IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 141

Tribunal Appeal No 5 of 2015

Between

(1) Goh Yee Lan Coreena
(2) Daniel Goh Kiang Chong
(3) Yang Mei Chee

… *Plaintiffs*

And

P & P Security Services Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Employment Law] — [Work Injury Compensation Act]

Version No 1: 27 Oct 2020 (22:39 hrs)

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Goh Yee Lan Coreena and others
v
P & P Security Services Pte Ltd

[2016] SGHC 141

High Court — Tribunal Appeal No 5 of 2015
Chua Lee Ming JC
6 June 2016; 15 July 2016

22 July 2016

Chua Lee Ming JC:

Introduction

1 Mr Goh Yoke Lin ("the deceased") was a security guard who was employed by the defendant. He felt unwell while at work, was subsequently warded in Changi General Hospital and died on 17 March 2012. The plaintiffs are his widow and children.

2 After investigating the circumstances of the death, the Commissioner for Labour ("the Commissioner") issued a notice of assessment of compensation under the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("the WICA") dated 18 March 2013 ("the Assessment").

3 Section 24(3) of the WICA provides that a notice of assessment is "deemed to have been agreed upon by the employer and the person claiming

compensation, and shall have the effect of an order" for payment of compensation if no objection is received within 14 days after the service of the notice of assessment.

4 In the present case, the defendant did not file any objection to the Assessment. Its insurer, AXA Insurance Singapore Pte Ltd ("AXA"), filed an objection in its own name ("the AXA Objection"). AXA subsequently disclaimed liability under the defendant's insurance policy.

5 For the reasons set out below, I decided that the AXA Objection was not an objection by the defendant and therefore the Assessment took effect as an order for payment under s 24(3) of the WICA.

The facts

6 The deceased felt unwell when he was working the overnight shift which ended in the morning of 15 March 2012. He saw a doctor at a polyclinic after his shift ended. The doctor referred him to the Accident & Emergency department at Changi General Hospital. He was warded at the hospital until 17 March 2012 when he passed away. The doctor who treated him stated that the primary cause of death was "cardiovascular collapse". An autopsy was carried out on 18 March 2012 and the final cause of death was determined as "massive acute myocardial infarction", otherwise known as a heart attack.

7 The plaintiffs, being the deceased's next-of-kin, lodged a work injury compensation claim against the defendant. The Commissioner investigated the case. The forensic pathologist, Dr Wee Keng Poh, replied on 23 January 2013 to queries by the Commissioner and opined that any physical activity could have precipitated the heart attack but that it was "more likely than not (on a

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balance of probabilities) that it was the deceased's activities at work which caused or contributed to his death". The Commissioner then assessed the total compensation at $137,759.04 and issued the Assessment.

8 The Assessment was addressed to AXA as "Payer", the defendant as "Employer" and the plaintiffs as "Claimant". I should add that although dated 18 March 2013, the Assessment was in fact sent out earlier on 6 March 2013. Apparently, this practice of postdating the notice of assessment was to give the parties more time to file their objections, if any.

9 On 18 March 2013, AXA filed the AXA Objection using the form prescribed under the Work Injury Compensation Regulations (Cap 354, Section 45, 2010 Rev Ed) ("the Regulations"). Section A of the form provided three boxes to be checked according to whether the party raising the objection was the "claimant", "employer" or "insurer". AXA checked the box for "insurer".

10 Section B of the form required the party objecting to state its grounds of objection. AXA checked the box that stated "Admissibility under the Act" as a general ground of objection. Under this heading, AXA checked the box that stated the following:

> Medical condition/injury/death is/is not* caused or aggravated by an accident that arose out of and in the course of employment (*please delete where inapplicable)

AXA did not make any deletions. Instead, it explained in the form that "[we] were only notified in March 2013. We need to carry out our own investigation".

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11 At a pre-hearing conference ("PHC") of the Labour Court held on 1 July 2013, the defendant alleged that sex enhancing pills may have caused the deceased's death.

12 At a subsequent PHC held on 30 September 2013, the Assistant Commissioner excused AXA from further participation in the matter because it had disclaimed liability under the insurance policy and the defendant had conceded that the policy was not engaged. Apparently, the value of the contract entered into by the defendant, pursuant to which the deceased was assigned to carry out his duties, exceeded the value of contracts that fell within the scope of the insurance policy between AXA and the defendant. This also meant that the defendant had failed to insure and maintain the necessary insurance with respect to the deceased, as required under the WICA.

