

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

Civil Appeal No. ABU0020 of 95
(High Court Civil Appeal No. 5
of 1993).

AN APPEAL from the decision of
the Fiji Court of Appeal in
Civil Appeal No. ABU0020 of
1995.

BETWEEN : FIJI SUGAR CORPORATION LIMITED

Applicant
(Original Appellant)

A N D : THE LABOUR OFFICER

Respondent

Mr B. Sweetman or the Applicant
Mr D. Singh for the Respondent

Date and Place of Hearing: 21st August, 1996, Suva
Delivery of Decision: 30th August, 1996

**DECISION OF THE COURT ON AN APPLICATION
FOR LEAVE TO APPEAL**

This is an application seeking leave to appeal to the Supreme Court from the judgment of this Court delivered on 17th May, 1996. The application is made under the provisions of Section 8(1)(c) of the Supreme Court Decree 1991.

Since the amount involved in the judgment given by this Court and also in the 2 Courts below was less than \$20,000 the

Applicant needs the leave of this Court to appeal to the Supreme Court by virtue of Section 8(1)(c) of the Decree.

The Provisions of Section 8(1)(c) of the
Supreme Court Decree 1991

We set out hereunder the whole of Section 8 of the Decree as in order to ascertain the meaning and purpose of subsection (1)(c) it is necessary to have regard to its context. It reads:

" 8.-(1) An appeal shall lie from decisions of the Court to the Supreme Court in the following cases, that is to say:

- (a) from final decisions in any appeal to the Court on any constitutional questions; and
- (b) from final decisions in any civil proceedings where the matter in dispute is of the value of 20,000 dollars or upwards or where the appeal involves, directly or indirectly, a claim to or a question respecting property or a right of the value of 20,000 dollars or upwards.
- (c) with the leave of the Court from decisions in any civil proceedings where in the opinion of the Court the question involved in the appeal is one that by reason of its great general or public importance or otherwise, ought to be submitted to the Supreme Court.
- (d) in such other cases as may be prescribed by law.

(2) Nothing in this section shall affect the right of the Supreme Court to grant special leave to appeal from the decision of the Court in any civil or criminal matter."

S.8(1)(c) of the Supreme Court Decree 1991 is the same as the provisions of Section 117(2)(a) of the Fiji Constitution of 1990.

The background

A chronological background to this application is important. It is as follows:-

1. On the morning of 5th October, 1990 one Mohan Lal who was employed by the Applicant Company as a Farm Adviser died at home from heart failure. He had gone to work as usual the previous day. The Respondent sought from the Applicant Company payment of death benefits for the widow and the children of Mohan Lal pursuant to Section 6 of the Workmen's Compensation Act (Cap.94). When the Applicant Company did not pay the Respondent made a formal application to the Magistrates' Court Labasa.

2. On 26th May, 1993 the Labasa Magistrates' Court (Moses Fernando Esq.) decided in favour of the Respondent and held in terms of Section 5(1) of the Workmen's Compensation Act, Cap. 94 that Mohan Lal died as a result of personal injury by accident arising out of and in the course of his employment with the Applicant Company. In accordance with Section 6 of the Act he awarded \$12,000 by way of compensation.

3. On 16th June 1993 the Applicant Company filed an appeal to the High Court against the decision of the Magistrates' Court. Grounds. 1 and 2 and 5 of the appeal read as follows:

- "1. That the learned Magistrate erred in fact and in law in holding that Mohan Lal died as a result of personal injury by accident arising out of and in the course of his employment with the Respondent in terms of Section 5(1) of the Workmen's Compensation Act, Cap.94.
- 2. That the learned Magistrate failed to have any proper regard to the evidence concerning the pre-existing heart condition of the deceased and the deceased's employment with the Appellant/Respondent would not have caused contributed or accelerated the deceased's death.
- 3.
- 4.
- 5. That the learned Magistrate erred in finding that the death of the deceased was work related."

4. On 17th February, 1995 the Suva High Court (Pathik J.) delivered a long and detailed judgment. It upheld the Magistrate's finding, affirmed the award of \$12,000 as compensation and dismissed the appeal.

