

THE EMPLOYMENT RELATIONS COURT
AT SUVA

ERCC Case No. 7 of 2019

BETWEEN : **THE LABOUR OFFICER** for and on behalf of the
dependents of **RAKESH NARAYAN**

APPLICANT

AND : **COPE CONSTRUCTION LIMITED**

RESPONDENT

BEFORE : M. Javed Mansoor, J

COUNSEL : Mrs. P. Singh for the Applicant
: Mr. A. Vulaono for the Respondent.

Date of Hearing : 23 October, 2019

Date of Judgment : 31 October 2020

DECISION

WORKMEN'S COMPENSATION Question of law for determination by court – Jurisdiction of the Employment Relations Tribunal in respect of claims in excess of \$40,000 – Purposive construction of a statutory provision – *ut res magis valeat quam pereat* – *generalia specialibus non derogant* – Sections 202(3), 211(1)(p), 211(1)(r), 211(2)(a), 211(4), & 220(1)(j) of the Employment Relations Act 2007 – Sections 6(a), 17(2) & 22 (1) Workmen's Compensation Act 1964 – Sections 16(1), 16 (1)(e) & 61B of the Magistrates' Court Act – Section 2 Workmen's Compensation (Repeal) Act 2018

The following cases are referred to in this judgment:

- a. *Saladoka v Attorney General of Fiji* [2005] FJMC 15; Workmen's Compensation No 12 of 2003 (25 October 2005)
 - b. *Tourist Corporation of Fiji Ltd v Labour Officer* [1982] FJSC 41; Civil Appeal 16 of 1982 (1 January 1982)
 - c. *Waisake Vucu v C & J Enterprises and Meli Naikanitaga v C & J Enterprises* [2003] Civil Case No.7 of 2003 (13 August 2004)
 - d. *Cusack v London Borough of Harrow* [2011] EWCA Civ 1514
 - e. *Pretty v Solly* [1859] 26 Beav 606
 - f. *Barnes v Jarvis* [1953] 1 WLR 649
 - g. *R (on the application of Hasani) v Blackfriars Crown Court* [2006] 1 All ER 817
 - h. *Buckley v Law Society (No.2)* (1984) 1 WLR 1101
-

1. The issue before court is whether the Employment Relations Tribunal has the jurisdiction to hear and determine workmen's compensation claims above \$40,000.00. The question has been raised by the applicant, who, by its summons filed on 30 July 2019, formulated the following questions of law for determination in terms of the Employment Relations Act 2007:

- (a) *Whether the Employment Relations Tribunal has jurisdiction to hear and determine any matter under the Workmen's Compensation Act 1964 notwithstanding its limited jurisdiction under section 211(2)(a) of the Employment Relations Act 2007.*
- (b) *If the Tribunal does not have jurisdiction to hear and determine any matter under the Workmen's Compensation Act that exceeds its jurisdiction pursuant to*

section 211(2)(a) of the Employment Relations Act, whether the Employment Relations Court has jurisdiction to hear and determine any matter under the Workmen's Compensation Act that exceeds the Tribunal's jurisdiction under section 211(2)(a) of the Employment Relations Act.

Prior to filing the aforesaid summons, the applicant filed an application in court on 2 April 2019 seeking compensation on behalf of the dependents of the deceased workman.

