

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 111 of 1998/L

BETWEEN: **RANJILA DEVI** daughter of Ram Sharan of Veisaru, Ba, Fiji,
Domestic Duties as the Administratrix of the Estate of Ashok Kumar
son of Hari Prasad by virtue of letters of Administration Number
34070.

PLAINTIFF

A N D: **SATISH CHAND MANI** son of Subarmani of Rarawai Cemetary
Road, Varandoli, Ba, Fiji, Businessman person trading as
"**SATISH MANI & SONS**"

FIRST DEFENDANT

A N D: **INDIRA DEVI** daughter of Ram Chandar of Rarawai Cemetary Road,
Varandoli, Ba, Fiji, Businessman person trading as "**SATISH MANI &**
SONS"

SECOND DEFENDANT

Appearances: Mr Mishra V. for the Plaintiff
 Mr Degei for the Defendants
Date of Hearing: 03 June 2011
Date of Ruling: 13 February 2020

R U L I N G

BACKGROUND

1. The late Ashok Kumar ("**Kumar**") died on 17 February 1997 between 10.30 p.m. to 11.00 p.m. at night from injuries he sustained as a result of a motor vehicle accident.

2. Kumar was a passenger in the vehicle in question. That vehicle was being driven by Satish Chand Mani ("Mani"). Mani allegedly was driving at an excessive speed when he lost control. This resulted in the vehicle veering off the road into a fairly deep side- drain.
3. The vehicle was actually owned by Kumar's employers. His employers were Mani and one Indira Devi ("Devi"), who is Mani's wife. Mani and Devi run a business manufacturing sweets for export.
4. On the night in question, Mani was driving Kumar home from work.
5. Kumar is survived by his wife, Ranjila, and two daughters Ashwini Devi Prasad and Ashni Devi.
6. Following the accident, the Labour Officer filed a claim at the Ba Magistrates Court pursuant to the Workmen Compensation Act (Workmen's Compensation Proceedings No. 1 of 1997).. That claim was settled and Ranjila did accept payment of \$14,643.20 ("**payment**") under the Workmens Compensation Act.
7. It appears that after accepting that payment, Ranjila would then file this common law claim in the High Court on 09 April 1998.

THE DEFENCE & OTHER INTERLOCUTORY PROCESSES

8. The defendants filed their first statement of defence on 04 August 1999 through Young & Associates who were under instructions from the Third Party Insurers, namely Tower Insurance (Fiji) Limited. A little over a year later, on 02 October 2000, Young & Associates filed a Summons to Withdraw As Counsel as Tower had taken the clear and firm position that it could not possibly be liable due to some failure on the part of the third party to serve Tower the necessary court processes.
9. On 29 March 2001, M.K Sahu Khan & Co. filed an Amended Statement of Defence ("**defence**"). This defence denies every single allegation of fact in the statement of claim. However, at paragraph 10, the defendants plead *res judicata*. They also assert that Ranjila is now estopped from instituting the current proceedings on account of

the fact that she had, earlier, accepted payment under the Workmen's Compensation Act.

10. Suffice it to say that at some point, Ranjila's claim was struck out but was later reinstated in November 2005.
11. Also, the lawyers acting for Mani and Devi withdrew as counsel, and in that state of affairs, their statement of defence was struck out and Ranjila was able to obtain judgement in April 2006 in the sum of \$160,000. Following judgement, Ranjila's lawyers also succeeded in obtaining a Prohibition Order which limited Mani's and Devi's movement in and out of the country.
12. On 14 April 2010, Mani and Devi's new lawyers filed a Summons seeking various orders. Frankly, if Order in Terms were granted to all their prayers, the effect would be to reverse all the adverse orders made hitherto and for the case to proceed to trial on the merits of the substantive issues.
13. Mr. Justice Inoke, on 17 September 2010, refused all the prayers sought except the following:
 - (i) *he granted Order in Terms to set aside the prohibition orders which hitherto had limited Mani and Devi's freedom of movement.*
 - (ii) *whilst he refused to set aside the judgement entered against Mani and Devi, he allowed Mani and Devi to defend their case "only to the extent of the Defence under section 25 of the Workmen's Compensation Act".*

WHAT I HAVE TO DECIDE NOW

14. What I have to decide now is whether the civil claim in the High Court is statute barred under section 25 of the Workmen's Compensation Act.

WORKMEN'S COMPENSATION ACT

15. Section 25(1) of the Act provides that an injured workman is at liberty to pursue proceedings for damages in a civil court¹.
16. However, there are three situations when civil proceedings in the High Court will be barred. These are set out in section 25(1)(a),(b) and (c):

Provided that-

- (a) *a judgment in such proceedings whether for or against the employer shall be a bar to proceedings at the suit of any person by whom, or on whose behalf, such proceedings were taken, in respect of the same injury under this Act;*
- (b) *a judgment in proceedings under this Act whether for or against the employer shall be a bar to proceedings at the suit of any person by whom, or on whose behalf, such proceedings were taken, in respect of the same injury independently of this Act;*
- (c) *an agreement come to between the employer and the workman under the provisions of subsection (1) of section 16 shall be a bar to proceedings by the workman in respect of the same injury independently of this Act.*

(my emphasis)

17. Section 25(1)(c) clearly sets out that "*an agreement ... between the employer and the workman under [section 16(1)]shall be a bar to proceedings by the workman in respect of the same injury independently of this Act*"
18. Two questions arise from this. The first is whether there was an agreement between the employer and the workman and, second, whether such an agreement was a section 16(1) agreement?
19. Section 16(1) provides that an employer and an injured workman may agree in writing as to the compensation to be paid by the employer. However, such an agreement, before it is ever entered into, must be approved by the Permanent Secretary or any person appointed by him.

