IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 64

Tribunal Appeal No 11 of 2019

In the matter of Section 29 of the Work Injury Compensation Act (Cap 354)

And

In the matter of Order 55, Rule 1 of the Rules of Court (Cap 322, Rule 5)

And

In the matter of the Amended Certificate of Order made under the Work Injury Compensation Act by the Learned Assistant Commissioner for Labour, Han Cher Kwang on 2 July 2019

Between

(1) Great Eastern General Insurance Limited
(2) Capstone Engineering Pte Ltd

… *Appellants*

And

Next of Kin of Md Sharif Hossain Rana Abdul Malek

… *Respondents*

JUDGMENT

[Employment Law] — [Work Injury Compensation Act]

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Great Eastern General Insurance Ltd and another
v
Next of Kin of Md Sharif Hossain Rana Abdul Malek

[2020] SGHC 64

High Court — Tribunal Appeal No 11 of 2019
Mavis Chionh Sze Chyi JC
3 February 2020

31 March 2020 Judgment reserved.

Mavis Chionh Sze Chyi JC:

Background

1 This is an appeal under s 29 of the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("WICA") in respect of a decision by the Assistant Commissioner ("AC") to allow the claim for work injury compensation by the next of kin ("the Respondents") of one Md Sharif Hossain Rana Abdul Malek ("the Deceased"). The assessed amount was $170,000. The Appellants are the Deceased's employer Capstone Engineering Pte Ltd ("Capstone") and Capstone's insurer Great Eastern General Insurance Limited ("GE General Insurance").

2 The events in the month or so from the incident of the piece of timber falling on the Deceased at the Ghim Moh Lane construction worksite on 9 October 2015, up till his hospitalisation on 7 November 2015 and his death on

13 November 2015, are not in any real dispute. They are set out in the AC's grounds of decision of 2 December 2019.[1] The facts as to the autopsy on 14 November 2015, the autopsy report of 16 November 2015, the Coroner's Certificate of 3 May 2016, and the Changi General Hospital ("CGH") medical report of 21 September 2017 are also not in any real dispute. These too are summarised in the AC's grounds of decision.[2]

3 It is not disputed that when the Deceased was admitted to CGH on 7 November 2015, he was said to have vomited for the past three days, and he was showing altered mental state.[3] The autopsy report of 16 November 2015 noted, *inter alia*, that post-mortem CT scan showed that the spinous process of the Deceased's T1 vertebra was detached from the T1 vertebral body, and stated the cause of death as "cardio respiratory failure pending further investigations". It is also not disputed that for the purposes of the coroner's inquiry, the Coroner had sought further clarification with the senior consultant and forensic pathologist Dr Wee Keng Poh ("Dr Wee"); and that the final cause of death was given by Dr Wee as "[h]ypoxic ischaemic encephalopathy following status epilepticus, consistent with spinal injury". The Coroner noted that the dropping of the timber appeared to be accidental, and in addition, that the extent of the Deceased's injuries "only became evident much later, after he was hospitalised". The Coroner's conclusion was that the Deceased "passed away … due to a brain injury [hypoxic ischaemic encephalopathy] following a seizure [status epilepticus], consistent with spinal injury". He noted that Dr Wee had

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[1] [3]-[10] of the AC's grounds of decision at pp 26-28 Vol 1 Record of Proceedings ("1ROP").

[2] [11]-[14] of the AC's grounds of decision at pp 28-29 1ROP.

[3] See e.g. [2] pf the CGH medical report of 21 September 2017 at p 78 Vol 2 Record of Proceedings ("2ROP").

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clarified that the injuries found on the Deceased were consistent with the impact of the timber falling on him, and that the spinal injury had caused the Deceased to suffer post traumatic pain in the neck and was the underlying cause of the status epilepticus.[4] At the end of the WICA proceedings, the AC was satisfied that the Deceased's death was caused by the spinal injury which had resulted in post-traumatic pain and status epilecticus; that all three requirements of s 3(1) WICA were satisfied; that the presumption in s 3(6) WICA was engaged because the accident (the spinal injury from the fallen timber which caused post-traumatic pain and status epilepticus) had arisen in the course of the Deceased's employment at the construction worksite; and that the Appellants had failed to rebut the statutory presumption that the accident had arisen out of the Deceased's employment.

On the preliminary issue of whether a "substantial question of law" is involved in the appeal

4 Pursuant to s 29(2A) WICA, no appeal shall lie against any order made 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. There is no question that the amount in dispute is more than $1,000.

