

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE MATTER OF THE WORKMEN'S COMPENSATION ACT

WC 104 of 2018

BETWEEN

LILOUTIE SOOKOO

residing at No. 25 Cemetery Street, Perseverance Village, Couva

Applicant

AND

SUNCREST INTERNATIONAL LIMITED

with its registered office located at No. 1 Santa Monica Drive, D'Abadie

Respondent

Coram: Commissioner Master Martha Alexander

Date of delivery: March 14, 2022

Appearances:

For the Applicant: Mr Ronald A Singh

**For the Respondent: Mr Nirad Samnadda- Ramrekersingh instructed by Mr Richard
Freeman**

DECISION

BACKGROUND

1. In broad, this matter involved a claim for workmen's compensation where there was a permanent partial disability of 15%. The applicant claimed that the accident happened while performing her duties as a medical sales representative, in the employ of the respondent. It would appear that she was seated in her motor vehicle registration number PDM 9007, which she had parked on the shoulder of the Sir Solomon Hochoy Highway, in the vicinity of St Madeline overpass when the accident

occurred. The applicant claimed that whilst lawfully parked, and in the course of her employment, the driver of motor vehicle registration number PBY 4020 pulled onto the said shoulder and collided with her motor vehicle.

2. The applicant sought compensation for personal injuries sustained which were supported by the medical report of Dr Rasheed Adam, dated February 28, 2018. Her injuries included cervical muscular spasm, cervical spondylosis secondary to whiplash injury, mild cerebral irritability, left cerebral dysfunction compatible with the effects of a head injury and post-concussion syndrome. There was no dispute that the accident happened and that the injuries were as claimed.
3. The applicant has applied to the commissioner to determine the following issues:
 - (a) Whether she was a workman within the meaning of the Workmen's Compensation Act Chapter 88:05 ("the Act");
 - (b) Whether the accident arose out and in the course of her employment with the respondent;
 - (c) Whether she has satisfied the requirements under section 11 of the Act to claim compensation for injuries sustained;
 - (d) Whether the respondent is liable to pay any workmen's compensation; and
 - (e) Whether the respondent is liable to pay the applicant's costs.
4. This was a robustly contested claim by the respondent. The respondent chose to pursue *in toto* a complete dismissal of the applicant's claim from the start by arguing that the applicant was not a "workman" under Section 2 of the Act and was, therefore, not entitled to any workmen's compensation. This was based on the premise that the substantial nature of her employment took her outside the scope of "manual labour" and although she was employed otherwise than by manual labour, her earnings exceeded \$5000 per year, which again made her fall outside the scope of being a "workman" under the Act. This first issue was pivotal as its determination would affect all others and how this application would proceed before the commissioner.

WAS THE APPLICANT A WORKMAN UNDER SECTION 2 OF THE ACT?

5. The Workmen's Compensation Act Chapter 88:05 defines a "workman" as:

Any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour or otherwise ... and whether such contract is expressed or implied, oral or in writing, whether the remuneration is calculated by time or by work done, and whether by the day, week, month or with reference to any other period whatever;

6. For the purposes of the Act, the following persons are deemed not to be workmen:

(a) persons employed otherwise than by way of manual labour whose earnings exceed five thousand dollars a year;

(b) persons whose employment is of a casual nature and who are employed otherwise than for the purposes of the employer's trade or business, ...;

(c) outworkers;

(d) members of the employer's family dwelling in his house;

(e) members of the Defence Force of Trinidad and Tobago and any auxiliary force attached thereto; or

(f) members of the Police Service and members of any Police organization or of any Fire Service.

7. The Act, therefore, provides a specific definition for the word "workman." Counsel for the applicant argued that based on the definition, the applicant was a workman employed as a medical sales representative. Counsel relied on the applicant's duties to establish that she was a workman within the confines of the Act. These duties involved taking customers' orders, either in person or over the telephone, and, at times, the lifting of boxes, which contained the respondent's products. Counsel for the applicant submitted that the lifting of boxes, with a weight of approximately 20-25 pounds from her car to be delivered to the respondent's clients would have

qualified as manual labour and so classified the applicant as a workman. It fell to the commissioner to determine whether, as counsel has argued, there was an element of manual labour included in the applicant's job description that sufficed to make her a workman under the Act.

