

**IN THE EMPLOYMENT RELATIONS COURT**  
**AT SUVA**  
**APPELLATE JURISDICTION**

**ERCA 08 of 2019**

**BETWEEN** : KOROQAQA & VATUWAQA CARRIERS

**APPELLANT**

**AND** : THE LABOUR OFFICER

**RESPONDENT**

**BEFORE** : M. Javed Mansoor, J

**COUNSEL** : Mr. S. Kumar for the Appellant

: Mr. K. Qiodravu for the Respondent

**Date of Hearing** : 7 April 2022 & 29 August 2022

**Date of Judgment** : 18 January 2024

# JUDGMENT

WORKMEN'S COMPENSATION

*Claim on behalf of dependents – Amendment to application – Whether letters of administration necessary for claim – Sections 3 & 6, Workmen's Compensation Act 1964 – Order 14 and Order 32 rule 8, Magistrates' Court Rules 1945*

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1. The labour officer made an application under the Workmen's Compensation Act 1964 seeking compensation on behalf of the dependents of the deceased worker, a former employee of the respondent. The appellant employed the worker as a driver and delivery person at the time of his death, which was caused by a motor vehicle accident on 9 May 2012, while going on delivery from Suva to Lautoka.
2. The worker's dependents were not identified in the original application, which was opposed by the employer. Subsequently, the labour officer made an application for amendment to include the dependents, which the tribunal allowed. The application on behalf of the dependents was made on 24 September 2014.
3. After considering the evidence and the statutory provisions, the tribunal held that Amrit Prasad and Chandra Wati were the worker's dependents at the time of his death. The tribunal concluded that the applicant's case was made out and that the dependents are entitled to compensation of \$24,000.00. He ordered 5% interest from 3 December 2014, the date of the amended application. Inclusive of interest, the tribunal ordered the appellant to pay a revised sum of \$29,440.00 within 30 days of the tribunal's decision.
4. Dissatisfied with the resident magistrate's determination, the appellant raised the following grounds of appeal:
  - i) "The learned Trial Magistrate erred in law and in fact when he failed to consider all the oral evidence of the Defendant/Appellant and Applicant
  - ii) The Learned Trial Magistrate erred in law and in fact when he failed to maintain neutrality and to apply proper principles of proof of civil liability thereby causing substantial miscarriage of justice.

- iii)* The Learned Trial Magistrate erred in law and in fact when he wrongly applied principles of law relating to civil liability by doing his own research of evidence behind the back of the Defendant/Appellant without allowing the Defendant/Appellant an opportunity to rebut.
  - iv)* The learned Trial Magistrate erred in law and in fact when he failed to consider that the evidence led by the Applicant Labour Officer of Mr. Amrit Chand in his oral statement stated he was a farmer and was self-dependent.
  - v)* The learned Trial Magistrate erred in law and in fact when he took into account the documentary evidence which was not proved by oral evidence wherein in Part 9 in place of dependents the application stated that “NOT APPLICABLE” see the comments of the Learned Trial Magistrate on last 3 lines of 1<sup>st</sup> paragraph of judgment on page 3 of him entering into the arena of witness.
  - vi)* The learned Trial Magistrate erred in law and in fact by allowing the action to proceed to hearing without there being a person duly appointed to represent the estate of deceased within the valid of originating process. Re AMIRTEYMOUR DECEASED [1979] 1 WLR 63
  - vii)* The learned Trial Magistrate erred in law and in fact in granting an award which exceeds the claim; 1 X Rule 3 of the Magistrates Court Act Cap 14
  - viii)* The learned Trial Magistrate erred in law and in fact in failing to act judiciously by delivering ruling which is contrary to the evidence given in court and which has seriously prejudiced the plaintiff/appellant; see cases Pettit v Dunkley [1971] 1 NSWLR376CA”.
5. This case was initially fixed for 7 April 2022. The appellant submitted that there must be an administrator appointed by letters of administration to commence a suit on behalf of the estate. In this case, it was submitted, letters of administration have not been issued and, therefore, proceedings for workmen’s compensation on behalf of the dependents cannot be maintained. The appellant pointed out that in the initial application to the tribunal, the labour department did not name the worker’s dependents. It was submitted that, as the worker was dead, an application for workmen’s compensation could not have been filed in the absence of dependents. The appellant submitted that the worker’s mother and father were substituted, without the tribunal’s prior leave, although letters of administration were not taken out and, therefore, the proceeding before the

resident magistrate was a nullity. The appellant submitted that the tribunal also exceeded its jurisdiction in granting \$29,440.00 when the claim for compensation was \$24,000.00. After the appellant concluded submissions, counsel for the respondent officer made a late appearance in court and sought time to make submissions, which was allowed.

6. When the case was taken up on 29 August 2022, the respondent submitted that there was an error when the application was initially filed in omitting to mention the names of the dependents, and that this was rectified by filing an amended application in terms of Order 14 of the Magistrates' Court Rules. The respondent submitted that the definition of "dependent" in the Workmen's Compensation Act permitted an application to be made on behalf of the worker's parents. Their identities and dependent circumstances, it was submitted, were found by the labour officer who conducted the investigation. In regard to the award of interest, the respondent submitted that Order 32 Rule 8 of the Magistrates' Court Rules provides for interest at the rate of 5% per annum.
7. In reply, the appellant submitted that the resident magistrate ventured into inquiries of his own, which had prevented the employer from rebutting certain matters. The appellant submitted that the defects in the proceedings before the tribunal are such that they cannot be rectified at this stage.

### **Conclusion**

8. Section 6 of the Workmen's Compensation Act made provision for compensation to be paid to the dependents of a workman. Section 3 of the Act defined "dependents" "to mean those members of the family of workman who were wholly or in part dependent upon his or her earnings at the time of his or her death, or would but for the incapacity due to the accident have been so dependent.... ". There is no requirement under the Workmen's Compensation Act to obtain letters of administration. The claim against the appellant is not in respect of the deceased worker's estate. Their claim is for lost earnings as dependents of the worker. The rights of the dependents are given by statute and have nothing to do with the worker's estate. The appellant's contention is misconceived.

9. Counsel for the appellant submitted that the court was not entitled to grant a sum more than the amount claimed by the respondent. This contention will not succeed. Interest is awarded to compensate a claimant for the delay in settling the sum awarded. Interest is no part of the compensation assessed in terms of the statute. The resident magistrate was entitled to order interest in terms of Order 32 rule 8 of the Magistrates' Court Rules in view of the delay in settlement of compensation to the worker's dependents.
10. A further submission concerns inquiries said to have been made by the resident magistrate. The appellant has not provided court with a transcript of the evidence in order to assist court to consider this aspect. It is the duty of the appellant to provide the court sitting in appeal with a signed copy of the proceedings so that any alleged defect in procedure could be ascertained. No observation, therefore, will be made on this issue. In the absence of a transcript of evidence, it must be stated, the evidence summarised by the resident magistrate was useful in understanding the way the tribunal approached the matter.
11. The appeal is dismissed with costs.

**ORDER**

- A. The appeal is dismissed.
- B. The appellant is to pay the respondent costs summarily assessed in the sum of \$2,000.00.

Delivered at **Suva** on this 18<sup>th</sup> day of **January, 2024**.



M. Javed Mansoor  
Judge