IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

Civil Action No. HBC 10 of 2015

BETWEEN	:	**NAVNEET VISHAL PRASAD**
		PLAINTIFF/RESPONDENT
A N D	:	**LINCOLN REFRIGERATION LTD**
		DEFENDANT/APPELLANT

BEFORE	:	**Hon. Justice Kamal Kumar**
COUNSELS	:	Mr. A. Kohli for the Plaintiff/Respondent Mr. A. K. Narayan for the Defendant/Appellant
DATE OF HEARING	:	**12 August 2016**
DATE OF JUDGMENT	:	**24 February 2017**

JUDGMENT

1.0 Introduction

1.1 On 12 April 2016, the Appellant file Notice of Appeal and Grounds of Appeal against Learned Master's ruling delivered on 22 March 2016, whereupon the Learned Master dismissed an application by the Appellant to strike out Respondent's claim under Order 18 Rule 18 (1) of the High Court Rules.

1.2 On 21 April 2016, Appellant caused Summon for Directions to be issued seeking hearing date for the Appeal and directions. On 27 May 2016, being returnable dates of the Summons the Appeal was adjourned to 2 June 2016, to fix hearing date.

1.3 On 2 June 2016, the Appeal was adjourned for hearing on 12 August 2016.

1.4 On 12 August 2016, Counsel for the parties made submissions and Counsel for Appellant informed Court that he will provide copy of submissions by the afternoon as he had soft copy of the submissions.

1.5 No submission was filed.

1.6 After Counsel for both parties made submissions the Appeal was adjourned for ruling on notice.

2.0 Background Facts

2.1 Respondent at all material times was employed by the Appellant as an electrician.

2.2 On or about 25 March 2013, Respondent had an accident during course of his employment with the Appellant.

2.3 Respondent allegedly suffered injuries as a result of the said accident.

2.4 The Appellant at all material times was insured by Tower Insurance (Fiji) Limited (**"Tower"**) under Workmen's Compensation Policy (**"WCP"**).

2.5 After the accident, Appellant submitted report to Ministry of Labour, Industrial Relations and Employment.

2.6 Labour Department then issued a Notice of Claim dated 19 November 2014, to the Appellant claiming a sum of $9,100.00 with conditions stated in the Notice.

2.7 On or about 20 February 2015, (after a lapse of three (3) months) Tower as insurer of Appellant forwarded cheque for the sum of $9,100.00 payable to Permanent Secretary for Employment.

2.8 Respondent did not accept the payment.

2.9 On 17 April 2015, Respondent caused Writ of Summon to be filed claiming damages under common law.

2.10 On 11 and 26 May 2015, Appellant filed Acknowledgment of Service and Statement of Defence respectively.

2.11 On 22 June 2015, Appellant filed Application to strike out Respondent's claim on the grounds that:-

"1. It discloses no reasonable cause of action;
2. It is frivolous and vexatious;
3. It is an abuse of the process of this honourable Court.
*Alternatively that the Plaintiff's action be dismissed on the trial of a preliminary issue that the Plaintiff's action is barred by Section 25 of the Workmen's Compensation Act Cap 94 (**"WCA"**)."*

2.12 The Striking out Applications was heard by learned Master on 6 August 2015.

2.13 The learned Master delivered his Ruling on 22 March 2016.

3.0 Grounds of Appeal

3.1 The grounds of appeal are as follows:

"1. The learned Master erred in law and in fact in failing to hold that the workman by virtue of representations made and acted on by the Appellant (Defendant) did not give rise to an estoppel which precluded the Respondent (Plaintiff) from pursuing any claim for compensation independently of the Workmen's Compensation Act.
2. The Learned Trial Master erred in law and in fact in making his findings in paragraphs 55 and 57 to the effect that either of the parties are free to withdraw from a section 16 agreement within 3 months which was a misconstruction of the provisions of section 16 of the Workmen's Compensation Act and which led inter alia the learned Master to find that there was no estoppel.
3. The learned Master erred in law and in fact in holding that estoppel cannot interfere with the exercise of the statutory power of the

labour officer, who was exercising a power under the provisions of the Workmen's Compensation Act when the labour Officer had already exercised his powers and discretion under the Act and had received payment from the Appellant (Defendant) as required by him and the Appellant (Defendant) was entitled to assume that the Respondent (Plaintiff) had already instructed the labour Officer that he was agreeable to his assessment."

