

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
6 - DEC 1971
25 RUSSELL SQUARE
LONDON W.C.1

IN THE PRIVY COUNCIL

No. 3 of 1968

ON APPEAL FROM THE COURT OF APPEAL

OF THE SUPREME COURT OF JUDICATURE OF GUYANA

B E T W E E N :

ENMORE ESTATES LIMITED Appellants

- and -

RAMKELLAWAN DARSAN Respondent

CASE FOR THE RESPONDENT

Record

- | | | |
|----|--|--------------------------|
| 10 | 1. This is an Appeal from a judgment, dated the 31st October, 1966, of the Court of Appeal of the Supreme Court of Judicature, Guyana (Luckhoo, J.A., Persaud and Cummings, J J.A. (acting)), dismissing an Appeal from the judgment, dated 15th April, 1966, of the Full Court of the Supreme Court of British Guiana (Bollers and Van Sertima, J J.) allowing an Appeal from the Georgetown Judicial District Magistrates' Court (R.M. Morris, Esq., Magistrate) and awarding the Respondent | 42-51 |
| 20 | compensation under the Workmen's Compensation Ordinance, Ch.111, of \$3,864.67 with costs of the said Appeals and in the said Magistrates' Court. | 26-38 |
| 30 | 2. By his Particulars in his application the Respondent alleged that he was employed by the Appellants as a cane cutter and that on 18th December, 1963 while at work he slipped, fell and jerked his back, thereby causing injury to his back from which he suffered a 70% permanent disability. The Respondent further alleged that his monthly wages during the 12 months previous to the injury were \$115.02 and that he was not earning or able to earn any sum in suitable employment or business after the said accident. The Respondent claimed \$6,048.00 plus medical and travelling expenses. The Appellants by their Answer dated 28th July, 1964, gave notice that they intended to oppose | 1-3
2

3
4-5 |

Record

the Respondent's application for compensation on the grounds that the Respondent had been medically examined by two doctors who had found evidence of an old injury to the back, that the Respondent's incapacity was not caused by the alleged accident but by pre-existing diseased condition: that the Appellants had paid the Respondent compensation for the period 19th December, 1963 to the 28th May, 1964 amounting to \$405.00; that the amount of compensation claimed was not due and that the Appellants were not liable to pay any further sum in respect of compensation and that the monthly wages of the Respondent as calculated in accordance with the Workmen's Compensation Ordinance amounted to \$95.03.

10

6-13
evidence
14-19
exhibits

3. The claim was tried by His Worship R.M. Morris, Esq., Magistrate, on 10th and 29th September, 1964 and 8th and 29th October, 1964 and on 31st May, 1965 and the Learned Magistrate dismissed the Respondent's claim on the following grounds:-

20

21-23

(1) There was a conflict of medical evidence as to whether the accident on 18th December, 1963 caused a new injury to the Respondent or an aggravation of a pre-existing condition.

(2) Implicitly, that the Respondent was suffering from aggravation of a pre-existing condition.

30

(3) That aggravation must be material before the injured person was entitled to succeed in a claim.

(4) That the aggravation was not material.

(5) That the Applicant was not suffering from any Permanent Disability as a result of the injury in question.

24-25

4. The Respondent appealed to the Full Court of the Supreme Court of British Guiana. By his Grounds of Appeal dated the 28th January, 1966 the Respondent contended that the Learned Magistrate erred in law on a number of grounds

40

10 the main effect of which was (a) that the Learned Magistrate erred in law in holding that although the Respondent suffered aggravation of a pre-existing condition as a result of his accident he was entitled to be compensated in respect thereof only if such aggravation to such pre-existing condition was material and (b) that on the evidence the Learned Magistrate erred in finding that the Respondent was not entitled to be compensated under the said Ordinance.

20 5. The Appeal was argued on the 11th and 12th of March, 1966 and judgment was given on the 15th April, 1966. The learned Judges reviewed the evidence and said that it was clear on the evidence that the sole issue that arose at the hearing was whether or not the Respondent (the then Appellant) was entitled to compensation on the basis of having sustained a permanent partial disability. Counsel for the Respondent (the then Appellant) had raised two points in the Appeal: first, that the Learned Magistrate erred in law in holding that the Respondent was entitled to compensation under the Ordinance only if the aggravation of the pre-existing condition was material but that if materiality was an issue the onus under the Ordinance was on the employers to show on the balance of probabilities that the aggravation was not material and they had failed to discharge this onus; secondly, that if the Respondent was not entitled to succeed on the basis of permanent partial incapacity he was entitled to be awarded periodic payments from the date of the accident for a temporary disability until the capacity was proved by the employers to have ceased. The main contention for the Appellants (the then Respondents) was that by virtue of a proviso contained in section 3 (1) (c) of the Ordinance the employers were not liable on the grounds that the injury did not aggravate the pre-existing condition in a material degree.

26-38
28-29

29

30

40 6. After holding that it was too late for the Respondent to claim compensation on the basis of a temporary incapacity the learned Judges then considered the question of the construction of the said proviso.

31

31-37

Record

7. The terms of the proviso in section 3 (1) (c) of the Ordinance, insofar as they are material, are as follows:-

"3. (1) If in any employment a workman suffers injury by accident arising out of and in the course of such employment his employer shall be liable to pay a compensation in accordance with the provisions of this Ordinance ...

Provided further that the employer shall not be so liable (under this Ordinance) for such compensation should ... 10

(c) it be proved that the accident would not have occurred, or in so far as the incapacity or death would not have been caused, but for a pre-existing diseased condition of the workman..."

