selling property. The stress placed on his health, especially his heart would have made the heart disease worse. Adding to that, his social risk factors of smoking and his health would be severely compromised. Therefore, considering the age of the patient and his working hours, scope of work and post mortem findings – it is my opinion that the nature of his work accelerated the disease that ultimately caused his demise”.

8. The Doctor who gave evidence on behalf of the employer was Dr. I. R. Bakani. Dr. Bakani is a Consultant Physician/Cardiologist. He also presented a report to the Court which he prepared on 21 November 2011. The report in its material parts read:

“ ...It is reported that he was found unconscious in the toilet of Mid West Tractors office on 26/02/09 and he was pronounced dead on arrival at Nadi Hospital. He was the Company Group Chief Executive and had worked for the company for 10 years and had not suffered any serious illness in the past. It is reported by his fellow workers that he was a heavy and chain smoker [smoked over 40 cigarettes a day] including high alcohol and yaqona consumption and undertook very little or no exercise.

The Post Mortem findings by Dr. P. G. Gounder on 27/2/2009 showed that

- 1. Heart is enlarged.*
- 2. More than 70% occlusion of the left and right coronary arteries*
- 3. Concentric Left Ventricular enlargement.*
- 4. Old inferior and septal heart attack.*

The certificate of death showed that "Ischemic Heart Disease" was the cause of death. He collapsed in the Mid West Company office toilet while at work on 26/2/09. You have requested my views whether his death was work related and to address this I wish to say that a prominent Cardiologist and pioneer of Cardiology Service in New Zealand, the late Dr. J.B.Lowe, former Chief Cardiologist, Greenlane Hospital, Auckland, writing in the Compensation Journal in 1979 had this to say;

"For work stress episodes to lead entitlement under the Compensation Act, the following criteria must be met:

- 1. The effort, strain and stress must arise out of and in the course of employment.*
- 2. Such effort, strain and stress must be abnormal, excessive, or unusual for the person suffering it.*
- 3. Sure effort, strain and stress must cause the cardiovascular episode.*
- 4. The episode must cause damage to the body or mind*

The deceased collapsed in the toilet while at work....The post mortem findings showed that the heart was enlarged, there was more than 70% occlusion of his two major coronary arteries and evidence of previous heart attack. The latter would have been due to silent heart attack. These findings would be consistent with no less than severe and long outstanding heart disease resulting in progressive reduction in blood and oxygen supply to the heart muscle eventually leading to impaired heart muscle function, heart enlargement, heart attack and cardiac arrest. His habit of excessive smoking, alcohol abuse and physical inactivity are important precipitating risk factors. The occlusive coronary plaques are cholesterol atheroma associated with his risk factors. These factors will interact to lead to overall risk that is greater than the sum of their individual risks.

It is in my view therefore that the deceased died of cardiac arrest due to long outstanding, progressive and irreversible ischemic coronary artery disease as he was sitting on a time bomb that cardiac arrest would occur anytime and anywhere, so event in the office toilet on 26/2/2009. The death was therefore not work related”.

9. It was accepted by both the doctors that the ischemic heart disease was not caused by work. However, the difference in the opinion was on whether the work of the worker contributed to or accelerated his disease leading to his death.
10. The Tribunal found that the death was work related which means that it accepted the report of Dr. Tupou Raqona. The Tribunal does not state any basis for rejecting the evidence of the consultant cardiologist. It accepted the evidence of Dr. Tupou Raqona who stated in his report that given the fact that the worker was old, his work hours and work scope placed stress on his health which would have made the heart disease worse.
11. At the time Dr. Tupou Raqona prepared the reports, he was an acting Divisional Medical Officer. He was not at any point a cardiologist expert. He based his report on the information provided by the Labour Officer. The doctor assumed that the worker had to work 12 hours a week and 8 hours in the weekend and that the scope of work was physical in nature placing stress on the health of the deceased.
12. Dr. Tupou admitted in the cross-examination evidence that when he prepared the report, he was not aware that the worker used to smoke about 20-30 cigarettes a day but that he only smoked two packets. He said that he did not know that the worker drank alcohol daily and that he did not know that he drank grog very heavily and not socially.

