

IN THE EMPLOYMENT RELATION TRIBUNAL

AT LAUTOKA

Case No. ERT Grievance 41 of 2016

BETWEEN: **LABOUR OFFICER** on behalf of the Dependants of Rakesh Prasad (Deceased) of Nadi Back Road

GRIEVOR

AND: **DEO CONSTRUCTION DEVELOPMENT Co. Ltd** of Denarua Island, Nadi

EMPLOYER

APPEARANCES:

Ms Manuliza Faktaufon for the Grievor

Ms Vikali Buli for the Respondent

Date of Hearing: 26 May, 2017

Date of Ruling: 20 February, 2018

JUDGMENT

The Claim

1. The Labour Officer instituted this claim on behalf of the dependents of Rakesh Prasad who died on 28 May, 2011. The Defendant died as a result of a motor vehicle accident. The Labour Officer forcefully contended that the injury which caused the death of the workman was sustained in the Course of Employment.
2. The Respondent on the other hand, strongly opposed the above contentions. The Employer argued that the injury or injuries did not arise out or in the course of the deceased's employment. Furthermore, the Respondent argued

that this action is statute barred and alternatively pleaded that the deceased was seriously and willfully in misconduct.

3. The Respondent in its **Notice of Motion** filed on 27 March, 2017 sought the following Orders:

a. That there be a hearing on a preliminary point that the action be dismissed as it is time barred, under **section 13 of the Workmen's Compensation Act [Cap: 94]**;

b. That should the matter not be dismissed under (a) above, the Applicant do within 14 days provide further and better particulars as requested and annexed to the affidavit of Louisa Mitchell filed herewith;

c. That the Applicant do by Affidavit within 14 days disclose and provide copies of all witnesses' statements, Medical Cause of Death Certificate and Autopsy Report.

And for a further order that the Applicant pay costs of this application on a full solicitor/client indemnity basis.

4. The Labour Officer submitted that **section 13 of the Workmen's Compensation Act (Cap: 94)** (hereinafter referred to as "the Act") had been fully complied with. According to the Applicant, the date of death was 28 May, 2011. The Notice of Claim being form **LD Form C2 (Claim for Compensation)** was served on the Respondent via post in the same year. A follow up Notice was sent to the Respondent on 10 November, 2014. This Notice had been annexed twice as

Annexures LM 4 and 5 in the Affidavit in Response of Louisa Mitchell filed on 23 May, 2017.

5. The Claim was disputed by the Respondent, which meant that the Labour Officer would need to file the application for enforcement of compensation. The application for enforcement of compensation is the substantive matter now before the Tribunal.
6. In support of the above submission, the Labour Officer relied on the matter of *Labour Officer -v- Nirmala Holdings t/a Ocean View Hotel, ERT WC 116 of 2016.*
7. The Learned Magistrate in the above matter, stated that the limitation found in section 13 of the Workmens' Compensation Act has no bearing on the proceedings initiated where the claim for compensation commenced within 12 months and the action for recovery was commenced within six years from the date of the accident.
8. Reading the Act holistically, it is clear that section 13 (a) of the Act sets the time limit for filing a claim within the 12 months period. Time is extended to six years under section 13 (b) if - by mistake or other good cause - compliance with the 12 months' time limit is not possible. (*Nisha -v- Attorney General (2012) Civil Action 177 of 2007*)

9. Justice Calanchini's exposition of section 13 of the Act in the matter of *Carpenters Steel Company Limited -v- Labour Officer (2012) HBA 9 of 2003* is apt to note. He stated:

I have come to the conclusion that the six years period for bringing a claim for compensation under the Act only applies if an injured workman or the representative of a deceased workman can invoke one of the two provisions. It simply would make no sense to require a claim for compensation to be brought **within twelve months** of the date of the death as specified in section 13 only for the proviso to provide for an inconsistent time limit of 6 years. It is apparent that the legislature intended even a claim for compensation saved by one of the provisos could not be brought after six years from date of the accident.

It is also clear that the legislature intended that a claim for compensation that was made after the twelve months limitation would be a valid claim if (1) it fell within one of the two provisos to section 13 and (2) it was made within six years from the date of the accident.

There was no material before this court that would indicate that the Respondent was relying on either proviso. There was no attempt to invoke either proviso.

As a result the claim for compensation was statute barred under section 13. The appeal is allowed. The Respondent is ordered to pay \$500.00 costs to the Appellant within 28 days. The costs fixed summarily are lower than costs currently awarded as these proceedings were completed in 2004.

10. Similarly, Justice Fatiaki in *Flour Mills of Fiji Ltd -v- Labour Officer* (1992) FJSC 4, **ruled that delay in getting the report from the Doctor was a reasonable delay and therefore came under good cause.** In this matter the workman was injured in November, 1984 in the course of his employment. The claim was instituted, 3 years after the date of the accident. The Appellant argued that the matter was not maintainable pursuant to section 13 of the Act.

11. The above authorities confirms that the law pertaining to section 13 of the Act is settled in our jurisdiction. The position enunciated above have been endorsed by the High Court and Court of Appeal that claims must be filed within 12 months. Failing which the claim would still be valid if it fell **within one of the two proviso under section 13.** And secondly, **if it was filed within six years from the date of the accident.** This Tribunal is bound by the principle of *stare decisis* i.e. it is bound by the decisions of superior Courts.

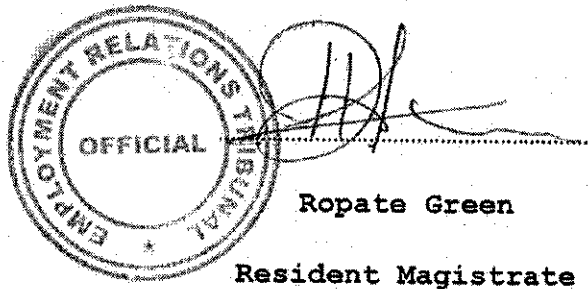
12. The Application for Compensation before this Tribunal was filed outside the 12 months period as required by the Act. This is an undisputed fact. As alluded to above, the burden shifts to the Respondent to show good cause or failure on part of the Respondent to notify them of the death of the workmen.

13. The Tribunal finds that the Applicant has not placed any material before the Tribunal to indicate that the Labour

Officer would be relying on either proviso. In the absence of any explanation of good cause, the Tribunal finds that the claim filed by the Labour Officer is statute barred.

Final Orders

14. It is hereby ordered that the claim filed by the Labour Officer is struck out on the ground that it is statute barred. Parties are further ordered to bear their own costs.

The image shows a circular official seal on the left and a handwritten signature on the right. The seal contains the text "EMPLOYMENT RELATIONS TRIBUNAL" around the perimeter and "OFFICIAL" in the center. The signature is written in dark ink over a horizontal dotted line.

Ropate Green

Resident Magistrate