Pang Chew Kim (next of kin of Poon Wai Tong, deceased) *v* Wartsila Singapore Pte Ltd and another
[2011] SGHC 194

Case Number : OS No 1251 of 2010

Decision Date : 23 August 2011

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : N Sreenivasan and Ahmad Nizam Abbas (Straits Law Practice LLC) for the Applicant; Eu Hai Meng (United Legal Alliance) for the 2nd Respondent.

Parties : Pang Chew Kim (next of kin of Poon Wai Tong, deceased) — Wartsila Singapore Pte Ltd and another

Employment law

23 August 2011 Judgment reserved.

Tay Yong Kwang J:

1 The Applicant is the next-of-kin of the deceased Mr Poon Wai Tong (the "Deceased"). She lodged a claim for compensation under the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("WICA") in respect of the death of the Deceased. Wartsila Singapore Pte Ltd (the "1st Respondent") was the employer of the Deceased which had obtained workmen's compensation insurance cover from India International Insurance Pte Ltd (the "2nd Respondent"). The 1st Respondent did not contest the present application.

2 The Deceased passed away in Cambodia on 1 September 2008 in a hotel room at around 11am, Cambodia time. No autopsy was performed and the death certificate registered on 2 September 2008 in Daun Penh District, Cambodia, did not contain any cause of death.

3 By a Notice of Assessment dated 25 May 2009, the Commissioner for Labour (the "Commissioner") assessed that no compensation was payable because death was not caused by an accident arising out of and in the course of employment. The Applicant lodged an objection to this Notice of Assessment and at the conclusion of the hearing of the matter, the Commissioner maintained the position taken in the assessment. The present application by way of this originating summons is an appeal against the Commissioner's decision.

Facts

4 The facts of this case are not in dispute. The Deceased was employed as a general manager by the 1st Respondent since 2 January 1987. As a general manager, he reported directly to the managing director of the company, one Mr Ong Ban Leong ("Ong"). The Deceased was required in the course of his employment to work outside Singapore periodically. Ong confirmed that he had travelled many times with the Deceased on business trips.

5 Ong gave evidence that the Deceased's travelling itinerary for this particular trip included travelling to Phnom Penh, Bangkok, Hanoi and Ho Chih Minh City. Phnom Penh, Cambodia was the first stop of the business trip which was scheduled to last from 31 August 2008 to 5 September 2008. The

Deceased was in Phnom Penh to attend, among other things, an anniversary dinner of Khmer Electrical Power ("KEP") on 31 August 2008 (as representative of the 1st Respondent) and more importantly, a meeting on 1 September 2008 to discuss a debt owed by KEP to the 1st Respondent. Upon arrival in Phnom Penh on 31 August 2008, the Deceased was met by the 1st Respondent's representative in Cambodia, Mr Jonathan Lim Balayan ("Lim"). Lim and the Deceased parted ways at the airport, agreeing to meet at the anniversary dinner later that evening. From the airport, the Deceased drove a company car (owned by the 1st Respondent) to Phnom Penh Hotel.

6 At the anniversary dinner, Lim suggested that the Deceased meet with Cambodia Brewery Ltd ("CBL") as it could be a potential client of the 1st Respondent. The Deceased agreed to meet CBL the next day before the scheduled meeting with KEP at 11am. Lim arranged to pick up the Deceased from Phnom Penh Hotel at 9am the next morning for the meeting with CBL. The hotel's Surveillance Department's report showed that the Deceased returned to his room alone at 1.31am on 1 September 2008 and that no one else entered the room from then until 10.58am.

