

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1977] SGCA 11

CA 23/1973

Between

Woh Hup (Pte) Ltd

... Appellant

And

China Insurance Co Ltd

... Respondent

GROUND OF DECISION

Insurance — General principles; Tort — Occupier's liability — Duty of care

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Woh Hup (Pte) Ltd v China Insurance Co Ltd

[1977] SGCA 11

CA 23/1973

Choor Singh J; D C D'Cotta J; Wee Chong Jin CJ

08 October 1977

1 Cur Adv Vult

2 This appeal arises from a claim in the High Court by the abovenamed respondents to be reimbursed by the appellants the sum of \$11,160 which they had paid on behalf of their insured, Cheng Meng Furniture Co (Pte) Ltd, in respect of the death of their workman, one Sitaram son of Shonlal under the Workmen's Compensation Act (Cap 130, 1970 Ed). By judgment date 26 April 1977 the High Court ordered the appellants to pay the respondents the sum claimed. The appellants now appeal against the said judgment.

3 The facts are these. The respondents are an insurance company. The appellants are contractors and were at the material time the main contractors for the construction of a large shopping-cum-residence complex in Beach Road known as the Woh Hup Complex. The accident which gave rise to this claim occurred when the said complex was still under construction and a number of other contractors were carrying out various works at the site. On 19 February 1973 the deceased Sitaram s/o Shonlal, a labourer employed by the said Cheng Meng Furniture Co (Pte) Ltd which had a contract to do some work in one of

the penthouses on the top floor of the complex, was pushing a wheel barrow laden with some bags of cement along a path in the open yard at the work site of the said Woh Hup Complex when the said wheel barrow in going over some electric cables lying on the ground in its path cut the insulation of one of the cables whereupon the said Sitaram s/o Shonlal was electrocuted.

4 The respondents as insurers of Cheng Meng paid out a sum of \$11,160 in respect of the death of the deceased on a claim under the Workmen's Compensation Act and sought to recover this sum from the appellants on the ground that, they were entitled to be indemnified by the appellants by right of subrogation under the Workmen's Compensation Act.

5 The trial judge found on the evidence that the appellants as the main contractors were the occupiers of the work site where the accident occurred; that the appellants knew that the deceased's employers Cheng Meng were doing some work for the owners of a penthouse on the top floor of the complex; that Cheng Meng's workmen were carrying materials across the open yard to the lift in the complex; that at the time of the accident there were electric cables lying on the ground across the path which the deceased was using to take bags of cement on a wheel barrow to the lift; that the deceased was therefore not a trespasser but a licensee; that the appellants were under a duty of care to the deceased, that the duty owed by the appellants to the deceased was to warn him of concealed dangers actually known to them but neither known or obvious to the deceased; that the electric cables lying across the path used by the deceased were live cables which carried electricity from the switchboard in the complex to another part of the work site; that the electricity which passed through the cables constituted a concealed danger; that the appellants were under a duty to protect workmen using the path from the concealed danger by erecting a barrier or giving a warning or otherwise that there were live cables running across the

path; that at the time of the accident there was no danger sign placed near the cables to warn users of the path and that the appellants had therefore failed in their duty of care to the deceased. Accordingly the trial judge gave judgment for the respondents.

6 The point was taken, both before the trial judge and before us, that the respondents were not entitled to sue the appellants in their own name. It was contended that since the respondents claimed by right of subrogation, the proper plaintiffs were Cheng Meng. The trial judge held that the short answer to this submission was that s 20(b) of the Workmen's Compensation Act (Cap 130) which was in force at the material time enabled the respondents to sue in their own name. The said s 20(b) provided as follows:

Where any injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employers to pay damages in respect thereof -

(a) ...

(b) if the workman has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called upon to pay an indemnity under sub-s (2) of s 19 of this Act, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid and all questions as to the right to and amount of any such indemnity may, in default of agreement, be settled by an arbitrator.

7 On the facts of this case, the respondents were `the person by whom the compensation was paid`, and they were therefore entitled to be indemnified, under s 20(b) of the Workmen's Compensation Act. We agree with the trial judge that the respondents' statutory right to be indemnified included the right to sue in their own name.

