IN THE EMPLOYMENT REALTIONS COURT HOLDEN
IN LAUTOKA, EXERCISING ITS CIVIL JURISDICTION.

ERCA CASE NO. 06 OF 2023

IN THE MATTER of an Appeal from the decision of the EMPLOYMENT RELATIONS TRIBUNAL in Civil Case No- ERT WC 35 of 2022.

BETWEEN: **THE LABOUR OFFICER,** for and on behalf of the dependents of the deceased **SOROPEPELI RAIKO** of Mana Island.

APPELLANT

AND **SEG HOLDCO LLC – FIJI BRANCH,** C/O KPMG Level 10, Renwick Road, Suva

RESPONDENT

BEFORE **: Mr. A.M. Mohamed Mackie –J.**

COUNSEL **: Ms. Hari Krishna A. For the Appellant.**

: Mr. Narayan A. (Junior). For the Respondent.

DATE OF HEARING **: 8th April 2024.**

WRITTEN SUBMISSIONS **: Filed by the Respondent on 29th January 2024.**

: Filed by the Appellant on 08th April 2024.

: Filed by the Respondent on 11th June 2024 (reply).

DATE OF JUDGMENT **: 19th November 2024.**

JUDGMENT

A. INTRODUCTION:

1. This is an Appeal filed on 27th June 2023 by the original Applicant-Appellant ("the Appellant") against the Ruling dated 30th May 2023 pronounced by the learned Magistrate of the Employment Tribunal in Lautoka, in Civil Case No-ERT 35 of 2022. By this Appeal, the Appellant is seeking **FOR THE FOLLOWING ORDERS:**

A. The Ruling of the Employment Relations Tribunal delivered on 30th May 2023 by the Legal Tribunal Aleem Shah be dismissed and set aside;

B. The costs of this application be costs in the cause; and

C. Any other order this Honorable Court deems just and equitable.

2. This Appeal is preferred pursuant to Section 22 of the Workmen's Compensation Act 1964, Order 37 of the Magistrates Court Rules 1944 and the inherent jurisdiction of this Court.

B. GROUNDS OF APPEAL:

3. The above orders are sought by relying on the **following Grounds of Appeal;**

1. ***THAT*** *the Learned Tribunal ('**Learned Tribunal')** erred in law in the Ruling by relying upon the decision of Honorable Justice Wati in Nirmala Holdings v Labour Officer [2021] FJHC 341; ERCA 16.2016, by holding that 'a claim for compensating means proceedings for compensation' when:*

   a. *Under section 13 of the Workmen's Compensation Act 1964 ('**Act')**, a claim for compensation bears a different meaning from proceedings for recovery for compensation; and*

   b. *The Learned Tribunal failed to consider that the prescribed manner in which a claim for compensation is made is provided in regulations 4 of the Workmen's Compensation Regulations 1964 ('Regulation') and the prescribed form is set out in Schedule 3 of the Regulations.*

2. ***THAT*** *the Learned Tribunal erred in law and in fact in the Ruling by holding that the claim for compensation must be made within 3 years from the time of the worker's death and that the time for filing the claim lapsed on 19 July 2022. This is incorrect as the Learned Tribunal failed to consider that;*

   a. *Section 13 of the Act requires that a claim for compensation for death occurring prior to 17 February 2017 must be made within 12 months from the date of the death of a worker; and*

   b. *The claim for compensation was made on the **4th August 2016** which was well within the 12 months period prescribed under section 13 of the Act. (Emphasis mine).*

3. ***THAT*** *the Learned Tribunal erred in law and in fact in the Ruling by holding that the Labour Officer:*

a. *Did not establish the failure to file the claim for compensation in Employment Relations Tribunal within 3 years from the date of the death of the workman was occasioned by mistake or other good cause; and*

b. *Did not rely on proviso (b) (ii) of section 13.*

The above considerations are irrelevant as there was no need for the Labour Officer to establish good cause and mistake stipulated under section 13 (b) (ii) of the Act when the notice of accident and the claim for compensation were made within 12 months from the dare of the death of the worker. Since both the requirements under section 13 of the Act were met, the Labour Officer was not required to establish good cause or mistake.