Ground One (1)

3.2 The principle in respect to equitable estoppel has been well established and Courts in Fiji have applied the principle stated by His Honourable Justice Brennan in **Walton Shores (Interstate) Limited v Maher (1988) 64 CLR 387**. His Honour at pages 428 – 429 stated as follows:-

"In my opinion, to establish an equitable estoppel, it is necessary for a plaintiff to prove that (1) the plaintiff assumed that a particular legal relationship then existed between the plaintiff and the defendant or expected that a particular legal relationship would exist between them and, in the latter case, that the defendant would not be free to withdraw from the expected legal relationship; (2) the defendant has induced the plaintiff to adopt that assumption or expectation; (3) the plaintiff acts or abstains from acting in reliance on the assumption or expectation; (4) the defendant knew or intended him to do so; (5) the plaintiffs action or inaction will occasion detriment if the assumption or expectation is not fulfilled; and (6) the defendant has failed to act to avoid that detriment whether by fulfilling the assumption or expectation or otherwise."

3.3 The facts of this case are stated at paragraph 2.1 to 2.8 of this Ruling which is undisputed.

3.4 The Learned Master held that equitable estoppel did not apply for reason stated at paragraph [58] of his Ruling which is as follows:

"58. Section 16 is a mandatory provision, the Labour Officer cannot distribute the funds unless this provision has been complied with, therefore any acceptance by the employee or the employer is subject to this provision. It is mandatory in respect of the distribution of the funds but discretionary in that

it gives both parties the choice to accept the assessment or to take common law action. Therefore, it is my view that the letter written by the Labour Officer must be accepted within the context of the requirement of the statutory power given to the officer."

3.5 Even though Appellant filed Application to strike out Respondent's claim pursuant Order 18 Rule 18 of High Court Rules the Learned Master instead of looking at principles for striking out the claim dealt the issue of equitable estoppel as preliminary issue pursuant to Order 33 Rule 7 of High Court Rules.

3.6 Learned Master noted that once the preliminary issue is decided then the Court will look at whether there is cause of action or if claim is abuse of Court process as stated at paragraph (35) of his Ruling.

3.7 Section 16(1)(a (b) of the WCA provide as follows:

"Agreement as to compensation

16.-(1) The employer and workman may, with the approval of the Permanent Secretary or a person appointed by him, in writing, in that behalf, after the injury in respect of which the claim to compensation has arisen, agree, in writing, as to the compensation to be paid by the employer. Such agreement shall be in triplicate, one copy to be kept by the employer, one copy to be kept by the workman, and one copy to be retained by the Permanent Secretary:

Provided that-

(a) the compensation agreed upon shall not be less than the amount payable under the provisions of this Act; and

(b) where the workman is unable to read and understand writing in the language in which the agreement is expressed the agreement shall not be binding against him unless it is endorsed by a certificate of a district officer or a person appointed by the district officer or Permanent Secretary, in writing, in that behalf, to the effect that he read over and explained to the workman the terms thereof and that the workman appeared fully to understand and approve of the agreement."

