

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

**APPLICATION FOR COMPENSATION BY WORKMAN
To the Commissioner of Workmen's Compensation**

No WC 183/2014

BETWEEN

ERICA HENRY

(Residing at LP No 58 John Elie Road, Chase Village, Carapichaima)

Applicant

AND

MASSY STORES (TRINIDAD)

(A division of Massy Integrated Retail Limited No 38A Wrightson Road, Port of Spain)

Respondent

Before: Commissioner of Workmen's Compensation, Master Alexander

Appearances:

For the Applicant: Mr Ronald A Singh

For the Respondent: Mr Ramnarine Mungroo instructed by Ms Sheena Ragoobar

DECISION

Background

1. In broad, this assessment involved a claim for workmen's compensation, where there was permanent partial disability. It was a robustly contested claim by the respondent/employer ("Massy Stores"). The applicant ("Erica") sought compensation for injuries sustained on 1st November, 2010 from a fall at her workplace situate at Mid Centre Mall Shopping Plaza, Chaguanas. The fact of her fall or the attendant injuries were undisputed. Erica's status as an employee of Massy Stores (then Hilo), at the time when she sustained the injuries, was also not in dispute. In dispute only was whether, or not, Erica was adequately compensated already for workmen's compensation. Parties were on polar opposite sides of this issue. On the one hand, Massy Stores contended that Erica was paid full compensation for her injuries in the sum of \$43,000.04 *sic* actually \$43,000.80 ("the said sum"). Further, the payment of the said sum was by way of weekly deposits into Erica's RBC bank account during the period 19th November, 2010 to 14th June, 2012 whilst she was on injury leave and during the currency of her employ with Massy

Stores. Thus, Erica was not entitled to any further sums under the Workmen's Compensation Act ("the Act"). The issues to be determined were:

- a) what was the total sum or payments received by Erica whilst on injury leave?
- b) whether the payments represented salary or workmen's compensation, as stipulated under the Act, and were to be taken into account in computing compensation?
- c) what sums, if any, were owing to Erica consequent on her injury?

Parties were desirous of having judicial clarity and/or pronouncement on these issues, as there were other matters awaiting the guidance obtained in this one. Both parties provided viva voce and documentary evidence, which this court would now examine.

The evidence

Erica's evidence

2. Erica testified that she was descending a staircase in Massy Stores, when she slipped from the third top tread, of the stair, and fell. She landed forcefully on her rear end and was in severe pains immediately. She presented the next day at the Chaguanas Health Facility, and was diagnosed with tenderness and decreased range of movement in her left knee and lower back. An x-ray revealed that she had suffered a coccyx fracture and damage to her lumbar spine. Subsequently, Dr Gentle awarded her a permanent partial disability of 25%, in report dated 17th October, 2014, which went into evidence by consent.
3. Erica worked as a grocery attendant at Massy Stores earning \$578.40 per week. After her injuries, she received from Massy Stores approximately \$18,000.00 around September, 2011 but did not know whether it represented salary or not. She then testified to neither receiving compensation nor salary. She provided a letter from Massy Stores dated 19th September, 2011, detailing the net payment to her of \$18,073.89 (with deductions of \$3,426.510). It would appear that this was a global payment, disbursed in a singular month. She also submitted bank statements for the period 4th October, 2010 to 31st December, 2012 of her account at Royal Bank of Trinidad and Tobago (now RBC), to which her salary was assigned. Erica also confirmed that she had signed some documents each titled "Workmen's Compensation Payment Voucher/Receipt", but disputed that she ever received all the payments as reflected in the vouchers. She testified further that there was a possibility that she would have signed some of the vouchers *en masse* or on the same date,

which would have been after the period reflected on the vouchers. She denied that these documents were explained to her; or that she knew their purpose. It would appear that in signing them, she was simply complying with instructions from Massy Stores. She stated that the usual deductions came out of the lump sum received as workmen's compensation (i.e. \$18,073.89).

Massy Stores' evidence

4. Massy Stores called two witnesses in support of its case - Rashtee Sankar ("Rashtee") and Karlene Woodroffe (Karlene), both employees. Rashtee testified that she was the head cashier at Massy Stores, Chaguanas. In this capacity, she processed workmen's compensation payments and specifically dealt with Erica's matter. It was her evidence that once an employee suffered injury on the job, Massy Stores would pay him for the time spent at home, until his return to work. The injured employee would be paid his full salary for the period, minus the necessary deductions. This payment would be sent to the injured employee's bank account. In the case of Erica, the payments, after deductions for taxes, were sent to her bank account on a weekly basis, as she was a weekly employee.

