

A T L A U T O K A

Civil Jurisdiction

Action No. 207 of 1980

Between :

ALI RAZA f/n Umaroa

Plaintiff

- and -

R. L. NAUHRIA

Defendant

Mr. Krishna, Counsel for the Plaintiff

Mr. Vallyan, Counsel for the Defendant

J U D G M E N T

This is a claim for Workmen's Compensation. The only issue is one of quantum.

The plaintiff who was employed by the defendants as a painter was about 12' above ground when the ladder supporting him slipped and he fell to the ground. He fractured his right knee cap and <sup>apparently</sup> sustained injuries in the region of his testicles which from the evidence of the two doctors has caused damage to the moto nerves.

P.W.1 Dr. Sharma estimates the residual incapacity of the right knee as causing 25% disability. He also estimates the loss of capacity due to damaged moto nerves at 5%. He bases the 5% on the recurrence of trophic ulcers on the plaintiff's penis which he says can give rise to much discomfort as a result of which the plaintiff would find it difficult to work.

The accident occurred on 15th October, 1979 and to date the plaintiff has not worked.

P.W.2 Dr. Welby Korwa removed the fractured patella on 16th October, 1979, the day after the accident and the plaintiff was discharged from Lautoka hospital on 22nd October, 1979.

On 3rd March, Dr. Welby estimated that there would be a 10% permanent incapacity which of course is widely removed from Dr. Sharma's 25%. However, Dr. Sharma based his estimate on an examination he made in December, 1980.

In cross-examination Dr. Sharma stated that the injury would equate to about 50% of an amputation below the knee, but he went on to indicate that this may not be a fair comparison because the injury extended to the thigh above the knee in that muscular power in the thigh was reduced and there had been some softening of the bone due to lack of use.

Dr. Welby stated that there could have been some deterioration of the right leg since he gave his estimate of 10%. He was unable to comment on the trophic ulcers except to agree that they would probably be related to damage caused to the moto nerves.

The injuries are unscheduled and permanent and according to section 8(1)(b) of the Workmen's Compensation Act, Cap. 94 the compensation payable is proportionate to the loss of earning capacity permanently caused by the injury.

The schedule to the Act indicates the extent of incapacity attributable to particular injuries. It is not intended to be a measure of overall incapacity which would cover such aspects as loss of ability to play games, indulge in athletics, play musical instruments, enjoy reading, arts, and so forth. A broken leg could render a man totally unfit for athletics but only partially unfit for earning in an occupation. Hence loss of earning capacity is not identified by reference to a total or partial inability to do a particular job but by reference to a table which appears in the schedule to the Act. A claimant's total earning capacity is taken to be the wage which he was earning at the time of injury and his percentage loss of earning is that set out in the schedule.

The foregoing is made clear by a reference to section 8(1) which fixes the compensation in cases of permanent partial incapacity at

"8(1)(a) in the case of an injury specified in the schedule, such percentage ..... as is specified therein as being the percentage loss "of earning capacity ..... " and

(b) in the case of injury not specified in the schedule, such percentage ..... as is proportionate to the loss of earning capacity permanently caused ....."

It appears that the yard stick for estimating loss of earning capacity caused by a non-scheduled injury is the schedule. The person reasonably placed to give an expert opinion is a medically qualified witness and the judge will consider such evidence along with any other evidence presented at the trial.

The amount of compensation is the above percentage of 260 weeks earnings.

In this case the plaintiff can walk with the aid of crutch or a stick. He says that he needs a crutch if he has to climb on to buses but he can manage with a stick when he is pottering around.

Dr. Sharma equated the loss to half of that following an amputation below the knee which the schedule fixes at 45%. That would amount to 22½%.

Some guidance may be gleaned from reference in schedule to ankylosis of a joint the percentage loss being put at between 25% and 100% of a loss of the leg at the knee depending on the degree of stiffening. By that it could only mean a loss above the knee which produces 25% to 100% of 70%. Thus if the knee joint were permanently stiffened the percentage would be between 17½% and 70% depending on the degree of stiffening.

I think that Dr. Sharma's estimate is reasonable and that Dr. Welby's was rather early for a final estimate.

It appears to me that an estimate of 25% for the knee injury would be fair.

With regard to the alleged scrotum injury giving rise to trophic ulcers it appears that the plaintiff never complained at any time to the hospital of an injury to the scrotum. It would require a severe blow, according to Dr. Welby, to cause an injury of that nature.

It was not greatly impressed with the plaintiff's evidence as to that injury and I am not satisfied that it is attributable to the accident.

I find the total percentage permanent incapacity to be 25%.

It was agreed before the plaintiff was cross-examined that his nett earnings were \$71.42 per week. But during cross-examination it was put to the plaintiff and he agreed that he also received <sup>board</sup> and accommodation, at the Mona Savu Hydro Scheme where he worked, over and above his nett wages. Although the earnings were agreed at \$71.42 the wage slips tendered in evidence show that that sum did not include board and lodging.

Attention should be directed to section 3(1) of the Ordinance which states that earnings includes gross wages and the value of food, fuel and quarters supplied to the workman. The wage slips Dr. 4 show that the plaintiff's gross wages were \$85.15.

I consider that I would be acting contrary to the law if I failed to calculate the compensation on the gross earnings and if I failed to place a value on board and lodging. No doubt lodging would not have much value to him because he is married and always had a home but his food merits consideration. I estimate the value of the board and lodging at \$19.85 which brings his total earnings to  $2(85.15 + 19.85) =$  \$105.00 per week.

His compensation is therefore assessed at 25% of  $2(260 \times 105) =$  \$6,805.

There will be judgment for the plaintiff for \$6,805.00.

LAUTOKA,  
July, 1982

*J. T. Williams*  
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(J. T. Williams)  
Judge

ORDER:- Question of costs reserved.  
Wms.

RECEIVED  
7 JUL 1982  
SUPREME COURT  
REGISTRY,