3.8 The Appellant relies on the letter dated 19 November 2014 written by Divisional Labour Officer Northern (**"LON"**) to it. For sake of clarity the letter is reproduced here:-

> *"The Manager,*
> *Lincoln Refrigeration Ltd,*
> *P.O. Box 4800,*
> *Samabula.*
> *Suva*
>
> *Dear Sir,*
>
> *I refer to the accident on **25/03/13** sustained by **Navneet Vishal Prasad** arising out of and in the course of his employment with you as an **Electrician**. I have now received a medical report from **Dr. Alaot Biribo** which the degree of permanent incapacity suffered by the workman has been assessed at twenty five [25] per cent. The amount of compensation payable to the injured workman in respect of permanent partial incapacity, assessed in accordance with Section 8 of the workman's Compensation Ordinance and based on his average weekly earnings of **$140.00** is as follows:-*
>
> | | | |
> |---|---|---|
> | *(a)* | *Gross Weekly Earnings* | *= $ 140.00* |
> | *(b)* | *260 Weeks of Earning* | *= $ 36,400.00* |
> | *(c)* | *Degree of Incapacity* | *= 25%* |
> | *(d)* | *Compensation payable* | *= $ 9,100.00* |
>
> *The net compensation payable is **$9,100.00**. If you agree with this assessment please send to this office your cheque for **$9,100.00** made payable to the Permanent Secretary for employment. On receipt of your cheque, a formal agreement under Section 16 of the Ordinance will be prepared for signature by yourself and the workman. A formal notice of claim on behalf of the workman is enclosed.*
>
> *In the event of the claim being disputed please state in writing the ground thereof.*
>
> *Yours faithfully"*

3.9 There is no doubt that Ministry of Employment through Labour Officer Northern made representation to Appellant that:-.

(i) Labour Officer Northern has received medical report in respect to Respondent with degree of permanent incapacity assessed at twenty five (25) per cent.

(ii) Amount of compensation payable to Respondent for permanent partial incapacity is assessed at $9,100.00 pursuant to section 8 of WCA.

(iii) If Appellant agrees with the assessment then Appellant is to send cheque for $9,100.00 payable to Permanent Secretary for Employment.

(iv) On receipt of cheque Agreement will be prepared for signing by Appellant and Respondent.

3.10 On or about 20 February 2015, Tower being Appellant's insurer sent cheque for the sum of $9,100.00 payable to Permanent Secretary for Employment to Labour Office.

3.11 There is no doubt LON made representation to Appellant and Appellant by its insurer acted on the representation albeit after a lapse of three (3) months.

3.12 The question that needs to be asked is whether Labour Officer Northern had the authority to make the representation on behalf of the Respondent.

3.13 It must be born in mind that Workmen's Compensation Act was enacted to ensure that employees who we injured during course of his/her work are paid fair compensation.

3.14 Therefore various provisions of Workmen's Compensation Act permits the Labour Officer to assist the employee and ensure that they look after the interest of the employees or their dependants at all times.

3.15 Section 16 does not in any way grant the Labour Officer any power or authority to make representation on behalf of the employer.

3.16 Section 16 requires the employer and employee to reach an Agreement in respect to compensation payable under Workmen's Compensation Act with the written approval of person appointed by Permanent Secretary.

3.17 The Agreement was to be reached between the Appellant and the Respondent and payment was only to be made by Appellant once Agreement was signed by Respondent.

3.18 LON in his letter clearly stated that Agreement will be prepared once cheque was received.

3.19 This should have put Appellant on notice that there was no written Agreement on foot for signing by the Appellant and Respondent when LON wrote the letter.

3.20 It must also be noted that Labour Officer who deal with employees are not fully conversant with the common law principles in respect to negligence claims and may not be in a positions to give employer proper advice as to amount of damage that they can claim if employer is found to be negligent.

3.21 As stated earlier Appellant should have paid the monies only upon signing of Agreement by Respondent and if the Tower paid the monies without Agreement being signed by Respondent then it did so at its own peril.

3.22 Furthermore it is undisputed that the Respondent did not get paid by Permanent Secretary for Employment and as such he himself did not benefit from LON letter or Tower paying sum of $9,100.00 to Permanent Secretary for Employment.

