Abdul Hadi bin Hamdan *v* Goldin Enterprise Pte Ltd
[2012] SGHC 192

Case Number : District Court Suit No 1990 of 2011 (Registrar's Appeal Subordinate Courts No 116 of 2012)

Decision Date : 17 September 2012

Tribunal/Court : High Court

Coram : Lee Seiu Kin J

Counsel Name(s) : Liew Teck Huat (Global Law Alliance LLC) for the plaintiff; Edwina Fan (United Legal Alliance LLC) for the defendant.

Parties : Abdul Hadi bin Hamdan — Goldin Enterprise Pte Ltd

Work Injury Compensation Act

17 September 2012

Lee Seiu Kin J :

1 This appeal turns on the interpretation of s 33(2)(a) of the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("the Act"). The salient facts are as follows.

2 The plaintiff, who was an employee of the defendant at the material time, suffered an injury at his place of work on 8 November 2008. He duly filed a claim for compensation under s 11 of the Act and on 1 February 2010, the commissioner served a notice of assessment under s 24(2)(a) of the Act ("the Notice of Assessment"). The effect of the Notice of Assessment would be that the plaintiff would be entitled to be paid about $19,800 by the defendant. The plaintiff, who was unrepresented, instructed solicitors sometime in May 2010, and in that same month, the plaintiff's solicitors wrote to the defendant's solicitors to make a claim under common law. The defendant's solicitors replied and took the position that the plaintiff was precluded from making a claim under common law and tendered a cheque in payment under the Notice of Assessment. On 27 July 2010, the plaintiff's solicitors wrote to the commissioner of labour ("the commissioner") to state the plaintiff's objection to the Notice of Assessment pursuant to s 25(1) of the Act. Although this provision states that such objection must be made within 14 days of service of the Notice of Assessment, it also provides that the commissioner had a discretion to allow a longer period. In the event, the commissioner allowed the objection to be made out of time and proceeded to refer the plaintiff's objection to the work injury compensation medical board ("WICMB") for a medical assessment in accordance with regulation 4 of the Work Injury Compensation (Medical Board) Regulations (Cap 354, Rg 6, 2010 Rev Ed). By letter of 3 March 2011, the commissioner notified the plaintiff that the WICMB had made an assessment of 17% permanent incapacity. This would translate to a payment of about $30,600 under the Act. In the same letter the commissioner requested the parties to attend a pre-hearing conference on 16 March 2011. However at that hearing, the plaintiff's solicitor informed the commissioner that the plaintiff was dissatisfied with the 17% awarded and had given instructions to withdraw the plaintiff's claim under the Act. This was confirmed in the letter from the plaintiff's solicitors to the commissioner dated 30 March 2011. The plaintiff filed the writ in this suit on 30 June 2011. The defendant applied to strike it out on the ground that s 33(2)(a) of the Act prevented the plaintiff from pursuing this claim. Before me, the plaintiff appealed against the decision of the district judge ordering the claim to be struck out.

3 Section 33(2)(a) of the Act provides as follows:

Limitation of employee's right of action

33. —(1) …

(2) Subject to subsections (2A) and (2B), no action for damages shall be maintainable in any court by an employee against his employer in respect of any injury by accident arising out of and in the course of employment —

(*a*) if he has a claim for compensation for that injury under the provisions of this Act and does not withdraw his claim within a period of 28 days after the service of the notice of assessment of compensation in respect of that claim;

…

4 Counsel for the defendant, Miss Fan, pointed out that the Notice of Assessment was served by the commissioner on 1 February 2010. The 28-day period for withdrawal of the plaintiff's claim expired on 1 March 2010. The plaintiff only withdrew it more than one year later, on 16 March 2011. Miss Fan submitted that the plaintiff was precluded from making his claim in this suit by operation of s 33(2)(a) of the Act as he had not withdrawn his claim under the Act within the 28-day period.

5 Counsel for the plaintiff, Mr Liew, submitted that the term "notice of assessment" in s 33(2)(a) of the Act ought not to be read with reference to s 24(2)(a) and that, on a consideration of the policy and objectives behind the Act, where an objection has been made, it should refer to an order made by the commissioner after he had conducted a hearing under s 25D and made an order for compensation under that provision. Since, in the present case, the plaintiff had withdrawn his claim prior to such hearing, the plaintiff was not precluded from proceeding with his claim in this suit.