5. Under cross-examination, Rashtee was resolute that the net weekly salary deposited into Erica's bank account, during the period of her injury leave, was workmen's compensation. Rashtee confirmed that the vouchers, on which her signature was appended, represented the compensation received in Erica's salary. It is her evidence that she would have explained to Erica that the vouchers represented the money she would have received as compensation, and asked her to sign them so that they could be submitted to the insurance company. For Erica's convenience, most of the vouchers were signed on the same day, but subsequent to her receipt of the money. This practice of signing the compensation vouchers in a bulk was done to facilitate Erica, who as a weekly paid employee would attend the office periodically to sign rather than weekly. Rashtee also confirmed that Erica returned to work in May, 2013 where she worked for some months before proceeding on vacation. Massy Stores paid Erica until the end of her vacation, but she began submitting sick leave certificates and has since not returned to work. It was clear that to Rashtee, there was no distinction between salary and compensation, and the legal construct of "compensation" held no particular special meaning to her.

6. The next witness, Karlene, testified that she was an employee services officer, with responsibility for dealing with all matters related to injuries suffered by employees and the public on Massy Stores' premises. She deposed that upon suffering injury, and submitting medical certificates, the employee would sign the voucher, which related to him getting compensation while on injury leave. The compensation was assigned through the payroll, once the head cashier submitted the names of the injured persons to be compensated. Karlene testified further that the lump sum of \$18,073.89 that Erica received had been disbursed in error. It was paid erroneously because her injury leave was initially, mistakenly, qualified as sick leave. When this error was recognised, Massy Stores paid Erica the compensation that she was entitled to from the onset. Erica was paid \$43,000.04 *sic* as workmen's compensation, through her bank account. Karlene was adamant that injured employees receive compensation, which they sign for, and not salary. She testified that she could not assist as to why deductions were made from the monies deposited into Erica's account at the relevant time, though she was aware that workmen's compensation was not subject to statutory deductions. Massy Stores tendered into evidence a bundle of documents consisting of vouchers, reflecting different sums paid to Erica. It relied on these vouchers as evidence that Erica was paid workmen's compensation, in accordance with the Act.
7. As a witness, Karlene was steadfast and unwavering in her evidence and this court found her to be credible and truthful. It was clear that the term "compensation", as utilised by Karlene to describe the weekly payments being made to Erica, was an administrative label attached to the payments. The responsibility resided with this court to determine whether these payments constituted workmen's compensation, as the statutorily created construct.

Submissions

8. Counsel for Massy Stores, Mr Mungroo, submitted that the sums paid to Erica should be taken into account in determining any outstanding compensation. Further, it was irrelevant if the payment to Erica was salary or not; it fell to be deducted from the lump sum compensation. To do otherwise would be unfair, unreasonable, unjustified and against the principles of the assessment of damages to expect Massy Stores to pay an employee's full salary while he or she was on injury leave and still pay workmen's compensation as required under the Act. He submitted further that any ruling that Massy Stores must pay the sums being claimed would result in overcompensation to Erica. Mr Mungroo posited that the principle underpinning this

application for compensation was *restitutio in integrum*, which required that the applicant be put back in the position he or she was in had the accident not occurred. This principle militated against double compensation. He relied on section 5(2) of the Act, which provided for deduction of sums received prior to lump sum compensation.

9. In further reliance on the above section, Mr Mungroo asserted that it was irrelevant whether Erica actually had received \$43,000.04 *sic* already or only \$18,078.89 as Erica claimed, since the amount to be deducted in consideration of compensation already paid could not exceed 50% of the lump sum payable. As such, the outstanding compensation due to Erica amounted to \$13,881.60. On the issue of double recovery, he relied on: *Hodgson v Trapp*¹; *Parry v Cleaver*²; *T&TEC v Singh*³; *Benjamin v Lennox Petroleum*⁴ and *PTSC v Sookhoo*⁵.
10. In the view of this court, the principles enunciated in these cases were inapplicable, unhelpful and not of much, if any, probative value in this matter. In fact, the principle of double recovery, as alluded to by *Massy Stores*, remained outwith the issues raised in this case and stood distinguished. There was no prior award of damages or other statutory benefits, against which any current award of workmen's compensation in this matter must be set-off. This instant case dealt only with workmen's compensation, not multiple forms of compensation. The application of the double recovery principle was found not to be apt in the circumstances.