7 On the morning of 1 September 2008, Lim was in office completing a report for his superior. As a result, Lim was late in leaving his office to pick up the Deceased from Phnom Penh Hotel. At about 9.45am, after Lim had left his office, he received a call from the Deceased but hung up on the call as he did not hear any voice on the line. At about 10.20am, when Lim was already driving towards Phnom Penh Hotel, he received another call from the Deceased asking for medical assistance as the Deceased was having difficulty breathing. Sometime between 10.30am and 10.45am, Lim reached Phnom Penh Hotel and subsequently managed to open the Deceased's room door with the assistance of the hotel staff. Upon entry into the room, the Deceased was found dead. He was clad in shorts and an undershirt with his upper body on the bed and his legs on the floor at the end of the bed. A pair of trousers was hung on the chair next to a table. A laptop was found on that table, although Lim could not confirm whether the laptop was turned on at that time. Lim also testified that there were no personal items around the room and suggested that it appeared as if the Deceased was ready to check out of the room.

The Commissioner's findings

8 After hearing the evidence adduced at the hearing, the Commissioner found that the Deceased's death did not arise out of and in the course of his employment with the 1st Respondent. [note: 1] According to the Commissioner, there was no evidence that the Deceased was involved in any work prior to his death. [note: 2] The Commissioner took into consideration the following:

(a) No work-related emails were received that morning; [note: 3]

(b) Although the Deceased had made phone calls requesting medical assistance, these phone calls did not seem to arise out of any work related to any of the meetings that the Deceased was to attend that morning; [note: 4]

(c) There was no evidence on any presentation or preliminary discussion with regard to the intended meeting with the potential client, CBL; [note: 5] and

(d) If the Deceased had been working, he would probably have prepared the documents

> necessary for discussion with KEP. The fact that there was no evidence of any of these documents present when the Deceased was found in the hotel room suggested that he had not been working at the material time. [note: 6]

9 Based on the above evidence, the Commissioner held that the Deceased was merely waiting for Lim to pick him up for the meetings with CBL and KEP. [note: 7] The Commissioner was accordingly of the view that the Deceased was in a position similar to someone waiting at home for transport to arrive to bring him to office. [note: 8] The Commissioner held that this was *not* to be considered as being in the course of employment, referring to the decision of Lai Siu Chiu JC in *QBE Insurance (International) Ltd v Julaiha Bee Bee and others* [1992] 1 SLR 406 ("*QBE Insurance*") at [23]:

> The paramount rule is that an employee travelling on the highway will be acting in the course of his employment if, and only if, he is at the material time going about his employer's business. *One must not confuse the duty to turn up for one's work with the concept of already being 'on duty' while travelling to it*. [emphasis added]

10 The Commissioner also pointed out that in *Ma Kit Ching Veronica v Attorney General* [1983] 1 HKC 470, Deputy Judge Grindey held that an employee cannot claim compensation if at the time of the accident he had finished his duty for the day, in other words, when he had "clocked off". [note: 9] In the Commissioner's view, the Deceased would have "clocked on" only when he was present at a work-related meeting, not when he was waiting for transport (*ie* Lim) to arrive. [note: 10]

11 The Commissioner further considered the presumption provided in s 3(6) of the WICA and found that it was not applicable and therefore the burden of the Appellant to prove the claim did not shift to the 2nd Respondent. [note: 11] Section 3(6) provides:

> For the purposes of this Act, an accident arising in the course of an employee's employment shall be deemed, in the absence of evidence to the contrary, to have arisen out of that employment.

In the Commissioner's view, s 3(6) may only be invoked where it is certain that the accident occurred *in the course of employment*, but it was uncertain as to whether the *accident arose out of that employment* in this case. [note: 12] In a case where there was uncertainty as to whether the accident even occurred in the course of employment in the first place, s 3(6) of the WICA would not apply. [note: 13] In making this decision, the Commissioner relied on the decision of Kan Ting Chiu J in *Karuppiah Ravichandran v GDS Engineering Pte Ltd and another* [2009] 3 SLR(R) 1028 ("*Karuppiah*") at [24]:

> The presumption in s 3(6) does not arise whenever a worker is injured in an accident. It applies to accidents arising in the course of his employment. When the Commissioner found that the accident did not arise in the course of the applicant's employment, the presumption in s 3(6) did not apply.

