

(21)

IN THE INDUSTRIAL COURT OF SWAZILAND

HOLDEN AT MBABANE.

CASE NO: 4/89

In the matter between:

1. <u>THANDIWE DUBE )</u>	Applicants
2. <u>NOOBILE DUBE )</u>	

VS.

<u>B.C.C.I. SWAZILAND LIMITED</u>	Respondent
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C O R A M.

J.A. HASSANALI	For	President
MR RWEYEMAMU		Applicant
MR FLYN	For	Respondent
MR DLAMINI &		
MR MATSEBULA		Assessors.

A W A R D  
(Delivered 20 - 12 - 90)

Hassanali, P.

This is an Application by the Applicants under the Workman's Compensation Act, claiming from the Respondent Bank, a sum of E24000/= as Compensation together with interest at 9% per annum.

At the outset of the trial, Mr. Rweyemamu representing the Applicants applied to Court to amend the prayer of the applicant's application in the following manner -

"Wherefore the Applicant's prayer for

- (a) Payment of E24000/= as workman's Compensation.
- (b) Payment of E300/= as burial expenses
- (c) Payment of E5000/= as Medical expenses
- (d) Interest at the rate of 9% per annum
- (e) Any further or alternative relief."

Mr Flyn representing the Respondent objected to the amendment relating to payment of E5000/= as medical expenses.

Having heard the Representatives, I overruled the objections and allowed

the amendment on the ground that it would not cause any injustice to the Respondent as it was an application for medical expenses which the applicants would be entitled to under Sec. 30(2) of the Act.

As requested by the Respondent, Mr. Rweyemamu tendered further particulars in terms of paragraph five of the Respondent's reply. Mr. Flynn objected to this on the ground that there was no provision under the Act for such an application. Since it was a technical objection, I overruled it and allowed the application.

Henry Dube, a person of about 31 years of age was employed by the Respondent Bank as an Accountant. On 30/4/86 at about 8.45 a.m. while on duty, a telephone call was put through to him by the Bank's Receptionist. While taking the call, he suddenly collapsed and fell on his back. Miss Virginia Simelane, who witnessed this, related that he was lying with his hands clenched and his whole body was shaking. Mrs. Dunn, another employee at the Bank too stated that as Dube fell down, he went into fits. He was then rushed to the Mbabane Clinic where he was seen by Dr. Wasswa, who made a provisional diagnosis of Grand Mal Epilepsy. He was discharged the next day but was re-admitted again at about 8 p.m. when he became very ill. Dr Sarugaser who attended on him on this occasion found him deeply unconscious with subdural haemorrhage. He was then transferred to Johannesburg for specialist treatment where he was operated on by Dr. Snycker, and was later sent back to the Mbabane Clinic. According to Dr. Snycker, Dube had severe brain compression due to subdural haematoma. On 18/7/86 he suffered severe pulmonary Oedema and respiratory distress to which he succumbed.

In the circumstances his widow and daughter the 1st and 2nd applicants commenced proceedings against the Respondent for compensation under the Workmans Compensation Act. The Respondent has however disputed their claims on the grounds that the deceased's fall was not accidental but was caused by some illness, which he suffered from, and as such, had not arisen out of or as a result of his employment with the Respondent Bank.

So much to the history of the casualty but one has to have regards to his medical condition.

The Respondent did not tender any evidence in support of its case but depended entirely on the cross-examination of the Applicant's witnesses to establish that the deceased died of an illness related either to epilepsy, alcoholism, hypoglycemia or High Blood Pressure which it stated had no link with his employment or in other words that the deceased did not die of an accident arising out of and in the course of his employment.

I shall now deal with the question as to whether the deceased suffered anyone or more of the aforesaid illnesses and whether the employment accident arose as a result of any one of them.

The only evidence that links the deceased with epilepsy is that given by Dr. Wasswa, who provisionally diagnosed his illness as Grand Mal Epilepsy. He however submitted that this conclusion was arrived at without the necessary tests i.e. E.E.G. Brain Scan etc, being done. Nor was any investigation carried out to find out whether or not he was epileptic. Dr. Snyder the Neuro Surgeon from Johannesburg stated that tests and investigation into the medical history of a person were essential in deciding whether or not a person was epileptic, none of which were carried out in this case. Dr. Mbottoni, Chairman Workmans Compensation Board told Court that in the course of his investigation he did not come across any evidence that suggested that the deceased was epileptic. Mrs. Dube, wife of the deceased too stated that the deceased was not subjected to epilepsy. Her evidence is supported by that of two of deceased's colleagues at the Bank, Miss Simelane and Mrs Dunn who categorically stated that they had at no time seen the deceased suffer from fits. Taking the above into consideration, I have come to the conclusion that the deceased was at no time an epileptic and in the circumstances I reject the Respondent's contention that his death was due to an epileptic fit.

On the question of alcoholism, it is evident Dr. Wasswa had on two occasions in 1984, treated the deceased for this problem, but never saw him there-

after. Dr. Sarugaser has stated that he had attended on the deceased thrice between 23/3/85 and 1/4/86 but had never treated him for alcoholism. Dr Mbottoni too maintained that he found no evidence in the course of his investigation to suggest that the deceased was an alcoholic. Mrs. Dube has stated that the deceased did take some drinks during weekends but never behaved like an alcoholic. Though there is the evidence of Dr. Wasswa to indicate that the deceased was treated for an alcoholic problem, this evidence in my view is insufficient to establish that he was an alcoholic. In the circumstances I find that the Respondent has failed to establish that the death of the deceased was corrected to his own alcoholic problem.