13 At the same PHC, the plaintiffs pointed out that the defendant had not filed any objection and that the AXA Objection did not state what AXA was objecting to. The Assistant Commissioner stated his view that the AXA Objection was a valid objection and added that the defendant had also indicated its objections and given its reasons (*ie*, that the deceased's death was caused by sex enhancing drugs) during the PHC on 1 July 2013.

14 Subsequently, the defendant was given a toxicology report which showed that no drugs were detected in the deceased's blood sample. On 25 November 2013, the defendant withdrew its allegation that the deceased's death was caused by sex enhancing drugs.

15 On 2 April 2015, the defendant obtained a report from Dr Goh Yew Seong, a cardiologist from the Changi General Hospital. Dr Goh opined as follows:

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(a) the deceased's heart attack was likely caused by massive blood loss; and

(b) the relation between the deceased's work and his massive heart attack could not be clearly established and the main cause of his blood loss remained undetermined.

16 At a further PHC held on 9 April 2015, the defendant referred to Dr Goh's medical report and raised, as its new ground of objection, the allegation that the deceased's death was due to a mysterious massive blood loss. The Assistant Commissioner scheduled the case for hearing on 21 and 22 May 2015. A Notice of Hearing was issued on 28 April 2015.

17 On 19 May 2015, the plaintiffs filed this present appeal against, *inter alia*, the Assistant Commissioner's decision in April 2015 to schedule the hearing and to deny its request to vacate the hearing. The hearing in the Labour Court was subsequently adjourned with liberty to restore.

The framework under the WICA

18 At this juncture, it would be useful to set out the framework under the WICA. Under s 3(1) of the WICA, an employer is liable to pay compensation for any personal injury caused to an employee by accident arising out of and in the course of the employment. For the purposes of s 3(1) of the WICA, "accident" includes an internal medical condition that caused an unexpected injury while the employee was carrying out his work: *NTUC Income Insurance Co-operative Ltd and another v Next of kin of Narayasamy s/o Ramasamy, deceased* [2006] 4 SLR(R) 507 at [24]; followed in *Pang Chew Kim (next of kin of Poon Wai Tong, deceased) v Wartsila Singapore Pte Ltd*

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and another [2012] 1 SLR 15 ("*Pang Chew Kim*") at [26]. The reason for this liberal interpretation is that being a piece of social legislation, the WICA should be interpreted purposively in favour of employees who had suffered injury during their employment: *Pang Chew Kim* at [27].

19 Section 23 of the WICA requires every employer to insure and maintain insurance against all liabilities which he may incur under the WICA in respect of any employee. Section 32 permits claims to be brought against the insurer "as if he were the employer" if the claimant so wishes.

20 Section 24 of the WICA gives the Commissioner the power to assess and make an order on the amount of compensation. The Commissioner is required to serve the notice of assessment of compensation on the employer and the claimant.

21 Under s 25 of the WICA, "any employer or person claiming compensation" who objects to any notice of assessment of compensation is required to file his objection in the prescribed form, within the prescribed period, stating precisely the grounds of his objection. The Commissioner shall disregard any ground contained in an objection given outside the prescribed period.

22 Section 25D of the WICA gives the Commissioner the power to conduct a hearing and make any order for payment of compensation as he thinks just. In view of the mandatory effect of s 24(3) where no objection has been filed (see [23] below), it seems to me that the power to conduct a hearing under s 25D would arise only if an objection has been filed.

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23 If no objection is filed, or the objection is withdrawn after being filed, then pursuant to s 24(3) of the WICA, the notice of assessment is deemed to have been agreed upon by the employer and the claimant and to have the effect of an order under s 25D:

(a) on the 15th day, if "no objection is received by the Commissioner" within 14 days after the service of the notice; or

(b) on the 29th day, if "all objections so received by the Commissioner are withdrawn" within 28 days after the service of the notice.

Under s 24(3B), no appeal lies against any such order for payment.

Whether the appeal was properly brought

24 Under s 29(2A) of the WICA, no appeal shall lie against any order by the Commissioner unless a substantial question of law is involved in the appeal and the amount in dispute is not less than $1,000. The monetary threshold was not an issue in this case.

25 The substantial question of law in this case was whether the Labour Court still had the power to conduct a hearing under s 25D of the WICA or whether its power to do so had ceased because the Assessment had become an order for payment pursuant to s 24(3) of the WICA. Implicit in the Assistant Commissioner's decision on 9 April 2015 to schedule a hearing was his decision that the Labour Court still had the power to conduct a hearing under s 25D of the WICA. There can be no doubt that the appeal against the decision to schedule a hearing therefore involved a substantial question of law.