3.23 This Court also takes into consideration the fact that the Respondent did not delay in instituting this action after receiving legal advise. The cheque was paid on or about 20 February 2015, and this action was instituted on 17 April 2015.

3.24 Appellant has also not suffered any detriment as it can easily obtain refund $9,100.00 paid to Permanent Secretary for Employment.

3.25 In **Vinod Patel and Company Ltd v Prasad [2000] ABU 0026B.98S (**12 May 2000) stated as follows:

> *"No evidence was presented in the Magistrates' Court, and the appellant did not allege, that the agreement under which the compensation was paid had been approved by the Permanent Secretary or by a person appointed by him. Nevertheless counsel for the appellant argued that paragraph (c) of the proviso to section 25(1) acted as a bar to the claim because the respondent was represented by a solicitor when he entered into the agreement. The learned magistrate rejected that submission and held that, unless an agreement was approved as required by section*

16(1), that paragraph did not apply to it. Quite clearly he was correct in doing so. A copy of the letter written by the respondent's solicitor agreeing to the quantum of the compensation was tendered in evidence. It made clear that the compensation was to be paid only in respect of the appellant's obligation under the Workmen's Compensation Act. So clearly the respondent was not barred from seeking a common law remedy."

3.26 In **Vinod Patel** case the Agreement between employer and employee was not approved by Permanent Secretary for employment or any person appointed by him and the Learned Magistrates held that the employee was not barred from seeking common law damages.

3.27 The Court of Appeal in very clear terms stated that the Learned Magistrate was "**correct**."

3.28 In **Vinod Patel** case the employee himself entered into Agreement with employer and received $1,040.00 compensation.

3.29 In this case the cheque for $9,100.00 was paid by Tower to Permanent Secretary for Employment and there is no evidence that Respondent received the benefit of the said sum.

3.30 For reasons stated above this Court holds that Appellant cannot rely on doctrine of equitable estoppel to strike out this action or stop it from processing further.

Ground two (2)

3.31 At paragraphs 55 and 57 of his Ruling the Learned Master stated as follows:-

"55. The Labour Officer after investigating the incident and then calculating the quantum of damages in accordance with the provisions of the Workmen's Compensation Act, has to inform the parties of the assessment and whether the assessment is acceptable to both of them. Upon acceptance, an agreement under section 16 is then signed by both the parties. Both the parties can, within three months of signing the section 16 Agreement, choose not to accept the assessment and institute civil proceedings instead.

[56]…

[57] If neither of the parties disagrees or has second thoughts about the effect of section 16, after the three month period, then the provision of section 25 becomes a statutory bar to further civil action in respect of the same injury."

3.32 The Learned Master relied on section 16 (3) of Workmen's Compensation Act and for sake of convenience. I will quote section 16 (3) of Workmen's Compensation Act which is in following terms:-

"16 (2) Any agreement made under the provisions of subsection (1) may, on application to the court, be made an order of the court.

(3) Where the compensation has been agreed the court may, notwithstanding that the agreement has been made an order of the court under the provisions of subsection (2), on application by any party within three months after the date of the agreement, cancel it and make such order (including an order as to any sum already paid under the agreement) as in the circumstances the court may think just, if it is proved-

(a) that the sum paid or to be paid was or is not in accordance with the provisions of subsection (1);

(b) that the agreement was entered into in ignorance of, or under a mistake as to, the true nature of the injury; or

(c) that the agreement was obtained by such fraud, undue influence, misrepresentation or other improper means as would, in law, be sufficient ground for avoiding it."

3.33 With all due respect to the Learned Master this Court finds that he was wrong in the way he interpreted section16 (3).

3.34 This Court totally agrees with Appellant's Counsels' submission that learned Master was wrong when he stated that parties to section 16 (1) Agreement can have "**second thought**" about the Agreement.