13. Dr. Tupou Raqona also admitted in cross-examination that his report is based on the premise that the worker worked 12 hours a day. He said that the worker worked long hours and that the scope of his work as an engineer too would have placed stress on his health. He said that his understanding was that as an engineer, he would carry out physical work and do supervisory work too. He said that he was not aware of the specific work the worker did but that it was mentioned in the Labour Officer's report that he was an engineer and a sales representative. He said that most of the patients with ischemic heart diseases would be advised not to do strenuous work or activity to exert themselves.
14. Dr. Tupou's evidence has many problems in comparison to Dr. Bakani's report. The first is that he is not a qualified cardiologist who could challenge Dr. Bakani's report. Secondly, he accepted that the worker worked long hours when the evidence from the employer was that he never did overtime work and worked normal hours. The records produced by the employer showed that he worked 44 hours a week which is the normal working hours.
15. The only person who said that the worker worked overtime for 12 hours each day was his wife. The Labour Officer did not present any pay slips or the wages records or the time register to indicate that the employer's evidence that he worked 44 hours a week was incorrect. In absence of any evidence which could have been easily obtained, the claim by the wife that that he worked over time could not be established and could not be given weight.
16. The claim by the wife that the worker worked overtime obviously can be looked at with suspicion because she is the claimant in this case and the medical evidence of

both doctors had clearly said that the heart condition was build up over some time and not caused by work or work related. It was therefore important that it be concretely established that the long hours of work placed stress on the worker's health.

17. Secondly, Dr. Tupou Raqona had very conveniently presumed that the nature of the worker's work involved physical activity when Mr. Rajnesh Kumar, another employee who testified on behalf of the employer stated that the worker used to be engaged in office work and did not undertake physical hard work. This evidence was not contradicted by any witness except for the wife who said that the husband used to complain of being tired when he came home and also said that the working conditions were not good. The Labour Officer did not present to the Court any evidence to suggest that the nature of the work was strenuous or exerted the worker which contributed to the disease leading to his death.
18. Further, Dr. Tupou Raqona did not even testify on what the worker did on the day which placed stress on him or exerted him that he collapsed. The worker was in his office obviously as he collapsed in the office washroom. There is no evidence of him having done any hard work or physical activity or work which caused him stress. In fact, there was no evidence led as to what work he did upon arriving at the office. The worker died at about 10.00am. He was only in office for two hours and in that two hours, what he did that caused him stress was not led in evidence.
19. One must not forget that the worker had been doing this work for the past 12 years before his death and for it to be established that his condition was exacerbated by work, it needs to be shown that the kind of work he did was not appropriate for his condition. It is expected that the worker had known his work for long as he has been in the employ for more than a decade. He would be quiet familiar with the nature of

the work and how it is to be done. One cannot assume that given his experience, he would be stressed with the normal work he did. It had to be established in evidence that the work he performed was abnormal which caused him stress and exerted him. There was no evidence to show that the worker did some heavy, difficult work out of the normal duties that he used to perform daily.

20. I do not find that Dr. Tupou's evidence could be preferred over Dr. Bakani's evidence because Dr. Tupou's evidence was based on the presumption that the worker worked for long hours and that his work involved physical activity placing stress on his health. In absence of any evidence on the nature of the work the worker did and given the evidence that the worker never worked overtime and barely worked for two hours that day, the basis of Dr. Tupou's finding is not sustainable.

21. I find that the Tribunal failed to analyze the evidence of the Doctors properly which led him to arrive at a conclusion that is not supported by the evidence. I find that Dr. Tupou's evidence does not have any probative value and that it should be disregarded. The conclusion arrived at that the condition of the worker was contributed by the nature of his work is not supported by proper medical evidence and as such I find that the worker's death was not work related.

Final Orders

22. In the final analysis, I make the following orders:

- (a). *The appeal is allowed.*
- (b). *I set aside the orders of the Tribunal.*

- (c) *The claim under the WCA is dismissed.*
- (d) *Each party must bear their own costs of the appeal proceedings.*

Anjala Wata

.....
Hon. Madam Justice Anjala Wata

Judge

22. 11. 2021



To:

1. *Messrs Patel & Sharma for the Appellant.*
2. *The Labour Officer.*
3. *File: ERCA 22 of 2015.*