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IN THE SUPREME COURT OF FIJI
Appellate Jurisdiction
CIVIL APPEAL NO. 16 OF 1982.

Between:

THE TOURIST CORPORATION OF FIJI LIMITED. — APPELLANT

-and-

THE LABOUR OFFICER for and on behalf of GANGA JALI also known as CLARA RAM d/o Raja Ram (widow), IRENE NIRMALA DEVI (daughter), EUGENE RAM BAHADUR SINGH (son) and SHARINE VALMA SINGH (daughter) of the deceased workman Jang Bahadur Singh s/o Baldeo Singh. — RESPONDENT

Mr. B.N. Sweetman for the appellant.
Mr. A.R. Matebalavu for the respondent.

J U D G M E N T

The appellant appeals against the decision of the First Class Magistrate's Court, Suva, dated the 29th day of January, 1982, whereby it was held that Jang Bahadur Sing deceased died as a result of personal injury arising out of and in the course of his employment.

The grounds of the appeal are as follows :

1. The learned Magistrate erred in fact and in law in holding that Jang Bahadur Singh deceased died as a result of personal injury by accident arising out of and in the course of his employment with the

Appellant in terms of Section 5(1) of the Workmen's Compensation Act, Cap. 77.

2. The learned Magistrate failed to have any proper regard to the evidence adduced concerning the pre-existing heart condition of the deceased and the effect of such condition on the deceased and having found that such condition could have caused the deceased's death at any time he erred in holding that the death arose out of the deceased's employment.

3. The learned Magistrate erred in not finding that the death of the deceased was unrelated to his employment."

The said Jang Bahadur Singh, whom I shall hereinafter refer to as the deceased, was prior to his death on 24th January, 1979, employed by the respondent company as a maintenance engineer.

On the day of his death he was engaged in repairing a vehicle owned by the respondent company when he was suddenly taken ill and collapsed and died. The deceased was a known diabetic with ischaemic heart disease for which he continued to take medication. He had been admitted to the Sigatoka Hospital in March 1978 and had attended the hospital's clinic on several occasions.

The cause of his death according to the medical evidence was severe myocardial infarction.

There was some conflict of evidence as to what work the deceased was actually doing at the time he was taken ill.

The Magistrate found as a fact that the deceased was lying on his back underneath the respondent's van

looking up. He was engaged in pushing up part of the engine. Whilst tightening a bolt in that position he felt ill. He came out from under the van rested on the arm of another employee and then collapsed and died.

The learned Magistrate referred to a number of cases which assisted the plaintiff and made a number of findings of fact but he made little reference to the evidence before him.

There was no post mortem and the deceased was dead before any doctor was able to examine him. While the Magistrate in his judgment summarised the evidence of the witnesses he did not refer to such evidence when making certain findings of fact.

As an example after stating he had given careful consideration to all the evidence he stated :-

> "On the evidence before me I am satisfied that the workman met with an accident resulting in death and this arose out of and in the course of his employment."

There was evidence given by the deceased's wife that on the day of his death the deceased appeared to be in good health when he went to work at about 7.30 a.m.

Then there wa the evidence of a co-worker who testified as to the work the deceased was doing when he was taken ill, collapsed and died within a very short time of feeling ill.

Mr. Vishok Prasad a medical assistant who examined the deceased about an hour after he died was unable to say how death could have been caused.

Dr. Samesi Savou a medical officer was called to give evidence. He first treated the deceased when he was

admitted to Sigatoka Hospital on the 15th March, 1978. The deceased was then suffering from diabetes mellitus and ischaemic heart disease (I.H.D.) The deceased was then in hospital for 3 weeks. The doctor had access to the medical records of the deceased which indicated the deceased came back for further treatment.

He saw the deceased on the day he died when his body was brought to the Sigatoka hospital. He was satisfied from his examination that the cause of the deceased's death was a heart attack. He issued a death certificate that the deceased had died of myocardial infarction and diabetes mellitus. The Magistrate accepted that evidence although it represented the doctor's opinion based on what he was told and his knowledge of the man's history. In the absence of any other conflicting evidence the Magistrate in view of the other evidence before him was entitled to accept the doctor's evidence.

The doctor was asked whether a man lying down and working upwards whether that could cause a heart attack. The doctor who appreciated the questions were in connection with the deceased's death said :

> "Would not advise him to do that. If he did that and died that could be cause of death."