5 As to whether a substantial question of law is involved in this appeal, the Appellants have in the written submissions tendered on their behalf sought to frame two alleged legal issues: one purports to relate to the Coroner's Certificate,[5] the other to the application of s 3(1) WICA versus s 3(6) WICA in

[4] [25] of the Coroner's Certificate at p 75 2ROP.

[5] [4]-[8] of the Appellants' Written Submissions.

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the present case.[6] On closer scrutiny, both issues as framed in the Appellants' written submissions really focus on the question of whether the Coroner's Certificate was admissible as evidence in the proceedings before the AC, and in that connection, whether the Respondents – having as the claimants below declined to call any witnesses – could discharge the burden of proving their claim by relying on the Coroner's Certificate. Central to the arguments made on behalf of the Appellants is the contention that s 45 of the Coroners Act (Cap 63A, 2012 Rev Ed) ("CA") prohibits the admission of a Coroner's Certificate in any subsequent judicial proceedings.

6 A number of local High Court authorities have established the errors of law which may provide grounds for appeal under s 29(2A) WICA. I set out below the relevant extract from Chan Seng Onn J's judgment in *Arpah bte Sabar and others v Colex Environmental Pte Ltd* [2019] SGHC 137 ("*Arpah*") which explains (at [17]–[18]) that such errors include:

> …*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*.
>
> In addition, "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' amount[s] to a misconception or error in point of law… These must be 'findings that no person would have come to if he had applied the law properly. It does not mean that every manifestly wrong finding of fact amounts to an error of law".

[6] [65]-[79] of the Appellants' Written Submissions.

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> [emphasis added]

7 Given the Appellants' contentions regarding the construction of s 45 CA, the consequent admissibility (or otherwise) of the Coroner's Certificate and the discharge of the Respondents' burden of proof as the claimants below, I am prepared to hold that there is a substantial question of law involved in the present appeal.

On the elements of a work injury compensation claim

8 The starting-point of a claim for work injury compensation is s 3(1) WICA, which states:

> 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.

For the employer to be liable to pay compensation, therefore, the employee has to show, firstly, that he has suffered a personal injury; secondly, that the injury has been caused by an accident; and thirdly, that the accident arose out of and in the course of his employment: *per* Sundaresh Menon JC (as he then was) in *NTUC Income Insurance Co-operative Ltd and another v Next of kin of Narayasamy s/o Ramansamy, deceased* [2007] 4 SLR(R) 507 ("*Narayasamy*").

9 It is not disputed that the Deceased suffered a personal injury in the form of his death, and that the first element of the work injury compensation claim under s 3(1) is satisfied. However, the Appellants dispute that the second and third elements are satisfied.

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On the second element of the work injury compensation claim: whether the injury to the Deceased was caused by an "accident"

10 In respect of the second element of the work injury compensation claim, the Appellants say that they do not dispute that a "minor accident" occurred on 9 May 2015 in that a piece of timber fell on the Deceased at the worksite, but they argue that this "minor accident" only caused "some minor orthopaedic injury": according to the Appellants, even the detachment of the spinous process of the Deceased's T1 vertebra from the T1 vertebral body could not have been serious enough to cause his seizures (status epilepticus), the brain injury or brain damage resulting from these seizures (hypoxic ischaemic encephalopathy), and the eventual death.

11 In this connection, as I alluded to earlier, the Appellants argue that the Respondents' reliance on the Coroner's Certificate to prove their claim was fatally flawed because – according to the Appellants – in the first place, the Coroner's Certificate is inadmissible in any judicial proceedings subsequent to the Coroner's Inquiry. The Appellants say this is the position mandated by s 45 CA.

12 This is what s 45 CA says:

> No oral testimony or conditioned statement admitted under section 33 in the course of an inquiry shall be admissible in any subsequent judicial or disciplinary proceedings as evidence of any fact stated therein, other than proceedings for an offence under this Act or an offence of giving or fabricating false evidence under any written law.

13 As an aside, I note that the Respondents do not appear to challenge the Appellants' position that the WICA proceedings before the AC fall within the

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term "judicial proceedings". Pursuant to s 30(1) WICA, for the purposes of the WICA, the Commissioner shall

> have all the powers of a District Judge for the summoning and examination of witnesses and the administration of oaths or affirmations and for compelling the production of documents and material objects.