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26 The defendant argued that the appeal was out of time. As required under O 55 r 2(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), the plaintiffs' appeal was brought by originating summons. O 55 r 3(2) required the originating summons to be *served* on the tribunal and the defendant within 28 days of the order or decision appealed against. The present originating summons was filed on 19 May 2015; it was served on the defendant on 20 May 2015 and on the Labour Court on 28 May 2015.

27 The defendant submitted that this appeal should be treated as an appeal against the Assistant Commissioner's decision during the PHC on 30 September 2013 that the AXA Objection was valid. I disagreed. As the plaintiffs pointed out, their appeal (as stated in the originating summons) was against the Assistant Commissioner's decision to schedule a hearing. In other words, this was an appeal against the Assistant Commissioner's decision that he had the power to conduct a hearing under s 25D of the WICA. The plaintiffs submitted that the date of this decision was 28 April 2015 (the date of the Notice of Hearing), or alternatively, 9 April 2015 (the date of the PHC when the Assistant Commissioner scheduled the matter for hearing).

28 In my view, the decision to schedule a hearing was made during the PHC on 9 April 2015. The Notice of Hearing merely implemented that decision. In any event, whether the relevant date was 9 or 28 April 2015, an extension of time was still required.

29 I granted an extension of time for the service of the originating summons to 28 May 2015. In my view, this case involved an important point of law which needed to be clarified. Further, if s 24(3) of the WICA applied in this case, the Labour Court no longer had the power to conduct a hearing and

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in that event, the case should not be allowed to be further prolonged. This was an exceptional case deserving of the court's intervention.

Parties' arguments

The plaintiffs' case

30 Whether the Labour Court still had the power to conduct a hearing under s 25D of the WICA depended on whether s 24(3) was applicable. The plaintiffs submitted that s 24(3) was applicable because the defendant did not file a valid objection in compliance with the WICA. The plaintiffs submitted that the defendant could not rely on the AXA Objection because:

(a) the AXA Objection was not filed by the defendant or on its behalf; and

(b) in any event, the AXA Objection was defective in that it did not state precisely the grounds of objection or attach the relevant evidence and documents to support its objection, as was required under the WICA and the Regulations.

31 Accordingly, the plaintiffs submitted that the Assessment crystallised into an order pursuant to s 24(3) of the WICA. Thereafter, the Labour Court no longer had any power to conduct a hearing.

The defendant's case

32 The defendant submitted that AXA had conduct of the proceedings (a) under the terms of the insurance policy and/or (b) as a result of subrogation. Therefore, the defendant argued, it did not have to file a separate objection and the AXA Objection "can be deemed as the [defendant's objection] as well".

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33 The defendant further submitted that it had informed the Labour Court of its objection and grounds of objection to the Assessment orally during the PHCs.

Whether the AXA Objection was an objection by the defendant under the WICA

34 At the outset, it bears emphasizing that s 25(1) of the WICA expressly requires the employer to file his objection stating precisely the grounds of his objection if he wishes to object. It cannot be disputed that the defendant itself did not do so in this case.

35 It is true that the objection form prescribed by the Regulations include a section for insurers. It seems to me that the section for insurers may have been intended for cases where the claim has been brought against the insurer pursuant to s 32 of the WICA. However, I do not have to decide this question. The fact remains that AXA did file an objection as insurer and the question remains whether the AXA Objection can be taken to be an objection by the defendant.

36 In my view, there were two ways in which the defendant could rely on an objection filed by AXA. First, under the terms of the insurance policy, AXA was entitled to take over and conduct the defence "in the [defendant's] name". This meant that AXA could have filed the objection in the defendant's name and such an objection would then be an objection by the defendant. However, AXA did not do so.

37 Second, AXA could have filed the objection on behalf of the defendant, as the defendant's agent. However, there was nothing in the AXA

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Objection that could be construed to mean that it was filed on behalf of the defendant. Neither was there anything in the AXA Objection that indicated that the defendant was bound by that objection.

38 The AXA Objection was filed by AXA as an insurer in its own name and on its own behalf. In my judgment, it is clear that the AXA Objection was not an objection by the defendant and therefore did not discharge the defendant's obligation to file an objection under s 25(1) of the WICA.

39 The defendant, as employer, had therefore failed to file its objection to the Assessment. Accordingly, the Assessment became a binding non-appealable order pursuant to s 24(3) read with s 24(3B) of the WICA, and the Labour Court ceased to have any jurisdiction to hear the matter thereafter.