On the facts as found by the Commissioner, the Commissioner held that the presumption in s 3(6) did not arise because the accident could not be said to have arisen in the course of the Deceased's employment.

Issues before this court

12 An employer's liability for compensation is imposed by s 3(1) of the WICA, which reads:

Employer's liability for compensation

3. —(1) If in any employment *personal injury* by *accident arising out of and in the course of the employment* is caused to an employee, his employer shall be liable to pay compensation in accordance with the provisions of this Act.

…

[emphasis added]

By virtue of s 2(4), the WICA applies to an accident happening to an employee outside Singapore where the employee is ordinarily resident in Singapore and is employed by an employer in Singapore but is required in the course of his employment to work outside Singapore.

13 Under s 3(1), an employee has to prove three elements before establishing an employer's liability for compensation: (a) the employee suffered *personal injury*; (b) the injury was caused by an *accident*; and (c) the accident arose out of and in the *course of his employment* (*Allianz Insurance Co (Singapore) Pte and others v Ma Shoudong and another* [2011] SGHC 106 ("*Allianz Insurance*") at [11], citing *NTUC Income Insurance Co-operative Ltd and another v Next of kin of Narayasamy s/o Ramasamy, deceased* [2006] 4 SLR(R) 507 ("*Narayasamy*") at [20]).

14 The first element ("personal injury") was not disputed by the parties, since the personal injury suffered by the Deceased was his death. The latter two elements ("accident" and "course of… employment") reflect the two main issues on appeal before this court:

(a) Whether there was an "accident" for the purposes of s 3(1) of the WICA; and

(b) Whether the accident arose out of and in the course of employment for the purposes of s 3(1) of the WICA.

15 Before turning to address the issues proper, however, it is prudent to first address the preliminary point on whether the Appellant has a right to appeal to the High Court on the two main issues.

Preliminary issue: appeals from the Commissioner

16 An appeal to the High Court from a decision of the Commissioner made under the WICA is possible only where a "substantial question of law is involved in the appeal" and "the amount in dispute is not less than $1,000" (s 29(2A) of the WICA). Section 29 of the WICA is reproduced here for convenience:

Appeal from decision of Commissioner

29. —(1) Subject to section 24(3B), any person aggrieved by any order of the Commissioner made under this Act may appeal to the High Court whose decision shall be final.

(2) Subject to the Rules of Court, the procedure in an appeal to the High Court shall be the procedure in a civil appeal from a District Court with such modifications as the circumstances may require.

(2A) No appeal shall lie against any order unless a *substantial question of law* is involved in the appeal and the *amount in dispute is not less than $1,000*.

(3) Notwithstanding any appeal under this section, the employer shall deposit with the Commissioner the amount of compensation ordered by the Commissioner under section 25B, 25C or 25D within 21 days from the date of the Commissioner's decision, and the deposit shall be held by the Commissioner pending the outcome of the appeal.

[emphasis added]

17 The parties in the present case did not raise any issues regarding s 29(2A), implying that they agreed that substantial questions of law were involved in the present appeal. Nonetheless, for completeness, I turn to make some brief observations on the right of appeal to the High Court from a decision of the Commissioner and to assess whether there were indeed substantial questions of law raised in the present appeal.

18 Several precedent decisions of this court have elaborated on the requirement of a "substantive question of law" in s 29(2A). Section 29(2A) reflects the policy that decisions of the Commissioner are not to be examined as though they are decisions of a court of law (*Karuppiah* at [9]), as evinced through Parliamentary debates which state the intention of the WICA is to provide "a simpler and quicker way to settle compensation claims by avoiding protracted legal proceedings" (*Allianz Insurance* at [20]).