4. ***THAT*** *the Learned Tribunal erred in law and in fact in the Ruling by holding that the claim is statute barred when the Learned Tribunal failed to consider:*

a. *That section 13 of the Act does not impose any time limitation for filing of the proceedings for recovery of compensation when the requirements for initiating a proceeding for recovery of compensation under section 13 are satisfied;*

b. *That the two requirements stipulated under section 13 of that Act were met when the notice of accident and the claim for compensation were made within 12 months from the date of death of the worker.*

C. BACKGROUND FACTS:

4. The employee Mr. Soropepeli (now deceased) was employed by the Respondent as a Security Guard, and when he was at his security post on **19th July 2016** collapsed and died.

5. The Appellant on **4th August 2016** gave "Notice of Accident " to the Respondent , and thereafter on **27th June 2017** pursuant to section 17(1) (c) of the Workman Compensation Act ("the Act") made the claim for compensation from the Respondent in a sum of $50,000.00. **(**It is to be observed that in Ground of Appeal 2 (b) above, the date of giving notice of accident, which was 4th August 2016, has been referred to as the date of making claim for compensation. The date of making claim for compensation was in fact 27th June 2017 , which was within the 12 months period prescribed by the Act)

6. As the Respondent disputed the claim for compensation so made on **27th June 2017**, the Appellant on **25th September 2018** filed the "Proceedings for Recovery of Compensation" bearing No. WC Case **No.91 of 2018** at the Tribunal, which was later withdrawn due to jurisdictional issues.

7. The aforesaid jurisdictional issue, namely on the monetary limits of the Tribunal, being resolved by the High Court on 30th October 2020, through another matter , the Appellant ,on **19th July 2022** , filed a fresh claim before the Tribunal under case bearing **No- ERCA-WC- 35of 2022**.

8. Conversely, the Respondent on 20th September 2022 filed a strike out Application pursuant to section 13 of the Act on the ground that the claim is time bared. After hearing the strike out Application, the learned Tribunal Magistrate by his impugned Ruling dated **30th May 2023** struck out the Appellant's claim on the ground that the claim was time barred.

9. It is against the said Ruling, the Appellant came before this Court on 27th June 2023, by timely filing of his Notice and Grounds of Appeal, upon which he relied for the purpose of this Appeal.

D. THE ANALYSIS:

10. Before I proceed to delve into the Grounds of Appeal, it is appropriate to carefully examine the contents of Sections 13 of the Act, in order to appraise the difference between the phrases "***Claim for Compensation"*** and "**Proceedings *for Recovery of Compensation***" imbedded in the Section. Proper interpretation and understanding of these phrases would, undoubtedly, dispel the ambiguity, which appears to have plagued the smooth resolution of matters of this nature before the Tribunal, including the matter at hand.

11. The Section 13 of the Act provides:

> ***"Proceedings for the recovery*** *under this Act* ***of compensation*** *for an injury shall not be maintainable unless* ***notice*** *of the accident has been given by or on behalf of the workman as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the* ***claim for compensation*** *with respect to such accident has been made within twelve months from the occurrence of the accident causing the injury or, in the case of death,* ***within twelve months from the time of death****: (emphasis mine)*
> Provided that –
>
> > *(a) the want of, or any defect or inaccuracy in, such notice shall not be a bar to the maintenance of such proceedings if it is proved that the employer had personal knowledge of the accident or had been given notice of the accident from any other source at or about the time of the accident, or if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake or other reasonable cause;*

(b) *The failure to **make a claim** for compensation within the period above specified shall not be a bar to the maintenance of such proceedings if it is proved that –*

(i) The failure was occasioned by mistake or other good cause; or

(ii)The employer failed to comply with the provisions of subsection (1) or (2) of section 14, so, however, that no proceedings for the recovery of compensation shall be maintainable unless the claim for compensation is made within a period of six years from the date of the accident".

12. I shall delve into the Grounds of Appeal in the light of the above section, and by careful consideration of the contents of the oral submissions made and those of the written submissions filed by counsel for both parties. I thank them for the Submissions.

