Soon Khai Min (administratrix of the estate of Yan Yik Peng, deceased) and another *v* Tiang Siew Keng and another
[2013] SGHCR 25

Case Number : Suit No 594 of 2013 (Summons No 4978 of 2013 and 5230 of 2013)

Decision Date : 04 November 2013

Tribunal/Court : High Court

Coram : Sim Khadijah AR

Counsel Name(s) : Mr Melvin Tan Kai-Lit (Ascentsia Law Corporation) for the Plaintiffs; Mr Charles Phua Cheng Sye and Ms Shahira Anuar (Tan Kok Quan Partnership) for the Defendants.

Parties : Soon Khai Min (administratrix of the estate of Yan Yik Peng, deceased) and another — Tiang Siew Keng and another

Civil Procedure – Pleadings – Striking Out

Civil Procedure – Determination of Question of Law

Statutory Interpretation – Construction of Statute

4 November 2013 Judgment reserved.

Sim Khadijah AR:

1 The matter before me stems from two separate but related applications, filed in close succession of each other:

(i) Summons No 4978 of 2013 filed by the Defendants on 23 September 2013 pursuant to Order 18, rule 19 of the Rules of Court (Cap. 332, 2006 Rev. Ed.) ("ROC"), to strike out the Plaintiffs' claim on the basis that it discloses no reasonable cause of action and/or is frivolous and/or vexatious and/or is otherwise an abuse of process ("Summons 4978"); and

(ii) Summons No 5230 of 2013 filed by the Plaintiffs on 4 October 2013 pursuant to Order 14, rule 12 of the ROC, for the determination of a question of law, namely, whether under Section 18(1)(a) of the Work Injury Compensation Act (Cap. 354, 2009 Rev. Ed.) ("the Act"), an employee is entitled to recover damages from a third party after he has received compensation under the Act from his employer, albeit in the reduced amount of damages less the compensation received.

2 The parties appeared before me on 9 October 2013 for the hearing of Summons 4978. As I was of the view that a determination of the question of law in Summons 5230 would dispose of both applications, I directed that both Summonses be heard in a single special date hearing before me on 28 October 2013. I further directed that parties tender written submissions ahead of the hearing, to crystallise the issues in contention.

Background

3 This Suit stems from a road traffic accident that had occurred on 13 July 2011 and had,

unfortunately, claimed the life of one Yan Yik Peng ("the Deceased"). The 1st Plaintiff is the Administratrix of the Deceased's estate and was his wife. The 2nd Plaintiff is the Co-Administratrix of the Deceased's estate.

4 The 1st and 2nd Defendants are mother and son respectively. The 1st Defendant was the registered owner of motor vehicle no SGK8843R ("the 1st Defendant's Vehicle") and the 2nd Defendant was an authorised driver of the 1st Defendant's Vehicle.

5 On 13 July 2011, at or about 1.10 pm, the 1st Defendant's Vehicle collided with the Deceased's motorcycle along the junction of Bukit Timah Road and Bukit Batok West Avenue 5. The 2nd Defendant was driving the 1st Defendant's Vehicle at the material time. The Deceased was taken to the National University Hospital for treatment, but succumbed to his injuries later that day.

6 The 2nd Defendant was eventually charged under Section 304A of the Penal Code for causing death by a negligent act. He pleaded guilty to the charge and was convicted on 17 January 2012.

7 Concurrently, from November 2011 onwards, the Plaintiffs' solicitors at the time, Messrs Patrick Tan LLC ("the Plaintiffs' former solicitors"), corresponded with the Defendants' solicitors, Messrs Tan Kok Quan Partnership ("the Defendants' solicitors" or "TKQP"), in respect of the Plaintiffs' claim against the Defendants for damages arising from the accident. TKQP was appointed by the Defendants' motor insurers, AIG Asia Pacific Insurance Pte Ltd (formerly known as Chartis Singapore Insurance Pte Ltd) ("AIG"), to act for the Defendants in respect of the claim. In the course of this correspondence, the Plaintiffs sought interim payment from the Defendants of S$23,000.00 for funeral and medical expenses incurred. This request was acceded to and on 19 January 2012, interim payment of this sum was made by AIG to the Plaintiffs ("the Interim Payment").