3.35 This Court also accepts Appellant Counsels' submissions that the three months period in Section 16 (3) of WCA is not a "cooling off" period as you have in certain contracts.

3.36 Pursuant to section 16 (3) any party to the Agreement entered under Section 16 (1) can move the Court within three months of signing of the Agreement to cancel the Agreement and Court make any Order **if the matter listed in section 16 (3) (a) or (b) or (c) are proved to the Court**.

3.37 If neither party, mostly employees had moved Court to cancel the Agreement signed pursuant to section 16 (1) then if the employee institutes proceeding against employer then the employer can plead the Agreement signed as a bar to such proceedings as provided in section 25 (1) (c) of Workmen's Compensation Act.

3.38 Also, if either party to section 16(1) Agreement moves the Court, to cancel the Agreement and Court refuses to cancel the Agreement on the ground that party moving to cancel the Agreement has not been able to prove the grounds listed in section 16 (3) (a) or (b) or (c), then the other party can plead the Agreement as a bar to any proceedings instituted at any time. That is whether it be within three months or thereafter.

3.39 This Court has no hesitation in allowing the appeal in Ground two (2) to the extent stated at paragraph 3.36 to 3.38.

Ground three (3)

3.40 Learned Master at paragraph 67 and 68 of his Ruling stated as follows:

> *"[67] The Court further finds that although a representation was made in the letter of 19 November 2014 the representation must be taken in the context of the statutory authority in which it is made and therefore estoppel by representation does not apply.*
>
> *[68] The Court further finds that estoppel cannot interfere with the exercise of the statutory power of the Labour Officer, who was exercising a power under the provisions of the Workmen's Compensation Act."*

3.41 As I have stated at paragraphs 3.13 to 3.16 that the Labour Officers pursuant to section 16 (1) are to assist the employee and in this case the Respondent in negotiating and reaching and Agreement with the employer.

3.42 The Labour Officer does not have authority to make representation on behalf of the employee that the employee upon receipt of the cheque by Labour Department will sign the Agreement.

3.43 Pre-requisite to section16 (1) is the Agreement between the employer and the employee, with the approval of Labour Officer.

3.44 Under Section 16 (1) Agreement that is to be signed by employer and employee needs to approved by the Permanent Secretary or person appointed by him and this is to ensure that the provision of WCA is complied and employee do so not receive compensation less than what he/she is entitled to under provisions of WCA.

3.45 This of course does not mean that equitable estoppel cannot be raised against statutory bodies or representation made by government officers duly authorised to make such representations.

3.46 The Appellant's Counsel referred to the case of **Western Wreckers Ltd v Comptroller of Customs & Excise [1992] 38 FLR 96 (5 June 1992)**.

3.47 Brief facts of **Western Wreckers** case are as follows:-

(i) In November 1989, the Government banned import of vehicle over three (3) years old with immediate effect.

(ii) Some dealers including Western Wreckers found some difficulty as they already made arrangements to import vehicles more than three (3) years old.

(iii) Western Wreckers sought Ministers approval to import vehicles already ordered.

(iv) On 10th April 1990, the Respondent in that case wrote to Western Wreckers as follows:-

"Further to my even referenced letter dated the 131' of March 1990 I am pleased to inform you that the Minister Finance and Economic Planning has now approved your application for importation of 50 units motor vehicle which are more than three years old.

Please note that no further application for importation of motor vehicles which are more than three years old will be entertained after this."

(v) 10 April 1990 letter was followed by another letter dated 23 April 1990 signed by one D. Jamnadas for the Respondent in the following terms:-

"*Further to my even reference letter of 131 March, 1990 I am pleaded to inform you that in a review of your case the Minister of Finance and Economic Planning has allowed your company to import fifty (50) units more than three years old vehicles. Please note that no further application for importation of motor vehicles which are more than three years will be entertained after this."*

(v) On 4th May 1990, D. Jamnadas for Respondent sent another letter to Western Wreckers in following terms:

"You were given a written approval for fifty (50) units more than three years old vehicles vide our letter 143 of 10 April 1990 the original of which was personally given by the Comptroller to your company representative. Under the circumstances our even reference letter of 23rd April 1990 on the same subject matter has been duplicated and is to be disregarded."

