

**IN THE EMPLOYMENT RELATIONS COURT**

**AT SUVA**

**APPELATE JURISDICTION**

**CASE NUMBER:**

**ERCA 16 of 2016**

**BETWEEN:**

**NIRMALA HOLDINGS trading as OCEAN VIEW HOTEL**

**APPLICANT**

**AND:**

**LABOUR OFFICER for and on behalf of the dependents of the deceased Potivera Sebua.**

**RESPONDENT**

**Appearances:**

*Mr. R. Naidu for the Applicant.*

*Ms. R. Kadavu for the Respondent.*

**Date/Place of Judgment:**

*Monday 22 November 2021 at Suva.*

**Coram:**

*Hon. Madam Justice Anjala Wati.*

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**JUDGMENT**

**A. Catchwords:**

*Workmen's Compensation Act 1964 – What does the term “claim for compensation” under s. 13 of the WCA mean – does it mean that a notice of claim should be given to the employer or does it mean that proceedings for the compensation be filed in court – was the delay in filing the claim within 12 months from the date of the death of the worker occasioned by “good cause” for the proceedings to be maintained beyond 12 months?*

**B. Cases:**

1. *Flour Mills of Fiji Limited v. Labour Officer [1992] FJHC 12; Hba 0010j. 91s*

**C. Legislation:**

1. *Workmen's Compensation Act 1964 (“WCA”): ss. 13.*

*Cause*

1. The employer appeals the decision of the Employment Relations Tribunal ("*Tribunal*") of 2 December 2016 when it dismissed its application to strike out the claim on the grounds that it was statute barred under s. 13 of the WCA. Leave to appeal the decision was granted by the Court on 16 December 2016.
2. In order for the issues to be properly determined, it is prudent that I outline the background facts of this case.
3. The deceased Potivera Sebua was employed as a security officer. The death certificate indicates that he died at employment (Oceanview Hotel) on 2 March 2014. The cause of death is noted as "*Acute Antero Lateral Myocardial Infection. Severe Coronary Artery Disease*".
4. On 10 March 2014, the employer gave notice of the accident to the Permanent Secretary for Labour and Industrial Relations.
5. On 10 April 2014 the Labour Officer acting on behalf of the workman gave to the employer a notice of claim. The notice was in LD Form C/2.
6. On 11 August 2016, the Labour Officer filed in court a claim for compensation under the WCA. Following that, on 06 October 2016, the employer filed an application to strike out the claim on the grounds that the claim was statute barred under s. 13 of the WCA which was dismissed on the grounds that the Labour Officer's giving of the notice of claim to the employer by LD Form C/2 amounts to making a claim for compensation within 12 months from the death of the workman.
7. In its affidavit material opposing the application to strike out on the grounds the action is statute barred, the Labour Officer Ms. Vani Doge had deposed that the claim was filed on 11 August 2016. She stated that the file was marked to her by the superior on 3 April 2014 to obtain medical history from the wife and the de facto partner of the deceased. The reason for the delay was the difficulty in obtaining the medical history of the workman from the said parties because

she was unable to contact them. They did not have any phones and had indicated that they would come to the office to follow up on the case.

8. It was further deposed that upon following up on the case, she was appointed to become the Assistant Labour Officer and therefore her work concerned only representing the workers in the Tribunal. Since the Workmen's Compensation Department had no legal personnel at that point in time, the investigation was put on hold.
9. Ms. Vani further stated that the new requirement for the Compensation Department was to have a legal officer representing the workers due to the volume of cases not being resolved in the Tribunal. This particular case was allocated to another Labour Inspector. The allocation process took a little bit of time because the inspectors were to be organized properly as they were already involved in a lot of files.
10. On 17 February 2015, the de facto partner of the deceased worker came into the office and was informed by the Labour Inspector that she would need to provide the post mortem report, medical history of the deceased and other particulars. The delay and turnover in the investigation hindered the claim being made in time.
11. It was further averred that the provisions of s. 13 had been met and therefore the claim is within the time limitation.
12. The position of the Labour officer was that since the employer was informed of the claim by the notice that was given on 10 April 2014, the employer was aware of the claim that was going to be made and therefore the requirement of s. 13 was fulfilled.

### *Appeal*

13. Aggrieved with the decision of the Tribunal, the employer filed an appeal raising 4 grounds. The employer contends that the Tribunal erred in law in:

1. *failing to dismiss or strike out the claim against the employer under s. 13 of the WCA as the claim was statute barred.*

2. *holding that the claim for compensation was made within 12 months from the time of the death of the deceased.*
  3. *holding that the notice of claim sent to the employer was a claim for compensation made within 12 months under s. 13 of the WCA.*
  4. *failing to hold that the employer failed to prove that the failure to file a claim within 12 months was occasioned by “mistake” or “other good cause” under s. 13(b) of the WCA or alternatively by failing to hold that the applicant failed to meet the test for “mistake” or “other good cause” under s. 13(b) of the WCA.*
14. The appeal basically raises two points. The first is what does s. 13 require when it states that a claim for compensation must be made within 12 months from the date of the injury or death of the workman – is a notice of claim to the employer sufficient or is it that a claim for compensation in court be made. The second issue is whether the Labour officer was able to establish that the delay in filing the claim was caused by “good cause” due to which the time to file the claim can be extended to 6 years.
15. The second issue was not determined by the Tribunal because it found that the notice of claim to the employer met with the requirement of s. 13 of the WCA in that a claim for compensation was made within 12 months. Since the Tribunal has not decided that issue, I will take that into account as there is little purpose served in sending the matter back for determination of that aspect, if needed. 7 years has already passed since the death of the deceased and it is important that there be quick disposition of the matter.
16. If I were to send the matter back to the Tribunal to determine the second issue, if needed, there would be more delay, if it is found that the failure to file the claim within 12 months from the date of the workman’s death was occasioned by “good cause” as provided by s. 13 (b) (ii) of the WCA.