¹ *Hodgson v Trapp* [1989] 1 AC 807 where an applicant, unable to take care of himself because of injuries, was given statutory benefits (i.e. mobility and attendance allowances). He also sued for negligence. The issue was whether the State benefits should be deducted from the damages? It was held that the disability grants were to be deducted and set off from a personal injury award for past and future care. Damages under negligence was purely compensatory, so it was the net loss and expense caused by the injury, which the defendant should be required to meet. State benefits should be deducted from damages to prevent double recovery. *Hodgson* was distinguishable from Erica's case, as it dealt with the deductibility of statutory benefits or grants from a personal injury award, which were not in issue before this court.

² *Parry v Cleaver* [1970] AC 113

³ *T&TEC v Keith Singh* CA 180 of 2008 where the court pronounced on double recovery after the respondent received \$75,795.03 as workmen's compensation, and \$43,588.20 from an internal insurance fund set up by the appellant to cover injuries or death occurring during the course of employment. He then filed a negligence claim and got damages but neither of the previous receipts were deducted from this award. The COA held that there was no double recovery as there was no 'like-for-like' receipt from which to set off either the workmen's compensation or the insurance fund. The general damages did not compensate for future loss of earnings, which was the purpose of workmen's compensation. Further, the insurance moneys paid did not include payments for medical expenses and cost of rehabilitation and the damages did not compensate for loss of earnings or loss of earning capacity.

⁴ *Marcel Benjamin v Lennox Petroleum Services Ltd* CV 2011-02393

⁵ *PTSC v Sookhoo* HCA 21 of 1993 held that workmen's compensation was correctly deducted from loss of future earnings.

11. On the other hand, counsel for Erica, Mr Singh, submitted that the monies actually deposited into her account, as reflected in her bank statement over the period 2010 to 2012, amounted to \$35,637.49 and not \$43,000.04 *sic* as alleged by Massy Stores. Mr Singh further submitted that the payments received by Erica ought not to be taken into account or deducted when calculating her workmen's compensation entitlement, since they represented salary and not workmen's compensation. In fact, he pointed out that in calculating workmen's compensation, gross and not net salary should be used, so as deductions were made from the payments, this meant that she had received net salary⁶. Further, in both oral and documentary evidence, Massy Stores interchangeably referred to the payments as both pay/salary and compensation. Moreover, Erica never had the nature, purpose and effect of the vouchers explained to her and did not understand the import of signing them. These vouchers were signed after the payments were deposited into her account, so there was no 'meeting of the minds' on the purpose of these payments. Finally, double recovery, which applied where an applicant for workmen's compensation was also an awardee of damages for loss of earnings, was inapplicable, as Erica was never awarded damages.

Discussion

Law

12. According to section 5 (1)(c) of the Act, where a workman suffered personal injury during his employment, and permanent partial disablement resulted, an employer would be liable as follows:
- (i) *in the case of an injury specified in the Second Schedule, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the incapacity caused by that injury; and*
 - (ii) *in the case of an injury not specified in the Second Schedule, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the incapacity permanently caused by the injury:*

Section 5(2) of the Act provided as follows:

(2) As regards subsection (1)(a), (b) and (c), there shall be deducted from any sum to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by

⁶ *Parry v Cleaver* [1970] AC 113 and *Teetec v Keith Singh supra*

way of compensation during the period of disablement prior to the receipt of such sum, provided that the total amount to be deducted does not exceed fifty per cent of the lump sum so payable.

Analysis

13. The Act was clear and it was undisputed that workmen's compensation was payable to Erica. The Act was also clear that any payment or allowance, by way of compensation, received prior to the lump sum compensation fell to be deducted. The responsibility of this court was to determine the amount payable, and, in particular, whether payments already made constituted salary or workmen's compensation. In the mind of this court, the mere designation of a payment or an allowance by an employer as workmen's compensation would not automatically clothe it with that qualification. It would be necessary to examine all the circumstances surrounding the payments to assess whether or not they fell within the category of workmen's compensation. In the view of this court, the concepts of workmen's compensation and salary are distinct and separate and should not be used interchangeably by an employer. In this regard, it was unfortunate that Massy Stores, both in its oral and written evidence, used these terms interchangeably to describe the payments made to Erica, which created confusion and cloudiness in the evidence.