20. Section 16(1) then sets out that the agreement shall be in triplicate. The employer and the workman are to retain one copy each while the last copy is to be kept by the Permanent Secretary.

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:

21. Section 16 subsection (a) sets out that the compensation agreed upon by an employer and an injured workman shall not be less than the amount payable under the Actⁱⁱ.
22. Section 16 subsection (b) provides that if the workman had not been able to read or understand the written agreement, but had signed it, the agreement shall not bind the workman, unless the Agreement had been endorsed by a certificate in writing of the District Officer or the Permanent Secretary confirming that the District Officer or Permanent Secretary had read over and explained to the workman the terms of the Agreement and that the workman appeared to fully understand itⁱⁱⁱ.

WHETHER THERE WAS AN AGREEMENT BETWEEN THE EMPLOYER & THE WORKMAN?

23. In this case, settlement was effected in the Magistrates Court. That settlement involved Ranjila in her capacity as personal representative of the estate of her late husband, Kumar.
24. In **Kumar v Commissioner of Police** [2002] FJHC 50; Hbc0003D.2001s (29 April 2002), Mr. Justice Scott was dealing with an interim payment application by the widow of a policeman who was killed on duty. The widow had returned a payment of \$24,000 made to her under the Workmen's Compensation claim in the Magistrates Court. However, in the High Court, she sought payment of the same sum, as an interim payment. Her argument was that she would have been entitled

to the same anyhow under a Workmen's Compensation Claim. It was argued by the Attorney-General that such a payment, even in the High Court, would amount to a payment under the Workmen's Compensation Act, and therefore, bar the widow from pursuing the rest of her civil claim.

In answer to this application Mr. Keteca once again conceded that the Plaintiff was entitled to recover under the Act but suggested that payment to the Plaintiff of the sum due under the Act would extinguish the balance of the Plaintiff's claim and that therefore it would not be an interim payment but a total payment in final satisfaction of the Plaintiff's whole claim.

25. Scott J noted that both counsel were under the misapprehension that acceptance by the plaintiff of a payment under the Workmen's Compensation Act would totally compromise her common law claim, which was why the plaintiff had returned the \$24,000 offered to her initially as settlement under the Act.

It is apparent that counsel both for the Plaintiff and the Defendants have been under the impression that acceptance by the Plaintiff of the Workers Compensation claim would amount to a compromise of her common law action and that it was for this reason that the sum of \$24,000 was repaid by the Plaintiff to the Defendants after it had been accepted by her sometime last year. In my opinion this reading of the law is incorrect.

26. Scott J considered section 16 and section 21(1)(c) and noted that the agreement was not an agreement between the workman and the employer, but rather was an action brought by the workman's widow.

It must however be noticed that in this case the agreement to pay \$24,000 for the death of Raj Kumar was not an agreement reached "between the employer and the workman" since the agreement followed the workman's death. Furthermore this is not an action being brought by the workman in respect of his own death but is an action being brought by his widow.

27. The question which Scott J asked himself was whether or not section 16 applies to a compromise agreed to by a personal representative of a deceased workman? The Learned Judge answered that question by reference to the ambits set by section 2(3) of the Act:

The matter is put beyond doubt by Section 2 (3) which provides that:

“Except for the purpose of Section 16 any reference to a workman who has been injured shall, unless the context otherwise requires, where the workman is dead, include a reference to his personal representative, or to his dependant or any of them.”

In other words, Section 16 does not apply to a compromise agreed by a personal representative following the death of the workman and therefore Section 25 (1) (c) does not apply either.

In my view there is no doubt that if the action proceeds to trial the Plaintiff will at least be awarded the \$24,000 already offered to her and to which there is no defence entered. Payment out of that sum will not act as a bar to the further prosecution of her common law claim.

I order that payment be made by the Defendants to the Plaintiff of \$24,000 forthwith. In view of the hardship which the Plaintiff is suffering payment out to her should be expedited.

28. Notably, in her High Court claim, the widow had pleaded compensation under the Workmen’s Compensation Act in the alternative to her common law claim.

WHAT IS A SECTION 16(1) AGREEMENT?

29. I adopt Scott J’s decision in Kumar v Commissioner of Police (supra). There is no reason for me to deal with this question.

CONCLUSION

30. The settlement at the Ba Magistrates Court is no bar to the plaintiff in this case pursuing a common law claim in the High Court. The award by Finnigan J therefore stands.
31. Costs to the plaintiff against the defendants which I summarily assess at \$3,500-00 (three thousand five hundred dollars only).



.....
Anare Tuilevuka
JUDGE
Lautoka

ⁱ Section 25 provides:

Proceedings independently of this Act

25.-(1) Where the injury was caused by the personal negligence or willful act of the employer or of some other person for whose act or default the employer is responsible, nothing in this Act shall prevent proceedings to recover damages being instituted against the employer in a civil court independently of this Act:

Provided that-

- (a) a judgment in such proceedings whether for or against the employer shall be a bar to proceedings at the suit of any person by whom, or on whose behalf, such proceedings were taken, in respect of the same injury under this Act;
- (b) a judgment in proceedings under this Act whether for or against the employer shall be a bar to proceedings at the suit of any person by whom, or on whose behalf, such proceedings were taken, in respect of the same injury independently of this Act;
- (c) an agreement come to between the employer and the workman under the provisions of subsection (1) of section 16 shall be a bar to proceedings by the workman in respect of the same injury independently of this Act.

ⁱⁱ Section 16(1)(a) provides:

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

ⁱⁱⁱ Section 16(1)(b) provides:

- (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.