### ***Analysis***

17. Let me start with s. 13 of the WCA. The full provision reads:

*“13. 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 the death:*

*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 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”.*

18. S. 13 very clearly sets out two obligations on the employer. The first is that a notice of accident should be given to the employer and the second is that a claim for compensation must be made within 12 months from the date of the injury or death of the workman.

19. In this case, the Labour Officer only gave a notice of claim to the employer which is the notice of the accident. That does not equate to a claim for compensation. A claim for compensation means proceedings for compensation. If "*claim for compensation*" meant notice of claim to the employer than the earlier and the first requirement to give notice of accident to the employer would become redundant. The legislature need not put the same obligation twice on the employer.
20. I do not think that one should confuse the requirement with what forms are to be used. Even if the wrong forms are used, the requirement to bring a proceeding in the court cannot be equated to the requirement to give notice of accident to the employer.
21. The purpose of giving the notice of accident to the employer is put the employer on notice that the employee is treating the injury or death as arising out of and in the course of the employment and that a claim will be made. The employer can then either settle the claim before court proceedings are issued or proceed to gather its evidence to defend the proceedings.
22. Let me look at s. 13(b). This section fortifies my view that the term "*claim for compensation*" means proceedings for compensation. S. 13 (a) states that the failure to make a claim for compensation shall not be a bar to **maintenance of such proceedings**, and the legislature provides two circumstances, which, if proved, will entitle the workman or any one acting on his behalf to bring a claim within 6 years.
23. Firstly, the term "*maintenance of such proceedings*" indicates that the term "*claim for compensation*" refers to "*proceedings in court*". Secondly, when the time is extended to 6 years, it automatically indicates that the time period is the limitation period for filing claims. Six years is the maximum time limitation in most cases for filing of claims.
24. Although I am not unsure about my findings on the aspect, I must refer to one case authority provided to me by Mr. R. Naidu. It is ***Flour Mills of Fiji Limited v. Labour Officer [1992] FJHC 12; Hba 0010j. 91s***. The case clearly indicates that the term "*claim for compensation*" meant the bringing of the claim in court. I can appreciate that the same issue was not before the court but it does not appear to me that the findings would be any different if raised.



25. I now turn to the reasons provided by the Labour Officer for the delay in bringing the proceedings. The first reason is that the Labour Officer was unable to contact the parties, that is, the wife and the de facto partner, to obtain the relevant details of the workman. It was clear from the death certificate what the cause of the death was. That could only be noted in the death certificate upon the post-mortem being carried out. The Labour Officer could have contacted the hospital for a post-mortem report. As for the medical history of the workman, I find that the workman's wife had given a statement to the Labour Officer. In that statement her residential address and phone number was provided. There is no proper material before the Court to accept that the Labour Officer did due diligence to contact the worker's wife and the de-facto partner.
26. Contrary to what is deposed in the affidavit, a phone number exists in the statement. The Labour Officer did not act swiftly, with diligence and on time and that failure cannot be considered as good cause.
27. I also do not accept that files were given to a Labour Inspector who had workload and could not proceed on time. This is a mere statement without any supporting evidence as to which officer was assigned the duties and how much files he had with him at the time to look after and why he could not ask for assistance to expedite the proceedings.
28. The provision in s. 13 has existed for so many years and by 2014 the Labour Officers should have been well versed on the need to bring the proceedings on time. If they were running short of man power, proper requests to the Ministry for allocation of staff to expedite the proceedings could have been made. There is no indication that any such request was made. Further, to meet with the time frame, a claim could have been filed even though not all information was at hand. The Labour Officer knew that the worker had died at work and the reasons for the death was clear. If after filing the claim, maintaining the same on availability of further material was not sustainable, the proceedings could have been withdrawn. The very institution which is bestowed the responsibility to advocate for the rights of the worker's must know how to go about dealing with certain difficulties and why they need to act quickly. If there was lack of manpower, they could have informed the worker's dependents to file the claim on their own.

There is no provision in the WCA that precludes a worker's dependents from filing claims on their own or that it be brought by some other legal personnel on their behalf.

29. I can only find sheer lethargy on the part of the Ministry of Labour in not acting on time. Lethargy and voluntary inaction does not amount to good cause. It may be an excuse but not good cause. If such excuses were to be accepted as good cause, none of the files will move and there will be enough delay which defeats the requirement of s. 13. If proceedings were not required to be brought early than there is no reason why the 12 months' time frame was put in the first place.

***Orders***

30. In the final analysis, I allow the appeal and find that the claim under the WCA is statute barred under s. 13 and that the Labour Officer has failed to establish that the delay in filing the claim was occasioned by good cause for the claim to be maintained.

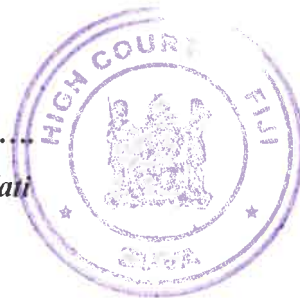
31. The claim under the WCA is struck out as it is time barred. Each party shall bear their own costs of the appeal proceedings.

*Anjala*

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***Hon. Madam Justice Anjala Wali***

***Judge***

***22. 11. 2021***



**To:**

- 1. Naidu law for the Applicant.***
- 2. Labour Officer for the Respondent.***
- 3. File: ERCA 16 of 2016.***