5. On 30th March, 1995 Applicant Company filed a Notice of Appeal with the Fiji Court of Appeal against the High Court's decision.

As the appeal to the Court of Appeal was a second appeal, only a question of law could be argued before it by virtue of Section 12(1)(c) of the Court of Appeal Act. Mr P. Sharma Counsel for the Appellant at the hearing of the appeal agreed 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.

6. On 17th May, 1996 the Court of Appeal dismissed the Applicant Company's appeal. In the course of its judgment the Court held -

" 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." (See pages 6 and 7 of the Court's judgment.)

The Applicant Company now wishes to appeal to the Supreme Court against the judgment of the Court of Appeal.

Proposed grounds of appeal

The proposed ground of appeal on which the Applicant Company seeks leave to appeal to the Supreme Court is as follows:

that the Learned Appeal judges erred in law in holding that the trial judge could properly find that the deceased suffered personal injury by accident "in the course of his employment" within the meaning of 5(1) of the Workmen's Compensation Act.

"In the course of employment" is the third element of Section 5(1) of the Act which requires to be proved. Section 5(1) so far as relevant 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 Applicant Company contends that the issue raised by the Court of Appeal decision is:-

"Whether, when a workman suffering from heart disease sustains a heart attack, whether at work or otherwise, and as a result dies, whether at work or otherwise, an entitlement of Workmen's Compensation arises."

Question for this Court

Is the question raised by the proposed appeal -

- (i) of great general importance;
- (ii) of (great) public importance; or
- (iii) otherwise of such a nature that it ought to be submitted to the Supreme Court? (See Section 8(1)(c) of the Decree.)

Applicant's contention

Applicant Company submits that leave should be given because the issue -

- "(a) raises a far reaching question of law; and/or*
- (b) is one of great general and public legal importance; and/or*
- (c) is one of substantial general interest to the administration of civil justice."*

Mr Sweetman also submitted that the question was a novel, interesting and a serious one because the Court of Appeal's judgment is a new precedent which will be followed in future unless modified by the Supreme Court.

The 2 cases that the Applicant relied on were (1) Buckle v Holme (1996) 2 K.B. 125 and Turtle Airways Limited v Kerry Frances Thomas FCA Civil Appeal No. 50 of 1992.

The issue raised by the proposed ground of appeal

We do not agree that the issue as formulated by the Applicant and set out above arises from the proposed ground of appeal.

In our view this states the position far too widely. All this case decides, so far as its general application is concerned, is that when a workman suffering from heart disease sustains a heart attack, whether at work or otherwise, and dies whether at work or otherwise, then if he had suffered some aggravation or acceleration of the disease which amounted to personal injury, and it was the result of an accident, namely, an episode causing stress, which arose out of and was in the course of his employment, then an entitlement of Workmen's Compensation would arise. For a claim to be successful in such circumstances evidence would have to be put before the court which established that the heart disease from which the man suffered was in fact aggravated or accelerated in such a way as to constitute a personal injury, which was attributable to an episode or episodes causing him stress, which arose out of and in the course of his employment.

It would certainly not be sufficient for it to be said merely that a workman suffering from heart disease and who had a heart attack and died, whether at work or otherwise, would have an entitlement of Workmen's Compensation, which is what the Applicant's contention of the issue in this case amounts to.

Prospects of success

Mr Sweetman argued that there was very good prospect of success on appeal as there was no evidence of stress on which the Court of Appeal could have arrived at its conclusion.

He said that he intended to attack the Court of Appeal's judgment on that basis; in particular the passage on pages 6 and 7 of the judgment which we have already quoted.