8 Unbeknownst to the Defendants, their insurers and solicitors, however, the 1st Plaintiff had made a claim for compensation under the Act against the Deceased's employer, Welmeta Engineering Pte Ltd ("Welmeta"), shortly after the accident. On 23 September 2011, a Notice of Assessment of Compensation was served by the Assistant Commissioner for Labour ("Assistant Commissioner") on the 1st Plaintiff, indicating that the claim had been assessed to be valid and that compensation in the sum of S$140,000.00 was payable ("the Compensation Amount"). The Compensation Amount was duly disbursed by Welmeta's insurers, QBE Insurance (International) Ltd ("QBE"), to the Commissioner for Labour on 24 October 2011, and subsequently provided to the 1st Plaintiff.

9 By a letter dated 8 May 2013, the solicitors for QBE wrote to AIG seeking a reimbursement of the Compensation Amount pursuant to Section 18(1)(b) of the Act. AIG forwarded the said letter to their solicitors, TKQP, and it was only at this juncture that the Defendants and their solicitors became alive to the fact that the 1st Plaintiff had already sought and received compensation under the Act.

10 A series of correspondence between the Defendants' solicitors and the Plaintiffs' former solicitors thereafter ensued, in which TKQP asserted that the Plaintiffs were prohibited from commencing a common law action for damages against their clients, having already received the Compensation Amount. It is not necessary for me to set out in full the contents of the solicitors' litigation by correspondence. Suffice to say, the Plaintiffs had, at one point, indicated a willingness to withdraw their claim on condition that they were allowed to retain the Interim Payment on compassionate grounds. The Plaintiffs subsequently reneged and hired new solicitors, Messrs Ascentsia Law Corporation ("the Plaintiffs' current solicitors"), to pursue their claim.

11 In the midst of this litigation by correspondence and change of solicitors, the Plaintiffs filed their Writ of Summons on 4 July 2013 and the Defendants filed their Defence on 13 September 2013. In their Defence, the Defendants maintained that by virtue of the 1st Plaintiff's acceptance of the Compensation Amount on behalf of the Deceased's estate and dependants, the Plaintiffs were precluded from bringing this action against the Defendants. The Plaintiffs' Reply filed on 30 September 2013 was conspicuously silent on the matter of the receipt of the Compensation Amount.

The Present Applications

12 Following the Plaintiffs' change of solicitors and decision to renege on their earlier indication to discontinue the Suit, the Defendants filed Summons 4978 to strike out the Plaintiffs' claim. The Defendants further prayed that if they were successful in their application, that an order be made requiring the Plaintiffs to return the Interim Payment to AIG.

13 Faced with the possibility of having their claim struck out, the Plaintiffs filed Summons 5230, seeking the Court's determination on the proper construction of Section 18(1)(a) of the Act. The Plaintiffs further prayed that if their construction of Section 18(1)(a) was accepted, that summary judgment be entered in their favour.

Parties' Submissions

14 Counsel for the Plaintiffs, Mr Melvin Tan ("Mr Tan"), advanced two main submissions before me, one in respect of each Summons. In relation to Summons 5230, Mr Tan submitted that Section 18(1)(a) of the Act could be construed to allow an employee to claim damages from a third party notwithstanding the fact that he had previously received compensation under the Act from his employer, as long as such damages are computed as the quantum of damages assessed less the compensation received. In response to the Defendants' striking out application in Summons 4978, Mr Tan submitted that the 1st Plaintiff had received the Compensation Amount in ignorance of her legal rights (i.e. that she had been labouring under a mistake of law) and was therefore not bound by her election.