19 It should be noted that the "question of law" test for appeals from decisions of statutory tribunals (such as the Commissioner in the present case) is different from that for appeals from arbitrators, since as a matter of policy, there must be a greater degree of judicial supervision over the former (*Ng Swee Lang v Sassoon Samuel Bernard* [2008] 1 SLR(R) 522 ("*Ng Swee Lang*") at [24] and [25], *Karuppiah* at [14] and *Selvam Raju v Camelron General Contractors and another* [2010] 2 SLR 1113 ("*Selvam Raju*") at [7]). In determining the range of errors of law that may provide grounds for appeal under s 29(2A), the courts have accepted the full range of errors of law listed in *Halsbury's Laws of England* vol 1(1) (Butterworths, 4th Ed Reissue, 1989) at paragraph 70:

> ... misinterpretation of a statute or any other legal document or a rule of common law; asking oneself and answering the wrong question, taking irrelevant considerations into account or failing to take relevant considerations into account when purporting to apply the law to the facts; admitting inadmissible evidence or rejecting admissible and relevant evidence; exercising a discretion on the basis of incorrect legal principles; giving reasons which disclose faulty legal reasoning or which are inadequate to fulfil an express duty to give reasons, and misdirecting oneself as to the burden of proof.

20 In addition, the courts have accepted Lord Radcliffe's statement in *Edwards (Inspector of Taxes) v Bairstow* [1956] AC 14 at 36 that a factual finding which was such that "no person acting judicially and properly instructed as to the relevant law could have come to the determination upon appeal" amounted to a misconception or error in point of law (*Karuppiah* at [13], *Selvam Raju* at [7]). However, not every wrong finding of fact would amount to a substantial question of law. In the final analysis, the nature and effect of the error will be considered and such errors must have a bearing on the ultimate decision (*Karuppiah* at [15]).

21 Turning to the two main issues on appeal in the present case (see above at [14]), it is clear that both involve "substantial questions of law" as defined in [19] and [20] above. Both issues involve

statutory interpretation of s 3(1) of the WICA (especially the terms "accident" and "course of employment"). They also deal with inferences drawn by the Commissioner from the facts that the Commissioner had found. While the court will not generally disturb findings of facts unless they are such that "no person acting judicially and properly instructed as to the relevant law could have come to the determination upon appeal" (*Karuppiah* at [13]), there is no similar rule precluding courts from assessing the robustness of inferences drawn from the facts as found by the Commissioner.

22 Having stated that this is a case where the issues raised are appealable to the High Court, I turn now to address the two issues involved in this appeal.

Whether there was an "accident" for the purposes of s 3(1)

23 On the issue of whether there was an "accident" for the purposes of s 3(1), it is apposite to refer to *Narayasamy*, where Menon JC interpreted the meaning of "accident" by drawing from the House of Lords' interpretation of the equivalent English statute (which is *in pari materia* with s 3(1) of the WICA). The relevant passages from *Narayasamy* are reproduced here:

> 23 Lord Loreburn LC, speaking in the majority, first considered whether this could be described as an accident and held that it could following the decision of the House of Lords in *Fenton v Thorley & Co Ltd* [1903] AC 443. His Lordship noted as follows at 245-246:
>
> > The first question here is whether or not the learned judge was entitled to regard the rupture as an "accident" within the meaning of this Act. In my opinion, he was so entitled. Certainly it was an "untoward event." It was not designed. It was unexpected in what seems to me the relevant sense, namely, that a sensible man who knew the nature of the work would not have expected it. I cannot agree with the argument presented to your Lordships that you are to ask whether a doctor acquainted with the man's condition would have expected it. Were that the right view, then it would not be an accident if a man very liable to fainting fits fell in a faint from a ladder and hurt himself. No doubt the ordinary accident is associated with something external; the bursting of a boiler, or an explosion in a mine, for example. But it may be merely from the main's own miscalculation, such as tripping and falling. Or it may be due both to internal and external conditions, as if a seaman were to faint in the rigging and tumble into the sea. I think it may also be something going wrong within the human frame itself, such as the straining of a muscle or the breaking of a blood vessel. If that occurred when he was lifting a weight it would be properly described as an accident. So, I think, rupturing an aneurism when tightening a nut with a spanner may be regarded as an accident.
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> 24 It is thus apparent that an "accident" within the meaning of the English statute (which is in *pari materia* with s 3(1) of the Act) ***would include an internal medical condition that caused an unexpected injury while the workman was carrying out his work*** .
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> [emphasis added in bold italics]

