IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

CIVIL APPEAL NO. 11 OF 1982

Between:

THE LABOUR OFFICER FOR AND ON BEHALF OF ATUNAISA RAUSANA OF WAIMARO, TAILEVU. — APPELLANT

- and -

INTEGRATED FOREST INDUSTRIES — RESPONDENT

J U D G M E N T

This is an appeal by the Labour Officer who acted for and on behalf of an injured workman, one Atunaisa Rausana in an application to the Magistrate's Court Suva to determine the quantum of compensation to be paid to the said workman pursuant to the Workmen's Compensation Act.

The appellant appeals on some eight grounds but it is not necessary to set out the grounds because in my consideration of the Record the only issue in my view is whether the application should be sent back to the Magistrate's Court for rehearing.

Two of the 8 grounds were added at the hearing framed so as to obtain an order for rehearing after the

Court had advised counsel for the appellant of a number of matters the Magistrate did not appear to have considered.

The said Atunaisa Rausana was injured on the 19th December, 1979. The application to the Court was not made until the 2nd June 1981 more than 12 months after the workman was injured.

The Magistrate did not consider section 13 of the Workmen's Compensation Act which provides that no proceedings for recovery of compensation under the Act is maintainable unless the claim is made within 12 months from the occurrence of the accident which caused the injury. However, delay is no bar if it is proved (underlinin is mine) that the employer has failed to comply with the provisions of subsection (1) or (2) of section 14 of the Act. Section 14(1) requires an employer not later than 14 days after a workman is injured to report to the Permanent Secretary for Labour on a prescribed form.

According to a letter dated 1st March 1980 written by the Permanent Secretary to a "Mr. Bicky Ram T/A Integrated Forest Industries Ltd." the company had not by that date reported the accident as required by section 14(1) of the Act and five copies of the prescribed form were enclosed for completion and return.

The Record does not disclose whether the forms were completed and when they were completed if they were. The Record does not disclose whether this issue was raised or considered on the hearing of the application.

An application pursuant to Regulation 11(1) of the Workmen's Compensation (Rules of Court) Regulations dated 26th May 1981 was filed in the Magistrate's Court. The Respondent Company filed a "Statement of Defence" about the 7th August 1981. What was required under Regulatic 13, if the application was opposed, was the filing of a written answer within 7 days after service of notice of the application or extended time allowed by the Court. Under Regulation 13(2), where a material allegation is not specifically or by necessary implication denied or stated not to be admitted it shall be taken to be established at the hearing.

The Record does not indicate when the notice was given to the Respondent. The Respondent in paragraph 7 of its "Defence" stated it did not deny or admit allegation contained in paragraphs 6 to 10 both inclusive in the claim. The Magistrate did not consider these issues at all.

I do not know how the Labour Officer established the claim. It appears he was permitted to put in evidence copies of certain correspondence. One letter dated 6th March 1981 addressed to the Respondent Company set out in some detail the Lqbour Department's calculations as to the compensation to which the workman was entitled under the Act. This letter contained a number of stated relevant facts on which no evidence whatsoever was given. The injured workman was called to give evidence and could have provided some of the evidence.

On the very relevant issue of his wages the workman said he was receiving $52 a fortnight nett. He

was not asked the hours he worked or whether he received any other benefits. He mentioned two rates of pay 76 cents and 65 cents per hour.

Where the Labour Department obtained the information on which it based the claim is not known. The letter refers to wages of $29.25 a week which is $3.25 a week more than the workman testified he was being paid. The letter mentions that total permanent incapacity had been assessed at 42%. The doctor however who examined the workman and assessed his incapacity stated in evidence that the workman's disability was 42% in use of his right hand.

Total loss of hand at the wrist is 60% total incapacity.

Although the Doctor put in evidence a report showing how he arrived at his figure of 42%, the Magistrate did not consider the doctor's apparently conflicting evidence nor was the doctor questioned on his assessment of 5% disability for "faulty fist clenching". The schedule to the Act makes no mention of such disability and the doctor should have been asked the basis for such assessment.

There is however a much more serious defect in the proceedings.

At the conclusion of a lengthy written judgment the Magistrate said :

> "The workman is entitled to compensation under the Act.
>
> In the outcome the applicant succeeds in his application for compensation.

The applicant is entitled to compensation for temporary incapacity for 52 days at 65c ph for 45 hours week and earning $29.25 per week. And for permanent incapacity he is entitled to compensation at the above rate earning $29.25 per week.

There will therefore be judgment for the applicant accordingly but I would ask the applicant to work out the actual amount for compensation."

Under section 17(2) of the Act it is the duty of the Court to determine all claims for compensation unless determined by agreement.

There is provision in section 16(1) of the Act for an employer and a workman with the approval of the Permanent Secretary to agree on the quantum of compensation provided that the compensation agreed shall not be less than the amount payable under the provisions of the Act.

The Magistrate abdicated his duty in asking the applicant to work out the actual amount of compensation.

It so happened that on the day the judgment was delivered the Labour Officer was not present and Mr. Grimmett of the Crown Law Office appeared on his behalf. The Record indicates that Mr. Grimmett and the solicitor for the Respondent Company had purported to agree on the quantum of compensation for temporary incapacity ($202.80) and permanent incapacity ($3,194.10) whereupon the Magistrate entered judgment against the respondent for the agreed sums with costs of $100.

Section 20 of the Act confers jurisdiction on the Magistrate's Court and provides that the Court shall have all the powers and jurisdiction exercisable by a resident

Magistrate in a civil suit. Subsection (1) however qualifies these powers by making such power subject to the Act by the use of the opening words "Save as is provided in this Act....."

I have earlier mentioned section 16 of the Act which is a specific provision regarding agreements as to compensation. The agreement must be between the worker and the employer and must be approved by the Permanent Secretary. Furthermore the compensation shall not be less than the amount payable under the provisions of the Act.

I do not view the purported agreement between counsel enforced on them by the Magistrate's directive to the applicant to work out the compensation as an agreement. Had it been an agreement arrived at pursuant to section 16 or an agreement to abide by an order of the Court, section 22(3) of the Act would operate to bar any appeal to this Court.

As to the adequacy of the compensation the applicant was seeking a total of $8,738.70 on figures worked out by the Labour Department. The Magistrate without considering the amount to which the applicant was entitled under the provisions of the Act entered judgment for a total of $3,456.90.

This application was poorly handled by the Labour Department and the Magistrate whose duty it was to ensure the injured workman received the compensation he is entitled to. Counsel involved are not free from blame. There is no way out of what I can only describe as a mess but to order a rehearing.

The appeal is allowed and the Magistrate's order or judgment set aside with no order as to costs.

I order that the application be heard de novo by the Magistrate's Court.

Should the final outcome on the rehearing be a finding that the application is statute barred, I would hope that Government would investigate the matter to ascertain whether the Labour Department is responsible for delay in applying to the Court. The workman is only a young man and he has suffered a partially crippling injury. It is approaching 3 years since he was injured and he still awaits payment of his compensation.

If the Respondent did not comply with section 14 of the Act the position may be that the application is not statute barred.

I would only add that the Record discloses that more attention should have been given by the Labour Department to investigating this accident and ensuring that the workman's application was properly prepared, processed and presented to the Court.

(R.G. KERMODE)

JUDGE

SUVA,

3 OCTOBER, 1982.