15 I pause here to observe that the two submissions put forward by Mr Tan were, with respect, inherently contradictory. If, as he had suggested *vis-à-vis* Summons 5230, the Plaintiffs were entitled under Section 18(1)(a) of the Act to claim damages from a third party despite having received compensation under the Act, then it would necessarily follow that the Plaintiffs would not be required to establish any ignorance or mistake in order to successfully pursue their claim. There would simply be no such ignorance or mistake to speak of, since the Plaintiffs' actions would be entirely consistent with the law. If, however, as he had suggested *vis-à-vis* Summons 4978, the 1st Plaintiff had received the compensation under the Act through ignorance or by mistake, then Mr Tan would, by raising such a defence, essentially be conceding that Section 18(1)(a) did not allow the Plaintiffs to recover damages from a third party once they had received compensation under the Act.

16 Nevertheless, I gave Mr Tan the benefit of the doubt in putting forward two inherently contradictory submissions and assumed that these submissions were intended to apply in the alternative. In other words, if I was in agreement with Mr Tan's construction of Section 18(1)(a) of the Act, his application in Summons 5230 would succeed and there would be no need for him to rely on any alleged ignorance or mistake on the part of the 1st Plaintiff in receiving the Compensation Amount. However, if I was of the view that Section 18(1)(a) precluded an employee from recovering damages from a third party once he had received compensation under the Act, Mr Tan would then seek to rely on the 1st Plaintiff's purported ignorance or mistake to avoid a striking out of the

Plaintiffs' claim under Summons 4978.

17 Counsel for the Defendants, Mr Charles Phua ("Mr Phua"), on the other hand, submitted that under a plain reading of Section 18(1)(a) and under the existing case law, once an employee had received compensation under the Act from his employer, he was precluded from bringing a claim for damages, whether against his employer or a third party. He further submitted that any allegation of ignorance or mistake by the Plaintiffs was nothing more than an afterthought, fabricated to salvage their claim. As a separate and distinct basis for striking out the Plaintiffs' claim against the 1st Defendant, Mr Phua submitted that any claim for vicarious liability against the 1st Defendant for the 2nd Defendant's negligent acts was not a sustainable cause of action, as a parent could not be held vicariously liable for the tortious acts of her child.

The Issues

18 Having regard to the factual matrix set out above and the submissions advanced by both parties, the issues that arise for my consideration are as follows:

(i) Whether, on a proper construction of Section 18(1)(a) of the Act, an employee is entitled to claim damages from a third party once he has received compensation under the Act from his employer;

(ii) If the answer to (i) is in the negative, whether the 1st Plaintiff may nonetheless rely on the defence of ignorance or mistake to salvage the Plaintiffs' claim; and

(iii) Whether a parent may be held vicariously liable for the tortious acts of her child.

The Law

The Proper Construction of Section 18(1)(a) of the Act

19 Section 18(1) of the Act serves as the starting point on the remedies available to an employee where injury has been caused by a third party:

> **Remedies both against employer and third party**
>
> 18.—(1) 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 employer (referred to in this section as the third party) to pay damages in respect thereof —
>
> (a) the employee may take proceedings against the third party to recover damages **and** may claim against any person liable to pay compensation under this Act, **but he shall not be entitled to recover both damages and compensation**; and
>
> (b) if the employee 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 section 17(3), shall be entitled to be indemnified by the third party so liable to pay damages as aforesaid.
>
> [Emphasis added.]

20 It was not disputed by the parties that the term "employee" under Section 18(1) extends to the employee's estate and/or dependants where the employee is deceased. In this regard, Section 2(3) of the Act provides:

> (3) Any reference to an employee who has been injured shall, unless the context otherwise requires, where the employee is dead, include a reference to his legal personal representative or to his dependants or any of them.

21 It was also not disputed by the parties that the employee's estate and/or dependants are entitled to claim compensation under the Act. In this regard, Section 6(1) of the Act provides:

> **Persons entitled to compensation**
>
> 6.—(1) Compensation under this Act shall be payable to or for the benefit of the employee or, where death results from the injury, to the deceased employee's estate or to or for the benefit of his dependants as provided by this Act.