24 The parties agreed on the interpretation of "accident" as adopted in *Narayasamy*, *viz*, that it would "include an internal medical condition that caused an unexpected injury while the workman was carrying out his work". The parties agreed that the Deceased had died from circumstances that resembled a cardiac arrest and further agreed that if the death was *indeed* caused by cardiac arrest, it would be considered, on the authority of *Narayasamy*, to be caused by an "accident" within the meaning of s 3(1). The only dispute concerning the requirement of an "accident" stemmed from the 2nd Respondent's argument that since the *precise cause of death* was not proved by the Appellant, it

could not be said that the Deceased's death had been caused by an "accident".

25 Considering the circumstantial evidence that is available, namely, the phone calls made by the Deceased and, in particular, a phone call seeking medical assistance for breathing difficulties (see [7] above), I am of the view that the death was, on a balance of probabilities, caused by cardiac arrest. Accordingly, I find that the Deceased's death was caused by an "accident" within the meaning of s 3(1).

26 At this juncture, I pause to record several observations on the use of the term "accident" in s 3(1). The word "accident" is defined in the Oxford English Dictionary to mean "an *unfortunate incident* that happens *unexpectedly* and *unintentionally*, typically resulting in damage or injury" (emphasis added). [note: 14] This definition would, at least on a literal reading, allow the word "accident" to include – as the court in *Narayasamy* held – an internal medical condition that caused an unexpected injury while the workman was carrying out his work". It could of course be argued that it is not in line with the common understanding of the word "accident" to include something which happens as a result of a person's "internal medical condition". Some may accordingly view *Narayasamy* as providing an overly broad interpretation of "accident".

27 I sympathise with those who think that the word "accident" had been stretched beyond its common usage in *Narayasamy*. Nonetheless, in my view, the liberal interpretation of "accident" adopted in *Narayasamy* is justified. It is clear that s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed) enjoins courts to prefer an interpretation that would promote the purpose underlying any particular legislation. The WICA describes itself as being "[a]n Act relating to the payment of compensation to employees for injury suffered in the course of their employment". Being a piece of social legislation, the WICA should be interpreted purposively in favour of employees who have suffered injury during their employment. The *Narayasamy* interpretation is therefore entirely in line with the purpose of the WICA.

28 An interesting point to note is the relationship between ss 3(1) and 3(5) of the WICA, stemming from the use of the word "accident" in the former. Section 3(1) has been set out at [12] above. Section 3(5) of the WICA provides:

> (5) An employer shall not be liable to pay compensation in respect of —
>
> (a) any injury to an employee resulting from an accident if it is proved that the injury to the employee is directly attributable to the employee having been at the time thereof under the influence of alcohol or a drug not prescribed by a medical practitioner; or
>
> (b) any incapacity or death resulting from a deliberate self-injury or the deliberate aggravation of an accidental injury.

29 To recap, s 3(1) is the gateway to liability under s 3 of the WICA; the three elements of s 3(1), the second of which being that the injury must have been caused by an "accident", must be fulfilled before an employer is liable to pay compensation to an employee. However, s 3(5)(b) excludes an employer's liability for "any incapacity or death resulting from a *deliberate self-injury* …" (emphasis added). It is difficult to see how a particular claim could pass through the s 3(1) gateway but subsequently be excluded by virtue of s 3(5)(b), since a "deliberate self-injury" could hardly be considered an "accident" in the first place. Of course, one way to rationalise the provisions is to interpret the "deliberate self-injury" component of s 3(5)(b) as dealing with a class of cases that does not fall within s 3(1) in the first place but if that were the case, then s 3(5)(b) would not be necessary since there is no liability apart from s 3(1). An "accident" which is proved to have been

faked or planned would be no accident at all.