14 I make the following points about the Appellants' argument on the application of s 45 CA to Coroner's Certificates.

15 Firstly, the express words of s 45 CA refer to "*oral testimony or conditioned statement admitted under section 33* [of the CA] *in the course of an inquiry*" [emphasis added]. The Appellants have not shown me any recognised principles of statutory interpretation that would allow the courts to read these italicised words as referring to or including the *Coroner's Certificate*. With respect, short of outright violence to the express language of s 45 CA, not even the most enthusiastic "purposive" interpretation of s 45 CA can support the proposition that the Coroner's Certificate constitutes "*oral testimony or conditioned statement admitted under section 33 in the course of an inquiry*".

16 One of the Appellants' main arguments appears to be that the Coroner's Certificate must inevitably make reference to the evidence contained in the oral evidence and conditioned statements adduced from witnesses during the inquiry; and that if such oral evidence and conditioned statements are inadmissible in subsequent judicial proceedings, so too the Coroner's Certificate must be inadmissible since "the fruit cannot fall far from the tree".[7] With respect, the argument is misconceived. Firstly, the argument fails to

[7] See e.g. [41]-[48] of the Appellants' written submissions.

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appreciate the nature and purpose of the Coroner's Certificate. The purpose of an inquiry into the death of any person is to inquire into the cause of and circumstances connected with the death: s 27(1) CA. The certificate sets out the cause of death as found by the Coroner at the inquiry; this is the whole purpose served by the document: s 42(1) CA. Where the Coroner has found as a fact that death was caused – for example – by a heart attack and not by any foul play, the Coroner's Certificate is evidence of that fact.

17 Secondly, the Appellants' argument ignores the express provisions within the CA which clearly contemplate that the Coroner's Certificate will be introduced in subsequent judicial proceedings and relied on by the tribunal or court in those proceedings as the basis of its findings. I refer to s 27(2) CA which states:

> A Coroner at an inquiry shall not frame a finding in such a way as to determine any question of criminal, civil or disciplinary liability but *shall not be inhibited in the discharge of his function by any likelihood of liability being inferred from facts that he determines or recommendations that he makes.*
>
> [emphasis added]

The italicised words plainly contemplate that a Coroner's Certificate may be admitted in subsequent judicial proceedings as evidence of the facts as determined or found by him at the coroner's inquiry. It would not make sense otherwise to talk about the "likelihood of liability being inferred from facts that he determines". Thus, for example, in *Li Gaiyun suing as the administrator of the estate of Ma Dewu, deceased v Chan Wei Lun Allan* [2015] SGDC 53, District Judge Seah Chi Ling made the point that "any factual findings made by the Coroner will be considered by the court in a subsequent civil action" though they will not be "binding or conclusive of any facts in issue in a subsequent civil action" (at [23]).

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18 For the reasons indicated above, therefore, I reject the Appellants' argument that s 45 CA renders the Coroner's Certificate inadmissible as evidence in the WICA proceedings.

19 I understand the Appellants' next major argument to be that even assuming the Coroner's Certificate was admissible as evidence of the cause of death found by the Coroner, it could not – in the absence of any medical witnesses called by the Respondents – constitute sufficient evidence to prove the issue of causation.

20 It is not disputed that the claimant in a work injury compensation case has to prove his claim "not… to a standard of absolute certainty; but… on a balance of probabilities": *per* Menon JC (as he then was) in *Narayasamy* at [41].

21 In this connection, something also has to be said about what it means to bear the burden of proving one's claim. This has been explained by the Court of Appeal in *Britestone Pte Ltd v Smith & Associates Far East, Ltd* [2007] 4 SLR(R) 855 ("*Britestone*") as follows (at [58] to [60]):

> … There are in fact two kinds of burden in relation to the adduction of evidence. The first, designated the legal burden of proof … describes the obligation to persuade the trier of fact that, in view of the evidence, the fact in dispute exists … The second … falls short of an obligation to prove that a particular fact exists. It is more accurately designated the evidential burden to produce evidence since, whenever it operates, the failure to adduce some evidence, whether in propounding or rebutting, will mean a failure to engage the question of the existence of a particular fact or to keep this question alive. As such, this burden can and will shift.
>
> The court's decision in every case will depend on whether the party concerned has satisfied the particular burden and standard of proof imposed on him… …
>
> [A]t the start of the plaintiff's case, the legal burden of proving the existence of any relevant fact that the plaintiff must prove

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> and the evidential burden of adducing some (not inherently incredible) evidence of the existence of such fact coincide. Upon adduction of that evidence, the evidential burden shifts to the defendant, as the case may be, to adduce some evidence in rebuttal. If no evidence in rebuttal is adduced, the court may conclude from the evidence of the plaintiff that the legal burden is also discharged and making a finding on the fact against the defendant. If, on the other hand, evidence in rebuttal is adduced, the evidential burden shifts back to the plaintiff. If, ultimately, the evidential burden comes to rest on the defendant, the legal burden of proof of that relevant fact would have been discharged by the plaintiff. The legal burden of proof – a permanent and enduring burden – does not shift.