22 On a plain reading of Section 18(1)(a), the use of the word "and" between the two available remedies suggests that the employee's claim for damages against a third party and his claim for compensation under the Act from his employer may be pursued concurrently. However, the prohibition against double recovery makes it clear that the remedies are meant to apply in the alternative. In other words, a cut-off point exists at which the employee's right to claim damages will be deemed to be extinguished if he successfully recovers compensation under the Act, and vice versa. By logical extension, therefore, an employee would have to elect, prior to that cut-off point, one of the two alternative remedies he wished to pursue.

23 I note that in respect of the construction of Section 18(1)(a), both counsel were in agreement that there could be no double recovery by an employee of both damages and compensation. Where they diverged was the matter of the precise point at which an employee's right to recover damages would be extinguished if he had concurrently sought compensation under the Act. Mr Phua submitted that an employee's right to recover damages from a third party was deemed to be extinguished once he had accepted payment of compensation under the Act. By contrast, Mr Tan submitted that there was no such cut-off point, and an employee's right to recover damages from a third party persisted despite him having received compensation under the Act.

24 Once again, with respect, Mr Tan's submissions were inherently contradictory. He could not, on the one hand, concede that an employee was precluded from double recovery of both damages and compensation while maintaining, on the other hand, that no cut-off point existed to prevent such double recovery. This time, I was unable to give Mr Tan the benefit of the doubt in making wholly contradictory submissions. Given the clear and express prohibition against double recovery in the provision itself, I could not accept Mr Tan's submission that Section 18(1)(a) could be construed to allow an employee to claim damages from a third party after he had already received compensation under the Act from his employer. To my mind, that would be a clear case of double recovery.

25 I should add that while under Section 18(1)(b), the employer could seek an indemnity from a third party tortfeasor, this statutory transference of ultimate liability to the third party does not detract from the above analysis. The fact remains that compensation had already been "recovered" by the employee under the Act. In my view, Section 18(1)(b) existed for the benefit of the employer and was not a provision which varied or created an exception to the rule against double recovery so clearly expressed in Section 18(1)(a). Further support for this position can be found in the Minister of State for Manpower's comments at the second reading of the Workmen's Compensation (Amendment)

Bill 2008. It was this Bill that had led to the enactment of Section 18(1) in its current form. In respect of Section 18(1)(b), the Minister of State remarked (see *Singapore Parliamentary Dates, Official Report* (22 January 2008) vol 84 at col 264):

> We have also amended section 18 **to allow the employers** to seek indemnity in the civil courts against a third party who was responsible for causing the injury, even if the employer was partially at fault. Currently, the employers can only do so if they were completely not at fault for the injury. The distinction between no and partial fault may be too fine to determine and the removal of this pre-condition **will not affect the payment of compensation to the injured employees who choose to claim under the WCA.**
>
> [Emphasis added.]

26 As regards the employee's available remedies, the Minister of State made the following comments at the same parliamentary session (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 alternative and more expeditious route to avoid protracted legal proceedings.**
>
> [Emphasis added.]

27 These clear expressions of legislative intent were sufficient for me to conclude that even on a purposive reading of Section 18(1)(a), Mr Tan's construction could not be sustained. Nevertheless, I will address the relevant authorities raised by Mr Phua, for completeness' sake.

28 In the course of submissions before me, Mr Phua cited two authorities which further suggested that Mr Tan's construction of Section 18(1)(a) was misconceived. The first authority cited by Mr Phua was the High Court decision of *Chua Ah Beng v Commissioner for Labour* [2002] 2 SLR(R) 945 ("*Chua Ah Beng*"), in which the Honourable Judicial Commissioner Tay Yong Kwang (as he then was) made, *inter alia*, the following observations (see [31] of *Chua Ah Beng*):

> 31 In my view, the following points emerge from the WCA and the above decision [referring to the Court of Appeal decision of *Ying Tai Plastic & Metal Manufacturing (S) Pte Ltd v Zahrin bin Rabu* [1983-1984] SLR(R) 212]:
>
> > (a) a workman may sue a "stranger" **and** may make a claim under the WCA **at the same time but may not be compensated twice for the same injury** (s 18 of the WCA);
>
> [Emphasis added; reference added in square brackets.]