The doctor agreed the deceased with I.H.D. could have died at any time. He stood by his opinion that the deceased's work had accelerated his death.

Dr. Uma Rao, who had never seen or examined the deceased, was called to explain what ischaemic heart disease was. Her evidence which consisted of presentation of a paper on the subject is interesting but of very little evidential value.

It did assist however when the doctor in her

statement mentioned that there is a two stage process in the progress of I.H.D. resulting in death. First there is the narrowing of the arteries which takes place slowly and can take several or many years to develop.

That was consistent with the deceased's medical history.

The second stage is the medical incident which gives rise to coronary occlusion, coronary thrombosis or heart attack. She stated that the latter, and often fatal development, can occur within seconds or minutes of being triggered, for example, by physical exertion and activities of a very slight nature or by emotion.

The evidence indicates that the deceased's exertions triggered off his fatal heart attack. The attack occurred while he was working on an engine.

The respondent called no medical witness and there is therefore no divergence of medical opinion as was faced by Ongley J. in Tansey v. Renown Collieries Ltd. [1946] N.Z.L.R. 730. In that case there was a divergence of medical opinion which was due to there being two distinct schools of thought on the subject. One school in years gone by was of the view that 'coronary thrombosis not being due to effort cannot be an injury by accident'.

In Taituha v. Attorney-General [1960] N.Z.L.R. 925 a person shouldering coal in a coal mine complained of pain in his chest at 9.00 a.m. 9.15 a.m. and 9.30 a.m. He continued to work until about 9.45 a.m. when he reported he was too ill to work. He was later found in a state of collap about 10 minutes walk from where he was last seen. He died of heart failure at about 11.45 a.m.

It was held that although the deceased was shown to have been suffering from advanced coronary disease, his

failure to take notice of the warning anginal pain and his persistence in effort at work after that time caused a change in his heart which led to his death. His death was consequently due to an accident which arose out of and in the course of his employment.

In Civil Appeal 13 of 1982 the Labour Officer on behalf of Luisa Legalega and Ports Authority of Fiji the authorities were considered. One case referred to therein was the case of Clover Clayton & Co. Ltd. v. Hughes /1910/ A.C. 242 where the House of Lords by a majority decision held that there was evidence to support the County Court Judge's finding that death was caused by strain arising out of the ordinary work of the deceased.

In that case a workman suffering from serious aneurism was employed in tightening a nut by a spanner when he suddenly fell down dead from rupture of the aneurism.

The facts in Hughes' case are very similar to the facts in the instant case.

In Oates v. Earl Fitzwilliam's Collieries Co. /1939/ 2 All E.R. 498 the Court of Appeal said at p. 502.

> "In our judgment, a physiological injury or change occurring in the course of a man's employment by reason of the work in which he is engaged at or about that moment is an injury by accident arising out of his employment, and this is so even though the injury or change be occasioned partly, or even mainly, by the progress or development of an existing disease if the work he is doing at or about the moment of the occurrence of the physiological injury or change contributes in any material degree to its occurrence. Moreover, this is none the less true though there may be no evidence of any strain or similar cause other than that arising out of the man's ordinary work."

There was evidence which the Magistrate accepted

indicating that the deceased's collapse and death occurred as a result of the work on which he was engaged.

Notwithstanding the history of his heart disease, on the authorities quoted his death was due to an accident arising out of his employment.

The Magistrate was correct in so holding and accordingly the appeal is dismissed.

I do not know how the Magistrate was able to determine the compensation payable as there appears not to be any evidence on which he could have made his assessment.

There was a letter produced written by Mr. S. Ali for the Permanent Secretary for Labour purporting to work out the compensation. It was accepted as an exhibit but no evidence was led to establish the claim.

The figures are suspect as they show the deceased's gross weekly earnings as being £508.33 or $26,433.16 per annum. The total compensation payable is shown by the sum $508.33 x 208 = $24,400.48. The answer to that sum is not $24,400.48 but $105,732.64. $24,400.48 divided by 208 does make the weekly sum of $117.31 which the appellant in its answer did not admit was the weekly wage.

However, the appellant has not challenged the Magistrate's figure of $12,000 and accordingly I ignore the errors in the only financial evidence before the Magistrate.

The appeal is dismissed with costs to the respondent.

(R.G. ~~KERMODE~~)
JUDGE

SUVA,