IN THE SUPREME COURT OF FIJI
Appellate Jurisdiction
CIVIL APPEAL NO. 5 OF 1983.

Between:

THE LABOUR OFFICER FOR AND ON BEHALF OF TALIMETI KETEVALU — APPELLANT

- and -

CARPENTERS FIJI LIMITED — RESPONDENT

Dr. Ajit Singh for the Appellant.
Mr. P.I. Knight for the Respondent

J U D G M E N T

On the 20th October, 1982, an application by the appellant/applicant under the Workmen's Compensation Act on behalf of the dependants of PAULA ROKORAIONE deceased for compensation alleged to be payable to the dependants was dismissed by the Magistrate's Court Suva.

The appellant appeals against the dismissal on three grounds as under :

"1. THAT the decision of the learned magistrate was against the weight of evidence.

2. THAT the learned magistrate erred in law and fact in that he placed undue reliance on the evidence of the Respondent's witness, Dr. Isoa Bakani.

3. THAT the learned magistrate misapplied the requirements of the burden of proof applicable in accident compensation cases in civil actions."

The deceased died on the 4th August, 1980, and the cause of death shown on the death certificate is myocardial infarction or in other words heart attack.

Dr. M. Singh carried out a post mortem examination of the deceased. He gave the cause of death as hypertensive cardiovascular disease (high blood pressure) due to or as a consequence of (a) myocardial infarct recently healed and (b) left ventricular hypertrophy (2.9cm thick). In evidence Dr. Singh said that stress at work could contribute to the death of the deceased but that anybody with a heart in the condition it was "would die anyway". He said death could take place anything up to 72 hours later (presumably after an attack or occasion of stress). He said that hypertension would not be caused by the deceased's job as a tyre retreader.

Dr. Singh gave evidence for the applicant. His statement that hypertension (high blood pressure) would not be caused by the deceased's work would seem to indicate that the cause of death he determined, as a result of the post mortem, namely hypertensive cardiovascular disease, was not caused or brought on by work stress.

Dr Singh mentioned that stress could bring on death earlier than it would otherwise and that lack of sleep could contribute He also said that physical activity coupled with a history of heart attack could accelerate a second heart attack which could kill.

Dr. Isoa Bakani, who specialises in heart diseases, gave evidence for the respondent. He produced a report he had written.

In layman's terms he said the cause of death established by the post mortem was :

> "the deceased died of a heart attack from Coronary artery disease as a result of long standing high blood pressure."

He expressed his view that physical activities such as one's work is not a cause of hypertension nor is it a factor, on its own, a common predisposing factor to sudden death.

He stated that alcohol, abuse, smoking, obesity and insufficient rest are danger pastimes in hypertensive cardiac patients to develop life threatening heart attacks.

He said hard work used to be regarded as a precipitate cause of heart attacks but now it is regarded as a prophylatic. He said that irrespective of what deceased was doing he may have been at high risk of an early death which was not work related.

The deceased last worked for the respondent on 1st August, 1980. Two of the deceased's work mates were called by the applicant to describe the work the deceased did.

One witness, Mr. J. Lal, said the deceased never felt sic' at work. He could not say if deceased was at ork on the 1st August, 1980. Mr. Elia Berari did not give any evidence as to what the deceased was doing on the last day he worked.

There was no evidence adduced by the applicant to establish that the deceased was taken ill at work.

The mother of the deceased said her son was healthy up to the time of his death.

The Magistrate came to the conclusion on the evidence before him that the evidence went no further than establishing the possibility that the deceased's physical exertions brought about his death.

He found on the evidence that the applicant had not shown on the balance of probabilities that the deceased's death arose out of his employment. On the contrary he thought that the respondent had probably shown it had not.

A case on almost all fours with the instant case is Civil Appeal 13 of 1982 The Labour Officer on behalf of Luisa Legalega v. Ports Authority of Fiji.

The deceased in that case had hypertension and congestive cardiac failure and left bundle branch block. He died at his home 2½ days after he last worked.

There was not in that case, as in the instant case, evidence that the deceased suffered any "accident" at work such as sudden collapse or reporting ill and dying shortly afterwards.

In the case of Clover Clayton & Co. Ltd. v. Hughes (1910) A.C. 242, there was evidence that deceased was tightening a nut when he collapsed and died from rupture of the aneurism. There was in that case evidence which linked the work and the deceased's collapse. The bursting of the aneurism established by the post mortem in the circumstances pointed to it occurring as a result of strain in tightening the nut.

The post mortem of the deceased indicated no symptoms which could establish that stress or strain had accelerated his death such as rupture of an aneurism or other visible injury.

The House of Lords case Barnabas v. Bersham Colliery Co. (1910) 4 B.W.CC 119 34 Digest 325, 2656 was a case where a collier died of apoplexy during working hours in a mine. His arteries were in a very diseased condition and medical evidence was that apoplexy might have come on him when asleep or when walking about.

It was held that the evidence as to cause of death was equally consistent with an accident and no accident and the onus of proving that it was due to accident rested on the applicants who had not discharged that onus.

Lord Birkhenhead L.C. in the case of Lancaster v. Blackwell Colliery Co. Ltd. (1919) 12 B.W.CC 400 34 Digest 324, 2647 at p.406 stated :

> "The principles which have to be applied to facts like these are now well settled; they have been declared on numerous occasions by your Lordships and they may be very easily summarised. If the facts which are proved give rise to conflicting inferences of equal degrees of probability so that the choice between them is a mere matter of conjecture, then, of course, the applicant fails to prove his case, because it is plain that the onus in these matters is upon the applicant. But where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the more probable conclusion is that for which the applicant contends, then the arbitrator is justified in drawing an inference in his favour."

In the instant case the learned Magistrate held in effect that the applicant had not discharged the onus of establishing that the cause of deceased's death arose out of his employment. In that finding on the evidence before him I consider he was correct.

The appeal is dismissed with costs to the respondent.

(R.G. KERMODE)
J U D G E

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