The reference made by Tay JC (as he then was) was to Section 18 of the Workmen's Compensation Act (Cap 354, 1998 Rev. Ed.) ("the Old Act"). Section 18(1) of the Old Act is, for all intents and purposes, *in pari materia* with the present provision, save that the reference to "employee" and "third party" under the current Act was to "workman" and "stranger" respectively under the Old Act.

29 The observations by Tay JC (as he then was) support my above analysis that an employee may concurrently pursue an action for damages against a third party while seeking compensation under the Act from his employer. His Honour's observations further confirm that the prohibition against double recovery prevents an employee from being compensated twice for the same injury. This once

again alludes to the need for the employee to elect between his alternative remedies before the cut-off point at which his right to pursue a common law action for damages or his right to claim compensation under the Act is deemed to be extinguished (see [22] above).

30 The second authority cited by Mr Phua was the High Court decision of *Kamis bin Satari v Nasir Natarajan* [2006] 1 SLR(R) 102 ("*Kamis bin Satari*"). *Kamis bin Satari* involved a similar situation in which an employee had sought to pursue an action for damages against a co-worker (i.e. a third party) after he had received compensation under the Old Act from his employer. The claim was struck out in the lower courts for running afoul of the rule against double recovery under Section 18(1)(a). Similar to the present case, the plaintiff in *Kamis bin Satari* accepted that he could not recover both damages and compensation, but sought to argue that as he had received the compensation under the Old Act by mistake, his claim ought not to be struck out. In this regard, the Honourable Justice Woo Bih Li held (at [10]):

> … It was common ground that the Act does not address the issue of receiving compensation under a mistake. I was of the view that a workman who has received compensation under a mistake of the kind alleged by Kamis **may avoid the consequence of the mistake (assuming the mistake is genuine) by returning the compensation he has received**.
>
> [Emphasis added.]

31 While the Court in *Kamis bin Satari* was willing to accept that an employee may avoid having his claim for damages struck out if he could establish that he had received the compensation under a mistake, this did not mean that the employee was entitled to retain the compensation so received. On the contrary, the implicit and necessary underlying premise for the above holding in *Kamis bin Satari* is that an employee may only elect one remedy or the other, never both. This case further undercuts Mr Tan's contention that an employee may retain the compensation and simply deduct that amount from the damages ultimately awarded by the Court in his claim against a third party.

32 In arriving at his conclusion that an employee must first return any compensation received before he could proceed with his claim for damages, Woo J reasoned (at [14] of *Kamis bin Satari*) that:

> 14 I was of the view that **if an injured workman is not required to return the compensation he has received before being allowed to continue with his action for damages, this will lead to abuse.** It will encourage workmen to remain silent about the fact that they have recovered compensation while maintaining an action against some person other than the employer. When they are found out, they then allege that they received the compensation under a mistake and then carry on with the action for damages while at the same time retaining the benefit of the compensation. I did not think that that was the scheme envisaged under the Act…
>
> [Emphasis added.]

33 To accept Mr Tan's construction of Section 18(1)(a) and to allow the Plaintiffs to retain the Compensation Amount while pursuing their claim for damages against the Defendants would lead to the precise abuse envisaged by Woo J. Moreover, one must consider the fact that under Section 18(1)(b), the Defendants would ultimately be made to indemnify QBE in respect of the Compensation Amount paid to the 1st Plaintiff. In the premises, allowing the Plaintiffs to retain the Compensation Amount whilst they pursued their claim against the Defendants would be to treat this compensation under the Act as a form of interim payment. I did not think that this was, by any stretch of the

imagination, Parliament's intent in enacting the compensation scheme under the Act. As can be gleaned from the comments of the Minister of State for Labour (see [26] above), the compensation scheme was intended to serve as an *alternative* to legal proceedings, not as a *preliminary adjunct* to it.

