IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

CIVIL APPEAL NO. 13 OF 1982

Between:

THE LABOUR OFFICER on Behalf of LUISA LEGALEGA — Appellant

- and -

PORTS AUTHORITY OF FIJI — Respondent

JUDGMENT

This is an appeal from the judgment of the Magistrate's Court, Suva dismissing an application by the Labour Officer, acting for and on behalf of Luisa Legalega, for compensation alleged to be payable to her pursuant to the provisions of the Workmen's Compensation Act.

Luisa Legalega is the daughter of Meli Ratulomai, a dockworker, who died at Suva on the 14th January 1978 aged 58. According to the post mortem report the cause of the deceased's death was congestive heart failure due to atherosclerotic cardiovascular disease. The deceased had a long history of heart trouble.

Doctor P. Ram prepared a report, which he tendered, compiled from hospital notes. This report indicates the deceased was admitted to hospital in September, 1973 with hypertension, congestive cardiac failure and left bundle

branch block. He was again admitted to hospital on 5th May, 1974 and, after discharge, regularly attended the hospital clinic at 4 - 6 weekly intervals. His last attendance was on 21st November, 1977 when he was still on treatment.

Doctor Ram's report states that the deceased had hypertension and ischaemic heart disease resulting in chronic congestive cardiac failure and left bundle branch block.

Doctor Ram in evidence said that heavy work would have made the deceased's heart condition worse. He could not exclude the possibility that the deceased could have died at any time. He mentioned that it could have happened as he walked up stairs.

There was no specific evidence before the Court as to the nature and duration of the deceased's work on the last day he worked before his death. He was employed as a cargo sorter. He was assisted by 2 labourers and would seldom handle cargo himself. He only worked when ships were in port.

The deceased's widow said that her husband's last day at work was on Friday the day before he died. However, in cross-examination, it was put to her that he did not work on the Friday. She agreed and said the last day he worked was Wednesday the 11th January 1978.

This date was confirmed by Mr. H. Chambers, the Assistant Secretary of the respondent authority, from records kept by the authority. The widow also stated that most afternoons because of chests pains the deceased would ask his family to massage his chest.

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The deceased died 2½ days after the time he would normally have ceased work on the 11th January, 1978. There is no evidence that he complained of chest pains on that day after he arrived home and nothing to indicate he had had any heart attack during working hours.

The Magistrate's judgment is very brief. He found as a fact that nothing the deceased did at work in any way caused or contributed to his death. He held also there was no accident in terms of section 5 of the act.

Of five grounds of appeal raised by the appellant only one touches on the one issue relevant in this case and is of any substance.

The fourth ground alleges the Magistrate erred in law and in fact in not giving sufficient consideration to the role of physical stress in heart attack cases.

Only one ground of appeal was necessary and that is that the Magistrate erred in law and in fact in dismissing the appellant's application.

The employer is liable if a workman receives "personal injury by accident arising out of and in the course of the employment". The words quoted and underlined for emphasis are part of section 5 of the Workmen's Compensation Act.

Mr. J.K. Maharaj for the appellant has referred to a number of cases which establish that where a workman with heart disease dies at work due to a heart attack in circumstances indicating that the work contributed to the attack the death was due "to personal injury by accident". The House of Lord's case CLOVER, CLAYTON & CO. LTD. v. Hughes (1910) AC 242 is one such case where a workman

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suffering from serious aneurism was tightening a nut with a spanner when he collapsed and died from rupture of the aneurism.

Hughes' case was followed by a later House of Lords case PARTRIDGE JONES & JOHN PATON LTD. v. JAMES (1933) A.C 501 which Mr. Maharaj also referred to. The workman in that case suffered from disease of the coronary arteries and his state was such that he might have died at any time without any act of physical exertion. Within ten minutes of stopping work he died suddenly.

Mr. P.I. Knight for the Respondent is correct when he points out that in all cases quoted death occurred in circumstances where the deceased workman was clearly working or must on the evidence be assumed to have been working when he had the heart attack or there was evidence that strain of work caused the attacks.

While the Magistrate's judgment is brief it is clear that he found as a fact that nothing the deceased did at work in any way caused or contributed to his death.

The deceased did not die at work. He died 2½ days after he had last worked. He apparently had an attack during the night at home shortly before he died because his daughter in evidence mentioned he was very sick at 3 a.m. on the Saturday he died. She heard of his death in hospital before 7 a.m. that day.

The onus was on the applicant to establish that the death of the workman arose out of and in the course of his employment. The Magistrate's finding of fact indicates that he did not consider the applicant had discharged that onus.

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The Court of Appeal in WHITTLE v. EBBW VALE, STEEL, IRON v. COAL CO. LTD. (1936) 2 ALL E.R. 1221 reviewed the authorities. That was a case where a workman with heart desease was found dead at work. There was in that case evidence that the employment contributed to the death of the workman.

The Court of Appeal in Whittles case distinguished the House of Lords' Case BARNABAS v. BERSHAM COLLERY CO. (1910) 4 B.W. C.C. 119 34 Digest 325, 2656. In that case a collier died of apoplexy during working hours in a mine. His arteries were in a very diseased condition and medical evidence was that apoplexy might have come upon him when asleep in bed or when walking about, or when overexerting himself. It was held that the evidence as to cause of death was equally consistent with an accident and no accident and the onus of proving that it was due to accident rested on the applicants who had not discharged that onus.

SLESSER L.J. in Whittles case in discussing the case of Falmouth Docks v. Engineering Co. Ltd. v. Treloar (1933) A.C. 481, also a House of Lords' case, and the Partridge Jones case I referred to earlier, pointed out that in both those cases there was a finding that the man might have died at any time but, what is of more x importance, that there was evidence that the work he was doing was of a laborious nature and that it accelerated or produced the workman's death. One man died ten minutes and the other 25 minutes after he last worked.

In the instant case there is no evidence as to what specific work the workman was doing or any evidence x that he suffered any attack at work.

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In referring to the lapse of time Slesser L.J. said at p. 1233:

> "I think if there had been a much larger interval that might have weighed with the learned county court judge to say: 'The interval is so long that I do not think in those circumstances I am satisfied that the strain caused the death'."

He went on to say:

> "But there can be no general principle that a man must die immediately he has received the strain; it is a question of fact to be decided on the evidence and the medical evidence."

In the instance case the worker died about 2½ days after he last worked.

There is only one other case I wish to refer to. It is also a Court of Appeal case where a workman suffering from heart disease became seriously ill while at his work and died shortly afterwards. It is the case of OATES v. EARL FITZ-WILLIAM'S COLLIERIES CO. (1939) 2 All E.R. 198.

The editorial note to this case states:

> "The Court of Appeal here reiterate that the proof of extra exertion or strain is not essential for recovery of compensation but there must be evidence of physiological injury or change due to the work upon which the workman was engaged at or about the moment of his death" (underlining is mine for emphasis).

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Considering the evidence in this case, the Magistrate was clearly right in dismissing the application. CLAUSON LJ in Oates' case at p. 503 said:

> "In MILLER v. CARNTYNE STEEL CASTINGS CO. LTD. [(1935) SC 20] the workman would have succeeded if he had collapsed during his work under the strain of his work ....."

So in the instant case the applicant would have succeeded if there had been any evidence of a heart attack during working hours and death followed shortly thereafter.

The appeal is dismissed with costs to the respondent.

R.G. KERMODE

JUDGE

SUVA,
11 ~~November~~ January, 1983.