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IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 37 of 1983

Between:

BA INDUSTRIES LIMITED

Appellant

and

LABOUR OFFICER, BA

Respondent

Mr. S.R. Shankar & Mr. K. Chhaganlal  
for the Appellant

Mr. S. Matawalu & Mr. Madraiwiwi  
for the Respondent

Date of Hearing: 28th March, 1984

Delivery of Judgment:

JUDGMENT OF THE COURT

Mishra, J.A.

This is an appeal by an employer against the decision of the Supreme Court, Lautoka, upholding an award made by the Magistrate's Court under the Workmen's Compensation Act in favour of a deceased workman.

The grounds are :

"The learned Appellate Judge erred in law:-

1. by not holding that the Respondent/  
Plaintiff failed to discharge the  
onus of proof of his case.

2. by not holding that there was no personal injury caused by accident arising out of and in the course of the employment and thus misconstrued S.5 of the Workmen's Compensation Act (Cap. 94). "

As to the facts of the case the following occurs in the Magistrate's judgment :

" Before the hearing commenced a statement of agreed facts was filed whereunder the following agreement was reached :

- (1) employment of deceased workman on 12.4.78 by the Respondent Co.
- (2) nature of employment, carting nails in 4 gallon drums (about 56 lbs in weight) and pouring into machine,
- (3) a complaint of chest pains whilst so working,
- (4) attendance by workman on doctor and examination.
- (5) Death of workman on same day but at home.
- (6) Cause of death "Acute myo-cardiac infarction (heart failure" in common parlance). "

The only witness called at the trial was the doctor who had examined him after the attack of chest pains. According to him the deceased had died of a heart attack. He had not treated the deceased at any time before and could not express any opinion on his general health prior to the day he died.

The witness said :

" If deceased had previous history of high blood pressure, diabetes, kidney problems thyroid problems etc. If he

did not have any of these problems physical labour only should not have precipitated heart problems because physical labour not the major cause of heart attacks. Can't say if 3 days previously the deceased was suffering from a heart condition. I deal with a lot of cases of this type but I cannot on the one examination say he had earlier heart condition. "

In most cases where a workman dies of a heart attack while doing manual labour there is generally evidence of existing heart disease and the courts have to decide whether he died of the disease alone or whether something he did during the course of his employment contributed to his death.

[See Oates v. Earl Fitz Williams Collieries Co. (1930 2 All E.R. 498);

Whittle v. Ebbw Vale etc. Co. (1936 2 All E.R. 1221)]

In this case there was no positive evidence of existing heart disease.

The medical evidence was that physical labour would not ordinarily cause a heart attack in a normally healthy person. The deceased, however, who complained of chest pains while at work was diagnosed by the doctor, to have had a heart attack. Later the same day he died at home the cause of death being a heart attack.

The learned Judge had this to say about the medical evidence :

"But what the doctor must be taken to mean when he gave evidence in court is that the death can only be attributable to a heart condition, and in the light of such heart condition the sort of work Subramani was presumably doing when he first felt chest pains, could have lead to the myocardial infarction which caused his death. "


This is a second appeal on a point of law alone and can only succeed if it is shown that there was no evidence upon which the court could so find.

We accept the respondent's submission that there was clear evidence from which the trial court, and the Supreme Court, could have drawn the inference which they both did i.e. the work that the deceased was doing in the course of his employment was a significant cause giving rise to the chest pains and that, likewise, it contributed to the subsequent heart-attack and death. The fact that death did not immediately follow the chest pains does not preclude the inference of causation. (See Whittle v. Ebbw Vale; Supra at 1233.)

No burden lay on the respondent to prove that the deceased was suffering from a heart disease prior to his death. Evidence that the manual work he was engaged in would not, as a rule, trigger a heart-attack in a normally healthy man would only provide basis for inference. The burden on the respondent was to show that the heart attack occurred during the course of his employment and that the work he was doing was a contributing factor. There was, in our view, ample evidence of that and the courts below were quite justified in holding that the respondent had discharged that burden.

The appeal is dismissed with costs to the respondent.

  
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Judge of Appeal

  
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Judge of Appeal

  
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