Hao Wei (S) Pte Ltd v Rasan Selvan
[2008] SGHC 148

Case Number : DA 25/2007

Decision Date : 05 September 2008

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Michael Eu (United Legal Alliance LLC) for the appellant; Kamala Devi (Yeo Perumal Mohideen Law Corporation) for the respondent

Parties : Hao Wei (S) Pte Ltd — Rasan Selvan

Employment Law – Employees' duties – Safety at work – Employer deploying worker at various work sites to undertake variety of tasks – Whether employer breached duty to take reasonable care to provide safe system of work and effective supervision – Whether employer's obligation to take reasonable care to provide safe system of work delegable – Whether subcontractor liable for injuries suffered by worker

Tort – Negligence – Duty of care – Employer deploying worker at various work sites to undertake variety of tasks – Duties of employers who deploy workers at various work sites to undertake variety of tasks – Whether employer breached duty to take reasonable care to provide safe system of work and effective supervision – Whether subcontractor liable for injuries suffered by worker

5 September 2008

Tan Lee Meng J:

1 The appellant, Hao Wei (S) Pte Ltd ("Hao Wei"), a building contractor, appealed against the decision of the District Judge Wong Choon Ning ("DJ Wong"), who found it liable to its employee, the respondent, Mr Rasan Selvan ("Rasan"), for an injury suffered in the course of his employment. I dismissed the appeal and now give the reasons for my decision.

Background

2 Rasan, an Indian national with a work permit, first came to Singapore in September 1998 to work for Hao Wei as a construction worker. He was deployed to work at various locations.

3 On 21 June 2001, Hao Wei deployed Rasan to work in a factory at 15 Sungei Kadut Street 2 (the "factory"). At the material time, Hao Wei was the sub-contractor of the first defendant (in the suit below), TSS Construction Pte Ltd ("TSSC"), whose task was to carry out reinforcement works to pre-cast elements at the factory (the "project").

4 On the morning of 21 June 2001, Ms Sufiah Ng ("Sufiah"), a director of Hao Wei, accompanied Rasan to the place within the factory where bars required for the project were bent by a bar bending machine. Rasan was introduced to a foreman, one Mr Pang. He was ordered to follow Mr Pang's instructions and the work schedule in the factory.

5 Mr Pang, who did not explain to Rasan how the machine was to be operated, told Rasan to obey the instructions of a Bangladeshi worker named "Sidik".

6 Sidik told Rasan to hold the bars that had been placed in the machine and to insert a stopper or pin into the bar bending machine before the bars were bent in order to prevent the machine from

going beyond a specified point, which indicated how far the bars were to be bent. Once the stopper was inserted, Sidik activated the machine by stepping on a foot pedal. On the basis of these simple instructions, Rasan started work immediately.

7 Rasan's work was not easy. A stack of bars had to be placed, one on top of the other in the machine. Their lengths had to be adjusted to be in line with one another so that all of them would be bent equally to the requisite shape or angle. During the bending process, Rasan had to hold the bars in position until the bending process had been finished to ensure that the bars at the top of the stack did not slip down.

8 On 26 June 2001, at around 9.45 am, Rasan removed a stack of bent bars from the machine. When he returned to the machine, he noticed that Sidik had already placed a new stack of bars into the machine and that these bars were being bent by the machine without the stopper having been put in place. Furthermore, no one was holding the bars in position. Rasan quickly grabbed the stopper to insert it into the machine but before he could do so, the bars that were then being bent hit him on his right hip and groin. He lost his balance and fell onto the machine, after which a part of the machine that was returning to its original position, after having bent the bars, hit him on the head, face and neck. He was severely injured and became unconscious. Subsequently, he was diagnosed as suffering from post concussion syndrome.

9 Rasan applied for compensation under the Workmen's Compensation Act (Cap 354, 1998 Rev Ed) (now known as the Work Injury Compensation Act). However, he withdrew the application. On 28 October 2003, he commenced the present proceedings against the main contractor, TSSC, which denied that it had any direct control or supervision over the manner in which the bending of bars was carried out at the factory site. Subsequently, on 4 June 2004, Rasan added Hao Wei as the second defendant in his suit.

