IN THE EMPLOYMENT RELATIONS COURT
AT SUVA
APPELLANT JURISDICTION

ERCA No. 22 of **2018 (B)**

BETWEEN : **WATER AUTHORITY OF FIJI**

APPELLANT

AND : **THE LABOUR OFFICER**

RESPONDENT

BEFORE : M. Javed Mansoor, J

COUNSEL : Mr. A. Vulaono for the Appellant

: Ms. V. Doge for the Respondent

Date of Hearing : 10 February 2022

Date of Judgment : 3 January 2024

JUDGMENT

WORKMEN'S COMPENSATION Appeal – Whether injury arose within the course of employment – Work place stress – Findings of primary facts – Transcript of evidence not provided to court – Intervention of appellate court – Workmen's Compensation Act 1964

The following case is referred to in this judgment:

a. Benmax v Austin Motor Company Ltd [1955] All ER 326

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1. This appeal is against the judgment of the senior resident magistrate, who ordered the appellant to pay compensation in a sum of $24,000.00 together with post judgment interest of 5% to the dependents of a deceased workman, who was employed by the appellant.

2. There is no dispute that the workman, Esikieli Farasiko, was employed by the appellant. His death was caused by a heart condition, which is also not in dispute. The labour officer filed an application to recover compensation from the employer on the basis that his death was work related. The employer resisted the claim.

3. In its determination, the tribunal stated that both parties agree that the workman suffered personal injury by accident, and held that all the elements necessary to constitute a claim under the Workmen's Compensation Act 1964 have been satisfied. The appellant disagrees, and has appealed.

4. The notice of appeal filed on 7 August 2018 was amended on 26 October 2020 and raised the following grounds of appeal.

i. "The Tribunal erred in law and fact for determining that the injury suffered by the deceased arose out of the employment when there were insufficient evidence to support such a finding.

ii. The Learned Tribunal erred in law and fact by failing to give regard to the deceased's pre-existing condition and personal lifestyle and not his employment as contributing factors to his demise.

iii. The Tribunal erred in law and in fact for determining that the injury suffered by the deceased occurred in the course of his employment when there were insufficient evidence to support such a finding.

iv. The Tribunal erred in fact and law for finding that the deceased's employment required meeting strict timelines which were very stressful when no evidence was adduced pertaining to strict timelines."

v. The Tribunal erred in law and in fact for determining that the working environment was stressful when there were no evidence that the deceased was stressed from his employment.

vi. The Tribunal erred in fact for determining that it was not disputed that the working environment of the Applicant was very stressful when the Appellant did not admit to the same at any time.

vii. The Tribunal erred in fact and law for finding that 'Nothing is further from the truth that both Doctors agreed on that Applicant's stressful work environment precipitated the heart attack that caused the death of the applicant' when Dr. De Asa Jnr testified that hypertension is the cause of death and not the working environment."

5. At the hearing of the appeal, the appellant urged that the tribunal erred in finding that the injury arose out of employment. The appellant submits that the findings are contrary to the evidence led before the tribunal.

6. The tribunal made a finding that the working environment was stressful, especially as water pipelines had to be laid according to a tight schedule to ensure that residents are not deprived of clean drinking water. The appellant disputes the finding and says there is no evidence that the workman had to meet strict timelines.

7. According to the appellant's submissions, the doctor summoned to give evidence on its behalf did not agree that the workman's heart attack was caused by his

employment. The appellant contended that the respondent had the opportunity to summon other employees to testify as to whether there were stressful timelines to be met by workers, but did not do so. The appellant submitted that Dr. De Asa (jnr), who gave evidence on behalf of the employer, had testified that there is no evidence that the work environment led to hypertension.

8. The appellant submitted that the tribunal erred in finding that both doctors agreed that a stressful work environment led to a heart attack. The appellant says that statements by co-workers and the investigation officer's report were not made available to the tribunal. The appellant contends that it was for the respondent to have shown some connection between the workman's death and the work he performed, and that this burden was not discharged.