34 Unsurprisingly, Mr Tan was unable to cite any authorities in support of his construction of Section 18(1)(a). When asked to explain how his construction would not amount to double recovery, Mr Tan submitted that this was because any damages awarded in a common law action would be higher than the Compensation Amount. He further submitted that while there would be some overlap between the damages and compensation claims, a number of heads of damages would not be captured in the compensation claim. While, in fairness to the Plaintiffs, that may be true, it has been observed by Woo J in another High Court decision of *Cosmic Insurance Corp Ltd v United Oil Co Pte Ltd* [2006] 3 SLR(R) 236 ("*Cosmic Insurance*") that since a workman was not entitled to recover both damages and compensation, all heads of claim had to be included in his common law claim and not some under the common law claim and some under a claim for compensation (see [13] of *Cosmic Insurance*). As such, if the Plaintiffs had been of the view that damages would be higher than the Compensation Amount and that certain heads of claim would not be adequately captured in their compensation claim, the proper course for them to have taken would have been to elect to pursue a common law action for damages against the Defendants instead.

35 Having found that the Plaintiffs' construction of Section 18(1)(a) was plainly unsustainable, it was not necessary for me to determine the cut-off point for an employee to elect between his claim for damages against a third party or his claim for compensation under the Act. Suffice to say, any such cut-off point had been breached in the present case given the 1st Plaintiff's acceptance of the Compensation Amount. I pause here to observe that in respect of an employee's right to claim damages against his employer, the cut-off point is clearly stipulated in the Act at Section 33(2)(a), which provides:

> (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**;
>
> [Emphasis added.]

Curiously, there is no equivalent provision in respect of an employee's right to claim damages against a third party. In my view, given the prohibition against double recovery in Section 18(1)(a), similar guidance should be provided stipulating the applicable cut-off point at which an employee may no longer maintain an action for damages against a third party. This would ensure clarity and consistency in the application of the provisions under the Act. This gap is, however, more appropriately addressed by way of legislative amendment, and not by the courts.

The Plaintiffs' Defence of Ignorance / Mistake

36 Having determined that Section 18(1)(a) could not be construed in the manner suggested by the Plaintiffs, I now turn to the Plaintiffs' defence of ignorance or mistake. According to the High Court decision of *Kamis bin Satari*, such a defence, if genuine, could be relied upon by the Plaintiffs to salvage their claim (see [10] of *Kamis bin Satari* set out at [30] above).

37 In *Kamis bin Satari*, Woo J upheld the striking out of the plaintiff's claim as His Honour had found that first, the plaintiff was not in a position to return the compensation as he had already spent it and secondly and more importantly, there was, in fact, no mistake on the plaintiff's part. In arriving at his conclusion that there had been no mistake, Woo J noted that the plaintiff had filled up a form indicating which of the alternative remedies of damages or compensation he wished to claim. The form had further stipulated that one could not claim both compensation and common law damages. As such, His Honour was satisfied that the plaintiff was aware of his alternative avenues. In addition, the plaintiff had deliberately omitted to inform his solicitors (who were acting for him in his damages claim) of his correspondence with the Ministry of Manpower and his employer's insurers, as well as his receipt of compensation under the Act. These deliberate omissions militated against a finding of mistake.

38 In the matter before me, although I was not provided with any evidence of deliberate omissions by the Plaintiffs, I was also not provided with any evidence of the 1st Plaintiff's alleged ignorance or mistake. The only evidence I was provided with was the series of correspondence between the Defendants' solicitors and the Plaintiffs' former and current solicitors. The Plaintiffs did not take the position in any of these letters that the Compensation Amount had been received under a mistake or ignorance of the 1st Plaintiff's legal rights. In fact, nowhere in the pleadings or affidavits before me was there any such allegation. The very first time this allegation was raised was in the written submissions tendered by the Plaintiffs' solicitors ahead of the hearing on 28 October 2013. This allegation of ignorance or mistake was, therefore, a mere submission from the bar and carried little, if any, weight.

39 The absence of any allegation of ignorance or mistake is particularly significant in light of the considerable length of time between the payment of the compensation and the filing of this Suit, i.e. approximately 1 year and 9 months. Had the 1st Plaintiff instructed her solicitors during this time that she had received the Compensation Amount under a mistake or ignorance of her legal rights, there was no reason why this would not have been alluded to in the solicitors' correspondence or in the pleadings or affidavits filed.

