IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0020 OF 95
(High Court Civil Appeal No. 5 of 1993)

BETWEEN:

FIJI SUGAR CORPORATION LIMITED LABASA — APPELLANT

-and-

THE LABOUR OFFICER — RESPONDENT

Mr. P. Sharma for the Appellant
Mr. D. Singh for the Respondent

Date and Place of Hearing : 16 May 1996 Suva
Date of Delivery of Judgement : 17 May 1996

JUDGMENT OF THE COURT

On 5 October 1990 Mohan Lal, an employee of the appellant, died. The respondent sought from the appellant payment of death benefits to the widow and children of Mohan Lal pursuant to section 6 of the Workmen's Compensation Act (Cap.94) ("the Act"). When the appellant did not pay them, the respondent made a formal claim in the Magistrates' Court, Labasa. After hearing evidence, the learned magistrate found that Mohan Lal's death had resulted from a personal injury by accident arising out of and in the course of his employment, so that the appellant was liable to pay the benefits. He ordered it to do so.

The appellant appealed to the High Court against that order. Pathik J. dismissed the appeal. The appeal in these proceedings is against Pathik J's decision. The sole ground of the appeal was stated in the notice of appeal as follows:-

"(a) That the Learned Judge erred in fact and in law in holding that the personal injury by accident to the deceased amounted to "in the course of employment" under Section 5(1) of the Workmans' Compensation Act, Cap. 94 Laws of Fiji."

As the appeal is against a decision of the High Court made not in its original jurisdiction but in its appellate jurisdiction, section 12(1)(c) of the Court of Appeal Act (Cap.12) is applicable. That reads:-

"12(1) Subject to the provisions of subsection (2), an appeal shall lie under this Part in any cause or matter, not being a criminal proceeding, to the Court of Appeal-

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(c) on any ground of appeal which involves a question of law only, from any decison of the Supreme Court in the exercise of its appellate jurisdiction under any enactment which does not prohibit a further appeal to the Court of Appeal"

The appellant, therefore, had no right to appeal to this Court on the ground that the learned judge erred in fact. At the commencement of the hearing of the appeal, we pointed this out to Mr. Sharma. He accepted that there was only one question of law, namely whether the evidence received by the Magistrates' Court was capable of supporting a finding that Mohan Lal's death was the result of an injury by accident sustained in the course of his employment.

Section 5(1) of the Act, so far as we need to set it out, is as follows:-

> *"5.-(1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter provided, be liable to pay compensation in accordance with the provisions of this Act....*

The medical evidence given in the Magistrates' Court (and no other evidence was received by the High Court) was that Mohan Lal died as the result of left ventricular failure consequent upon his having suffered a myocardial infarction. He had been suffering for a considerable time from myocardial ischaemia resulting from coronary artery disease. In simple terms, therefore, the medical evidence was that for a considerable time one or more of Mohan Lal's coronary arteries was or were narrowed to the extent that the flow of blood into his heart was restricted. Myocardial infarction is the death of muscles inside the heart; it is the result of an episode of severe myocardial ischaemia caused by a total, or near-total, occlusion of one or more of the coronary arteries. The death of muscles inside the heart impairs the functioning of the heart i.e. its pumping blood to the lungs and then round the body. The degree of impairment varies with the extent of the muscle damage. In Mohan Lal's case the evidence was that it caused such serious loss of functioning that death resulted.

The provisions of section 5(1) are similar to those of the earlier workmen's compensation legislation in the United Kingdom

and several other countries of the Commonwealth. In Fenton v Thornley & Co Ltd [1903] A.C. 443 the House of Lords held that the phrase "injury by accident" meant an accidental injury, so that an injury which was in the nature of a mishap or untoward event which was not expected or designed was an injury by accident. The House of Lords further held in Fife Coal Co Ltd v Young [1940] 2 All E.R. 85 at 91 that, for a personal injury to be suffered by accident, the accident need not result from a cause external to the person. Thus the rupture of an aneurysm was an injury by accident, even though it resulted simply from the effect of exertion on a pre-existing diseased condition of the body of the person suffering it (Clover Clayton & Co Ltd v Hughes [1910] A.C. 242) The same view was adopted by the High Court of Australia in Hetherington v Amalgamated Collieries of W.A. Ltd (1939) 62 C.L.R 317, 325, 333 and Adelaide Stevedoring Co Ltd v Forst (1940) 64 C.L.R 538, 565 where the employee suffered a heart attack while doing heavy work. The Courts in Fiji have followed the English decisions e.g. in The Labour Officer v Fiji Sugar Corporation Ltd (1985) 31 FLR 118. It is to be observed, however, that in each of those cases there was no doubt that the physiological event (to use a neutral term) which led to the workman's death occurred while he was at his place of work. The issue with which the court was concerned in each case was causality, that is to say whether the physiological event arose out of the employment.