30 The situation in relation to ss 3(1) and 3(5) may be avoided if the term "accident" (which already connotes something unintentional) is replaced by a more general term, for instance, "incident" (which is defined by the Oxford English Dictionary to mean "an instance of something happening; an event or occurrence"). [note: 15] The "deliberate self-injury" (referred to in s 3(5)(b)) would be an "incident" although it is not an "accident".

31 In addition, replacing the word "accident" in the WICA with "incident" (or some other suitable term) would, I think, be more palatable to linguistic purists who may object quite legitimately to describing someone who suffered a heart attack as having had an "accident". It would obviate the need for an expansive or over liberal meaning to be given to the word "accident".

Whether the accident arose out of and in the "course of the employment"

32 The next issue (which is also the main issue in dispute in the present case) is whether the accident arose in the "course of the employment". This is a requirement to be met before liability can be established under s 3(1) of the WICA. The parties agreed that if the accident was found to have arisen in the "course of employment", then it would, pursuant to s 3(6) of the WICA, be deemed to have arisen out of that employment. To repeat, s 3(6) provides:

> For the purposes of this Act, an accident arising in the course of an employee's employment shall be deemed, in the absence of evidence to the contrary, to have arisen out of that employment.

In other words, the parties are agreed that all that is required in the present case is to determine whether the accident arose in the "course of employment" since there is no contradicting evidence.

33 As noted at [9] above, the Commissioner relied on the case of *QBE Insurance* in determining that the Deceased, while waiting for Lim's transport, was not in the course of employment. The House of Lords' decision in *Charles R Davidson and Company v M'Robb or Officer* [1918] AC 304 ("*Davidson*") is instructive and it is apposite to reproduce extracts of the judgments of three of the learned Law Lords in that case. I begin with the dissenting opinion of Lord Finlay LC (at 314-315):

> "In the course of the employment" must mean, similarly, in the *course of the work which the man is employed to do, and what is incident to it* – in other words, in the course of his service. In the case of a domestic servant who sleeps and takes his meals in his master's house he is in the course of his service all the time – his service is interrupted if he goes out on his own business or pleasure. A workman who by the terms of his employment takes his meals on his employer's premises is in the course of his service in being there at meal-times. In either case the master or employer would be liable for damage caused by such an accident…
>
> …
>
> *"In the course of the employment" does not mean during the currency of the time of the engagement*. If the words meant this they would be useless, and would add nothing to the words "arising out of the employment," while to interpret them in this sense would let in the possibility of a number of claims of the nature above indicated which the words "in the course of the employment" rightly read as meaning in the course of the work or service would exclude. If "in the course of the employment" meant during the currency of the engagement a sailor engaged for a round voyage would be in the course of his employment while in a public-house in any port where he had leave to go on shore. *"Course" is more applicable to work or service than to the*

currency of the engagement. Leave on shore on the sailor's own business or pleasure is an interruption of his employment, not in the course of it.

[emphasis added]

Lord Dunedin noted (at 321) that:

> … In my view "in the course of employment" is a different thing from "during the period of employment." It connotes, to my mind, the idea that the workman or servant is doing something which is part of his service to his employer or master. *No doubt it need not be actual work, but it must, I think, be work, or the natural incidents connected with the class of work* – e.g., in the workman's case the taking of meals during the hours of labour; in the servant's, not only the taking of meals, but *resting and sleeping*, which follow from the fact that domestic servants generally live and sleep under the master's roof. … [emphasis added]

Lord Atkinson provided further guidance on determining whether an employee was "in the course of employment" at the material time (at 327):

> … The words "in course of his employment" mean, I think, while the workman is doing something he is employed to do. In the case of a sailor who lives on board his ship, or an indoor servant who lives in his master's house, these words would of course cover and include things *necessarily incidental to his service there – such as taking his meals, sleeping, resting, &c*. In satisfying these demands of nature the sailor is as truly doing something within the course of his employment as he would be in keeping a look-out or going aloft. … [emphasis added]

