IN THE RESIDENT MAGISTRATE'S COURT AT SUVA

W.C. Case No. 13 of 2007

Between:

THE LABOUR OFFICER
(on behalf of UDAY RAJ

Applicant

And:

RAIWAQA BUSES LIMITED

Respondent

JUDGMENT

Before Ajmal G Khan Esq
Resident Magistrate

Applicant: Ms Lagilagi
Respondent: Ms Naidu

Date of Hearing: 26/8/08
Date of Decision: 25/9/08.

The deceased Uday Raj was employed by Raiwaqa Buses Limited as a casual driver. On 27th December 2003 Uday was at work driving. Around 2.30 pm he had chest pain and collapsed in the bus. He was taken to CWM Hospital by a passenger, but was pronounced dead on arrival.

On 27th the bus driven by Uday broke down in Raiwaqa area. He walked down from there to the bus garage and took another bus for his passengers just before he collapsed. He worked 11 hour shifts for 5 to 6 days weekly.

The labour officer has brought this application on behalf of the dependants. The workman had a dependant mother and two children. He was divorced at the time of death.

APPLICANT'S CASE

The workman suffered personal injury by accident arising out of and in the course of his employment. Death resulted. Workman has left dependants who relied on his earnings and so the employer is liable to pay under Section 5 / 6 of the Workmen's Compensation Act. The deceased had an old mother and two children from his marriage whom he supported financially. He was a healthy person and did not suffer from heart attacks. He used to smoke, drink grog and drink alcohol with his driver friends after work during off days.

RESPONDENTS ARGUMENTS

The respondent submits that the dependents of deceased gave no notice of the accident to the bus company within 12 months of the accident. The employer had filled the LD form to which the applicant's replied in 2005, so cannot rely on the claim under the Act.

It also says the deceased was a smoker and a drinker which contributed to 90% of fat accumulation and caused his death. Since he was only employed 7 months, his death was not result of driving with the respondent company.

The respondent submits the applicant has not discharged its' burden of proof under the act and dependents are not entitled to compensation. In the alternative it says the mother and two children were not wholly dependent on deceased and the compensation should be assessed at a lower sum.

ANALYSIS OF ISSUES

Was it personal injury by accident arising out of and in the course of employment of the workman?

There is uncontested evidence that the deceased was at work driving on the day of his death. He suffered pain in chest and was taken to hospital where he was pronounced dead on arrival. The third witness Mahesh Prasad also indicated how the workman's bus had broken down and he had to walk down to the garage at Raiwaqa and get a substitute bus for his passengers and continued his regular route.

Doctor Samberkar in his post mortem found the cause of death to be ***'shock due to acute myocardial infarction'*** which is commonly known as heart attack. He gave a further opinion that 'the stressful nature of work and smoking have contributed and accelerated his death.

The respondent submits accumulation of fat in blood vessels blocked it and it couldn't have happened whilst he was in employment for only 7 months for the bus company. They say his smoking and drinking were major contributors to his death.

In case of Clover, Clayton & Co. Ltd –v- Hughes (1908) All ER 222 the court discusses;

> ***"What then is an accident"? It has been defined in this House as "an unlooked for mishap, or an untoward event which is not expected or designed .....It seems to be enough if it appears that the employment is one of the contributing causes without which the accident which actually happened would not have happened, and if the accident is one of the contributing causes without which the injury which actually followed would not have occurred. The workman in this case died from the***

rupture of an aneurism, and "the death was caused by a strain arising out of the ordinary work of the deceased operating upon a condition of body which was such as to render the strain fatal". Again, "the aneurism was in such an advanced condition that it might have burst while the man was asleep, and very slight exertion, or strain, would have been sufficient to bring about a rupture". The first question here is whether or not the learned judge was entitled to regard the rupture as an "accident" within the meaning of this Act. In my opinion, he was so entitled. Certainly it was an "untoward event". It was not designed. It was unexpected in what seems to me the relevant sense-namely, that a sensible man who knew the nature of the work would not have expected it.....No doubt the ordinary accident is associated with something external; the bursting of a boiler, or an explosion in a mine, for example.....Or it may be due both to internal and external conditions, as if a seaman were to faint in the rigging and tumble into the sea. I think that it may also be something going wrong within the human frame itself, such as the straining of a muscle, or the breaking of a blood-vessel. If that occurred when he was lifting a weight it would be properly described as an accident. So, I think, rupturing an aneurism, when tightening a nut with a spanner, may be regarded as an accident. It cannot be disputed that the fatal injury was in this case due to this accident, the rupture of the aneurism."

The doctor's evidence shows he based his opinion on the bus driver's history. Although he didn't know the deceased had worked only 7 months for the respondent, he said heart attack was result from driving stress and psychological factors. He said smoking also contributes to ashemic heart diseases.