40 The defendant had also argued that it did not file an objection because AXA had stepped into its shoes as a result of subrogation. I agreed with the plaintiffs' submission that this argument could not succeed. First, AXA was entitled to be subrogated to the defendant's rights only on payment of the loss sustained by the defendant: *Halsbury's Laws of Singapore* vol 13(2) (LexisNexis Singapore, 2016 Reissue) at para 155.176. In this case, AXA had disclaimed liability and no payment had been made by it. Second, because the rights to which AXA would be subrogated were those of the defendant, they must be exercised in the defendant's name unless they have been assigned at law to AXA: *Halsbury's Laws of Singapore* vol 13(2) at para 155.179. As discussed earlier, AXA did not file the objection in the defendant's name. It was not the defendant's case that there was any assignment at law to AXA.

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Whether the AXA Objection stated sufficient grounds

41 Even if the AXA Objection could be construed as having been filed on behalf of the defendant, I agreed with the plaintiffs that the objection was defective in that it did not state sufficient grounds. Section 25(1) of the WICA requires the objection to state precisely the grounds of objection. The prescribed objection form contains instructions which remind parties to "state precisely the ground(s) of objection" and to attach "supporting evidence and documents where relevant". As mentioned at [10], AXA had merely stated in its objection that it needed to carry out its own investigations.

42 In my view, the defect in the objection was fatal. Neither the Commissioner nor the plaintiffs would know from reading the objection what the precise grounds of objection were. Even if the Commissioner proceeded with the hearing, there would have been no grounds for him to deal with. I noted that under s 25(2) of the WICA the Commissioner "shall disregard" any ground of objection that is not given within the prescribed period. In the present case, the precise grounds were not even stated in the AXA Objection.

Whether the defendant's oral objection and grounds were sufficient

43 The defendant submitted that it had informed the Assistant Commissioner of its objection and grounds of objection orally during the PHCs. At the PHC on 1 July 2013, the defendant had alleged that the deceased's death was not work related as it may have been caused by his taking of sex enhancing pills. This allegation was made despite the fact that the defendant had stated earlier, in the Work Injury Compensation Claim Form it submitted to AXA on 5 March 2013, that the deceased was not under the influence of alcohol or drugs at the relevant time. In any event, as seen earlier,

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this allegation was withdrawn on 25 November 2013. Subsequently, at the pre-hearing conference on 9 April 2015, the defendant submitted that the deceased's death was due to a mysterious massive blood loss.

44 In my view, the defendant could not rely on its oral objection or grounds of objection. They were not given in the prescribed form as required under s 25(1) of the WICA. They were also given after the prescribed 14-day period under the WICA had expired. Pursuant to s 25(2) of the WICA, the Commissioner was duty bound to "disregard any ground of objection" given outside the prescribed period. Although s 25(1) of the WICA allows the Commissioner to extend the period for filing of objections, no application had been made for any such extension. I pause to add that the mandatory nature of s 24(3) suggests that any application for an extension of time to file an objection would have to be made within the prescribed 14-day period.

45 The consequences of not filing an objection within the prescribed time are very clearly set out in s 24(3) of the WICA. If no objection has been filed within the prescribed period, the notice of assessment becomes a non-appealable order for compensation. The Commissioner's jurisdiction to adjudicate the claim then ceases.

46 The intention behind the WICA was clearly stated during the second reading of the Work Injury Compensation (Amendment) Bill 2011, where the WICA was described as "a piece of social legislation that aims to provide low-cost and expeditious resolution of work-related injury claims": *Singapore Parliamentary Debates, Official Report* (21 November 2011) vol 88 at cols 594–595 (BG [NS] Tan Chuan-Jin, Minister of State for National Development and Manpower). It was also emphasised that the WICA is a no-

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fault regime and that one key principle of the WICA is "to ensure that the WICA framework remains expeditious and workers are able to receive compensation promptly".

47 In my view, it would be contrary to the provisions in the WICA, as well as the objectives of the WICA, to allow employers, who have not filed an objection stating precisely their grounds of objection, to object and state their grounds orally after the prescribed period has expired. The requirement for objections stating precise grounds to be filed within the prescribed period and the mandatory provisions of s 24(3) were clearly designed to achieve an expeditious resolution of work-related injury claims at a low cost. The provisions of the WICA must be strictly adhered to.

48 The defendant had also argued that the plaintiffs sought to rely on s 24(3) because they knew they could not succeed at a hearing before the Labour Court in view of Dr Goh's report. I noted that the defendant did not explain why it did not try to obtain the report earlier. In any event, in my view, the defendant has overstated the importance of Dr Goh's report.

