



Employment Relations Tribunal

Decision

Title of Matter:	The Labour Officer v Mohammed Samshood
Section:	Section 8 <i>Workmen's Compensation Act 1964</i>
Subject:	Application for compensation for permanent partial impairment of a Worker
Matter Number:	ERT WC No 108 of 2018
Appearances:	Ms M Waqaisavou and Ms R Kadavu, Labour Office, on behalf of Mr Ronald Rohitesh Chand Mr M Samshood, for the Employer
Date of Hearing:	Wednesday 28 November 2018
Before:	Mr Andrew J See, Resident Magistrate
Date of Decision:	28 November 2018

KEYWORDS: *Section 9 Bankruptcy Act 1944; Operating a business when Receiving Order in force; Section 14 Workmen's Compensation Act 1964; Failure to Report Serious Workplace Health and Safety Incident Causing Injury to Worker.*

CASES CITED:

Travelodge Fiji Limited Suva v The Labour Officer for Karalaini Diratu, [1994] FJHC 180 Hba0001;93s (9 December 1994)

Background

[1] The matter that has been brought before the Tribunal in somewhat novel circumstances, insofar as it involves a serious injury by accident of a worker at a workplace, where the Employer, was the debtor the subject of a Receiving Order issued in the Labasa Magistrates Court on 1 July 2014.

[2] The employer Mr Mohammed Samshood, was the operator of a sawmilling business, that has on various occasions been referred to as Sam Civil Works¹, Sam Civil Service², the Dalomo Sawmill Ltd³ and the Namara Sawmill⁴.

¹ See Receiving Order issued by the Labasa Magistrates Court, Bankruptcy Action No 05 of 2013, dated 1 July 2014.

² See Letter to Mr Mohammed Samshood from the Acting Deputy Official Receiver, dated 6 February 2014.

³ Though it is recognised that the employer cannot be both an individual person and a company registered under the *Companies Act 2015*.

⁴ See LD Form C/2 Notice of Claim By Or On Behalf Of A Workman dated 8 August 2017.

[3] For the sake of the record, it is probably useful to place in some sort of order the events that have given rise to this decision. They can be set out in the following short form:-

- (i) Mr Ronal Rohitesh Chand was engaged by the Employer as a casual employee working in the pellet section of the Namara Sawmill⁵.
- (ii) On 12 June 2015, Mr Chand suffered a traumatic amputation of the proximal 1/3 of the Left Index Finger and a full thickness laceration of the first web space (Palmar) of the same hand⁶.
- (iii) The reason given for this accident by Mr Samshood, was that "when (Mr Chand) was working, his eyes weren't very good and he went and dropped himself in with saw and cut his hand⁷."
- (iv) According to Mr Samshood during the proceedings, "(his) Manager took (Mr Chand) to the hospital after the accident (and he) ... didn't come back to work."
- (v) The Labour Office was not advised of the accident causing injury, as required under Section 14(1) of the Act⁸.
- (vi) The Notice of Claim was therefore made outside of the then 12 month time window stipulated under the Act, having regard to Section 13(b) (ii).
- (vii) The Application for Compensation was served on Mr Mohammed Samshood on 17 October 2018, albeit that he refused to sign as having received the documents⁹.

Standing of the Employer

[4] When Mr Samshood presented himself to the Tribunal, his demeanour and response to direct questions, were evasive and indicative of a person who was being highly unco-operative. In the first instance, Mr Samshood attempted to convey a situation whereby he claimed not to be the employer the subject of the application, because of the fact that within the workers statements contained with the Disclosure Documents provided to him, he had been referred to by the injured worker as "Bobby" and claimed that this was not his name. When the Worker on the other hand was asked to clarify who it was that he was referring to as "Bobby" within the statement that he had provided, Mr Chand made quite clear that this was the name by which Mr Samshood was known in the workplace. Given that Mr Samshood ultimately conceded that he had employed the Worker casually at least and did organise for him to go to hospital after the incident, only served to highlight the deliberate and conscious effort by him, to be uncooperative and misleading.

