

TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
SUB-REGISTRY, SAN FERNANDO**

No. S 259 of 1999

BETWEEN

KATHLEEN THOMAS

Plaintiff

AND

**NATIONAL MAINTENANCE TRAINING AND SECURITY
COMPANY LIMITED**

Defendant

Before The Hon. Madam Justice C. Gobin

Appearances:

Ms. S. Mohammed for Plaintiff

Ms. C. Foderingham for Defendant

JUDGMENT

1. When this matter was called Counsel indicated that he wished to take a preliminary point by which the Defendant would stand.

2. Before Mr. Jessamy embarked on his submissions the parties agreed as follows:

- (a) The accident took place on 18th March 1995.
- (b) The Plaintiff received compensation in the sum of \$4,071.00.
- (c) This compensation was paid in August 1998.
- (d) The pending decision of the Privy Council in the case of the **Petroleum Company of Trinidad and Tobago v Ancil Allsop Cva No. 8 2001** is not relevant – this is not a

case where there was any payment other than a lumpsum of \$4,071.00 above.

3. Mr. Jessamy relied upon the provision of S. 4 (3) of the Workers Compensation Act Ch. 88:05. It was his contention that the Plaintiff was barred from bringing the instant action after the 17th March 1996. This was because she had received compensation in the sum of \$4,071.00 in August 1988.

4. In the course of his submissions, Counsel referred to an undated document, a "Memorandum of Agreement" which the Plaintiff had exhibited in bundle. The parties accept that the document was prepared sometime in August 1998. It was not signed by anyone.

5. Mr. Jessamy referred to this document as evidence of the receipt by the Plaintiff of compensation payable under The Act. On the face the document, it appeared that even by the employer's calculation, only fifty percent (50%) of the "compensation" had been paid in August 1998.

6. When I made this observation, Mr. Jessamy appeared to resile from his position that compensation in the sum of \$4,071.00 had been paid to the Plaintiff. He indicated then that the Defendant had made some half monthly payments to the Plaintiff early on by way of compensation for her temporary disablement before she had been fully assessed.

7. In the light of this I invited the Defendant to amend the defence so that I could proceed to try the factual issue which was being introduced, as to whether there had been any partial payments. It seemed to me if there had been partial payment, then depending on when it had been received, the ruling in **Petroleum Company of Trinidad and Tobago v Ancil Allsop** might have become relevant. The preliminary submission had been premised on an agreement that there was one payment in August 1988.

8. Counsel then candidly indicated that he could not immediately produce any documents to support that allegation. He had not had access to the records. Having regard to the history of the matter I did not propose to adjourn. Counsel was then confined to the agreed facts as to the quantum and mode of the payment.

9. So the Defendant contends that the Plaintiff received "compensation" in August 1998 in the sum of \$4,017.00, therefore this action which was filed on the 17th March 1999 is out of time.

10. I understood Ms. Sharma to emphasise in response, that the payment was received in August 1998 well over three years after the accident. Such a payment therefore could not fall within what was contemplated as "compensation payable under the Act", receipt of which would bar the plaintiff's action.

11. Section 4 (3) of the Workmen's Compensation Act Ch 88:05 has recently been amended, but the amendment does not affect this case. The relevant section which is applicable remains:

"Where compensation payable under this Act for injury by accident arising out of an in the course of employment is received as such by a workman who is an adult, no action shall be brought against the employer for compensation independently of this Act by such workman in respect of such accident after the expiration of one year from the date on which the cause of action accrued."

12. This section preserved the right of the workman to pursue his common law action against an employer even where he had received compensation payable under "the Act". It was subject to one limitation. Where compensation was received as such, the common law action had to be brought within one year of the date of the accident.

13. The effect of the section was to severely contract the four year limitation period for common law actions for negligence arising in the course of employment to one year. But the bar could only have been triggered when compensation payable under the act was received. It was only after payment was received that time could have begun to run. In this case the belated payment by the employer could not retrospectively limit the Plaintiff's right to bring this action within the usual four-year period. It seems fairly obvious that if the payment of compensation so limited the period for commencing an action, that compensation must have been received before the expiration of the

year from the date of the accident. I therefore reject the Defendant's submission.

14. There shall be judgment for the Plaintiff on her claim. Damages to be assessed by a Master sitting in Chambers on a date to be fixed by the registrar. The Defendant is ordered to pay the Plaintiff's costs of this action.

Dated this 20th day of July, 2005

CAROL GOBIN

JUDGE