22 In the context of the issue of causation in the present case, it will be remembered that the Coroner had found that the Deceased died from a brain injury [hypoxic ischaemic encephalopathy] following a seizure [status epilepticus], which was consistent with spinal injury following from the impact of the falling timber. It should also be remembered that in the other documentary evidence which was before the AC, there was nothing to contradict or refute this finding of fact by the Coroner. The CGH medical report of 21 September 2017[8] noted that an electroencephalogram ("EEG") on 11 November 2015 had shown "continuous diffuse slow activity", and a CT scan of the brain on 13 November 2015 had shown "diffuse cerebral oedema", "both of which were consistent of a hypoxic ischaemic encephalopathy [brain damage from shock]": "(o)verall the clinical diagnosis was Encephalopathy of uncertain cause resulting in status epilepticus, and suspected viral myocarditis". While the report alluded to the "(p)ossibility of recent Leptospiral infection" being "entertained" (a remark which the Appellants have sought to make much of), there was nothing in the report which stated or even suggested that this

[8] pp 78-96 2ROP.

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"possibility" could in turn be a possible cause of the encephalopathy and status epilepticus.

23 On the evidence available before him, therefore, the AC would have been entirely justified in finding that the Respondents had discharged the evidential burden of adducing some (not inherently incredible) evidence of the second requirement under s 3(1) WICA; namely, that the Deceased's brain damage and consequent death were caused by the spinal injury from the impact of the falling timber. Of course, since the facts as found in the Coroner's Certificate were not to be treated as binding and conclusive, the AC still had to consider – and clearly did consider – all other evidence available, including the findings reported in the CGH medical report (above) and the evidence of the Appellants' medical witness (which I will come to shortly).

On the third element of the work injury compensation claim: whether the accident arose out of and in the course of the Deceased's employment

24 The third element of the work injury compensation claim requires the Respondents to show that the Deceased's spinal injury from the impact of the falling timber arose out of and in the course of his employment. In this respect, it is indisputable that the Deceased suffered the impact of the falling timber while working at the Ghim Moh Lane construction worksite – in other words, in the course of his employment. It follows from this that s 3(6) WICA would then operate so as to presume that the accident had also occurred out of his employment.

25 Having regard to the evidence before him and the operation of s 3(6) WICA, there was no error and certainly no controversy in the AC's finding that

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at this point, the evidential burden would shift to the Appellants to adduce some evidence in rebuttal in respect of the contested elements of the work injury compensation claim.

On the evidence of Dr Leo

26 This was indeed what the Appellants sought to do with the evidence of their medical witness, Dr Leo Pien Ming Sean ("Dr Leo"). In his written opinion of 19 April 2019, Dr Leo referenced the remark in the CGH medical report that "after demise, [the Deceased's] Leptospira IgM EIA was reported as positive and that the "(p)ossibility of recent Leptospiral infection" was "entertained". Dr Leo opined that "the coroner's conclusion of the spinal injury caused [*sic*] [the Deceased] to suffer post traumatic pain in the neck and is the underlying cause of the status epilepticus is less likely compared to the possibility that [the deceased] had contracted neuroleptospirosis and manifested symptoms which are known to occur in neuroleptospirosis infections".[9] In his written opinion, Dr Leo stated that "(l)eptospirosis can lead to kidney damage, meningitis (inflammation of the membrane around the brain and spinal cord), liver failure, respiratory distress, and even death. Among the presenting symptoms are headaches, muscle aches, vomiting, diarrhea and abdominal pain. Leptospirosis can also manifest as a primary neurological disease (neuroleptospirosis) although this is an uncommon presentation. Based on the study by Panicker *et al*, aseptic meningitis was the commonest manifestation of neuroleptospirosis. Other neurological manifestations include encephalitis with altered sensorium, psychosis, seizures and hemiplegia. Symptoms of altered sensorium and

[9] p 173 Vol 3 Record of Proceedings ("3ROP").

