

AT LAUTOKA

Civil Appeal No. 1 of 1983

BETWEEN: THE LABOUR OFFICER Plaintiff
AND: BA INDUSTRIES LIMITED Defendant

Mr Matawalu Counsel for the Plaintiff
Mr R D Patel and Chaganlal Counsel for the Appellant

J U D G M E N T

One Subramani was an employee of the appellant, whose job involved carting nails in a 4 gallon drum. The weight of the drum of nails was about 56 lbs.

In the course of his work on 12 April 1978 Subramani complained of chest pains and was sent home after being seen by the doctor. At home Subramani died. Apparently no post-mortem examination was carried out, and the doctor, who gave evidence in the lower court, diagnosed death due to myocardial infarction.

In his written report the doctor had stated that in no way the nature of his work contributed to his death. But in court the doctor said that his condition could be attributed to his work, although he also appeared to be saying that this was on the basis that he had previously had a history of high blood pressure, diabetes, kidney problems etc. It is a pity perhaps that he was not asked a few more questions on this point to clear up any ambiguity, but what he appears to have been saying is that the job Subramani was doing contributed to his final heart attack.

Again it is not clear from the evidence that Subramani was actually carting about the heavy drums of nails when he got the pains in his chest, but there is a general statement that he was in the course of his work, so there is a reasonable presumption that part at least of his work was carting about the heavy drums.

The magistrate on this evidence found for the Labour Officer on behalf of Subramani's dependents for the undisputed sum of \$4680.00 with costs.

The employees now appeal and have referred me to a number of cases most of which were referred to the magistrate or which the magistrate considered in reaching his conclusion. Whittle v. Ebbu Vale Steel Iron and Coal Co Ltd (1936) 2 A.E.R. was one such case, where a miner suffering from heart disease from which he might have died at any moment was found dead during the course of his work. It was held that there was evidence that his employment contributed to his death and workmen's compensation had rightly been awarded.

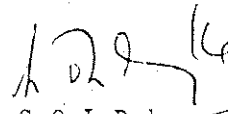
There is also the case of Moore v. Tredegar Iron and Coal Co Ltd (1938) 31 BWCC 359 where a collier apparently in good health completed his work which was no heavier than he was occasionally required to do. A quarter of an hour later, walking home he collapsed and died. A post mortem revealed a disease of the heart. On appeal it was held that there was evidence that his death had been accelerated by his normal work on the night in question and the widow was entitled to workmen's compensation.

The sole question in this appeal is whether there was evidence on which the magistrate could find that Subramani's work contributed to his death, particularly in view of the doctor's somewhat conflicting evidence. In my view there was, although his evidence requires a certain amount of interpretation, which could perhaps have been avoided by proper questioning at the hearing. Clearly what the doctor is saying in his written report as explained when he gave evidence, is that to a normal healthy person, work such as that done by Subramani would not cause myocardial infarction so to that extent his work was not the cause of his death. But what the doctor must be taken to mean when he gave evidence in court is that the death can only be attributable to a heart condition, and in the light of

such heart condition the sort of work Subramani was presumably doing when he first felt chest pains, could have lead to the myocardial infarction which caused his death.

In the circumstances, although it is not a strong case there was evidence on which the magistrate could find as he did and the appeal is dismissed with costs to be taxed if not agreed.

18 July 1983
LAUTOKA


G O L Dyke
JUDGE