10 TSSC did not appear at the trial on 10 January 2007 and interlocutory judgment was entered against it with damages to be assessed. The trial thus focussed solely on Hao Wei's liability to Rasan for the injuries suffered as a result of the industrial accident.

11 DJ Wong held that Hao Wei was liable to Rasan because it had not provided him with a safe system of work and had not ensured that there was proper supervision of his work. Interlocutory judgment was entered against Hao Wei, with damages to be assessed by the Deputy Registrar.

12 Hao Wei then appealed against the decision of DJ Wong.

The appeal

13 The court was informed that a decision on this appeal would be useful as it will shed light on the duties of employers who deploy their workers at various work sites to undertake a variety of tasks.

14 Whether an employee is hired for a particular job at a specified place or to handle a variety of tasks at different places, the employer's common law duty of care towards the employee cannot be overlooked. Such a duty, as laid down by the House of Lords in *Wilsons and Clyde Coal Co Ltd v English* [1938] AC 57 ("*Wilsons and Clyde*"), involves taking reasonable care to provide competent staff, adequate material, a proper system of work and effective supervision.

15 In *Parno v SC Marine Pte Ltd* [1999] 4 SLR 579 ("*Parno*"), Chao Hick Tin JA ("Chao JA"), who delivered the judgment of the Court of Appeal, endorsed the position adopted in *Wilsons and Clyde*

and added as follows at [46]:

> [T]he employer must devise a suitable system and instruct his men in what they must do: See *Pape v Cumbria County Council* [1992] 3 All ER 211. In devising a safe system, the employer should be aware that workmen are often careless for their own safety, and his system must, as far as possible, reduce the effects of an employee's own carelessness: see *General Cleaning Contractors Ltd v Christmas* [1953] AC 180 … per Lord Reid. The employer must also take reasonable care to ensure that his system is complied with, but he is not obliged 'to stand over workmen of age and experience at every moment they are working … to see that they do what they are supposed to do': see *Woods v Durable Suites Ltd* … [1953] 1 WLR 857 … per Singleton LJ.

16 Hao Wei asserted that DJ Wong had erred in holding that it had failed to provide a safe system of work and effective supervision. It claimed that it had no control over the worksite at the factory and that the system of work was set up by TSSC. Evidently, Hao Wei sought to exonerate itself by shifting the blame for the accident to TSSC but what cannot be overlooked was that Hao Wei was required under its contract with TSSC to provide the necessary supervision for the proper execution and completion of the tasks entrusted to it. More importantly, an employer's obligation to take reasonable care to provide a safe system of work is non-delegable in a special sense. In *McDermid v Nash Dredging & Reclamation Co Ltd* [1987] AC 906 ("*McDermid*"), Lord Hailsham explained at p 910 that this "special sense does not involve the proposition that the duty cannot be delegated … but only that the employer cannot escape liability if the duty has been delegated and then not properly performed". *McDermid* was followed by the Court of Appeal in *The "Lotus M (No 2)"* [1998] 2 SLR 145. Karthigesu JA, who delivered the judgment of the Court, stated at [30] and [32] as follows:

> 30 We cannot emphasise too strongly that the duty to take reasonable care to provide a safe system of work rests on the employer and that it is non-delegable. This was made clear by the two Law Lords who delivered the only speeches in *McDermid….*
>
> 32 This law is free from all doubt.

17 It should also be noted that an employer who deploys his employee to carry out assorted tasks at various places should be especially careful when the task at hand is not one which has previously been undertaken by the employee. In *Parno* (*supra* [15]), Chao JA reiterated at [48] that an employer is responsible for the instruction of apprentices and inexperienced workers. Before he was sent to the factory to work, Rasan had only been asked to do gardening and construction work. As such, Hao Wei should have ensured that Rasan was properly instructed as to what was expected of him at the factory and that he was adequately supervised. It was rather startling that when cross-examined, Hao Wei's director, Sufiah, admitted that she was aware of the dangers at the factory and that she had not warned her company's employees, including Rasan, about these dangers.

1 7 As there was thus no doubt that Hao Wei did not have a safe system of work and did not properly supervise its employees, its appeal was dismissed with costs.

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