Again on the question of Hypoglycemia, there is no medical evidence that the deceased suffered from this illness. According to Dr. Snycker a 24 hours fasting blood sugar test is essential to decide whether a person has this illness. However he stated that the deceased did not suffer from Hypoglycemia while he was in Hospital. Both Dr. Wasswa and Dr. Sarugaser submitted to Court that they did not carry out any tests. In view of their evidence I have no other alternative but to conclude that the death of the deceased cannot be established as having been due to the above illness.

Even on the question of High Blood Pressure there is no evidence that the deceased was subject to it. In fact according to Dr. Wasswa his Blood Pressure on 30/4/86 was normal.

It is clear from the above evidence that the deceased did not die of any of the aforesaid illnesses. Therefore the employment accident did not arise from any one or more of them.

The evidence sufficiently establishes that in the course of his employment the deceased was at his work place. It is common cause that at about 8.30 a.m. on the day in question while answering a call he fell down, sustained a head injury

from which he later died. He was said to be a man of cheerful disposition and on that particular morning when he fell he was 'just as usual' and there was no reason at all to believe that he was ill.

Mr. Flyn in his arguments submitted that if alcoholism, epilepsy, hypoglycemia and high blood pressure are excluded, the cause of death ought to be treated as a mere conjecture or as an unmitigated speculation and ought to hold that the applicants had not discharged the onus placed upon them. However in my view it is open to some doubts. Mr. Rweyemamu on the other hand argued that since the deceased was in good health and did not die from any of the aforesaid illnesses, he could have in all probability fainted and fallen as a result of receiving some shocking news which news could have been conveyed to him in the course of his employment. He submitted that the head injury on the deceased could have been caused either by his head striking the table or by his falling heavily on his head. It is in evidence that the floor was carpeted and was not in itself dangerous. Dr. Sarugasar in his evidence told Court that the fall on it, just as on any other hard surface would very probably be productive of injury. I therefore accept the argument of Mr. Rweyemamu and hold that the head injury on the deceased was in all probability caused as a result of his head colliding with the table or his having fallen heavily on the floor.

The next question is did the deceased faint and fall as a result of receiving some shocking news as alleged by Mr. Rweyemamu. In this connection both Dr. Sarugasar and Dr. Snycker stated in evidence that a shocking message or sad news could cause a person to faint and fall. Unfortunately the Respondent did not call any evidence to negative this. Therefore Mr. Rweyemamu asked Court to draw an inference that the deceased did receive a shocking news arising out of and in the course of his employment and this message caused him to faint and fall and receive the head injury.

The question which arises in this case is whether the Court is entitled to draw an inference of fact from certain facts which appear in evidence. The

principles on this is very clearly laid down by Lord Birkenhead LC in Lancaster vs. Blackwell colliery Co. Ltd 12 BWCC 400 (Reported in Ellison Vs. Calvert and Heald 1936(3) All England Report at page 469 which is as follows -

"If the facts which are proved give rise to conflicting inferences of equal degrees of probability so that the choice between them is a mere matter of conjecture, then of course, the applicant fails to prove his case because it is plain that the onus in these matters is upon the applicant. But where the known facts are not equally consistent, where there is a ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the more probable conclusion is that for which the applicant contends, then the Arbitrator is justified in drawing an inference in his favour."

Since there is no evidence to the contrary, I am entitled to draw an inference of facts from certain facts which appear in evidence. The fact being that the deceased on the day in question in all probability received a shocking news arising out of and in the course of his employment and which news caused him to faint and fall, and sustain the head injury from which he subsequently died.

In the circumstances I hold that the deceased died of an employment accident arising out and in the course of his employment.

I shall now deal with the applicant's claims -

- (1) The Applicants are claiming E24000/= as Compensation. In support of this they produced Ex."G". In my view the applicants are entitled to this claim under Sec. 6 of the Act and I allow the application.
- (2) The Applicants are also claiming E300/= as burial expenses. This claim is made under Sec. 6(c) of the Act. I allow the application.
- (3) The Applicants are further claiming E5000/= as medical expenses. This claim is made under Sec. 30(1) of the Act. According to the

evidence adduced, they would be only entitled to the following sums -

Mbabane Clinic	E2154.96	Ex. J
Dr. Sarugasor	712.60	Exs P; P2 & V
1st Applicant Paid Clinic	257.18	
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	<b>E3124.16</b>	

I allow the application in the sum of E3124.64 as medical expenses.

I now make the following Order -

The Respondent Bank shall pay the applicants the following -

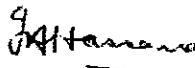
Compensation	E24000.00
Burial Expenses	300.00
Medical Expenses	3124.64
	<hr/>
	<b>E27424.64</b>

This amount is payable together with interest at 9% per annum from this date.

I further order that the amount of E27424.64 be paid to the 1st applicant under Sec.4(H) of the Legal Notice 102/1983 since she is solely responsible for the maintenance and upbringing of the 2nd applicant.

I make this Order as an Award of this Court.

My Assesors agree with my decision.

  
J.A. HASSANALI,  
PRESIDENT.