Conclusion

9. The workman was at home when he had chest pains, and died at around 4 am on 30 April 2014 after he was taken to the Labasa hospital. He was 52 years at the time of his death. The labour office issued the employer a notice dated 8 October 2014 claiming workmen's compensation. On 16 July 2015, Dr. R. Tikoinayau certified that death was work related. The submissions show that the doctor gave evidence to this effect.

10. The respondent called three witnesses. They were the investigating officer, the workman's wife and the doctor. The appellant says the doctor relied on the information provided by the investigating officer and the wife of the workman did not give any evidence concerning timelines at work. The appellant contends there is no evidence of the work performed by the workman leading up to his death.

11. The proceedings in the tribunal was for the recovery of compensation based on a formula given by the Workmen's Compensation Act. The appellant's contention is that there is no evidence to support the tribunal's finding that the workman's death was due to stress at work because of the deadlines he had to meet. The tribunal has stated that the workman's working condition prior to death revealed that he was under a lot of pressure to meet timelines. The tribunal says: "His

stressful working conditions together with his high blood pressure aggravated and triggered the myocardial infraction which was the cause of death".

12. The tribunal's determination does not show an entirely satisfactory evaluation of the evidence. The determination does not explain the basis on which the senior resident magistrate reached his findings.

13. Notwithstanding this infirmity, the court is mindful that the tribunal has held a hearing at which evidence was given. The testimony of the medical experts was before the tribunal. The tribunal was in a position to have considered the evidence as a whole. In order to reverse the findings, the appellant must show that the tribunal's findings are not supported by evidence. This could have been done by tendering a transcript of the evidence to court.

14. However, the court has not been provided a transcript of the evidence, although this was undertaken. The appellant is required to provide the court a signed copy of the note of proceedings maintained by the tribunal in terms of Order 55 rule 7 (4) of the High Court Rules 1988. There is no possibility of considering whether the tribunal's findings are erroneous without a consideration of the parties' testimonies.

15. The decision in *Benmax v Austin Motor Company Ltd*[1] impresses on the reluctance of an appellate court to intervene when a court of first instance reaches findings of facts based on evidence. The House of Lords stated:

> "Apart from cases where appeal is expressly limited to questions of law, an appellant is entitled to appeal against any finding of the trial judge, whether it be a finding of law, a finding of fact or a finding involving both law and fact. But the trial judge has seen and heard the witnesses, whereas the appeal court is denied that advantage and only has before it a written transcript of their evidence. No one would seek to minimize the advantage enjoyed by the trial judge in determining any question whether a witness is, or is not, trying to tell what he believes to be the truth, and it is only in rare cases that an appeal court could be satisfied that the trial has reached a wrong decision about the credibility of a witness. But the advantage of seeing and

[1] [1955] AER 326 at 328/ 329

hearing a witness goes beyond that. The trial judge may be led to a conclusion about the reliability of a witness's memory or his powers of observation by material not available to an appeal court. Evidence may read well in print but may be rightly discounted by the trial judge or, on the other hand, he may rightly attach importance to evidence which reads badly print. Of course, the weight of the other evidence may be such as to show that the judge must have formed a wrong impression, but an appeal court is, and should be, slow to reverse any finding which appears to be based on any such considerations".

16. In these circumstances, the appeal is dismissed subject to the following variation. The senior resident magistrate ordered 5% post judgment interest. The rate is varied. Post judgment interest will apply to the compensation awarded at the statutory rate.

ORDER

A. The appeal is dismissed subject to variation in the interest rate as provided by statute.

B. The appellant is directed to pay the respondent 1,500.00 as costs summarily assessed within 21 days of this judgment.

Delivered at **Suva** on this **3rd** day of **January, 2024.**

HIGH COURT OF FIJI SUVA

M. Javed Mansoor
Judge