[5] Mr Samshood then produced to the Tribunal a copy of a Receiving Order dated 1 July 2014, pertaining to a petition made by Vinod Patel & Company Limited, dated 18 June 2013. According to Mr Samshood, this document was proof of the fact that he was bankrupt and that no proceedings could be commenced against him in pursuit of the claim for compensation. The Tribunal then questioned how could it be the case that he continued to trade in his business as 'Sam(s) Civil Service' if he was a bankrupt and Mr Samshood replied that he had been given approval by the Official Receiver to continue to operate his business by virtue of a letter provided to him from the then Acting Deputy Official Receiver Mr Katia, dated 6 February 2014¹⁰. The

⁵ Statement provided by Mr Mohammed Samshood at the proceedings on 28 November 2018.

⁶ Report of Dr Maloni Bulanauca, General Surgeon, Labasa Hospital dated 13 July 2015.

⁷ Statement provided by Mr Mohammed Samshood at the proceedings on 28 November 2018.

⁸ Submission of Ms Waqaisavou during proceedings on 28 November 2018.

⁹ Submission of Ms Waqaisavou during proceedings on 28 November 2018.

¹⁰ See Letter with reference O/R 97/12.

Tribunal again expressed doubt as to that state of affairs, given that the Receiving Order to which that correspondence related, was referenced as Order 97 of 2012 and which preceded the subsequent Order issued out of Bankruptcy Action No 05 of 2013, dated 1 July 2014.

Effect of Receiving Order on Employer and this Tribunal

[6] The Tribunal has read Section 9(1) of the Bankruptcy Act 1944 and cannot see that it provides any statutory block to preventing the determination of this application. The reason for this is that the Labour Officer on behalf of the injured worker at this point in time is not a "creditor to whom the debtor is indebted" and for that reason until such time as that is the case, Section 9(1) of the Act has no work to do. Where for example, an Order was to be issued by the Tribunal in relation to Mr Samshood that gave rise to a judgment debt, then of course the leave of the High Court to pursue such a debt would need to be sought.

[7] In the interests of expediency, and for the fact that the Employer has conceded a workplace accident and appears intent on evading any obligations he may have to the injured worker who has suffered a very serious and traumatic workplace injury, the Tribunal has decided in the interests of justice to determine the application based on the available material and order that the Employer, Mr Mohammed Mashood pay to the injured worker the amount of \$5226.62 within 28 days from today's date¹¹. So that there is no mistake, all three elements required to prove a claim for workers compensation are present. The Worker had suffered a personal injury by accident, arising out of employment and in the course of employment.¹² In addition, upon receiving an application by the Labour Officer for costs in the amount of \$200.00, the Tribunal is of the view that such an amount is reasonable in the circumstances and should be paid within 28 days hereof. The Labour Officer will have to prepare an Order to give effect to this decision.

Decision

[8] It is the decision of this Tribunal that:

- (i) Mohammed Samshood pay to the Labour Office on behalf of the injured worker, Mr Ronald Rohitesh Chand, the amount of \$5,226.62 in accordance with Section 8(1)(b) of the *Workmen's Compensation Act 1964*. Such payment to be made within 28 days.
- (ii) That Mohammed Samshood pay to the Labour Office, the amount of \$200.00 for legal costs arising as a result of the bringing of these proceedings. Such payment to be made within 28 days.



Andrew J See
Resident Magistrate



¹¹ It should be restated here, that Mr Samshood had refused to acknowledge receipt of the Application and sought to mislead the Tribunal in relation to his state of affairs and his relationship with the injured Worker.

¹² *Travelodge Fiji Limited Suva v The Labour Officer for Karalaini Diratu*, [1994] FJHC 180 Hba0001].93s (9 December 1994)