2. In terms of section 220(1)(j) of the Employment Relations Act 2007, this court has jurisdiction to hear and determine a question connected with the construction of that Act or of any other law, being a question that arises in the course of proceedings properly brought before this court.
3. The claim relates to compensation claimed by the dependents of Mr. Rakesh Narayan, who died while employed as a construction supervisor with the respondent. Mr. Narayan died on 24 August 2017, after suffering cardio pulmonary arrest – a condition where the heart suddenly stops beating, which is commonly referred to as a cardiac arrest. The applicant claims that death was due to sustaining a personal injury by accident arising out of and in the course of Mr. Narayan's employment with the respondent. The applicant is seeking \$50,000 as compensation for Mr. Narayan's dependents, under the Workmen's Compensation Act. The claim is disputed by the respondent. For the purpose of this action, however, the factual disputes between the parties are not material.
4. The Workmen's Compensation Act was repealed by section 2 of the Workmen's Compensation (Repeal Act) 2018¹. However, a claim for compensation resulting from an accident that had occurred prior to 1 January 2019, and which arose out of and in the course of employment has to be dealt with according to the repealed Workmen's Compensation Act or any other law applicable at the time of the accident.² The parties do not dispute the applicability of the Workmen's Compensation Act to the present claims.

¹ No.30 of 2018

² Section 3(1)(c) of the Workmen's Compensation (Repeal) Act 2018 which amended section 33B of the Accident Compensation Act 2017

5. Section 211(1)(p) of the Employment Relations Act 2007 states that the tribunal has jurisdiction to hear and determine any matter under the Workmen's Compensation Act. Section 17(2) of the Workmen's Compensation Act provides that all claims for compensation under the provisions of the Act, unless determined by agreement, and any matter arising out of proceedings thereunder shall be determined by the court whatever may be the amount involved and the court may, for that purpose, call upon any person to give evidence, if the court is of opinion that such person is, by virtue of his expert knowledge, able to assist the court, which is defined to mean the Employment Relations Tribunal³.

6. Section 6(a) of the Workmen's Compensation Act states that where death results from injury, if the workman leaves any dependents wholly dependent on his or her earnings, the amount of compensation shall be a sum equal to 208 weeks earnings, provided that in any case the compensation shall not be less than \$9,000 nor more than \$50,000. If compensation has been paid under the provisions of sections 7 and 8 of the Act, the amount paid must be deducted from the sum payable under section 6 (a) of the Act. From a plain reading of the enactment, it is evident, therefore, that in terms of the Workmen's Compensation Act, parliament has permitted compensation to be awarded up to a maximum of \$50,000, where death results from an injury. Section 7(1) of the Act, which is in respect of permanent total incapacity, and which is not applicable to the present case, imposes a limit of \$67,000 as compensation for such incapacity. There is similar provision in respect of permanent partial incapacity. The question, therefore, is whether the Employment Relations Tribunal can hear a workmen's compensation claim.

7. Prior to the establishment of the Employment Relations Tribunal in 2008, the applicant submitted, claims for workmen's compensation were determined by a resident magistrate, and that the law was amended from time to time to enhance the jurisdiction of a resident magistrate in relation to all personal suits, whether arising from contract or from tort. The applicant submitted that the jurisdiction of the magistrate was raised from \$15,000.00 to \$50,000.00 from 27 September 2007.

³ Section 3 of the Workmen's Compensation Act and section 265 (2) (a) of the Employment Relations Act 2007

Despite the limited jurisdiction of the Magistrates' Court, it was submitted, resident magistrates awarded compensation under the Workmen's Compensation Act in excess of its jurisdiction under section 16(1) of the Magistrates' Court Act 1944.

