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Risk Management Issue

In this issue we look at the Trinidad and Tobago High Court case of ***Aarika Mendoza et al v. N&S Electrical Company Limited et al*** [2016]. The claimant is the widow of the deceased Guyadeen Lookoor who was employed with N&S Electrical, a company that had a contract with Trinidad and Tobago Electricity Commission (T&TEC) to carry out re-conductoring works on certain electricity poles. He earned the equivalent of \$63,653.00 per annum.

An undisputed fact of this case is that the Trinidad and Tobago Electricity Commission (T&TEC) contracted N&S Electrical to carry out re-conductoring works on certain electricity poles. Work was required at pole 1813 in order to de-energise the low voltage electricity supply from that pole to poles 3-16. However other work was performed at electricity pole 1813. The deceased lost his life by electrocution while he was working on that pole.

Contributory Negligence

The claimant claims that both N&S, and T&TEC were responsible for the death of Mr. Lookoor. T&TEC denies all responsibility and further contended that the deceased was contributorily negligent. N&S claims that T&TEC bears some responsibility, but also contends that the deceased was contributorily negligent.

Mr. Justice Peter A. Rajkumar held that the deceased contributed to his own death to the extent of 50% by failing to take sufficient care for his own safety. He was working in the vicinity of High voltage lines and, as an experienced linesman, must have known that such lines were to be treated as energized unless proven otherwise. Rajkumar J: noted:

1. The deceased must also have known that contact, particularly with high voltage lines, had to be avoided at all costs as it was likely to be fatal.
2. He had to exercise extreme care with respect to his position on the pole to avoid at all costs even the possibility of coming into contact in any way with the high voltage lines.
3. His failure to do so resulted in his death by electrocution.

Rajkumar J: also found that N&S contributed to the death of the deceased by its negligence in inter alia:

1. attempting to repair the cut out and then the hotline connector, even when it was not immediately necessary to do so before beginning the re-conductoring works on poles 3 – 16.
2. The low voltage lines had been de-energized.

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3. While it is likely that the hotline connector would have needed repair before re-energizing the low voltage lines at the conclusion of the re-conductoring works, there is no basis on the evidence for considering that this was an emergency repair that could not wait.

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The electrical works were at multiple locations. T&TEC had hired an experienced contractor N&S which had its own foremen, including Mr. Roy Gill - the site foreman and other experienced and inexperienced staff.

The court noted that if the work required the presence of T&TEC then it was the responsibility of N&S to ensure the presence of T&TEC before embarking on such work. The additional repair work did not need to have been performed instantly.

In so far as this additional repair involved working in the proximity of high voltage lines there was ample opportunity to call upon and consult with T&TEC for advice and guidance. It is not appropriate to contend, after the event, that T&TEC should have been on site and supervising.

The court went on to note that even if N&S personnel believed that it needed to be done then and there, a tailboard conference should have been held in relation to the extra risks inherent in and specific to the additional work involved in repairing the hotline connector.

A hotline connector

As its name suggests a hotline connector connects to Hot (high voltage) line. TTEC's safety rules, as known to N&S and Mr. Gill, specifically point out that the height of a workman on a pole is critical when working in the vicinity of high voltage lines.

Mr Gill claimed that he pointed this out to the deceased and that the deceased allegedly responded by ignoring his request to reposition himself lower on the pole and allegedly even made the remarkable and incredible comment that the high voltage line was dead, (de-energized). As the court noted "This makes no sense as the whole point of opening the fuse at that pole in the first place was to prevent the electricity from the high voltage line flowing to the low voltage line via the transformer, and then feed poles 3-16".

Duty of a supervisor

What is more important in this case is that if Mr. Gill did observe that the position of the deceased was too high and instructed him to lower himself on the pole, and the deceased ignored him, his duty as supervisor, the court noted, was to insist that the deceased do so. The consequences of not doing so could have been fatal. In fact as it turned out, they were.

Alternatively, if Mr. Gill saw that the deceased was in a dangerous location, in too close proximity to the high voltage lines or hotline connector, and failed to say or do anything about it, then Mr. Gill, on behalf of N&S, who had sent the deceased up that pole in the first place, would have equally been negligent.

Unfortunately, the evidence is that the deceased was not certified to perform work of that type in the vicinity of high voltage cables. Though other members of the N&S crew were, they were not the ones chosen to attempt the reconnection of the hotline connector.

Mr. Justice Rajkumar found that this negligence cannot be absolved by a contention, after the fact, that T&TEC should have been physically on site looking over the shoulders of his men and

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ensuring that they observed T&TEC's safety rules. "That was what N&S had him as supervisor there to do" said Mr. Justice Rajkumar.

In the end, the case for negligence on the part of T&TEC has not been established. In the context of work being carried out by an experienced contractor, supervised by a foreman, at multiple poles, for work which was within their track record of experience, the need for additional direct physical supervision by T&TEC of the employees of its contractor, who took it upon themselves to embark on additional work without informing and contacting T&TEC, has not been established in the circumstances of this case.

The Court noted that the deceased would have been 50 at the date of assessment and that a post assessment multiplier of 8 would be appropriate where the deceased would have had a working life of 15 more years. The court awarded the sum of \$281,048.00 which included \$20,000.00 for loss of expectation of life, and ordered the employer to pay half of this given the deceased's contribution of 50 % to this accident--\$140,524.00.

Strange but True

Vietnamese woman hires man to amputate hand, foot in insurance scam

Hanoi (dpa) - Police in Vietnam say that a woman who claimed her hand and foot were cut off in a railway accident actually had them deliberately amputated as part of an insurance scam, local media reported Wednesday.

Ly Thi N., 30, told police three months ago that she had been hit by a train after it dragged her onto the rails, the Thanh Nien newspaper reported.

Police found Ly Thi N. near the tracks with her left foot and hand missing on May 5.

Doan Van D., 21, who reported the incident to police, claimed he had not met Ly Thi N. prior to finding her in distress.

However, police later concluded that the supposed stranger had in fact been paid 50 million Vietnamese dong (2,250 dollars) by Ly Thi N to amputate her hand and foot.

The woman was allegedly seeking a 4 billion dong insurance payout over the loss of her body parts.

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Cecil Jaipaul is an Insurance Consultant and Mediator. He can be contacted at cjjaipaul@rogers.com

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