GROUND 1:

13. The key argument advanced on behalf of the Appellant to substantiate this ground of Appeal is that the learned Tribunal Magistrate made a crucial error by failing to distinguish the deference between "**a *Claim for Compensation***" and "**a *Proceeding for Recovery of Compensation".***

14. At the outset, I observe that the learned Magistrate's reference to the phrase "***Claim for Compensation***", found in the Section 13 of the Act, as "***to Institute a Claim for Compensation"*** in page 2 of the impugned Ruling, appears to have led the Magistrate to err in his findings. Because, making the "**Claim for compensation**" which is the second step in the process, should not be understood or treated as an act of filing or institution of a Claim for Recovery of Compensation. It is only a pre- step fulfilled by the Workman or on his behalf before commencing the Recovery Proceedings at the Tribunal. In this regard, the learned Magistrate seems to have been heavily influenced by the judgment in ***Nirmala Holdings Vs Labour Officer [2021] FJHC 341; ERCA 16 of 2016 (22nd November 2021*,** wherein it was decided that ***"a Claim For Compensation"*** *means* ***"Proceedings for Recovery of Compensation"*** with which I beg to disagree, with all the due respect, for the reasons to be discussed below.

15. As per Section 13 of the Act, once an Employee sustains injury , the first and foremost action taken by the Employee or on his/her behalf is giving Notice of Accident to the Employer as soon as practicable after the occurrence thereof or before the workman has voluntarily left the employment. This requirement, in this case, was well and truly met once the Notice of Accident that occurred on **19th July 2016** was given by the Appellant on the **4th August 2016** within a time period of around 16 days. The parties were not at variance in this regard.

16. The next step that required to be followed, under Section 13 of the Act, was making the "Claim for Compensation" from the Employer , which also was duly complied with on **27th June 2017** pursuant to section 17(1) (c) of the Act , by which a sum of $50,000.00 was sought as compensation from the Respondent. It is to be observed that the Claim for Compensation hereof was duly made within 12 months period from the date of accident, as per the law prevailed at that time, which was later amended as 3 years. The exact time period hereof between the date of "accident" and making the "Claim for Compensation" was only 11 months and 8 days, which was, obviously, less than 12 months period required by the Section. Thus, the Appellant cannot be found fault with on his compliance as far as this second step of making the "Claim for Compensation" is concerned.

17. So, what is sent or made to the Employer, after giving or his taking of Notice of the accident or of resultant death, is the "***Claim for Compensation"***, which is a requirement prior to filing , initiating or commencing "***Proceedings for Recovery of Compensation***" at the Tribunal, which is the third or final step in the process of obtaining compensation. The Act does not prescribe any time limit for this purpose. However, the Employer, who wishes to dispute the claim, usually, rely on Section 4 the Limitation Act of 1971, which prescribes the time limit as 6 years.

18. Even the want of, or any defect or inaccuracy in, such notice of accident, and/ or failure to make "Claim for Compensation" shall not be a bar to the maintenance of such ***"Proceedings for the Recovery of Compensation***". This provision is made under proviso (a) and (b) to section 13 of the Act. However, I find that no requirement arises in this matter for this Court to go into the said proviso (a) or (b) as the Appellant has duly complied with the given time frame as far as the "Notice of Accident" and making of "Claim for Compensation" are concerned.

19. When the contents of Section 13 of the Act is carefully scrutinized, it becomes as clear as crystal that there are 3 steps or stages that an Employee or his dependents have to follow in obtaining compensation on account of Workman's workplace injury or death. The first one is giving "***Notice of the Accident***", the Second one is making "***Claim for Compensation"*** from the Respondent Employer and final one is the filing or commencing "***Proceedings for Recovery of Compensation"*** at the Tribunal. This third or final step comes into play only when the Claim is disputed by the Employer.

20. Perusal of the section 13 also makes it, abundantly, clear that the phrase "**Claim for Compensation"** and the phrase "**Proceeding for Recovery of Compensation"** denote two different and distinct processes that are to be adhered to in obtaining compensation under the Act. The act of "**Claiming Compensation**" from the Employer is not the actual proceeding filed before the Tribunal to recover the compensation. It is almost similar to

a formal Letter of demand sent to the debtor by the Creditor demanding money due to him from the debtor. In the event the Employer opts to dispute the claim for Compensation, then it can be regarded as a Notice of the impending proceedings for recovery before the Tribunal. It means, that *"If you pay my claim at this stage, I will not pursue behind you any further, otherwise we will have to meet at the Tribunal"*. As I understand, the rationale behind requiring to make the "Claim for Compensation" prior to commencing the "Proceedings for Recovery of Compensation" is the expeditious resolution of the claims, by avoiding litigation.