6 I did not agree with the plaintiff's position and dismissed the appeal on the simple ground that the Act is very clear on this. The term used in s 33(2)(a) of the Act to describe the event from which the 28-day period runs is "service of the notice of assessment of compensation". The provision in which the term "notice of assessment of compensation" is first used in s 24 of the Act, which provides as follows:

Commissioner to assess compensation payable

24.—(1) Subject to the provisions of this Act, the Commissioner shall have power to assess and make an order on the amount of compensation payable to any person on any application made by or on behalf of that person.

(2) The Commissioner shall cause to be served on the employer and the person claiming compensation for any injury resulting from an accident —

(*a*) *a notice of assessment of compensation* stating the amount of the compensation payable in accordance with the assessment made by the Commissioner under subsection (1); or

(*b*) *a notice of assessment of compensation* stating that no compensation is payable if the Commissioner is of the view that the injury to which the claim relates did not arise out of or in the course of the person's employment or that the person was not an employee within the meaning of this Act.

(3) *A notice of assessment of compensation* referred to in subsection (2)(*a*) that is served under subsection (2) on an employer and the person claiming compensation shall be deemed to have been agreed upon by the employer and the person claiming compensation, and shall have the effect of an order under section 25D on —

(*a*) the 15th day after the notice is served where no objection is received by the Commissioner within a period of 14 days after the service of the notice; or

(*b*) the 29th day after the notice is served where all objections so received by the Commissioner are withdrawn within a period of 28 days after the service of the notice.

(3A) *Any notice of assessment of compensation* referred to in subsection (2)(*b*) that is served under subsection (2) on an employer and the person claiming compensation shall have the effect of an order under section 25D on the 15th day after the notice of assessment is served if no objection is received by the Commissioner within a period of 14 days after the service of the notice.

(3B) No appeal shall lie against any order under subsection (3) or (3A).

(4) The employer shall pay the amount of compensation determined to the Commissioner or such person claiming compensation as the Commissioner may direct —

(*a*) within a period of 21 days after the service of a *notice of assessment of compensation* on the employer if no objection is received by the Commissioner within the time limited under subsection (3)(*a*); or

(*b*) within a period of 35 days after the service of a *notice of assessment of compensation* on the employer if all objections so received by the Commissioner are withdrawn within the time limited under subsection (3)(*b*).

(5) (Deleted by Act 5 of 2008)

(6) Any assessment of compensation made by the Commissioner under this section may, in any case involving any prescribed occupational disease specified in the Second Schedule, be reviewed at any time within 3 years from the date of the assessment if the Commissioner is satisfied that since that date there has been an aggravation of the result of the relevant occupational disease and that the amount of compensation originally assessed is substantially inadequate.

(7) The Commissioner shall, where a review under subsection (6) has been made, issue a notice of assessment of additional compensation payable by the employer.

(8) This section and section 25 shall apply to a notice of assessment of additional compensation under subsection (7) as they apply *to a notice of assessment of compensation*.

[emphasis added]

7 The next provision that uses that term is in s 25(1) of the Act, which provides as follows:

If any employer or person claiming compensation objects to any *notice of assessment of compensation* issued by the Commissioner under section 24(2), he shall, within a period of 14 days *after the service of the notice of assessment* (or such longer period as the Commissioner

may, in his discretion, allow in any particular case), give notice of his objection in the prescribed form and manner to the Commissioner stating precisely the grounds of his objection. [emphasis added]

It should be noted that there is a time limit of 14 days which is referenced against "service" of the same "notice of assessment".

8 The third and last provision in the Act in which the expression "notice of assessment" is used is s 33 of the Act. The plaintiff's position that the time period in s 33(2)(a) runs with reference to the commissioner's order under s 25D does not accord with the language employed in s 25D, which provides as follows:

Power of Commissioner to conduct hearing

25D. The Commissioner may, after a claim for compensation has been made under section 11 —

(*a*) conduct a hearing of the case and hand down a decision accordingly; and

(*b*) make any order for the payment of compensation as he thinks just at or after the hearing.