Issue No 1: What was the total sum received by Erica, whilst on injury leave?

14. Before discussing the main issue, the subsidiary issue of whether Erica had received \$43,000.04 *sic* whilst on injury leave or some lesser sum fell to be determined. According to the case advanced by Massy Stores, Erica had received in total the sum of \$43,000.04 *sic* whilst on injury leave for the period 19th November, 2010 to 14th June, 2012, which was deposited into her bank account via weekly payments, as she was a weekly paid employee. Massy Stores substantiated its claim by documentary evidence. This evidence consisted of 29 vouchers each designated "Workmen's Compensation Payment Voucher/Receipt", which showed the dates, the period of payment, Erica's name and an indication that the payments were being made in accordance with the Act. Further, the second part of the voucher was in the form of a receipt that read, "*I, the undersigned hereby acknowledge to have received the sum of \$_____ in settlement of the above.*" Erica signed these receipts as the employee and her identification number was inserted. Under cross-examination, Erica admitted that it was her signature appended to these vouchers. The documentary evidence

was accepted as confirming that the period covered by these payments was from 19th November, 2010 to 14th June, 2012.

15. On the other hand, Erica's case was that she had not received the sum of \$43,000.04 *sic* from Massy Stores whilst on injury leave over the period 19th November, 2010 to 14th June, 2012. She admitted that Massy Stores had made certain payments by way of bank deposits, into the account where her salary would usually be deposited, in the global sum of \$35,637.49. She provided documentary evidence, in the form of a bank statement, which reflected deposits in the total sum of \$35,637.49, and not \$43,000.04 *sic* as alleged by Massy Stores. A check of this evidence confirmed that deposits into Erica's bank account, over the period under query, amounted to \$35,637.49. On the documentary evidence provided by Erica, namely the bank statement covering the period 4th October, 2010 to 31st December, 2012, it was clear that there was no evidence of an actual total payment received by Erica of \$43,000.04 *sic* as reflected in Massy Stores' vouchers. Erica's counsel, Mr Singh, posited that this meant that Massy Stores had failed to prove its case on this point. Massy Stores countered, in response, that the sum of \$43,000.04 *sic* represented the gross payments before deductions were made; so that the sums actually deposited into her bank account were her net salary or compensation payment. Based on the evidence before it, which showed the exact sums deposited into Erica's account, this court found that she had received \$35,637.49 from Massy Stores. This court also found that this sum represented net payments, after deductions from the gross sum of \$43,000.80.

Issue No 2: Whether the “payments”, received by Erica, were salary or compensation and have to be taken into account in computing compensation under the Act?

16. These were dual issues presented, and tightly interwoven. This court proposed to dispose of the latter before the former. To this end, it was common ground that workmen's compensation was payable by lump sum. This was not done by Massy Stores. The Privy Council was clear that in the case of permanent disablement, this lump sum would operate to compensate for the fact of the injury and its effects, such as future loss of earnings⁷. The question was if any payment,

⁷ *Ancil Allsop v Petroleum Company of Trinidad and Tobago* [2005] UKPC 34 where PC stated, “*more importantly, however, the provisions show that, in a case of permanent disablement, Parliament's overriding concern is that the workman should receive a lump sum to compensate, to some degree at least, for his future loss of earnings.*” See also *Robert Matthews v Well Services (Marine) Ltd* HCA No S-109 of 1998

outside of this lump sum, and made purportedly in pursuance of compensation, should be deducted in working out workmen's compensation. The response to this question was yes.