21. If, the "Claim for Compensation" is taken as the "Proceedings for Recovery of Compensation", as observed in the case of "***Nirmala Holdings" (Supra),*** the purpose of the legislature, to discourage the laborious, time and money consuming litigation will be defeated , which could , undoubtedly, be detrimental to the Employer, Employee or to his/her dependents. The introduction of this, in-between, step of making "Claim for Compensation" after giving "Notice of Accident" and prior to the last step of Recovery proceedings at the tribunal , will, undoubtedly, create a conducive environment for the settlement of the claim amicably , so that the undesired litigation can be avoided. This will also pave the way for a healthy and untainted Employer & Employee relationship, which is advantageous to both the parties.

22. If the finding made in ***Nirmala Holdings (Supra)*** to the effect that the ***"Claim for Compensation"*** means "***Proceeding for Recovery of Compensation***" is to be accepted, then a pertinent question arises as to how the Employer is supposed to know about the claim, had there been an instance of non-service of the "Notice of the Accident" on him at all, as required by the Section 13. If this is the situation, the first opportunity that the Employer becomes aware of the claim can, probably, be when the Summons for the Recovery Proceedings is served on the Employer. This can result in a situation where the Employer is sued in the absence of any prior notice. He should have been made aware of the impending claim in advance by service of Notice of Accident and/ or the "Claim for Compensation" made, as provided under Section 13 of the Act. This Claim for Compensation can, possibly, serve as a notice of claim as well prior to the recovery proceedings. The Employer has all the rights to be informed about the Claim before having to go to the Tribunal. However, there is no process of "**dual notice"** provided for under Section 13 of the Act, as observed in ***Nirmala Holdings (Supra).***

23. Perusal of the Section 13 shows that when the phrase "***Claim for Compensation"*** is referred therein , the term used is **"made"**, while the phrase "***Proceeding for Recovery of Compensation"*** is referred, the term used therein is "**Maintenance"**. This shows that the "***Claim for Compensation"***, which is required to be made to the Employer, is a distinct step from the step of commencing ***"Proceedings for Recovery of Compensation"*** at the Tribunal. Neither the Recovery proceeding is filed and maintained before the Employer,

nor is the Claim for Compensation made to the Tribunal. Both are two different exercises performed under two different circumstances.

24. If this two-step procedure is not correctly identified and applied in the process of obtaining Compensation for workplace injuries/ death, adverse consequences may arise in the proper implementation of the relevant provisions of the Act. Undoubtedly, the Claim for compensation is not same as the Proceedings for the Recovery of Compensation. Making "Claim for Compensation" and commencing "Proceedings for Recovery of Compensation" are two distinct processes meant to be followed one after the other.

25. Counsel for the Appellant in his written submissions , has stated that the Section 13 of our Act is identical to Section 2 of the United Kingdom's Workman's Compensation Act 1897 , which is reproduced below , is also referred to in **Powell v Main Colliery Company [1990] AC 366 [TAB 1]** at page 369 by Lord Chancellor;

> *"Proceedings for the recovery under this Act of Compensation for an injury shall not be maintainable ….unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing injury"*

26. My attention has also been drawn to some other foreign authorities as well in support of his position, which has been responded to by the learned Counsel for the Respondent in his reply submissions. However, I prefer to rely on our own legislation and decided authorities in the resolution of this Appeal.

27. For the reasons stated above, I find that the ground of Appeal 1 above is meritorious and the Appellant should succeed on it.

GROUND 2:

28. The 2nd Ground of Appeal is on the learned Magistrate's finding that the claim for compensation must be made within 3 years from the date of death of the worker and the time for filing the claim lapsed on 19th July 2022.

29. The above finding of the learned Tribunal Magistrate is incorrect as the Tribunal had failed to consider that as per the Section 13 of the Act that was in force prior to 17th February 2017, the time period for making the Claim for Compensation was not 3 years, but only 12 months. The fact that the claim for compensation hereof was made within 12 months from the date of accident seems to have had escaped the attention of the learned Tribunal Magistrate.