8. The applicant relied on the decisions in *Saladoka v Attorney General of Fiji*⁴, *Tourist Corporation of Fiji Ltd v Labour Officer*⁵ and *Waisake Vucu v C & J Enterprises and Meli Naikanitaga v C & J Enterprises*⁶ in support of its contention that the tribunal could, in matters relating to workmen's compensation, award sums beyond the limit ordinarily placed on it as had been done by resident magistrates in those cases. These decisions, however, do not shed much light on the tribunal's jurisdictional limit on the basis of the applicable statutory provisions.
9. In regard to the question of the tribunal's jurisdiction, the respondent was more or less on the same page as the applicant, and seemed to concede that the tribunal had jurisdiction to grant a claim for workmen's compensation up to \$50,000, but for reasons different to those urged by the applicant. The respondent submitted that section 17(2) of the Workmen's Compensation Act gave the tribunal additional jurisdiction to determine claims that may exceed \$40,000, but are limited to \$50,000, and that the only limitation lay when members comprising the tribunal are not legally qualified. Section 211 (4) limits the jurisdiction of the tribunal to \$10,000, when it comprises members who are not legally qualified.
10. Section 202(3) of the Employment Relations Act states that the tribunal has the jurisdiction, powers and functions conferred on it by the Employment Relations Act or any other written law. Section 211(1)(p) of the Employment Relations Act and Section 17(2) of the Workmen's Compensation Act clearly vest the tribunal with jurisdiction to hear and determine all claims for workmen's compensation. Parliament's widening of the tribunal's reach is evident by section 211(1) (r) of the Employment Relations Act which says that the tribunal has the jurisdiction to exercise other powers and functions as are conferred on it by this Act or any other written law.

⁴ [2005] FJMC 15; Workmen's Compensation No 12 of 2003 (25 October 2005)

⁵ [1982] FJSC 41; Civil Appeal 16 of 1982 (1 January 1982)

⁶ [2003] Civil Case No.7 of 2003 (13 August 2004)

11. I accept the applicant's submission that a purposive approach be taken in understanding the jurisdiction of the Employment Relations Tribunal, which is a creature of the Employment Relations Act, in relation to claims under the Workmen's Compensation Act. The legislation as a whole must be looked at in context, and a meaning that is conducive to its social purpose needs to be ascertained. The purpose of the Workmen's Compensation Act is to compensate a worker who has suffered injuries during the course of employment. It is a social legislation which has been tailored to protect the vulnerable. The limit of \$40,000 is imposed on the tribunal by the Employment Relations Act, which, nevertheless provides that the tribunal may exercise the jurisdiction, powers and functions conferred on it by any other law.

12. In that context, the limit of \$40,000 imposed by the Employment Relations Act must be seen as giving way to section 17(2) of the Workmen's Compensation Act which empowers the tribunal to hear and determine all claims for workmen's compensation whatever may be the amount involved. The plain meaning must be given effect where there is nothing to modify, alter or qualify an enactment⁷. Here, the phrase "*whatever may be the amount involved...*" in section 17(2) is qualified by section 6(a) of the Workmen's Compensation Act, in respect of the claim giving rise to the questions of law in this case. The upper limit of the compensation was introduced by section 3 of the Workmen's Compensation (Amendment) Act No.8 of 2015 which raised the sum payable from \$ 24,000 to \$50,000, when death results from an injury. Likewise, compensation was enhanced from \$32,000 to \$67,000 in respect of injury resulting in permanent total incapacity⁸ and from \$24,000 to \$50,000 for permanent partial incapacity⁹. These were substantial changes made by parliament to provide for much higher claims under the Workmen's Compensation Act. A forceful expression as such by parliament must be considered as a relevant factor in the matter of construction of the provisions under consideration. Parliament is taken to do nothing without a reason.

⁷ Bennion on Statutory Interpretation, 5th ed. page 549

⁸ Section 7 of the Workmen's Compensation Act

⁹ Section 8 *ibid*

13. The amendment by Act No.8 of 2015 was brought in to remedy a mischief. It is the duty of court to make such construction of a statute that suppresses the mischief and advances the remedy¹⁰. A certain amount of common sense must be applied in construing statutes¹¹, and provisions must be construed so as to give them a sensible meaning¹². An enactment must be construed in such a way as to implement, rather than defeat, the legislative purpose¹³. This is expressed by the maxim *ut res magis valeat quam pereat* (it is better for a thing to have effect than to be made void). The rule is used to confer on courts, jurisdiction and powers that are not expressly conferred¹⁴. A construction of an enactment which is adverse to the public interest must be avoided, if possible, the basis of legal policy being, that the law should serve the public interest.
14. Another principle in statutory construction is that the specific overrides the general. The maxim *generalia specialibus non derogant* i.e: a general provision does not derogate from a specific one, can be usefully applied to construing the applicable provisions. The English Court of Appeal explained the principle in this way in *Cusack v London Borough of Harrow*¹⁵: “Where there is a general provision and a more specific provision, and a course of action could potentially fall within both the court will usually interpret the general provision as not covering matters covered by the specific provision”. In *Pretty v Solly* it was held “wherever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply”.¹⁶ While each case must be resolved by reference to the particular factors at issue, the principle mentioned in these decisions is an important guideline in construing the different enactments in the matter before court. The limit placed on the tribunal by the Employment Relations Act must be considered a general provision which must give way to the special provision in