34 It should be noted that in *Allianz Insurance*, Lai JC cited Lord Findlay LC's dicta in *Davidson* with approval and went on to find that the deceased in *Allianz Insurance* was within the course of his employment despite being on a break after his shift had ended and despite there being no evidence that he was actually doing work at the time of death. The present case is concerned with a situation in which an employee is sent overseas on a business trip. Accordingly, I limit my observations to the context of employees going on overseas working trips. One possible interpretation is that an employee on an overseas working trip is considered to be in the "course of employment" for the *entire period* that he is overseas. Another possible interpretation is that the employee is considered to be in the "course of employment" only during the time that he is actively at work, and not, for instance, when he is having meals or sleeping. To my mind, however, both interpretations are extreme and cannot represent the law with regard to the "course of employment" under s 3(1) of the WICA. The former interpretation is clearly too broad. It would, for instance, render an employer liable for an employee's injury where the employee chooses to do extreme sports on a free day between business meetings. Such an action by the employee would, to borrow Lord Finlay LC's words, be "an *interruption* of his employment, not in the course of it" (emphasis added). In contrast, the latter interpretation is clearly too narrow. It would, for instance, render an employee without compensation simply because he had been taking a breather from work when tragedy struck. Such an interpretation would starkly contradict the opinions of Lords Dunedin and Atkinson, that "natural [or necessary] incidents" connected to work would fall within the course of employment as well.

35 In my opinion, the proper approach to take falls somewhere between the extreme approaches outlined in the preceding paragraph. Some examples will be useful to illustrate the necessity of a fact-sensitive approach in determining whether an employee was in the "course of employment" at the material time. In some cases, it is reasonably clear that the employee is not in the course of employment when he suffered the injury. For instance, if an employee travels on a working trip to London and thereafter heads to Paris for a vacation before returning, any injury occasioned during the

period of time when he is in Paris would not be in the course of employment – his presence in Paris cannot generally be said to be *incidental* to his work. There are, however, situations which are less clear. Take the example of an employee who travels for a working trip that involves numerous meetings and little time for leisure activities; *prima facie*, the entire trip would be considered to be in the course of employment, since his presence overseas may be said to be "necessarily incidental" to his work. However, if the employee chooses to go bungee jumping during a period of free time between meetings and injures himself in the process, this would probably not be sufficiently *incidental* to the course of work and accordingly constitutes a "frolic of the employee's own", a "deviation" from or an "interruption" to the course of employment. On the other hand, if there was evidence that the employee had gone bungee jumping for the purposes of building business relations with a particular client, then it could conceivably be argued that the injury from bungee jumping was caused in the course of employment.

36 The process of determining whether an employee was, at the material time of suffering injury, in the "course of employment", is a *highly factual inquiry*. An analogy may be made with tort cases relating to whether an employer is vicariously liable for acts done by an employee in the course of employment. From those cases, it is clear that whether a detour by an employee is a "frolic of his own" or is conversely in the course of employment, is a matter of fact and degree (see *eg Joel v Morison* (1834) 6 C&P 501, *Whatman v Pearson* (1868) LR 3 CP 422 and *Storey v Ashton* (1869) LR 4 QB 476). In my view, the factual nature of the test applies equally in the context of determining whether, for purposes of work injury compensation, the employee concerned was "in the course of employment" when injury was suffered. It is neither helpful nor appropriate for courts to attempt to phrase a precise legal test to govern all situations, given that the question whether an employee was in the "course of employment" is essentially a fact-specific inquiry. Indeed, this brings to mind a recent exhortation of the Court of Appeal in *Shadrake Alan v PP* [2011] SGCA 26 at [29], albeit in a very different context, that "seeking to elaborate upon a legal test whose efficacy is to be demonstrated more in its *application* rather than its theoretical elaboration is, with respect, perhaps an approach that should be avoided" (emphasis in original).