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seizures herald a worse prognosis. Death from leptospirosis has been known to occur…".[10]

27 The AC has explained at [55] to [62] of his grounds of decision why he did not find Dr Leo's evidence at all credible or sufficient to discharge the Appellants' evidential burden. Having perused Dr Leo's written opinion versus the notes of his oral testimony, I am of the view that the AC was justified in rejecting Dr Leo's opinion that the Deceased's death was more likely due to neuroleptospirosis. In cross-examination, Dr Leo conceded that it was very "rare" for leptospirosis to present as neuroleptospirosis,[11] and that the medical reports on the Deceased did not reveal many of the manifestations of neuroleptospirosis (e.g. heavy fever, parapesis, myelopathy, etc). Indeed, Dr Leo was eventually obliged to concede that the statement in his written opinion that the Deceased "had contracted neuroleptospirosis" should be amended to read "[the Deceased] contracted leptospirosis known to occur in leptospirosis which includes neurological symptoms".[12] Even then, it should be noted that as Dr Leo himself admitted, he is not a specialist in infectious diseases and has never diagnosed a case of leptospirosis, nor any case of neuroleptospirosis. In fact, the "Conclusion" stated at the end of his written opinion was a "recommendation that an infectious disease specialist with experience dealing with leptospirosis be consulted to give a medical specialise opinion regarding the likelihood that [the Deceased's] clinical presentation, progress and eventual

[10] p 172 3ROP.

[11] p 16 1ROP.

[12] pp 19-20 1ROP.

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demise was more likely the result of leptospirosis infection rather than the cervical injury causing post traumatic pain and status epilepticus".[13]

28 The other portion of Dr Leo's evidence which the Appellants sought to rely on was his opinion that neurological symptoms of altered mental state with seizures would be a "rare presentation" for a spinous process detachment. It should be noted, however, that in cross-examination, Dr Leo conceded that such a presentation was indeed possible.[14]

[13] p 172 3ROP.

[14] p 20 1ROP.

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On the letter from Dr Gilbert Lau

29 After the hearing before the AC had concluded, the Appellants sent in a letter dated 3 June 2019 from Dr Gilbert Lau,[15] another forensic pathologist at the Health Sciences Authority, in which Dr Lau stated his opinion that "from a forensic perspective", it would be "immensely difficult to establish a causal relation" between the spinal injury from the impact of the fallen timber and the subsequent development of status epilepticus "that could be defended, robustly". The AC noted that no application was made by the Appellants' counsel to introduce Dr Lau's letter as further documentary evidence. He was of the view that it would have been procedurally improper for him to admit the letter or to accord it any weight. This view was wholly correct, bearing in mind the fact that the letter was sent in only after the parties had closed their respective cases, that the Appellants had made no attempt to call Dr Lau as a witness nor even filed an application for leave to adduce further evidence, and that the Respondents were thus bereft of any opportunity to cross-examine Dr Lau on the contents of his letter.

30 In any event, as the AC also noted, despite expressing a difference of opinion from Dr Wee on the likelihood of a spinal injury such as the Deceased's leading to status epilepticus, Dr Lau's letter actually concluded with the statement that he saw *"no reason" to amend the final cause of death given by Dr Wee*.[16] In the circumstances, even assuming Dr Lau's letter had been admitted into evidence, it would not have warranted any amendment of the final cause of death given by Dr Wee.

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[15] pp 318-319 3ROP.

[16] p 319 3ROP.

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On the Respondents' satisfaction of the burden of proof in the proceedings below

31 For the reasons given above, I am satisfied that the Respondents had enough evidence before the AC, and were entitled to invoke s 3(6) WICA, so as to shift the evidential burden to the Appellants; that the Appellants failed to adduce evidence sufficient to discharge their evidential burden; and that a finding that the Respondents had discharged their legal burden of proof was in order in all the circumstances of the case. I am satisfied, accordingly, that there is no reason to allow the appeal against the AC's decision.

32 I should add that my decision is premised on the specific facts of the present case. It is not a precedent for a general proposition that in all work injury compensation claims under s 3(1) WICA, a claimant will succeed if he tenders the Coroner's Certificate (in cases where there has been a coroner's inquiry into the death) but calls no medical or other witnesses. There is no rigid single rule as to the specific type of witness who must be called or the specific type of documentary evidence which must be produced in order for a claimant to discharge his burden of proof.