There can be no doubt, that in the present case the evidence presented in the Magistrates' Court was sufficient to support a

finding that Mohan Lal's death resulted from his having sustained a personal injury by accident, namely the occlusion of the coronary arteries and also the resulting myocardial infarction, to which his employment contributed causally. The medical evidence was that stress of the employment accelerated the development of the coronary artery disease of which the occlusion which caused the myocardial infarction was the culmination. For the purpose of section 5(1), injury is to be taken to have arisen out of employment if the employment has contributed causally to its being suffered (Whittle v Ebbw Vale Steel, Iron & Coal Co. Ltd [1936] 2 All E.R. 1221).

Mr. Sharma's argument was essentially that, because Mohan Lal suffered the myocardial infarction at home when not in the course of his employment, the personal injury by accident which resulted in his death did not occur in the course of his employment. Asked by the Court to identify the physiological event which constituted the personal injury by accident, he found difficulty in doing so. This is not surprising as, in our view, there were several and he appeared to think that there could only be one; that is a point to which we return below. At one point he appeared to concede that the disease itself was an injury by accident. In our view that cannot be so; a disease is a morbid pathological condition, not an injury by accident, although it may itself be the result of such an injury. However, we can see no reason why the aggravation or acceleration of a disease by something other than the disease process itself is not, and should not be treated as, an injury by accident.

There are early cases in England, e.g. Marshall v East Holywell Coal Co. Ltd (1905) L.T. 360, in which it was held that neither an individual minor traumatic event in a series which cumulatively produced a seriously incapacitating physiological condition nor the resulting physiological condition itself was an injury by accident. However, there have been great advances in medical knowledge since then, particularly in the field of cardiac medicine. One has only to read the account of the medical evidence in Forst (supra) to appreciate that - and that case was heard as comparatively recently as 1940. Many of the mechanisms by which the coronary arteries can become atherosclerotic are now understood. There is still dispute within the medical profession regarding the effect of recurrent stress in respect of those mechanisms; but in the present case the only evidence presented was that it did accelerate the development of Mohan Lal's coronary artery disease.

In our view the evidence in the Magistrates' Court was ample to support a finding not only that the occlusion which resulted in Mohan Lal's death was the result of his coronary artery disease but that it was also the result of the aggravation and acceleration of the disease by numerous episodes of stress in the course of his employment. There can be no doubt, in our view, that each such aggravation and acceleration constituted an injury by accident. They eventually resulted in the occlusion and the myocardial infarction. Certainly the occlusion and the myocardial infarction each constituted an injury by accident but, just as the latter was the result of the former, so the former

was itself the result of the series of injuries by accident constituted by the aggravation and acceleration of the disease. Since those injuries occurred in the course of Mohan Lal's employment, the evidence before the Magistrates' Court of their doing so was adequate to support the learned magistrate's decision that Mohan Lal's death resulted from a personal injury by accident in the course of his employment and Pathik J's judgment upholding that decision.

There is one further obervation which, we think, needs to be made. It concerns the process of identifying what personal injury by accident, if any, resulted in death or incapacity. Mr. Sharma submitted that we should look for an identifiable "triggering" event which led to the personal injury by accident; implicity he was asserting that the injury had to be "triggered" by an event. In our view that is wrong. The process of identifying what personal injury by accident resulted in the death or incapacity should be undertaken by examining the whole chain of causality leading to the death or incapacity. Obviously the chain stops where there is no longer a causal link. Subject to that, however, a claimant will establish his case if *any* of the personal injuries by accident in the chain occurred in the course of the employment. In cases where a workman's disease has been aggravated or accelerated in the course of his employment, it will often be inappropriate and unhelpful to look for an identifiable "triggering event".

For the reasons which stated above the appeal is dismissed. The appellant is to pay the respondent's costs, to be taxed by the Registrar if not agreed.

M & Casey

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Sir Maurice Casey
Justice of Appeal

I. R. Thompson

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Mr. Justice I. R. Thompson
Justice of Appeal

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Mr. Justice J. D. Dillon
Justice of Appeal