8 The next point taken before us was that the trial judge `erred in finding that the appellants owed a duty of care to the deceased to warn him of the alleged concealed danger of the electric cable and that the appellants failed in that duty`. In our opinion the facts which speak for themselves are overwhelmingly against the appellants. They know or should have known that by allowing cables carrying electricity to lie on the ground across the path used by workmen, they were creating a concealed danger to all workmen using that path and should have taken appropriate measures to warn them of such danger. As they failed to do so, the appellants were clearly in breach of their duty to the deceased who as a licensee was entitled to be warned of such a concealed danger.

9 Another point taken before us is that `the learned judge erred in law and in fact in finding that the deceased was not in anyway to be blamed for the accident`. In our opinion the facts on this issue are again entirely against the appellants. Photographs taken at the scene of the accident immediately after the accident and tendered at the trial show quite clearly that at the site of the accident, on both sides of the path used by the deceased there were a lot of discard materials, junk and rubbish lying around which concealed the cables lying on the ground, and it would be unreasonable to expect anyone using the path to realize that the exposed portion of cables across the path were live cables carrying electricity and not bits of discarded cables. The deceased was pushing a heavily laden wheel barrow with the assistance of two other workmen and thus concentrating on the task assigned to him and in the absence of any danger sign or warning had no reason to assume that it was dangerous for him to push the wheel barrow over the cables. In our judgment there was no contributory negligence on the part of the deceased.

10 The last submission before us by counsel for the appellants is based on the provisions of s 20(b) of the Workmen`s Compensation Act which we have

already set out. The submission is that the trial judge `erred in law in failing entirely to consider the omission of the respondents to adduce any evidence whatsoever that the payment by them on behalf of their insured was justified under the provisions of the Workmen`s Compensation Act`. The decision in ***County Council of Galway v County of Galway Board of Health and Public Assistance*** [1931] IR 547 is cited in support of this submission. In this Irish case, Meredith J had to construe sub-s 2 of s 6 of the Workmen`s Compensation Act 1906 which is substantially in terms with s 20(b) of our Workmen`s Compensation Act. Meredith J held that the right to be indemnified conferred by the subsection was subject to the concluding words, `and all questions as to the right to and amount of any such indemnity may, in default of agreement, be settled by action or by consent of the parties, by arbitration`; that these words qualify the employer`s title to be indemnified; that the first part of the subsection was merely intended to give the employer a right over against the stranger in respect of his original liability to the workmen; and that questions as to the right to, and the amount of, the indemnity are left open and at large for settlement, if necessary by action. Meredith J went on to add that the right conferred by the subsection `was limited to the amount which the workman might have recovered as damages had he brought his action against the defendants`.

11 Although counsel for the appellants has not put it so clearly, his submission really is that as the respondents in this case did not tender any evidence at the trial to show that in a claim at common law, made on behalf of the deceased, a sum of \$11,160 could have been recovered as damages, the trial judge should have dismissed the respondents` claim for want of evidence. It is true that in his judgment the trial judge has not dealt with this aspect of the case although submissions on this issue were made by both counsel. There is, however, evidence on record which shows that the claim before the

Commissioner for Workmen's Compensation was a dependency claim made on behalf of the widow of the deceased; that the average monthly earnings of the deceased at the time of his death were \$155 per mensem; that the Commissioner for Labour made a claim on behalf of the widow under s 8(2) of the Workmen's Compensation Act for a lump sum payment of 72 months wages amounting to \$11,160 and that this claim was accepted by the deceased's employers and by the respondents as their insurers. In our opinion this was sufficient evidence to shift the burden of proof on the appellants. It was open to the appellants to show by evidence at the trial that in a common law action, the widow of the deceased, could not have recovered as much as \$11,160 as damages in a dependency claim. This they failed to do and therefore have only themselves to blame.

12 In our judgment the trial judge came to a right decision in allowing the claim of the respondents and entering judgment for \$11,160 against the appellants. The appeal is dismissed with costs.

13 ***Appeal dismissed.***

Choor Singh J
D C D'Cotta J
Wee Chong Jin CJ

Cheong Yuen Hee (Chan Goh & Co) for the appellants
Peter Lee (SK Lee & Co) for the respondents