The events in s 25D are described as "hand down a decision" and "order for the payment of compensation", which are not only very different words from "notice of assessment of compensation" but also concern different concepts. A notice of assessment under s 24(2)(a) is not an order for payment but a statement of an amount payable as compensation which the employee may object to, and if he does so, there is a procedure for review. The event in s 25D is a final order for payment after the review.

9 It is therefore clear from the manner in which s 24 of the Act is drafted that the specific term "notice of assessment of compensation" in s 33(2)(a) refers to the notice in s 24(2). Furthermore, s 33(2)(a) refers to "service" of the notice of assessment of compensation which is the act referred to in s 24(2) as opposed to the "making" of an order after the hearing in s 25D. As I had observed to counsel during the hearing, the only way that the draftsman could have made it any clearer is to provide in s 33(2)(a) that the notice of assessment is "made under s 24(2)". While this would have removed any attempt by any employee to make the submission made before me by the plaintiff, I have to say that this omission does not result in any ambiguity at all in the Act.

10 In view of the clarity of the provisions in the Act, it is not necessary to provide any further justification beyond this point, but as counsel have made submissions before me, I shall set these out. The Act came into force on 1 October 1975 under the name of Workmen's Compensation Act 1975 (Act No 25 of 1975) ("the Old Act"). Under the Old Act, the equivalent provision, which is s 33(1) provided as follows:

… no action for damages shall be maintainable in any court by a workman against his employer in respect of any injury —

(*a*) if he has applied to the Commissioner for compensation under the provisions of this Act; or

(*b*) if he has recovered damages in respect of the injury in any court from any other person.

There was an ambiguity as to whether this precludes an employee from maintaining an action in court

if he has applied for compensation but has subsequently withdrawn it. This was considered in a number of decisions of the Court of Appeal, High Court as well as the District Court. In *Yang Dan v Xian De Lai Shanghai Cuisine Pte Ltd* [2011] 2 SLR 379 ("*Yang Dan*"), Woo J reviewed those decisions, as well as two English decisions, and concluded that the prohibition in the Old Act does not apply if the employee had withdrawn his application before the commissioner makes an order for compensation (*Yang Dan* at [56(c)] and [57]).

11 In the second reading speech for the Workmen's Compensation (Amendment) Bill (No 50 of 2007) on 22 January 2008, the Minister of State for Manpower stated as follows (*Singapore Parliamentary Debates, Official Report* (22 January 2008) vol 84 at cols 265-266):

> Under the present Act, workers can only claim for injuries from the common law or the workmen's compensation system. They cannot do so from both. This makes sense because the WCA was indeed created to serve as an alternate and more expeditious route to avoid protracted legal proceedings. However, some claimants abuse the system by filing claims for both but withdrawing the WCA claims at the last minute to switch to a civil suit. This imposes significant commitment of resources, as time and effort would have been invested to investigate and prepare the case. Involved parties such as witnesses would also have committed their time to the adjudication process. Employers will have to repeat part of the process in the courts. Processing time for each case becomes unnecessarily prolonged and as a result, compensation is delayed. We will streamline the process, so that claimants through the WCA can have speedy compensation. Nevertheless, even after our amendments, we still allow adequate time for claimants to decide on either route whether to claim damages or compensation for their injuries through WCA or through the civil courts.

12 The Bill was passed and the Workmen's Compensation (Amendment) Act 2008 (Act No 5 of 2008) came into force on 1 April 2008 ("the Amendment Act"). The Amendment Act renamed the Old Act to its present name and made a number of changes, some of which were very significant. Amongst those was what is now s 33(2) of the Act. It can be seen from the tenor of that part of the second reading speech reproduced above that s 33(2) of the Act has reset the event in relation to which time runs for withdrawal of a compensation claim in order to preserve the employee's right to proceed by way of a suit in the court to make a claim under common law. Under the Old Act, it was the date of the final order for compensation. The legislature had considered that to be unsatisfactory and had amended s 33. It is clear from the words in s 33(2) of the Act that the event from which time runs to withdraw a claim is now the date of service by the commissioner of a notice of assessment under s 24(2) of the Act.