He said, ***"if it was not for strenuous work, he may have survived."*** The workman did not suffer from any medical conditions prior to this day. It is clear from evidence that the deceased when he started work on 27th December 2003 did not expect **'a heart attack.'**

It was ***"an unlooked for mishap or an untoward event which was not expected or designed."*** The workman had extra stress and a physiological changes in his routine work when the bus broke down. He had to walk a distance and get a substitute bus from Raiwaqa garage. His stress was greater than usual and resulted in **'acute myocardiac arrest'** (Exhibit 4). I find it was an accidental death.

Did injury arise out of employment?

The workman was at the time at work. He was employed as a driver of bus. He may have been a smoker or drank alcohol with friends. He had no heart condition or history.

In Clover, Clayton Ltd –v- Hughes (Supra)

> States ***"It seems to me enough if it appears that the employment is one of the contributing causes without which the accident which actually happened would not have happened; and if the accident is one of the contributing causes without which the injury which actually followed would not have occurred."***
>
> ***"An accident arises out of the employment when the required exertion producing the accident is too great for the man undertaking the work, whatever the exertion or condition of health ___"***

I find the exertion of driving is stressful but moreso if you have to walk in the hot sun in event of a bus full of passengers in a brake down bus on the road. Then obtaining a substitute bus and continuing on the bus route.

It certainly was strenuous stress which was a contributing factor to the heart attack. I find it arose out of employment.

Was it in the course of employment?

The test is stated "in course of employment' as
"A workman is acting in the course of his employment when he is engaged 'in doing something he was employed to do.' Or what is, in other and I think better words; . . .when he is doing something in discharge of a duty to his employer, directly or indirectly imposed upon him by his contract of service. The true ground upon which the test should be based is a duty to the employer arising out of the contract of employment, but it is to borne in mind that the work 'employment', as here used covers and includes things belonging to or arising out of it" (St. Helen's Colliery Co. –v- Hewitson, [1924] A.C. 59, 71; 16 B.W.C.C. 230, 238, per Lord ATKINSON; 34 Digest 280, 2364.

"The man is not in the course of his employment unless the facts are such that it is in the course of his employment, and in performance of a duty under his contract of service, that he is found in the place where the accident occurs. If there is only a right and there is no obligation binding on the man in the matter of his employment there is no liability" (ibid., p.95, per Lord WRENBURY);

I think an accident befalls a man 'in the course of his employment, if it occurs while he is doing what a man so employed may reasonably do within a time when he is employed, and at a place where he may reasonably be during that time" (Moore –v- Manchester Liners, [1910] A.C. 498; 3 B W C C 527; 34 Digest 309, 2547, per Lord LOREBURN, L.C.)"

In this case the workman did his normal course of duty. He had extra strain on the job that day but that was ***'reasonably expected'*** and implied in his contract as a driver. He walked to get a substitute to his broken down bus. It was no doubt, in the course of his employment.

The respondents have argued contributions of smoking and fat accumulation as other causes.

In Whitte –v- EBB Vale Co. (1936) 2 All ER

"The principle which I extract from the case of Partridge Jones –v- James (1933 A.C.501) seems to me to be this: the House of Lords have decided that where a man in a diseased condition dies and it is found that the disease and the work together contribute to his death, then his death results from accidents within the meaning of that Act".

In this case the workman did not have a heart or pre medical condition. He was a smoker, and drank with bus driver friends at work. He had a normal life style where he ate and enjoyed life. The doctor stated in court in evidence "***if it was not for strenuous work, he may have survived***". I find it was the stress that day at work, contributed to and accelerated his death. It was certainly in the course of his employment.

CONCLUSION

In this case the employer had given notice and filled the LD/C/I form. The labour department on behalf of deceased relatives corresponded with the employer and insurers. Labour Department also investigated and interviewed people. The machinery of the Workmen's Compensation Act was put into gear. Unlike, the case of Radiniceva –v- Labour Officer cited by learned respondent's counsel where the applicant was trying to advance her claim under the Act by way of originating summons in the High Court under common law and then trying to ask for compensation under the Workmen's Compensation Act.

There the procedural requirements were not followed. I find the purpose of the Act is fulfilled by the actions of parties in this case and the employer had sufficient notice as envisaged in the Act.

The applicant here has discharged the burden under the Act and dependent's mother and children are entitled to compensation upon his death.

In the alternative, Ms Naidu for the respondents states dependants were not wholly dependent on the workman so court should assess and proportion the award.

I have considered the evidence. The mother Shiu Raji said he ***"supported us by his earnings."*** When he was injured he didn't work a little while. She has a younger son Deo Raj who supported her when deceased was injured. This witness was 92 years old.

She could not recall names very well. However, she clearly expressed that she was dependant on the deceased who looked after her and the

two children under 21 years. I find it as a fact that the workman has left dependants who were wholly dependant on his earning from employment.

Therefore the compensation should be for 208 weeks earnings under Section 6 of the Act and a proportionate assessment is not required.

I therefore award the sum of $24,000 is fully payable with costs of $850.

Dated this 25th Day of September 2008.

MAGISTRATE'S COURT SUVA

Ajmal Gulab Khan
RESIDENT MAGISTRATE

A. G. Khan
Resident Magistrate