37 I would specifically mention one consideration to be taken into account when determining whether, as a matter of fact, the employee was in the "course of employment" at the material time. I have earlier (at [27] above) alluded to the fact that the WICA is social legislation which should be interpreted purposively in favour of employees who have suffered injury during their employment. The WICA must continue to be relevant to the realities of contemporary working environments and conditions. Increasingly, work is no longer confined to specific places and times, especially for white-collar employees (such as the Deceased). Accordingly, the concept of being in the "course of employment" must accommodate and reflect these changes in modern working life.

38 Returning to the facts of the present case, it should be noted that it was undisputed that the *entire trip was a working trip*. No leisure activities were planned. Indeed, on the very day that the Deceased landed in Phnom Penh, he attended KEP's anniversary dinner as a representative of the 1st Respondent. The next morning, he was going to meet with CBL for business matters and thereafter with KEP for an important meeting to resolve financial issues. The very afternoon after the meeting with KEP, the Deceased was scheduled to fly to Bangkok for further work-related purposes. There was no "interruption" whatsoever that brings the case outside the *prima facie* position that the Deceased was in the "course of employment" at the material time. Indeed, the Deceased's being in his hotel room on the fateful morning was *necessarily incidental* to his work for the 1stRespondent.

39 Even if leisure activities were included as part of the programme, so long as they were sanctioned by the employer, they would not amount to a break in employment. This accords with present day working life where leisure, team-building and morale-boosting activities are part and

parcel of employment.

40 I accept the Commissioner's findings that there was no evidence of work-related emails or that the Deceased had prepared the documents necessary for discussion with KEP when he was found at 11am that fateful morning. Nonetheless, it should be noted that the fact that there was no *actual work* at that point in time does not mean that the Deceased could not be considered to have been in the course of employment (see the judgments of Lords Dunedin and Atkinson in *Davidson*, reproduced at [33] above). Indeed, I note that the Deceased's employers fully recognised and accepted that the Deceased died in the course of employment. Ong gave uncontroverted evidence that the Deceased was "a very disciplined and professional man" and that from his experience of working with the Deceased for over 20 years, including travelling with him on several business trips, he was certain that the Deceased would have spent the morning of 1 September 2010 preparing himself for the meeting with KEP. That is something entirely reasonable in the circumstances of this case and perhaps in most cases of overseas work trips as well, especially those with a demanding schedule.

41 In the circumstances, I find that the Deceased suffered what appeared highly likely to be a cardiac arrest in the "course of employment". By virtue of s 3(6), the accident would be deemed to have arisen out of the Deceased's employment (see [32] above).

Conclusion

42 For the reasons given above, I find that the requirements under s 3(1) of the WICA were made out and the employer's liability was established. The application for the Commissioner's decision to be reversed is therefore granted. Costs are awarded to the Applicant to be taxed or agreed between the parties.

[note: 1] *Phang Chiew Kim (NOK of Poon Wai Tong) v Wartsila Singapore Pte Ltd and India International Insurance Pte Ltd*, Case No 0820791E, Grounds of Decision of Assistant Commissioner (Work Injury Compensation) Jimmy Khoo Lian Wai ("GD") at [5].

[note: 2] GD at [11]-[24]

[note: 3] GD at [25]

[note: 4] GD at [25]

[note: 5] GD at [25]

[note: 6] GD at [28]

[note: 7] GD at [28]

[note: 8] GD at [28]

[note: 9] GD at [29]

[note: 10] GD at [29]

[note: 11] GD at [5]

[note: 12] GD at [5]

[note: 13] GD at [5]

[note: 14] Oxford Dictionaries. April 2010. Oxford University Press. Online: <http://oxforddictionaries.com/definition/accident> (accessed July 20, 2011)

[note: 15] Oxford Dictionaries. April 2010. Oxford University Press. Online: <http://oxforddictionaries.com/definition/incident> (accessed July 20, 2011)

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