3.48 Western Wreckers then filed action in Lautoka High Court to have the Respondent's letter of 4 May 1990 quashed and for an order that it be allowed to import fifty (50) cars as per letter of 23 April 1990.

3.49 **Western Wreckers** action was dismissed by the Judge who held that Western Wreckers did not act to its detriment.

3.50 **Western Wreckers** appeal to Fiji Court of Appeal was dismissed when Court of Appeal found that letter of 23 April 1990, was a mistake and Western Wreckers was aware that it was a mistake.

3.51 In reference to issue of estoppel against State the Fiji Court of Appeal stated as follows:-

"The appellant further suggests that the learned Judge's reference to a ministerial order was a finding estoppel does not bind the State. Such a finding would be wrong but we are far from persuaded that is what was being suggested by that: passage."

3.52 It is therefore clear that equitable estoppel can be raised against the State and statutory bodies and whether Court will hold that the principle of equitable estoppel apply against State or Statutory body will depend on circumstances of each case including but not limited to nature of legislation, regulation or policy and/or power and authority of person making the representation.

3.53 What this Court stated in the preceding paragraph is supported by the following statement of Honor Justice Welsh in **Attorney General (NSW) v Quinn (1991) 70 CLR 1** at page 17:-

"The Executive cannot by representation or promise disable itself from, or hinder itself in, performing a statutory duty or exercising a statutory discretion to be performed or exercised in the public interest, by binding itself not to perform the duty or exercise the discretion in a particular way in advance of the actual performance of the duty or exercise of the power… What I have just said does not deny the availability of estoppel against the Executive, arising from conduct amounting to a representation, when holding the Executive to its representation does not significantly hinder the exercise of the relevant discretion in the public interest. And, as the public interest necessarily comprehends an element of justice to the individual one cannot exclude the possibility that the courts might in some situations grant relief on the basis that a refusal to hold the Executive to a representation by means of estoppel will individual who acted on the representation than any detriment to that interest that will arise from holding the Executive to its representation and thus narrowing the exercise of the discretion."

3.54 This Court finds that Learned Master did not fully shut down estoppel being raised against statutory bodies. His comments at paragraph 67 of his Ruling clearly states that "**representation must be taken in the context of the statutory authority in which it is made and therefore estoppel by representation does not apply**".

4.0 Conclusion

4.1 Even though Appellants succeed in respect to Ground 2 this Court finds that Learned Master was correct in holding that equitable estoppel is not established in this instance.

4.2 Learned Master was correct in dismissing the Appellant's Application to strike out Respondent's Claim.

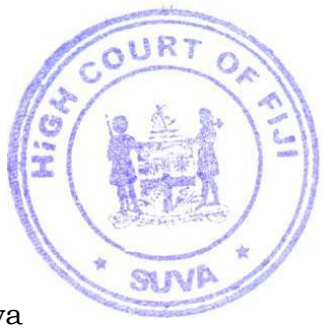
5.0 Cost

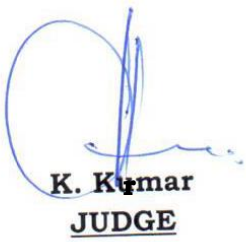
5.1 Appellant Counsel made detailed submissions. The Respondent's Counsel virtually adopted Appellant's Counsels' submission and made very brief submissions on behalf of the Respondent.

6.0 Order

(i) Appeal is dismissed.

(ii) Each party to bear their own cost of this Appeal.





K. Kumar
JUDGE

At Suva
24 February 2017

Kohli & Singh for the Plaintiff/Respondent
A. K. Lawyers for the Defendant/Appellant