17. The Act stipulated by section 5(2) that "the amount of **any payment or allowance** which the workman has received from the employer by way of compensation" during the period that he was disabled must be deducted, provided that the total amount to be deducted does not exceed fifty percent of the lump sum payable [emphasis mine]. Based on the literal interpretation of this section, it was the view of this court that Erica had received certain payments or allowances during her period of injury leave, made pursuant to compensation, and thus subject to deduction from her lump sum. The rationale for this conclusion would be expanded upon below.
18. Counsel for Erica took issue with the nature of the payments in his bid to oust it from coverage by or classification under section 5(2). It would appear that while the fact of the payment or allowance was clear and accepted; what was unclear was whether the payments to Erica represented salary or compensation; the latter operating to invoke the section. Mr Singh doggedly maintained that it was salary. From the perspective of this court, Massy Stores failed to help its case when it referred to these payments sometimes as salary and on occasions as workmen's compensation. It seemed that even Massy Stores was uncertain as to the correct designation of these payments. As stated above, and even if Massy Stores were steadfast in classifying the payments as workmen's compensation, this nomenclature in itself was insufficient to clothe the payments with that characteristic. In the mind of this court, this *faux pas* on the part of Massy Stores was not necessarily fatal to its case. In any event, the Act, apart from pinning liability for workmen's compensation on a respondent/employer, does not bind a respondent/employer to compensate an applicant/employee for earnings lost because of an injury. This court found as a fact that Erica, who was away from work for an inordinate extensive period, has provided no evidence of contractual entitlement to loss of salary. Further, this court considered that under cross-examination, Erica admitted that she had received workmen's compensation benefits from Massy Stores in the sum of \$35,637.49 via deposits to her bank account. She was also required subsequently to sign vouchers, which on their face treated the payments received as compensation. On these bases alone, the payments to Erica were done pursuant to compensation and were not weekly salary payments.

19. With respect to computation of workmen’s compensation, parties were on common ground correctly that gross salary was the measure for computing such payments. This meant that Massy Stores would have erred in making statutory deductions from Erica’s workmen’s compensation entitlement. This alone would not qualify the payments as salary, as Erica has brought no evidence of entitlement to salary during injury leave. The evidence pointed to Massy Stores having paid the full weekly salary, minus deductions by way of compensation. This meant that the payments made to Erica might in fact be more than the prescribed sum in the Act. To be borne in mind was the purpose of the Act, which was to compensate employees, by buffering any loss of income whilst on injury leave. In these circumstances, this court was of the view, in reliance on section 5(2) of the Act, that any “payments or allowances” to Erica must be taken into account and deducted from her lump sum compensation. This conclusion found support in both sections 5(2) and 9(5) of the Act, which contemplated an employer making payments or allowances to an injured employee prior to the determination or settlement of the compensation payable under the Act. It was clear that the Act treated such payments as capable of being deductible from the lump sum.
20. Next, was whether the “payments or allowances” were compensation payable under the Act? In determining the issue, this court turned first to the 1999 decision of Jamadar J (as he then was) in *Matthews v Well Services*⁸ where he treated comprehensively with this matter. *Matthews (supra)* dealt with the statutory bar provided at section 4(3) of the Act and in issue was whether part payments by the employer operated as a bar to commencing an action for damages. Jamadar J (as he then was) posited that these payments or allowances fell to be deducted from the amount of compensation payable in the case of death, permanent total disability or permanent partial disability. Jamadar J was clear that compensation payable was a lump sum, for permanent partial disability, and as calculable under section 5(1)(c)(ii) of the Act. He opined further that in cases of permanent partial disability, “*payments and allowances made to the workman prior to agreeing or receiving such a lump sum, are not compensation payable under the Act.*”⁹ He concluded that what the Act contemplated by section 4(3) was that these payments be taken into account as deductibles in

⁸ *Robert Matthews v Well Services (Marine) Limited* HCA S-109 of 1998 delivered on 25th October, 1999 where the plaintiff who was seriously injured in a workplace accident was placed on sick leave and received fortnightly cheques from his employer for the period totalling \$88,899.87. The court had to decide if the monies paid to him represented compensation payable under the Act.

⁹ *Robert Matthews* pages 18-19

calculating the sum payable as compensation, subject to the proviso at section 5(2) of the Act¹⁰. The maximum amount capable of being deducted was fifty percent of the lump sum so payable¹¹. Based on the *Matthews (supra)* the designation of payments or allowances under the Act seemed determined.

21. Nevertheless, in a subsequent decision this time by the Court of Appeal, the issue resurfaced in circumstances similar to the case at bar, leading the court in that context to pronounce differently: see *Reshard Hamid v Kiss Baking Co Ltd*¹². In that case, the decision turned on the vouchers, and the intention demonstrated therein that linked the payments to compensation. Of note is that this type of evidence was not before the court in *Matthews (supra)* but it was in the case at bar, rendering it necessary to explore its import, if any, before pronouncing on the issue.