¹⁰ Maxwell on the Interpretation of Statutes, 12 ed. page 96

¹¹ Barnes v Jarvis [1953] 1 WLR 649

¹² R (on the application of Hasani) v Blackfriars Crown Court [2006] 1 All ER 817

¹³ Bennion, page 558, *supra*

¹⁴ Buckley v Law Society (No.2) (1984) 1 WLR 1101

¹⁵ [2011] EWCA Civ 1514

¹⁶ [1859] 26 Beav 606

section 6 of the Workmen's Compensation Act in relation to the applicant's claim.

15. A reading of the relevant provisions giving primacy to section 211(2)(a) of the Employment Relations Act would be to thwart the legislature's objective of enabling compensation to be paid to injured workmen up to a maximum of \$50,000. Parliament is presumed to know the consequences of the laws it enacts, and could not have intended the special law on workmen's compensation to be limited by the general provision i.e: section 211(2)(a) of the Employment Relations Act. A grey area that gave rise was that the tribunal having been created by the Employment Relations Act, whether the limitation it has expressly placed could be impliedly varied by another statute. The answer seems to be in section 211(2)(a) by which the tribunal has the jurisdiction, powers and functions conferred on it by the Employment Relations Act or any other written law. The reading of the enactments suggested here, the court is of the view, is in accord with the intention of the legislature.
16. In my opinion, therefore, the Employment Relations Tribunal has jurisdiction to hear and determine any matter under the Workmen's Compensation Act notwithstanding its limited jurisdiction under section 211(2)(a) of the Employment Relations Act, subject to the compensation limits imposed by the Workmen's Compensation Act. The tribunal derives its jurisdiction in terms of section 17(2) of the Workmen's Compensation Act and section 211(1)(p) of the Employment Relations Act. The limitation in section 211(4) is a matter to be dealt with administratively, and could be overcome when a claim is heard by a resident magistrate in terms of section 61B of the Magistrate' Court Act, whereby a magistrate may exercise the jurisdiction and powers and perform any duties and functions of any statutory tribunal subject to part 8A of that Act.
17. Neither party submitted with any conviction that the Employment Relations Court had jurisdiction to entertain claims for workmen's compensation in the first instance except where it is referred to determine a question of law or an

application is made by a party on the ground of public interest¹⁷, the situations there being on very specific grounds. In view of my answer to the first question of law referred by the applicant, the second question relating to the Employment Relations Court need not be determined in this instance. I thank the counsel for both parties for their helpful submissions to court in understanding the statutory provisions. This being a preliminary issue, and the substantive matter yet to be inquired into by the tribunal, this court acknowledges with regret the delay in the disposal of the questions of law raised by the applicant.

ORDER

- A. The Employment Relations Tribunal has jurisdiction to hear and determine the applicant's claim for compensation under the Workmen's Compensation Act.

- B. The parties will bear their own costs.

Delivered at **Suva** this 30th day of **October, 2020**



M. Javed Mansoor
M. Javed Mansoor, J
Judge.

¹⁷ Sections 217 (1), 218 and 220 (1) (d), (e) and (f) of the Employment Relations Act and section 21 of the Workmen's Compensation Act