IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 6 of 1983

Between:

THE LABOUR OFFICER on behalf of LUISA LEGALEVU — Appellant

\- and -

THE PORTS AUTHORITY OF FIJI — Respondent

Mr. A. Singh for the Appellant
Mr. P. Knight for the Respondent

Date of Hearing: 17th November, 1983
Date of Judgment: 22.11.83

JUDGMENT OF THE COURT

Mishra, J.A.

The appellant unsuccessfully applied to the Magistrate's Court for compensation under the Workmen's Compensation Act following the death of a dockworker, Meli Ratulomai. His appeal to the Supreme Court was also dismissed.

He, acting on behalf of the dependent, the deceased's daughter, now appeals to this Court.

Meli Ratulomai was employed at Suva Wharf as a cargo-sorter. his duties consisting largely of examining packages and directing workmen as to their storage. He, like other permanent dockworkers, worked only when ships were in port and work available. According to the records kept by the respondent, the last day on which the appellant worked was Wednesday 11th January, 1978. There is no evidence to suggest that anything untoward happened during

the work period that day. He had no work on Thursday or Friday. In the early hours of Saturday morning he complained of severe chest pains and was rushed to the Colonial War Memorial Hospital but was pronounced dead on arrival.

Medical evidence showed a history of heart disease going back to September 1973 when he was admitted to the hospital with congestive cardiac failure and hypertension. After being discharged he continued to receive treatment as an outpatient but was admitted again on 5th May, 1974 for thirteen days for congestive cardiac failure. He attended regularly at the hospital thereafter at four to six weekly intervals. He was described as having "chronic congestive cardiac failure and left bundle branch block".

He, according to the doctors, could have died any time anywhere.

The Magistrate found that nothing done at his work had caused, or contributed to, his death. The learned appellate judge considered a number of authorities on the subject and upheld that finding.

The appellant had originally filed 6 grounds most of them involving findings of fact. At the hearing of this appeal he, quite correctly, informed the court that he would accept the facts as found by the Courts below and argue the single ground to the effect that the learned judge erred in interpreting the law so as to find that the accident suffered by the deceased did not arise out of and in the course of his employment. He submitted that the learned judge had failed fully to consider the law relating to death arising out of employment stress in cases involving a history of heart disease.

There does not seem to be any serious divergence of views as to the principle to be applied in such cases. It is not necessary for the evidence in case of a person with a long history of heart disease to show that a specific injury had resulted from a specific act during the course of employment. But, as was said in Oates v. Earl Fitz William's Collieries Co. (1939 2 All E.R. 498) :-

> "It was essential that there should be evidence of a physiological injury or change occurring in the course of a man's employment by reason of the work on which he was engaged at or about the time of his death."

The principle was also stated by Godderd J. in Whittle v. Ebbw Vale etc. Co. (1936 2 All E.R. 1221 at 1235) in following words :-

> " The principle which I extract from the case of Partridge Jones v James (1933 A.C. 501) seems to me to be this: the House of Lords have decided that where a man in a diseased condition dies and it is found that the disease and the work together contribute to his death, then his death results from accident within the meaning of the Act. "

Section 5 of Fiji's Workmen's Compensation Act follows the wording of the English Act referred to in Whittle (supra).

It was also said in Whittle (supra 1233) :-

> "But there can be no general principle that a man must die immediately he has received the strain; it is a question of fact to be decided on the evidence and the medical evidence."

The evidence must show some physiological change occurring in the course of the workman's employment and its connection with the ensuing death."

So much for the principle.

The difficulty in the present case is not the principle itself but the evidence required to bring the matter within its scope.

The appellant concedes that the deceased died 2½ days after the day he had last worked. He further concedes that there is no evidence to show what work he did on Wednesday, 11th January 1978, except that he generally worked as a cargo-sorter. What evidence there is indicates that nothing untoward occurred while he was at work on that day, or any other day.

There is no evidence to show what the deceased did on Thursday or Friday, certainly nothing to suggest that he was sick in bed or even that he stayed home.

