

IN THE RESIDENT MAGISTRATE'S COURT
AT SUVA

W.C. Case No. 4 of 2008

Between:

THE LABOUR OFFICER

(for & on behalf of **SAMUELA RALAWÉ**)

Applicant

And:

HUMES INDUSTRIES

Respondent

RULING

Before Ajmal G Khan Esq
Resident Magistrate

Applicant: Ms Hughes

Date of Hearing: 12/9/08

Date of Ruling: 30/9/08.

This is an application for award under the Workers Compensation Act Cap 94. The workman was an employee of the respondent Humes Industries Limited for about 20 years. He was employed as a Pipe Moulder. Due to noise of the machine and his noisy work environment he suffered slow hearing loss of his ears from 1994. He used the ear muffs provided by the respondent but it was inaccurate and inexpensive ones unsuitable to keep the noise out.

He worked 7 days from 7 to 5 pm and also did overtime when required. The noise when machine operates can be heard from over a km away.

On doctors recommendation better quality ear muffs were provided but still didn't prevent the noise. He has sought medical advice in 2001. In 2002 he got a medical report of ENT specialist unit at CWM. Examination revealed

“his external ear canal and tympanic membrane and nasal cavity were normal. It appeared bilateral sensorineural hearing loss which could be due to long term noise exposure.”

His hearing impairment as per the accepted American Academy was assessed at 49.4%

Two witnesses also revealed the noisy machines at work place the moulding machine made the most noise. Light ear muffs were given at first but now on doctors recommendations its thicker ones provided. Witness says there is still a lot of noise at the workplace. He confirmed how the applicant's ears had deteriorated and they had to speak louder to enable him to hear at work.

The Labour Inspector in evidence described the workplace and interviews he had during investigation. He found the loud noise at workplace could be heard by him about ½ km away. He in consultation with O.H.S. report found applicant had operated machine which was more than 85db in noise measurement.

Also found for most part of the day the workman had no personal protective gear. Another witness Tomasi, who works with the applicant gave evidence of noise and similar experience of hearing impairment as the applicant.

The applicant has worked in a noisy environment for about 20 years. His hearing was good before but has gradually impaired. The doctors certify it to be due to long term noise exposure. He had assessed 49.4% hearing impairment.

Did he suffer personal injury by accident?

Did it arise out of employment?

Was it in the course of his employment?

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 designedIt 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.”

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 _ _ _*”

There is evidence that his hearing was good before and it gradually got worse during work. This was injury and it was not designed or self inflicted. It was contributed to and a consequence of noise at workmen's

work environment. It has also been shown that the respondent omitted to provide a safe workplace or facility to prevent such an occurrence. Medical report confirms it.

I am satisfied that the workman has proven claim and is entitled to compensation under the Act.

He earned \$156.74 gross weekly 260 weeks earnings is \$40,752.40
49.4% amounts to \$20,131.69

I therefore award \$20,131.69 and costs \$800.

Dated this on the 30th day of September 2008.



Ajmal Gulab Khan

RESIDENT MAGISTRATE

A. G. Khan
Resident Magistrate