IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 36 of 1984

Between:

CARPENTERS FIJI LIMITED — Appellant

- and -

THE LABOUR OFFICER
for and on behalf of
KATARINA ESITA & OTHERS — Respondent

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

Date of Hearing: 20th November, 1984
Delivery of Judgment: 24.11.84

*JUDGMENT OF THE COURT*

Mishra, J.A.

This is an appeal against an order for a rehearing made by the Supreme Court in a case under the Workmen's Compensation Act. The respondent cross-appeals for an order restoring the Magistrate's decision set aside by the Supreme Court.

Most of the facts are not in dispute.

The deceased, about 40 years of age, was employed by the appellant as a welder, though he attended to other duties also when no welding work was available. He has no history of illness. On 25th April, 1979, his last day at work, he was engaged in shifting steel sheets from one part of the yard to another. His work was to place a clip on the sheets after they had been loaded onto a truck and to remove it when the truck reached the fabricating shop about 30 yards away. He finished work at 5 p.m. and went home. Nothing untoward happened at work and he complained to no one of feeling unwell. It was, according to the evidence, a perfectly normal working day.

At home he complained to his wife about an inflamed eye and feeling "different". At 9.30 p.m. he became unconscious and was rushed to the hospital where he died at about 7 a.m. the following morning without regaining consciousness. The cause of death was subarochanoid haemorrhage i.e. rupture of a blood vessel on the brain surface.

The Magistrate who heard the case said :-

" I find as fact that the type of work that the deceased did over a considerable period of time for the Respondent and the overtime work which he did from time to time and in the week-end prior to his death, produced considerable strain on the deceased. He even complained about his eyes to his wife.

He also had high blood pressure at the time of his death.

In this state of things there was onset of subarochanoid haemorrhage (SH) by the time the deceased knocked off work on 25.4.79. "

The Magistrate upheld the claim for compensation.

On appeal, the Supreme Court found that, while the Magistrate was entitled to hold the injury to have arisen out of the deceased's employment, there was no evidence on which he could find that it had arisen in the course of his employment. It ordered a retrial on the ground of the Magistrate's failure to apply his mind judicially to the evidence.

Counsel for the respondent concedes that, as the rehearing will involve a retrial of the same issue upon the same evidence, the order for retrial cannot stand. He, however, submits that there was sufficient evidence before the Magistrate to warrant a finding that the injury suffered by the workman had arisen out of, as well as in the course of his employment.

As for the law, the learned Judge correctly stated :-

> " I think I need quote no authority for saying, as counsel agreed, that the onus was on the widow to prove the following three elements of her claim:
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> (i) that the workman suffered personal injury, i.e. physiological injury or change, by accident;
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> (ii) that the injury arose out of the employment and
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> (iii) that the injury occurred in the course of the employment. "

The issue, therefore, was not so much one of law as of sufficiency of evidence.

The deceased according to Dr. Bakani had an aneurism in a blood vessel of the brain. He could have died at any time, at work or while asleep, of a rupture of this aneurism.

As this court said in Labour Officer v. Ports Authority of Fiji (13 of 1982) :-

> " 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. "

Dr. Rao's evidence suggested that, in general terms, high blood pressure would being on a rupture of such an eneurism. Dr. Bakani agreed. When the deceased was brought to the hospital his blood pressure was abnormally high. Dr. Bakani's evidence, however, is that a rupture itself would cause the blood pressure to rise and no inference is therefore justified that high blood pressure existed prior to the rupture.

Dr. Rao said, again in general terms, that hard work and stress over and long period could cause high blood pressure; but there was no evidence from which, on a balance of probability, it could be held that deceased was suffering from high blood pressure as a result of his work.

Dr. Rao's evidence is :-

> "Blood pressure was high on admission, whether he had it before cannot say. "

When asked -

> "Q. Bearing in mind doubt as to direct cause of haemorrhage can you hereby say with conviction that deceased's employment was probable cause of haemorrhage?
>
> A. I can't say. It is a possible cause. "

She said that a post-mortem would have provided the answer to the question the court was faced with but no post mortem had been conducted. Dr. Rao had formed her opinion from the hospital records and Dr. Bakani from information supplied to him, presumably, on the basis of the same records.

There was some evidence to suggest that the deceased had an inflamed eye prior to going to work on 25th April, 1979 and it was still inflamed when he returned home that evening. When asked about this, Dr. Rao said :-

> "Q. Would he show symptom of injury to eye?
>
> A. Affects inside of the eyes - arteries of the eyes - not an external appearance. "

There is no positive evidence anywhere to suggest that anything untoward occurred at any time, or over any period, during the course of the deceased's employment which set in train circumstances that eventually led to the rupture of the blood vessel at 9.30 on the night of 25th April, 1979. According to Dr. Rao haemorrhage occurred about the same time as loss of consciousness.

In most of the cases cited to us the deceased had a history of illness and death occurred at or near the place of employment.

(See Whittle v. Ebbw Vale 1936 2 All ER 1221;
Cates v. Fitzwilliams Collieries 1939 2 All ER 498;
Heatherington v. Amalgamated Collieries 62 C.L.R.317.)

In such cases an inference of employment's contribution to death, given appropriate medical evidence, would not be difficult to draw.

In Fife Coal Co. v. Young (1940 2 All ER 85) where a workman had limped home after feeling numbness in one foot, his subsequent paralysis was, on medical evidence, held to be referable to injury suffered in the course of employment.

No such evidence establishing a nexus between the deceased's work and the rupture of a blood vessel at home at 9.30 p.m. was available to the court.

As was said by Slesser L.J. in Whittle v. Ebbw Vale etc. Co. (1936 2 All ER 1221 at 1222) :-

> "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. 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 inference 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.' "

We cannot find any support in the evidence for the Learned Judge's view that the injury suffered by the deceased had arisen out of his employment. On the other hand he was correct, in our view, in concluding that the evidence did not support a finding that the injury had occurred in the course of the deceased's employment.

The appeal is allowed and the order for a rehearing made by the Supreme Court set aside. Its order setting aside the Magistrate's Court's judgment is confirmed.

The respondent's cross-appeal is dismissed.

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VICE PRESIDENT

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JUDGE OF APPEAL

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JUDGE OF APPEAL