8. Further to this, and in the alternative, counsel for the applicant submitted that should the commissioner disregard the above argument, then it should be considered that the applicant was still a workman as she would fall under the word "otherwise" in the Act. He inventively argued that parliament must have intended the word "otherwise" to have a wide meaning such as to capture workers doing jobs like the applicant. Counsel sought, strangely, to bolster his argument by pointing to the applicant's earnings. He admitted that her earnings were more than the statutory ceiling to qualify as a workman namely \$5000 per year, but asked that this requirement be ignored because of its antiquated nature. In effect, counsel asked that the commissioner give consideration to the fact that the ceiling set out in section 2 had to be revised to reflect present time thereby allowing the applicant to be classed as a workman. There was no lucid rationale or basis provided for asking the commissioner to step outside the clear requirements of the Act and create her own statutory amendment.
9. Counsel for the respondent, on the other hand, submitted that the scope of the applicant's work was outside manual labour. Counsel stated that although the applicant lifted boxes at certain times during her employment, these were not of a substantial nature to satisfy the requirement of manual labour. He argued further that, the lifting would not include heavy boxes but simply that of syringes and other medical products.
10. The applicant's evidence failed to detail the products in the boxes that she was required to lift or the regularity or frequency of the lifting of these alleged heavy boxes. In her evidence, the applicant also stated that there were deliverymen assigned for the purpose of lifting boxes. The circumstances in which she was required

to do the lifting was far from clear. This evidence, being unclear, led to a curiosity as to what her job description entailed.

11. The respondent brought witnesses who gave evidence as follows:

i. Indar Rampersad

12. Indar Rampersad was the sales supervisor with general supervisory powers over the applicant during her tenure. During cross-examination, Mr Rampersad identified the difference between a sales representative and medical sales representative. He explained that a medical sales representative would give details and in-depth information about the products, similar to that of promoting the product, while a sales representative will go out to sell the product. The applicant was a medical sales representative whose duties were more promotional and certainly less physical than the sales representative.

ii. Satie Ragoonanan

13. Satie Ragoonanan was the HR Coordinator who also stated during cross-examination that the role and duties of a medical sales representative and that of a sales representative were different in certain ways. She stated in her witness statement that she was the custodian of the records for each employee and that she had sight of a document that was called "sales representatives job description." She gave evidence that as a medical sales representative, the applicant was responsible for showing and selling the respondent's products. The applicant would work with customers to determine their needs and wants. Further, the applicant would occasionally carry products in small quantities to the respondent's customers. Furthermore, as the custodian of these documents, Ms Ragoonanan was clear that the applicant was not responsible for deliveries, as there were drivers and loaders hired for that job. She gave evidence that at most, the applicant would carry small samples of products to customers such as brochures or other informational materials to promote medical equipment, vitamins, syringes, masks, gloves and condoms. These samples would not be of any substantial weight or significant volume.

14. Ms Ragoonanan's evidence was that the applicant was informed, during her tenure, of her responsibilities and was aware that the job of heavy lifting was done by drivers and/or loaders. She stated further that details of the applicant's duties were contained in the respondent's current job description for sales representative and stated that it did not include manual labour. It would appear that the respondent did not specifically issue the applicant with a formal job description but referred to the job description of the sales representative that encompassed the duties, functions and qualifications required of the applicant as a medical sales representative. This job description was exhibited and produced into evidence.

iii. Vendra Lutchman

15. Ms Vendra Lutchman was the general manager and sales manager who gave evidence that the roles and duties of a medical sales representative and that of a sales representative were different in certain ways. She identified two differences as being that the sales representative would visit pharmacies while the medical sales representative visited doctors and institutions. Secondly, the medical sales representative did more detailing of the respondent's products in keeping with the promotional nature of her duties. She confirmed that a medical sales representative does not deliver products, as there were van drivers for that purpose. Further, if there was an emergency that required a delivery to be done, arrangements would be put in place to get a van to do the delivery. She maintained that medical sales representatives would never be asked to perform this duty and, by extension, were not paid for that job function.

EVIDENCE OF THE APPLICANT

16. The applicant testified that on January 11, 2017 she left her home around 6:45am to perform her duties along the Penal route. She began by heading towards Balmain Medical Centre and after conducting business there, she proceeded to the Highway towards Barrackpore. She stated that her cell rang and she switched on indicator and pulled onto the shoulder. While speaking on her cell phone, she heard a loud bang and felt her vehicle jerk forward, leaving her unconscious. She claimed that when she

woke up, she was in the San Fernando General Hospital with a collar around her neck and in severe pain. She was visited by different doctors. The accident resulted in the injuries detailed above.

17. The applicant gave evidence further that her duties involved taking customer's orders either on the phone or in person and that she was required to lift boxes from her car and deliver same to customers. These boxes, she averred, weighed approximately 20-25 pounds, which consisted of the totality of her evidence as to manual labour. She failed to identify the types of products contained in the boxes or to establish how lifting sample boxes of products consisted of manual labour especially when there were designated workers for heavy lifting. During cross-examination, she admitted that her job was largely administrative such as taking orders, collecting and submitting payments, attendance at office, submitting reports, visiting customers, promoting products, checking status of deliveries, dealing with customer service and loyalty issues and resolving complaints. The substantial part of her job was administrative, involving the provision of tailored solutions and customer service. From her evidence, any lifting was more the exception than the norm. Further, she admitted to the fact that she earned \$8000 per month.