22. Erica too had signed vouchers reflecting payments that ranged from small to larger sums. She also gave conflicting evidence as to her understanding of what she was signing. In the view of this court, Erica's evidence was not persuasive. This court also found her to have displayed a non-allegiance to the truth. This court could have accepted that when Erica signed the several receipts for smaller sums that could have led to her misconception as to salary or compensation. However, this court found it difficult to believe that Erica would sign a voucher for twenty one thousand five hundred dollars, which clearly stated that it was for compensation for injury sustained, and assume that it was salary. Further, this court found itself hard-pressed to accept that Erica would hold herself out as being entitled to continuous salary over her extensive stay away from work on injury leave. And even more so, how could Erica expect that these payments were not to be deducted from her lump sum compensation, as artfully argued by her counsel? She had been absent from work for an inordinate length of time and failed to provide evidence of contractual entitlement to salary for no work done. This court considered further that while a receipt by itself would not necessarily be conclusive or operate as an estoppel from denying its terms or of any kind, the circumstances in which it was issued must be taken into account¹³. In the mind of this court, the words imprinted on the face of the vouchers or receipts were clear and, in all the circumstances of this case when these receipts were issued, must be interpreted as

¹⁰ *Robert Matthews* page 22

¹¹ Section 5(2) and 9(5) of the Workmen's Compensation Act

¹² *Reshard Hamid v Kiss Baking Co Ltd* CA No 82 of 2004 delivered on 18th July, 2005

¹³ *Oliver v Nautilus Steam Shipping Co Ltd* [1903] 2 KB 639

meaning that the sums being paid were payments relative to workmen's compensation. These part payments were not and could not constitute the "lump sum" workmen's compensation as contemplated under the Act. This court accepted only that the receipts clearly evinced an intention by Massy Stores for these part payments to be viewed or treated as amounts from the employer by way of compensation, the actual lump sum not having been worked out or agreed.

23. In arriving at its conclusion, this court turned to the judicial guidance on what amounted to 'compensation payable' under the Act. First, was the Court of Appeal's decision in the ***Kiss Baking (supra)***, whose facts bore some striking similarities to the case at bar, as both applicants had signed vouchers. However, the issue raised in that case related to the statutory time limit for bringing a workmen's compensation claim. Section 4(3) of the Act stipulated that, "*no action shall be brought ... after the expiration of one year from the date on which the cause of action accrued.*" The appellant in ***Kiss Baking (supra)*** injured his shoulder when he had slipped and fallen off a ladder at work. He was subsequently away from work for two separate periods of sick leave totalling some six months. During these periods of absence, he continued to receive "salary" paid to his bank account. On his return to work after each period of absence, he signed receipts each designated "Workmen's Compensation Payment Voucher/Receipt" acknowledging payment of the sums. The doctor eventually assessed him with a 10% permanent partial disability, and he instituted a claim for damages against his employer. The appellant claimed that these payments were salary and the employer that they were workmen's compensation. The trial judge held that the payments were compensation payable under the Act.
24. On appeal, counsel for the appellant conceded that the mere fact that the payments were made weekly did not take the matter outside of section 4(3) but they were made and received as salary. The Court of Appeal, comprising Chief Justice Ivor Archie, Mendonca JA and Weekes JA, upheld the trial judge's decision. The Court of Appeal stated that there was no evidence before the lower court of any obligation on the employer to compensate the appellant for loss of earnings except under the Act. The fact that the appellant was asked to and signed receipts, which on the face treated the monies already paid to him as compensation, meant that he had received the sums as compensation under the Act. While acknowledging that a receipt in itself was not necessarily

conclusive of the matter¹⁴, Mendonca JA opined that the outcome of the matter depended on the effect of the receipts taking all the circumstances into consideration. As there was nothing in the surrounding circumstances to qualify the terms of the receipts; the receipts prevailed. Also, the appellant was under no misapprehension that he would be receiving the sums shown in the receipts, as the position was explained to him.

