

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction
Civil Action No. 752 of 1983

Between : BISH LIMITED

Plaintiff

- and -

JOHN ALEXANDER WATSON

Defendant

Mr. K. Chauhan for the Plaintiff
Mr. R. Patel for the Defendant

J U D G M E N T

This is an application by the plaintiff for summary judgment under Order 14 of Rules of the Supreme Court.

The plaintiff company is the former employer of the defendant who was its General Manager between January 1980 and July 1982. On the 22nd June 1980 the defendant during the course of his employment sustained personal injuries in a motor accident involving a vehicle owned by Tropic Sands Resorts Limited. Subsequently the insurers of the plaintiff company paid to the defendant the sum of \$7,039.77 which the defendant describes in paragraph 4 of his Amended Statement of Defence as a "voluntary payment".

On the 24th June 1982 the defendant acknowledged receipt of the sum of \$20,000 from the National Insurance Company as insurers of Tropic Sands in settlement of damages sustained by the defendant in the accident referred to above. It is clear from a study of the pleadings, affidavits and annexures that the above recited facts are not in dispute. What is in dispute is the liability of

the defendant to reimburse the plaintiff company \$7,039.77 being the amount of compensation paid to the defendant by its insurers. The plaintiff company relies on section 24 of the Workmens Compensation Act Cap. 94 in support of its claim. The other matters which have been put in issue by the parties in the pleadings are not material to a determination of the real issue in dispute, which can be put thus:- is the defendant entitled to recover damages for the injuries he sustained in the motor accident both from his employer and the third party?

The defendant submits that both the payments he recieved were ex-gratia. He did not institute any legal proceedings against the plaintiff company under the Workmens Compensation Act or against the third party at common law.

It would have been more felicitous if the plaintiff in his Statement of Claim had added an allegation that the payment made to the defendant was money had and received to the use of the plaintiff company. The object of the Workmens Compensation Act is twofold. It gives a workman a right to recover damages from an employer (which he would not have had at common law) and it preserves the right of the employer to seek recompense against any third party who may be liable in damages, and, it expressly precludes the workman from obtaining compensation from both his employer and a third party.

Section 24 of the Act reads as follows:-

"(1) Where the injury in respect of which compensation is payable under the provisions of this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under the provisions of this Act for such compensation:

Provided that -

- (a) on being awarded such damages as aforesaid, the person against whom such damages are awarded, or the workman, may be ordered by any court to pay to the employer:-
- (i) where such damages do not exceed the amount of compensation, including costs, ordered to be paid by the employer to the workman, the amount of such damages; or
 - (ii) where the amount of damages awarded against such person exceeds the amount of such compensation, the amount of such compensation.
- (b) if the workman has recovered compensation under the provisions of this Act the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the provisions of section 23 relating to liability in the case of workmen employed by contractors, may be ordered to be indemnified as regards the amount of compensation, including costs, by the person so liable to pay damages as aforesaid.
- (2) A court on the application of any person specified in subsection (1) or any court awarding compensation or damages, with or without the application of any such person, may make such order as to it seems just to ensure that the workman does not receive both compensation and damages in respect of the same accident and to implement the provisions of subsection (1)".

The defendant contends that he is not liable to make a refund because the payment he received was not the result of court proceedings or an agreement entered into under the terms of the Act. This is a point of law. The first matter to be decided is whether on the hearing of an Order 14 summons this Court should decide a question of law when full argument has been addressed to it and the only result of not deciding the point will be that the case will go for trial and the argument will be rehearsed all over again before a judge.

In Verral v. Great Yarmouth B.C. (1981) Q.B. 202
Roskill L.J. said in the Court of Appeal at 218.

" We have often said in this court in recent years that where there is a clear cut issue raised in order 14 proceedings, there is no reason why the Judge in Chambers - or for that matter this court - should not deal with the whole matter at once. Merely to order a trial so that the matters can be re-argued in open court is to encourage the law's delays which in this court we are always trying to prevent."

An example of the application of this principle can be found in European Bank v. Punjab Bank (No.2) 1983 W.L.R. 642 where Robert Goff L.J. set out the matter at 654 in the following terms:-

" If the judge has already decided, on the evidence, that there is a triable issue on a question of fact, it must in the very nature of things be unlikely that this court will interfere with his decision and decide that no trial should take place; because, where such a conclusion has already been reached by a judge, this court will be very reluctant to hold that there is no issue or question which ought to be tried. But where the appeal raises a question of law, this court may be more ready to interfere. Moreover, at least since Cow v. Casey (1949) 1 K.B. 474, this court has made it plain that it will not hesitate, in an appropriate case, to decide questions of law under R.S.C., Ord. 14, even if the question of law is at first blush of some complexity and therefore takes "a little longer to understand". It may offend against the whole purpose of Order 14 not to decide a case which raises a clear-cut issue, when full argument has been addressed to the Court, and the only result of not deciding it will be that the case will go for trial and the argument will be rehearsed all over again before a judge, with the possibility of yet another appeal: see Verral v. Great Yarmouth Borough Council (1981) Q.B. 202, 215, 218, per Lord Denning M.R. and Roskill L.J. The policy of Order 14 is to prevent delay in cases where there is no defence; and this policy is, if anything, reinforced in a case such as the present, concerned as it is with a claim by a negotiating bank under a letter of credit: compare

Bank fur Gemeinwirtschaft Aktiengesellschaft v. City of London Garages Ltd. (1971) 1 W.L.R. 149, 158, per Cairns L.J., a case concerned with a claim on a bill of exchange by a holder in due course."

In paragraph 4 of the Amended Statement of Defence it is admitted that the plaintiff company and/or its insurers voluntarily made a payment of \$7,039.77 to the defendant. Why should they make such payment? It is alleged, but not expressly denied, that the payment was for compensation under the Workmans Compensation Act. It is not sufficient, in my view, for the defendant to rely upon the general and unspecific traverse set out in paragraph 4 of the amended defence. If it was his case that the payment he received was made otherwise then under the Act he should have so pleaded. (R.S.C. Order 18 Rule 13(3)).

In Any event the defendant admits that at the time of the accident he was driving in the course of his employment. There can be no other reasonable explanation for the payment being made to the defendant other than the existence of the statute. If the money was not paid under the Act, why was it paid?

The defendant has succeeded in obtaining both the compensation which he would have been entitled to had he proceeded under the Act and damages from a third party. If he had made a formal application, as provided for in section 13 of the Act, and had instituted proceedings at common law against the third party he would have brought himself within the ambit of section 24 and would not have been able to retain the benefit of both the compensation and the damages. Should his position in this respect be altered by the fact that it did not prove necessary for him to institute formal proceedings in either case?

As I have said, without the Act he had no claim against the plaintiff company as his employer.

Thompson & Sons v. Norlt Eastern Marine Engineering Company 1903 1 K.B. 428 while not directly on point is of some assistance. It was concerned with the application of section 6 of the Workmans Compensation Act 1897 which may have been the model upon which section 24(1) of the Act was based. The court held that section 6 applied where the compensation was paid under an agreement made between the injured workman and the employer after notice of the accident and of the claim for compensation had been given by the workman to the employer, but before any proceedings had been taken.

This is a case in which the defendant has acquired a pecuniary advantage to which he was not entitled and he ought not in justice be allowed to keep the compensation paid to him. I favour the application of the principle of unjust enrichment in a proper case such as this. The defendant must in equity make restitution.

Accordingly I enter final judgment as prayed.



(F.X. Rooney)
JUDGE

Suva.

3rd August, 1984.