DISCUSSION

18. The Act provides a clear definition of the term "workman" and there was no sufficient evidence produced that qualified the applicant as a workman under the Act. In ***J. and F. Stone Lighting and Radio Limited v Haygarth***¹ the court considered the concept of manual labour and identified two principles that must be considered. First, it was necessary to consider the nature of the substantial employment and secondly the, "deciding factor now in determining whether a workman performs 'manual labour' or 'manual work' is the extent of work performed by the use of the hands." In another case, ***Leo Williams v TSTT***², the commissioner stated that to determine if someone is employed "otherwise than by manual labour" a decision had to be reached on

¹ [1968] AC 157

² WC No 255 of 1993 delivered by Doyle M on January 30, 1995

“whether the duties by way of manual labour constitute the substantial part of the employment.”

19. This was a case where the applicant’s stated duties involved customer service, promotion of products, resolving customer issues, and taking orders. It would appear also that the applicant was required to take samples from her car and physically deliver these to the respondent’s customers. On certain days, the applicant would be in office and on others, she would be required to visit different areas. There was no sufficient evidence before me to support the applicant’s contention that she performed manual labour nor was the commissioner satisfied that the substantial portion of her job function involved manual labour. It is always a question of fact to determine whether a workman is employed “otherwise than by manual labour.” To settle this issue, it was necessary to consider the real and substantial character of the applicant’s job³.

20. Counsel for the applicant relied on the case of ***Ganga Barban v Kalipersad Gunpat***⁴ where the question arose as to whether a backhoe driver performing manual labour was considered a “workman” for the purpose of the Act. It was stated in that case that:

It is necessary to consider the nature of the substantial employment; if someone spends all his time or the greater part of it, doing work with his hands albeit work of a nature that required the application of knowledge and therefore some intellectual effort in its performance, but does not involve the exercise of creative or artistic faculty, the work is essentially manual labour and the person is a “workman” within the definition of section 2(1).

21. In the view of the commissioner, this case was distinguishable from the present one and cannot serve as authority for the applicant to be deemed a workman under the Act. There was no evidence in the current case that the applicant spent the greater

³ *Ralph Hutchinson v Vernon Montrichard and Royal Castle* WC No 119 of 1973

⁴ (1991) 2 TTLR delivered on February 15, 1991 by Bernard CJ, Edo J and Sharma JA

part of her job doing work with her hands or manual labour, if at all, so the case of ***Ganga Barban*** does not assist hers. Further, the commissioner was not satisfied that the applicant has proved that her job entailed substantial elements of manual labour. The fact that she might occasionally have been required to physically carry certain unidentified sample products from her vehicle to customers' offices does not make her a workman under the Act. The evidence was that manual and/or heavy lifting was done by workers hired for that purpose. This was accepted. The evidence was also that heavy lifting formed no part of the applicant's job and she was not mandated to perform the task assigned to delivery drivers. The commissioner did not accept as credible the applicant's evidence that in order to complete her overall duties or tasks, she was charged with the responsibility also to perform the job of a delivery driver and/or a loader. The commissioner found credible the respondent's evidence, which described the arrangements that were in place to handle emergency situations by locating and sending a delivery driver. It was not accepted that the respondent would hire delivery drivers and/or loaders to do heavy lifting and still require the applicant to perform these duties.

22. Further, the commissioner did not accept that any lifting of boxes, by the applicant, at intermittent periods or in times where an emergency arose would constitute manual labour under the Act. In essence, the requirement of manual labour would not be satisfied if the physical duties were merely incidental as against being based substantially on physical or manual duties. Hence the commissioner was satisfied that any incidental lifting of samples, in the process of completing her assigned job, would not constitute manual labour and certainly was not in her job description. It was accepted, therefore, that the applicant was not engaged in employment with the respondent where the substantial character of her job was that of manual labour. She was not a workman within the confines of the Act. In any event, her salary of \$8000 clearly puts her outside of the definition and the arguments of her counsel that call on the commissioner to operate outside her statutory remits were rejected.

23. Having not found favour with the applicant's case that she was a workman under the Act, the other issues would not be relevant for consideration. In any event, the

respondent has put up no challenge to the other issues so a discussion of them would be moot in the circumstances. The commissioner, therefore, has no alternative but to find that there was no workmen's compensation due and owing to the applicant by the respondent. Further, whilst it was accepted that the respondent has incurred costs in defending this application, it was deemed an appropriate case for the parties to bear their own costs of this application.

ORDER

24. The application filed September 14, 2018 for workmen's compensation is dismissed, with parties to bear their own costs of this application.

Master Martha Alexander

Commissioner of Workmen's Compensation

MARTHA ALEXANDER
MASTER OF THE SUPREME COURT OF
TRINIDAD AND TOBAGO