25. On the issue of the receipts, the Court of Appeal in ***Kiss Baking (supra)*** examined and lifted the reasoning from the case of ***Huckle v LCC***¹⁵, which might have a bearing on the present matter, considering Erica's case that she had not understood the import of the receipts. In ***Huckle***, the worker had received payments from his employers and signed receipts acknowledging same under the 1906 Act (the issue being whether the worker had received compensation under the Act). The Court of Appeal in ***Huckle*** reversed the trial judge's ruling that, on account of the worker's evidence that he had neither read nor understood the receipts he was signing. Coleridge J stated:

If the only evidence in the case had been the document itself, it is clear that there would be no issue of fact for the jury, and the non-suit would be right. But the plaintiff said that he did not read it, and his evidence went to show that his case was that he did not understand the nature and terms of the document he signed.

A receipt does not in itself create an estoppel from denying its terms. You may review the facts surrounding the giving of the receipt in the particular terms to get at the real intention of the party signing it. If a party signs a receipt in particular terms, prima facie, no doubt he is bound by such terms. If he shows that he did not read it and did not understand that he was signing a receipt in those terms, it may be that he is not bound.

26. The Court of Appeal in ***Kiss Baking (supra)*** following Coleridge J's reasoning felt that the case before them turned on the effect of the receipts signed by the appellant, taking into account all the circumstances of the case. The receipts prevailed. They provided the proof that the appellant had acknowledged and received the payments as compensation. The case turned on the context of their issue and lack of evidence to qualify the terms of the receipts. ***Kiss Baking (supra)***

¹⁴ *Oliver v Nautilus Steam Shipping Co Ltd* [1903] 2 KB 639, "After all, a receipt does not in itself create an estoppel of any sort or kind. You are at liberty to take all the circumstances surrounding it into consideration, and ask yourself the question what was the real intention of the parties when the receipt was given and taken."

¹⁵ *Huckle v The London County Council* [1910] TLR 580

established that an applicant for workmen's compensation must do more than merely claim that he had not read or understood the receipt in order to defeat the interpretation that it clearly demonstrated. There must be something more in the nature of evidence or explanation of the mistake, which would move the court to disregard clear and otherwise unambiguous evidence to the contrary.

27. Based on the evidence from Rashtee that she had explained the purpose of the receipt to Erica, this court concluded that the terms of the receipts were clear and pointed to the sums being issued by way of workmen's compensation. Erica's position that she had not read or understood the import of the receipts was unbelievable, and not accepted. Further, there was no evidence of any practice for injured employees of Massy Stores having to sign as receiving salary. To this end, this court rejected the contention of Erica's counsel that she was disadvantaged in being requested to sign after receiving unilateral deposits into her payroll account, without independent legal advice. This argument was not persuasive and clearly skewed to benefit Erica's case. The wording on the voucher itself was unambiguous and descriptive. It lent credence to Massy Stores' case that its intention was that the payments represented its liability under the Act or made pursuant thereto. Erica provided no evidence that she was entitled to salary contractually or otherwise while on injury leave. Given the extensive injury leave, during which she received these payments, there was nothing to support her erroneous belief that she was collecting salaries instead of payments or allowances by way of compensation.

28. This court was of the view that when an employee has been kept away from work for an extended period due to injury, the employer's only responsibility to pay that employee would arise under the provisions of the Act. The Act mandated that this compensation must be done by lump sum payment. The confusion and administrative incongruities on the part of Massy Stores in dealing with Erica's compensation were regrettable but not fatal, as the Act provided for part payments by way of compensation to be deducted from this lump sum. Mr Singh's submission to the contrary that these payments were on account of salaries, and not compensation, was rejected as being against the weight of the evidence. Nevertheless, it must be repeated and emphasized at this point that workmen's compensation must not be subjected to statutory deductions, or provided by piecemeal payments. In the present circumstances, this court found there was sufficient evidence to ground a finding that the monies were paid to Erica by way of

compensation, and were received by her as such. They were not the lump sum workmen's compensation to which she was statutorily entitled. These payments were deductibles to be considered in computing the lump sum compensation payable.

Issue No 3: What was the lump sum compensation payable to Erica?

29. Erica would be entitled to a lump sum award of \$27,763.20 from which must be deducted payments made and received, constituting no more than 50% of this sum.

$$\$2,313.60 \times 48 \times 25\% = \$27,763.20$$

Order

30. The respondent do pay the applicant (Erica) the lump sum of \$13,881.60 as workmen's compensation with costs of the application to be taxed, if not agreed, by the Registrar of the Supreme Court.

Dated 28th March, 2018

Master Martha Alexander

Commissioner of Workmen's Compensation