36-37

8. The learned Judges held that the word "accident" in the said Ordinance was to be given a wide meaning; that the word "accident" bore not only the ordinary meaning of such word, that is to say, an untoward event or mishap, but also the extended meaning of an incident due to exertion while at work in which the incident and the injury were the same thing. The learned Judges held as a matter of construction that the said proviso applied only to an accident in such extended meaning. They further held that in the present case an untoward event or mishap (that is to say, an accident in its ordinary meaning) had occurred when the Respondent slipped and fell and jerked his back and sustained injury which had the effect of aggravating the pre-existing condition of the fracture of the back in the region of the 12th thoracic vertebra and that it had caused a permanent partial incapacity or disability. The learned Judges accordingly allowed the appeal and awarded judgment for the Respondent in the sum of \$3,864.67 and costs of the appeal and in the Court below. 20 30 40

36

37

9. The Appellants appealed to the Court of Appeal of the Supreme Court of Judicature, Guyana (then the British Caribbean Court of

Appeal). By their Notice of Appeal, dated the 25th April, 1966 the Appellants contended that the Full Court of the Supreme Court of British Guiana erred in law in holding that the Respondent was entitled to succeed in a claim for compensation under the Ordinance because he sustained an injury which aggravated a pre-existing fracture of the back as by doing so the Full Court had failed to give proper effect to the provisions of paragraph (c) of the proviso to sub-section (1) of section 3 of the said Ordinance; that the Full Court had erred in holding that it was not necessary for the injury to aggravate the pre-existing condition to a material degree for the Respondent to be successful in his claim for compensation; that the Full Court had erred in holding that the question of materiality only arose when an accident in its extended sense was being considered; and further that the Full Court had erred in holding that the evidence did not disclose that the aggravation was not material or alternatively had erred in failing to find that the aggravation was of a temporary nature which did not give rise to a permanent incapacity.

Record

39-41

10

20

30

40

10. The Appeal to the Court of Appeal of the Supreme Court of Judicature, Guyana, was argued on the 13th and 20th September, 1966 and judgment was given on the 31st October, 1966. Judgment was given by Mr. Justice Persaud, Justice of Appeal (acting), and Luckhoo, J.A. and Cummings J.A. (acting) concurred. After setting out the circumstances by which the Appeal came before the Court, Persaud, J.A. (acting) said that in the Court of Appeal the Appellants had accepted that the Respondent had a fractured thoracic vertebra and that his fall might have aggravated that injury but on this appeal had taken two points: first, that the finding of the learned Magistrate should be restored because in the absence of a material aggravation, the Respondent was not entitled to compensation; and, secondly, in any event, proviso (c) to section 3 (1) of the Workmen's Compensation Ordinance protected the employer if the real cause of incapacity was the pre-existing disease. The learned Justice of

42-49
50

43

Record

46

47-49

Appeal after considering the authorities on the Appellant's first argument held that when regard was had to the evidence in this matter, the correct conclusion was that there had been an accident in its restricted or ordinary meaning in the course of the workman's employment which had aggravated a pre-existing diseased condition to a material degree, and that the Respondent, was, therefore, entitled to compensation. On the second submission of the Appellants, the learned Judge of Appeal held that proviso (c) to section 3 (1) of the Ordinance applied only to an accident in its extended meaning and said that he was content with the unanimous opinion expressed on this point by the Full Court; he accordingly held that the proviso could have no application to the present case. The Appeal was dismissed. 10

11. The Respondent respectfully submits that on the evidence and on the concurrent findings of fact of the Full Court and of the Court of Appeal the Respondent suffered an accident on 18th December, 1963 out of and in the course of his employment by the Appellants in which he sustained a permanent disability due to aggravation of a pre-existing condition, namely, an old fracture in the region of the 12th thoracic vertebra. 20

12. The Respondent respectfully submits that in the circumstances he is entitled to compensation under the said Ordinance unless the Appellants are entitled to rely on proviso (c) of section 3 (1) of the Ordinance. The Respondent respectfully submits that the said proviso on its plain language and true construction would apply only in the following circumstances: 30

- (1) if the accident would not have occurred but for a pre-existing diseased condition, or 40
- (2) if incapacity for work would not have been caused but for a pre-existing diseased condition

The Respondent respectfully submits that the

proviso does not defeat his claim:

Record

- 10
- (1) because a pre-existing fracture of the vertebra was not a "diseased condition" of the vertebra; and
 - (2) because the Appellants did not prove (the onus being on them) that the Respondent's accident would not have occurred or that his incapacity for work would not have been caused but for his pre-existing condition if (contrary to his contention) such condition was a pre-existing "diseased condition".

Further the Respondent respectfully submits that the said proviso does not apply when the accident was an untoward event or mishap, as occurred in his case.

- 20
13. The Respondent respectfully submits that the judgment of the Court of Appeal of the Supreme Court of Judicature, Guyana, was right and ought to be affirmed, and that this Appeal ought to be dismissed, for the following (amongst other)

REASONS

- 30
1. BECAUSE proviso (c) of section 3 (1) of the Workmen's Compensation Ordinance applied only to a workman suffering from a relevant pre-existing diseased condition.
 2. BECAUSE the Respondent was not suffering from any relevant pre-existing diseased condition
 3. BECAUSE the Appellants have failed to prove that the Respondent's accident would not have occurred or that the incapacity would not have been caused, but for a pre-existing diseased condition of the Respondent.
 4. BECAUSE of the other reasons set out in the judgment of the Court of Appeal of the Supreme Court of Judicature, Guyana.

40

D. TURNER-SAMUELS

No. 3 of 1968

IN THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL
OF THE SUPREME COURT OF JUDICATURE
OF GUYANA

B E T W E E N :

ENMORE ESTATES LIMITED Appellants

- and -

RAMKELLAWAN DARSAN Respondent

C A S E F O R T H E R E S P O N D E N T

GARBER, VOWLES & CO.,
37, Bedford Square,
W.C.1.