33 In this connection, it is worth noting that in *Pang Chew Kim v Wartsila Singapore Pte Ltd* [2012] 1 SLR 15 ("*Pang Chew Kim*"), there was no autopsy evidence, the deceased having passed away in a foreign country where no autopsy was conducted; and the death certificate registered in the foreign country in question did not contain any cause of death. The only witnesses called by the claimant (the deceased's next of kin) were his managing director (who had not been with the deceased on his foreign work trip) and a representative from his company who had been due to pick him up from the hotel where he was found dead. The employer's insurer argued that since the

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precise cause of death was not proved by the claimant, it could not be said that the deceased's death had been caused by an accident within the meaning of s 3(1) WICA (that is, the second element of a s 3(1) work injury compensation claim). Notwithstanding the absence of any medical evidence, Tay Yong Kwang J (as he then was) had no difficulty in finding that on the circumstantial evidence available (namely, the phone calls made by the deceased, and in particular, a call seeking medical assistance for breathing difficulties), he was satisfied that the death was on a balance of probabilities caused by cardiac arrest. He found that the deceased's death was caused by an "accident" within the meaning of s 3(1) and overturned the AC's decision to reject the claim (at [25] of the judgement). The point, therefore, is that every work injury compensation claim must be scrutinised on its own particular facts.

On the Appellants' conduct of the appeal

34 Before I conclude, I wish to make two observations about the Appellants' conduct of the appeal. I have earlier mentioned the letter from Dr Gilbert Lau which they produced only after the parties had closed their respective cases in the proceedings below – and without making any attempt to call Dr Lau or to apply for leave to admit the letter. A similar attempt was made in the proceedings before me. Weeks after the appeal hearing and on the very eve of the day when I was due to deliver my decision, the Appellants' counsel sent in a letter enclosing what was said to be a report from one Dr Kevin Yip (the orthopaedic doctor to whom the Deceased had first been referred) and claiming that Dr Yip had contacted counsel on 27 March 2020 and had prepared the report because he was "surprised" by the Coroner's findings in the Coroner's Certificate. Counsel's letter concluded by stating that they were sending in Dr

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Yip's report "(i)n the interests of justice and for the completeness of the evidence".

35 The sudden and belated attempt to introduce new evidence at this stage ignores the severe prejudice that would be caused to the Respondents if the purported new evidence were to be relied on, since the Respondents have had no opportunity to test this purported new evidence and are being apprised of it literally at the eleventh hour. With respect, this sort of conduct – manifested both in the proceedings below and in the appeal before me – exhibits a disregard for procedural fairness which cannot be condoned. It would be entirely contrary to "the interests of justice" to allow the Appellants to rely on Dr Yip's report. Both counsels were informed by the Registry that I would not be allowing the report (or indeed any new documents) into evidence.

36 In addition, as I remarked to the Appellants' counsel in the course of the appeal hearing, various comments about the AC in the written and oral submissions were completely unwarranted and also not to be condoned. I found particularly disturbing the attempts in the written submissions to suggest that the AC was somehow biased or incompetent or both. For example, the written submissions made remarks about the AC's alleged "eagerness to find in the [Deceased]'s favour" ([50] of the written submissions), claimed that the AC had "conveniently ignore[d] Dr Tee's reply to Vision Law's query" ([110] of the written submissions), described him as "clearly clutching on straws to discredit Dr Leo" ([149] of the written submissions), and even expressly stated that it was "biasness… in the [Deceased]'s favour" that had led the AC to decline to draw an adverse inference against the Respondents for not calling medical experts ([160] of the written submissions). Quite apart from the regrettably intemperate language used, the attacks on the AC's impartiality and competence were

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simply baseless: the mere fact that a tribunal or a court rules against a litigant cannot be a basis for the litigant to allege that the tribunal or court is therefore biased or incompetent. From the AC's grounds of decision, he was careful to give reasons for the material aspects of his decision. In respect of his refusal to draw an adverse inference against the Respondents for not calling medical experts, for example, he had explained that he was of the view that the Respondents had enough on the undisputed facts and the s 3(6) presumption to proceed without calling medical experts; and that he also considered the financial implications involved in their calling such experts (the Respondents being the Deceased's parents from Bangladesh). I find it necessary, therefore, to put on record my disapprobation of the attacks on the AC. Such conduct should not be repeated.

Conclusion

37 I dismiss the appeal with costs. The Appellants are to pay the Respondents the costs of the appeal; and if parties are unable to agree on the quantum of such costs within 14 working days from today, either side may write in to seek an appointment for me to fix the quantum.

Mavis Chionh Sze Chyi
Judicial Commissioner

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Hong Heng Leong (Just Law LLC) for the appellants;
Lee Ee Yang, Claire Teng Shu-Min and Douglas Pang Wei Jie
(Covenant Chambers LLC) for the respondents.

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