

TERESINA REGINA VAEKENEI v CARPENTERS (FIJI) LTD and Anor

HIGH COURT — CIVIL JURISDICTION

5 SCOTT J

21 May 2002

[2002] FJHC 55

10 **Workmen’s compensation — compensation — interim payment — (FJ) Workmen’s Compensation Act (Cap 94).**

15 Applicant sought damages for personal injuries which she claimed arose from the Defendant’s negligent failure to provide a proper and safe place of work. She also concurrently claimed compensation under the Workmen’s Compensation Act. Defendant denied liability.

Held — Plaintiff suffered an accident arising out of and in the course of her employment with Defendant with the result that she is entitled to recover compensation. She had demonstrated a need for an interim payment.

20 Application allowed.

No case cited.

K. Muaror for the Plaintiff

I. Razaak for the Defendant

25 *A. Tikaram* for the Third Party

Decision

30 **Scott J.** This is an application by the Plaintiff for the interim payment of damages to her by the Defendant brought pursuant to RHC O 29 rr 10 and 11(1)(c).

At all material times the Plaintiff was employed by the Defendant at its Superfresh supermarket at Tamavua.

35 On 21 March 1998 the manager of the supermarket picked her up from her home in a vehicle which then went to Tamavua. Shortly after arrival at the supermarket and while the Plaintiff was entering the premises she was attacked and robbed by three armed men.

40 On 24 June 2000 the Plaintiff commenced proceedings by writ. She claimed damages for personal injuries which she claimed arose from the Defendant’s negligent failure to provide a proper and safe place of work. She concurrently claimed compensation under the Workmen’s Compensation Act (Cap 94 — the Act).

45 The Amended Defence filed on 7 June 2000 is not absolutely clear. Although the Plaintiff’s employment by the Defendant is admitted as is her arrival with the manager at the supermarket the attack on her while entering the premises is not specifically denied. It is merely embraced by a general denial included in the last paragraph of the Statement of Defence. The Plaintiff’s claim in para 14 that she was injured during the course of her employment is however specifically denied in para 14 of the Amended Defence.

50 In support of her application for an interim payment the Plaintiff filed an affidavit on 10 April 2002. After repeating in affidavit form a large part of the Statement of Claim she deposed that she is still suffering from post-traumatic

stress disorder which has prevented her from finding employment and has severely affected her both in her capacity as a wife and as a mother with five children.

5 She stated that she was suffering from financial difficulty and severe depression. No answer to this affidavit was filed.

10 Exhibited to the affidavit were three reports. The first, dated March 1998, was from a Medical Officer at the Fiji Military Hospital. After describing the Plaintiff's physical injuries the report describes the Plaintiff as having been "psychologically upset and shocked". The report concludes that the physical injuries would heal but that the "psychological injury will leave a permanent scar".

15 The second report is dated July 1999 and is from the Fiji School of Medicine. It was prepared by the Consultant Psychiatrist Dr Henry Aghanwa. According to this report the Plaintiff had suffered emotional harm as a result of the incident having "profound effects on her psychosocial functioning". Evaluation of her disability on the GAF scale revealed a score of on 41–50 per cent. After treatment over several months the Plaintiff's score had recovered quite significantly to 71–80% with prospects of further improvement following more treatment.

20 The third report was prepared by the Ministry of Labour for the purposes of the Workmen's Compensation Act claim. It is dated February 2000 and suggests that the Plaintiff has suffered a 45% permanent partial incapacity entitling her to recover \$11,737.44 statutory compensation.

25 Despite the pleadings closing in June 2000 (see O 18 r 19) and a Summons for Directions dated 14 September 2000 the Defendant has failed to comply with RHC O 25 r 8(1)(b). Mr Razaak told me that this was an oversight. The result however is that the medical evidence placed before the Court by the Plaintiff is unanswered.

30 Mr Razaak opposed the application. First, he submitted that s 25 of the Act operates to prevent an award now being made. I do not agree. There has been no s 16 agreement between the Plaintiff and the Defendant and the claims are concurrent. Obviously the Plaintiff could not recover twice both in negligence and under the Act. Any amount awarded now would be set off against the total amount recovered whether under the Act or in negligence.

35 Second, Mr Razaak argued that the Plaintiff's affidavit did not sufficiently comply with the requirements of RHC O 29 r 10(3)(a) and (b). With respect, I disagree. In my view the Plaintiff's affidavit contains sufficient essential information to support her application.

40 Third, Mr Razaak suggested that the figure of \$11,737.44 should not be taken as a guide to the amount to which the Plaintiff might now be entitled. He re-emphasised that the Defendant's defence centred on its denial of any responsibility for what occurred and its attribution of the entire blame for the attack on the deteriorating and lamentable law and order situation in Fiji.

45 In my view the common law claim does indeed raise an important issue which will have to be the subject of a full hearing. The Workmens Compensation claim is however in my view quite clear cut and I find no reason to doubt that the Plaintiff suffered an accident arising out of and in the course of her employment with the Defendant with the result that she is entitled to recover compensation.

50 My only concern is the amount certified. On the face of it a 45% permanent partial incapacity does not appear to be consistent with Dr Aghanwa's diagnosis. This question will need further investigation.

On the papers before me I am satisfied that the Plaintiff will eventually recover substantial damages either under the Act or in common law. I am satisfied that she had demonstrated a need for an interim payment. Care must be taken to ensure that she is not now paid more than the minimum which I believe she will eventually recover.

The application succeeds. I order that the Defendant pay the Plaintiff \$6000 forthwith.

Application allowed.

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