30. It is clearly on record, that the accident occurred on 19th July 2016, the Notice of Accident was given on 4th August 2017 within about 16 days from the date of Accident, and the Claim for Compensation was made on 27th June 2017, which was within 12 months from the date of the accident. As the Employer had disputed the claim, the 1st Proceeding bearing No. WC- Case No- 91 of 2018 was instituted on 25th September 2018, which was later withdrawn as aforesaid due to jurisdictional issues. However, the jurisdictional issue being sorted out, the subsequent proceeding bearing No- WC ERT 35 of 2022 was filed on 19th July 2022, which was still within the period of 6 years from the date of the accident. Thus, I find that the Appellant was well within the time periods as far as all the required steps are concerned. Therefore, the 2nd Ground also succeeds.

GROUND 3:

31. The 3rd Ground of Appeal is on the Tribunal Magistrate's erring in law and in fact in ruling that the Labour Officer did not establish his failure to file the Claim for Compensation, at the Tribunal within 3 years from the date of the death of the workman, was occasioned by mistake or other good cause; and did not rely on proviso (b) (ii) of Section 13.

32. Apparently, since the Appellant had complied with all the prescribed time requirements in relation to giving Notice of the Accident and making the Claim for Compensation , the Tribunal Magistrate need not have ventured in to see whether the Labour Officer had established good cause and mistake stipulated under section 13 (b) (ii) of the Act. Establishing good cause and mistake is required and come into play only if the stipulated time periods had not been complied with. Accordingly, I find that the Appellant should succeeds in this 3rd Ground of Appeal too.

GROUND 4:

33. This ground is based on the Tribunal Magistrate's erroneous finding to the effect that the claim of the Appellant was statute barred, by failing to consider that section 13 of the Act does not impose any time limitation for filing of the proceeding for Recovery of Compensation, when the two pre-requirements for commencing Proceedings for Recovery of Compensation under section 13 were satisfied.

34. As I observed above, when the Notice of Accident had been given within 16 days from the date of the Accident and the Claim for Compensation was made before the expiry of 12 months from the date of the Accident, there was no hurdle for the Appellant to have commenced the proceedings for Recovery of Compensation on 19th July 2022. Accordingly, this Ground of Appeal also bound to succeed.

E. CONCLUSION:

35. The ***"Claim for Compensation***" made by or on behalf of the Worker, after giving "***Notice of the Accident"*** to the Employer, is certainly not the ***"Proceeding for Recovery of Compensation".*** However, in the event the Respondent disputes the ***"Claim for Compensation"*** so made, it can, probably, serve as a notice of impending ***"Proceedings for Recovery of Compensation"*** before the Tribunal. The section 13 of the Act, as it appears, does not make provisions for two notices to be served on the Employer.

36. The learned Tribunal Magistrate's conclusion is misconceived. Section 13 of the Act does not mean that the Claim for Compensation is Proceedings for Recovery of Compensation. If the Notice of Accident is given expeditiously after the occurrence of it, and the Claim for Compensation is made within 12 months, which steps were duly complied with in this matter, there need not be any hurdle for the Appellant to commence Proceeding for Recover of Compensation, if it was commenced within 6 years from the date of Accident.

37. For the reasons stated above, I have no alternative other than allowing the Appeal , setting aside the impugned Ruling of the learned Tribunal Magistrate and directing the matter to be heard before another Magistrate as expeditiously as possible. I also find that imposition of $1000.00 on the Respondent as summarily assessed costs is reasonable.

F. FINAL ORDERS:

a. The Appeal is allowed.

b. The striking out Ruling, dated 30th May 2023 and delivered by the Employment Tribunal in Civil Case No- ERT WC 35 of 2022, is hereby set aside.

c. The said Civil Case No- ERT WC 35 of 2022 is hereby reinstated.

d. The said case is to be heard and disposed, expeditiously, by another Magistrate.

e. The Respondent is to pay the Appellant a sum of $1,000.00 (One thousand Fijian Dollars) being the summarily assessed costs, within 21 days from the date of this Judgment.

f. A copy of this judgment shall be dispatched to the Magistrate's Court of Lautoka forthwith, along with the Original record.

Delivered at the High Court of Lautoka on this 19th day of November 2024.

A.M. Mohamed Mackie
High Court (Civil)
Lautoka.

SOLICITORS:-

For the Appellant- Attorney General's Office

For the Respondent- Messrs. A.K. Lawyers- Barristers & Solicitors.