Chua Jian Construction and another *v* Zhao Xiaojuan (deputy for Qian Guo Liang) [2018] SGHC 98

Case Number : HC/Tribunal Appeal No 18 of 2017

Decision Date : 25 April 2018

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Appoo Ramesh and Vinodhan Gunasekaran (Just Law LLC) for the Applicants; Jogesh s/o Kantilal Doshi (Hoh Law Corporation) for the Respondent.

Parties : Chua Jian Construction — China Taiping Insurance (Singapore) Pte Ltd — Zhao Xiaojuan as Deputy for Qian Guo Liang

Employment law – Work Injury Compensation Act

25 April 2018 Judgment reserved.

Choo Han Teck J:

1 Qian Guo Liang ("QGL") was born in China on 7 April 1969. He married Zhao Xiaojuan ("Zhao") in 1993 and she gave birth to their only child, a daughter, in 1994. QGL came to work in Singapore in 2004. He was a manual worker in construction sites under various companies, but on 19 October 2013 he was employed by Chua Jian Construction, and was working at a site in Clementi Avenue 4. About 5.00pm on that day, his colleague found him lying motionless on the ground. Help was summoned when they realised that QGL was unconscious. He was taken to the National University Hospital and there diagnosed as having an intracerebral haemorrhage ("ICH"). Chua Jian Construction filed an incident report on 22 October 2013 which, after a year, culminated with an assessment of $272,500 compensation by the Ministry of Manpower to be paid under the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("WICA"). Chua Jian Construction and its insurer objected to the assessment, and after a hearing, the Assistant Commissioner of Labour dismissed Chua Jian Construction's objections.

2 Chua Jian Construction appealed before this court on two grounds. Its counsel Mr Appoo submitted that the Notice of Assessment was a nullity because the application under the WICA was not made within 12 months of the incident as required under s 11(1)(b) of the Act. The circumstances were a little complicated. What transpired was that Zhao made an application under the WICA for an assessment of the compensation which was issued on 24 March 2014 in the sum of $272,500. But at this time, Zhao was not a properly appointed deputy of QGL, an appointment that is not necessarily on a spouse. Any relative or other suitable person can be appointed the deputy of a mentally incapacitated person, as QGL was undoubtedly was (and remained to this day).

3 Chua Jian Construction's objections were heard on 19 February 2016 but was adjourned after Zhao's testimony, to 26 April 2016. The Assistant Commissioner of Labour dismissed Chua Jian Construction's claim that Zhao did not have to the standing to lodge a claim on behalf of QGL since she was not an appointed deputy when the claim was first made in 2014. She was subsequently appointed QGL's deputy on 28 July 2015. The assessment was upheld and Chua Jian Construction appealed to the High Court. Before the appeal was heard, the Ministry of Manpower wrote to Chua Jian Construction to inform them that the first Notice of Assessment was issued in error, and would be set aside as a nullity. This was, presumably, consequent upon the Court of Appeal decision in *SGB Starkstrom Pte Ltd v Commissioner of Labour* [2016] 3 SLR 598 ("*Starkstrom*"), holding that only a

properly appointed deputy may commence a claim on behalf of a mentally incapacitated workman.

4 Zhao was invited to renew her claim and she did. Chua Jian Construction raised the same objection as to Zhao's lack of standing. It also objected to the claim as a valid claim under WICA because QGL's incapacity was not an injury in the course of work. The objections were heard by the Assistant Commissioner of Labour on 25 and 26 January 2017 and dismissed. Chua Jian Construction thus filed the present application before this court to set aside the orders of the Assistant Commissioner of Labour.

5 Mr Appoo made the same arguments as he did before the Assistant Commissioner of Labour and Mr Jogesh, counsel for Zhao, also made the same arguments he did in the tribunal hearing below.

6 Mr Appoo is right in saying that the second Notice of Assessment was filed 33 months from the date of the incident, almost three years out of time. Her claim ought to have been made by 20 October 2014. He is also right in saying that the reasons that might justify the Assistant Commissioner for Labour proceeding with the assessment in such cases must be reasonable and sufficient. Counsel submitted that they were not. One of the reasons that might have been sufficient is that the applicant (that would be Zhao, in the present case) was not in Singapore. Zhao cannot rely on that ground because she had been staying in Singapore to look after QGL. Section 11(4) of the WICA which Mr Appoo relies on reads as follows:

> …the making of a claim after the lapse of the period specified in subsection (1) shall not be a bar to the maintenance of proceedings if it is found that the delay was occasioned by mistake, absence from Singapore or other reasonable cause.

The mistake that occasioned from the beginning was the failure to appoint Zhao as QGL's deputy from the outset. It was then made worse when the Assistant Commissioner for Labour proceeded as if the claim was properly filed.