49 Under the WICA, it is sufficient that the cause of the deceased's death arose in the course of his employment. Pursuant to s 3(6) of the WICA, it would then be deemed, in the absence of evidence to the contrary, to have arisen out of that employment. In this case, even if the heart attack was the result of the blood loss, the evidence showed that it was highly likely that the blood loss happened when the deceased was at work. Pursuant to s 3(6) of the WICA, the blood loss (which led to the heart attack) would be deemed to have arisen out of the deceased's employment, in the absence of evidence to the contrary. Since Dr Goh did not know what caused the blood loss, his report

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did not provide any evidence to the contrary. It seemed to me that the most that can be said about Dr Goh's report was that it was unclear whether it would have been fatal to the plaintiffs' claim under the WICA.

Interest payable under the WICA

50 Under s 24(4) of the WICA, the defendant became liable to pay the amount of compensation in the Assessment within 21 days after the Assessment was served on it. The defendant submitted that it should not have to pay interest in this case. I agreed with the plaintiffs that s 28A(1) of the WICA was applicable and that they were entitled to compute interest as provided under that section read with the Regulations. However, s 28A(1) also gives the Commissioner the discretion to waive the whole or any part of such interest. It is for the defendant to apply to the Commissioner for any waiver of interest.

Conclusion

51 For the above reasons, I allowed the appeal and set aside the Assistant Commissioner's decision to schedule the case for hearing before the Labour Court. I also declared that pursuant to s 24(3) of the WICA, the Assessment has the effect of an order for payment under the WICA and that the amount of compensation in the Assessment was deemed payable as of 2 April 2013.

52 This was an unfortunate case. The deceased died on 17 March 2012. The Commissioner's notice of assessment of the compensation payable was dated 18 March 2013. As the defendant employer did not file its objection, the assessment became an order for payment on 2 April 2013. Under s 24(4)*(a)* of the WICA, the defendant should have paid the plaintiffs the compensation

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amount by 8 April 2013 but it has not done so. The fact that AXA had disclaimed liability probably caused the defendant to continue contesting the claim. However, the defendant has only itself to blame for having failed to properly maintain the necessary insurance in the first place. It has to be borne in mind that under the WICA, it was the defendant's responsibility to do so.

53 The WICA required the defendant to file its objection stating precisely the grounds of its objection within the prescribed 14-day period. The prescribed period expired on 1 April 2013. The defendant failed to file its objection. Even if one were to proceed on the basis of the AXA Objection, no specific ground was given in that objection.

54 The WICA mandates that the defendant's objections that were given orally be disregarded. As stated earlier, the defendant first gave its ground of objection orally on 1 July 2013, withdrew it in November 2013, then obtained a cardiologist's report and raised a new ground of objection, again orally, in April 2015. In my view, the framework in the WICA was intended to avoid such conduct on the part of employers.

55 Employers who choose not to comply fully with the requirements of the WICA have to face the consequences provided under the WICA. A key principle of the WICA is to ensure that its framework remains expeditious. Employers should not be permitted to nullify this key principle whether deliberately or through their tardiness in complying with the WICA.

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Defendant's applications for leave to appeal and for stay of execution

56 On 13 June 2016, the defendant filed Summons No 2917 of 2016 for leave to appeal to the Court of Appeal against my decision allowing the plaintiffs' appeal.

57 Under s 29(1) of the WICA, the decision of the High Court on an appeal from the Labour Court is final. The defendant sought to get around this prohibition against any further appeal by arguing that the declaratory order that I made was an order made by me in the exercise of my original jurisdiction.

58 In my view, the defendant's argument had not merit whatsoever. This originating summons was filed and came before me as an appeal under s 29 of the WICA and I heard it in the exercise of my appellate jurisdiction under the WICA. There was no other basis for me to have assumed jurisdiction. The form of the orders made by me cannot change the fact that I was exercising my appellate jurisdiction under the WICA. The declaratory order was made further to my decision to allow the appeal. I therefore dismissed the application for leave to appeal.

59 The defendant also applied for a stay of execution pending the disposal of its application to the Court of Appeal (which it said it intended to make) for leave to appeal against my decision. As the High Court's decision in an appeal under s 29 of the WICA is final, I could see no reason to grant a stay. Accordingly, I dismissed the application for a stay.

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Chua Lee Ming
Judicial Commissioner

Johnny Chu Chang Yee (Vicki Heng Law Corporation) and Michael Hwang, SC (instructed) for the plaintiffs;
Bhargavan Sujatha and R Dilip Kumar (Gavan Law Practice LLC) for the defendant.

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