The testimony of Chambers and Delailakeba, sketchy though it is suggests that the deceased was among permanent dock employees and that a rostering system was in operation. From that we understand that these men reported for work everyday but worked only when work was available. There may have been some payment for reporting but no evidence was led on that.

According to the evidence of Kasanita Vereivalo, the dependent's mother, the deceased used to suffer from chest pains. She said :-

> "After work he would ask us to massage him. Most afternoons because of his chest pains. His last day at work was on Friday i.e. that day before he died. He complained of pains and asked to be massaged on the chest.

> That night he went to sleep. Before 5 a.m. he told me to prepare breakfast.
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> He sent for a taxi to take him to hospital. One of my sons took him to hospital (Eremasi). At hospital he was dead on arrival. "

It seems difficult from this evidence to draw any inference other than that the deceased complained of chest pains the day before he died i.e. Friday. There is, of course, the evidence that he frequently had these pains but no evidence whatever was led as to his movements and his condition on Thursday and all day Friday. When he returned home on Friday, he complained of thest pains.

The learned judge's own assessment of the evidence was :-

> "In the instant case there is no evidence as to what specific work the workman was doing or any evidence that he suffered any attack at work."

We accept that assessment as correct and learned counsel for the appellant has no quarrel with it. He, however, submits that, to bring the case within the Act, it is not necessary to prove an attack in the sense of a sudden collapse. In our view, the learned judge did not use the word "attack" in that narrow sense for he clearly had in mind the case of Oates v. Earl Fitzwilliams Collieries (supra) which he referred to and where the words "physiological injury or change" are used.

Cases of this nature are largely a matter for medical evidence and that evidence, the courts below held, was of little help to the appellant. The case before the trial court proceeded on the basis that strenuous physical work would accelerate the death of a person with chronic congestive cardiac failure. Dr. Parshu Ram said :-

"There should have been no undue physical exertion."

Dr. K. Singh said :-

"Death could have been accelerated by manual work. "

It was for this reason that a large part of the Magistrate's judgment dwelt upon the kind of work a cargo-sorter was required to do. There was no evidence of any heavy manual work done by the appellant at any time.

Counsel for the appellant changes his stance before this court and submits that proof of heavy physical work is not necessary to establish liability. True; but that was the way the case was presented and no medical evidence was led to show any connection between the deceased's death and any other kind of work. Dr. Parshu Ram's report states that when the appellant was discharged from the hospital he was fit enough to undertake light work. He was examined at the hospital at 4 to 6 weekly intervals, but was never advised to discontinue working. Neither of the two doctors was asked any questions about chest pains; why they occurred or why they occurred at home and not at work. Their opinion was not sought relating to the actual circumstances of the deceased's death viz. that nothing untoward occurred at work on Wednesday, that the deceased did not work on Thursday or Friday, that he had chest pains on Friday night and died on Saturday morning. There had to be some medical evidence to show that sickness alone was not the cause of death and that what he did in the course of his employment also contributed to it.

As was said in Whittle v. Ebbw Vale etc. Co. (supra) :-

> "The question which arises upon this appeal is whether the county court judge was or was not entitled to draw an inference of fact from certain facts which appeared in the evidence. The principles upon which he has to proceed are very clearly stated by LORD BIRKENHEAD, L.C., in the case of Lancaster v. Blackwell Colliery Co., Ltd. (1) at p. 406, where he says this:
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> ' The principles which have to be applied to facts like these are now well settled; they have been declared on numerous occasions by your Lordships and they may be very easily summarised. If the facts which are proved give rise to conflicting inferences of equal degrees of probability so that the choice between them is a mere matter of conjecture, then, of course, the applicant fails to prove his case, because it is plain that the onus in these matters is upon the applicant. But where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the more probable conclusion is that for which the applicant contends, then the arbitrator is justified in drawing an inference in his favour.' "

In the present case, to use the appellant's own words, "the deceased was a candidate for a sudden death". The onus was on the appellant to produce some evidence from which it could affirmatively be inferred that the work he did in the course of his employment furthered that candidacy.

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The learned appellate judge was correct, in our view, in holding that that burden was not discharged.

The appeal is dismissed.

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Vice President

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Judge of Appeal

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Judge of Appeal