7 It is true that a claimant such as Zhao cannot make a claim in her own name and must, even in the days before electronic filing, sue as the personal representative or next friend of the person claiming compensation. In this case, Zhao claimed without first seeking to be named QGL's deputy, but the Assistant Commissioner for Labour initially allowed the claim to be made and issued the first Notice of Assessment. It was when the *Starkstrom* case made it clear that it is imperative that the person claiming on another's behalf must be a properly appointed deputy that Zhao, or rather, her solicitors, made the application for her to be appointed QGL's deputy.

8 I am of the view that under those circumstances, it was not wrong for the Assistant Commissioner of Labour to proceed with the second assessment. I do not think that any fault can be attributed to Zhao and QGL. Section 11(4) of the WICA is in my view sufficiently wide as to apply to the facts here. The delay in this case was "reasonable" in the wider sense of being "understandable". The second issue is more problematic.

9 Mr Appoo's objection to the claim is that there is no evidence that QGL's condition arose in the course of employment within the meaning of s 3 of the WICA. Section 3(1) provides:

> [i]f in any employment personal injury by accident arising out of and in the course of employment is caused to an employee, his employer shall be liable to pay compensation in accordance with the provisions of this Act.

Subsection (3) further provides that:

> [a]n accident happening to an employee in or about any premises at which he is for the time being employed for the purposes of his employer's trade or business shall be deemed to arise out of and in the course of his employment if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue or protect persons who are, or are thought to be or possibly to be injured or imperilled, or to avert or minimise damage or loss to property.

10 The WICA is meant to provide compensation to an employee for injuries sustained in an accident at his workplace even if there is no one at fault for causing that injury, or even if he had himself been responsible for the mishap that caused him injury.

11 The only evidence we have is that QGL was instructed to install metal formworks on the 34th floor of a building under construction. It was his regular routine work which he commenced at 8.00am. At 5.00pm on 19 October 2013 his colleague found him unconscious and lying sideways. There were no external injuries on him.

12 Associate Professor Yeo Tseng Tsai provided medical evidence at trial and he was of the view that QGL had suffered an ICH, and as a result, fell into a coma till this day. Dr Yeo also testified that the ICH was caused by hypertension which QGL had been suffering from for many years, and which was left untreated.

13 The tribunal accepted the same argument that Mr Jogesh made before me, and in reliance on *NTUC Income Insurance Co-operative Ltd and another v Next of kin of Narayasamy s/o Ramasamy, deceased* [2006] 4 SLR(R) 507 ("*Naraysamy*"). In that case, the court held that an employee who had breathing difficulties and died at his workplace was entitled to claim compensation under the WICA even though the cause of death was ischaemic heart disease. Mr Jogesh submitted that there is no difference between *Narayasamy* and this case.

14 It is important to set out the crucial passage from *Narayasamy* at [38]:

> [i]n my judgment, the passages in *Ormond* and *Hawkins* which I have just cited go to establish the important principle that to come within the Act, it must be shown that there was some occurrence which caused the injury in question. Thus, mere wear and tear would not constitute an accident. Further, an occurrence which could constitute an accident but which has not been shown on a balance of probabilities to have *caused* the injury would also not bring the workman within the protection of the Act. However, the occurrence need not be the sole or even dominant cause. It will be sufficient to show that the accident was an operating or contributory cause of the injury. It must further be shown that the injury was in some way connected with the employment.

15 The court then went on at [40] to accept that there was evidence that "the deceased was engaged in strenuous work just prior to and at the time he suffered the heart attack, there was no doubt that the respondent had showed that there had been an occurrence". And further, at [46] the court held that:

> [i]t does not matter whether that which was done entailed a level of exertion that was beyond that to which the workman was accustomed. It also does not matter that the workman had a pre-existing medical condition such that the injury could have happened at any time, even in his sleep. What is material is that something in fact transpired in the course of his work which made the injury occur when it did.

16 That last sentence is the crucial, thin line that the law draws between *Narayasamy* and this

case. In the present case there was no evidence that "something in fact transpired in the course of his work which made the injury occur when it did". That a heart attack could have occurred to the employee while at his workplace is the same as an employee suffering a stroke at home, unless the employee who suffered the heart attack or stroke suffered it at his workplace after something had transpired that made the injury occur when it did. In *Narayasamy* the answer was yes, he was exerting himself when he collapsed, and that exertion had brought about the heart attack. In the present case, there is only the evidence of the stroke. There was no evidence that it was brought about by an exertion, and no evidence, in fact, of what QGL was doing before he collapsed.

17 For the reasons above, I will allow the appeal. I will hear the issue of costs on another date.