Mr Sweetman agreed that if there was some evidence of stress which accelerated the heart failure then no question of law arises. We consider that there was some evidence of stress. We refer in particular to the following pieces of evidence before the trial magistrate:-

In his memorandum dated 6th June 1991, Dr Krishnan, the Medical Superintendent, Labasa Hospital, stated inter alia, that the deceased's death was "accelerated by the nature of his work". He said:

"Having considered the distance the deceased had to travel daily to his work, his working hours, nature of his work, his long medical history of diabetes and ischaemic heart disease, it is my opinion that the deceased's death was caused by his disease but accelerated by the nature of his work"

Dr Shaomin said that the deceased had a history of ischaemic heart disease; he was also a diabetic. The doctor

said that "if he suffers from stress and exerts himself too much heart failure could occur". He used to drive 64km everyday to work and "driving is a stressful job. Driving is a cause of stress". This, the doctor said might cause heart failure; the "work he did definitely accelerated his ischaemic heart disease". The doctor said that she agreed with Dr Krishnan's report that "death had been accelerated by the stress caused by the work".

Dr Rajesh Chandra gave evidence to the contrary but the trial magistrate relied on the testimony of Dr Krishnan and Dr Shaomin.

There was indeed a specific finding by inference by the trial magistrate who after analysing the evidence of witnesses and after outlining the nature of Mohan Lal's work held -

"There is no doubt that all this had caused stress to the deceased who was already suffering heart disease." (See page 15 of the Appeal Record.)

In the circumstances we are of the opinion that the Applicant's ground of appeal does not, and indeed cannot, raise any question of law let alone any question of great general or public importance. To amount to a question of law the Applicant would have had to have shown there was no evidence of stress which would cause aggravation or acceleration of the heart disease; so long as there was some

evidence of it the question was one of fact, not law. In our view the appeal is destined to fail if leave were granted because the decision of the Court of Appeal was based on facts found by the trial magistrate and inferences drawn from those facts.

We accept that the phrase "or otherwise" in Section 8(1)(c) of the Supreme Court Decree enables leave to be granted in special cases which are not founded upon a question of great general or public importance (see *Rich v. Christchurch Girls' High School Board of Governors* (No. 2) [1974] 1 NZLR 21).

We are unable to find any special circumstances why this application should be granted under the phrase "or otherwise". There is no suggestion here that a refusal will result in the Applicant suffering any irreparable injustice. Furthermore this case depends upon its own particular facts and does not have general application. We see no reason for finding that it ought to be submitted to the Supreme Court.

Decision

This application for leave to appeal is, therefore, dismissed with costs to the Respondent.

Some observations

However, before we dispose of this matter we wish to make observations on two matters.

First, this Court has no jurisdiction to either entertain or grant "special leave" to appeal. In its synopsis of argument Applicant says that "under Section 8(1)(c) of the Supreme Court Decree Appellant needs special leave of this Court". Both Counsel appearing before us also spoke of "special leave". The only Court which has power to deal with a special leave application is the Supreme Court. It is provided for in Section 8(2) of the Supreme Court Decree 1991 which says -

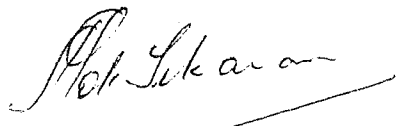
"2. Nothing in this section shall affect the right of the Supreme Court to grant special leave to appeal from the decision of the Court in any civil or criminal appeal". (In fact Section 8(2) reproduces the provisions of Section 117(3) of the 1990 Constitution, in identical terms.)

Second, we once again wish to draw attention of future applicants to the provisions of Rule 5(2) of the Supreme Court Rules 1992 which require that -

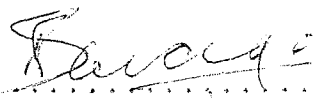
"(2) The notice of motion shall specify the question involved in the appeal which by reason of its general or public importance ought to be submitted to the Supreme Court".

The above requirement was not complied with in the present case although the Applicant's written submissions did specify (or purported to do so) the question or issue involved. In Turtle Airways Case (already cited) when dealing with an application for leave to appeal, the Court of Appeal drew attention to the need to comply with Rule 5(2) and emphasised that to 'specify' means to state with particularity.

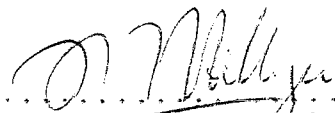
Application dismissed with costs.



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 Sir Moti Tikaram
President, Fiji Court of Appeal



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 Mr Justice Richard Savage
Judge of Appeal



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 Mr Justice Peter Hillier
Judge of Appeal