40 When parties appeared before me for the initial hearing on 9 October 2013, I had sought to know if the Plaintiffs would be filing an affidavit in response to the Defendants' striking out application in Summons 4978. Mr Tan had flatly replied that no affidavit in response was necessary as an affidavit had already been filed by the 1st Plaintiff on 4 October 2013 in respect of Summons 5230. Yet, the 1st Plaintiff's affidavit made no mention whatsoever of any such allegation of ignorance or mistake. At the very least, if the Plaintiffs were intending to rely on such a position at the hearing of the applications, this ought to have been included in the 1st Plaintiff's affidavit. After all, the 1st Plaintiff was the only and most appropriate person who could depose to the fact that she had been labouring under a mistake or ignorance of her legal rights at the material time.

41 Given that there was simply no indication on the evidence before me of the alleged ignorance or mistake on the part of the 1st Plaintiff in accepting the Compensation Amount, and in light of the conspicuous silence of the pleadings and affidavits in respect of the same, I had little choice but to conclude that the belated defence had been a mere afterthought, devised to salvage the Plaintiffs' claim.

42 On this point of an allegation of mistake by a plaintiff, I note Woo J's comments in *Kamis bin Satari* (at [15]):

15 I was of the view that if the court is not able to summarily determine the allegation of mistake in favour of or against a workman who has received compensation, **then the compensation must first be repaid before the workman is allowed to continue with his action for damages**. **Indeed, there will still have to be an eventual finding about the allegation of mistake before the main claim can continue.** An order may have to be made for cross-examination of deponents and to allow subpoenas to be issued for the purpose of determining the preliminary point about mistake before a further step is taken to pursue the main claim under the action. The order can be made at the hearing to strike out or at the stage when directions are sought or at some other appropriate stage, but should be made as soon as possible.

[Emphasis added.]

43 The above passage suggests that even if I am incorrect in my summary determination that there has been no ignorance or mistake on the part of the 1st Plaintiff, the Compensation Amount would nonetheless have to be repaid and a determination on the allegation of ignorance or mistake would have to be achieved, before the Plaintiffs would be able to proceed with their claim for damages against the Defendants. In the course of the hearing before me, Mr Tan had initially offered for his clients to return the Compensation Amount, only to clarify later on that he had no such instructions from his clients.

44 As matters stand, the Compensation Amount has not been repaid and the Plaintiffs' claim must accordingly be struck out pursuant to the prohibition against double recovery in Section 18(1)(a).

Vicarious Liability of a Parent

45 Finally, I come to the issue of whether a parent may be held vicariously liable for the tortious acts of her child. On this point, it was not apparent to me on the face of the pleadings that the Plaintiffs' claim against the 1st Defendant was indeed one of vicarious liability. Instead, I was of the view (which was subsequently confirmed by Mr Tan) that the Plaintiffs had merely joined the 1st Defendant as a party as she was the registered owner of the vehicle, and the Plaintiffs had wished to reap the benefit of the 1st Defendant's motor insurance coverage in their claim against the Defendants. While I do not think that it had been necessary for the Plaintiffs to do so, given that the 2nd Defendant was an authorised driver and would have been covered by the motor insurance, this was not an issue raised for my determination.

46 Since the Plaintiffs' claim against the 1st Defendant was not, in truth, one of vicarious liability, I need say no more on the issue. In any event, it was not necessary for me to make any finding in respect of the claim against the 1st Defendant specifically, as I have already found that the Plaintiffs' claim against both Defendants are unsustainable in light of the proper construction of Section 18(1)(a).

The "Justice of the Case"

47 I was cognisant of the fact that, in making my findings in relation to the construction of Section 18(1)(a), I would essentially be depriving a widow and the dependants of the Deceased's estate of their claim for damages against the Defendants. In this regard, I note the 1st Plaintiff's plea in her affidavit filed on 4 October 2013 for this Court to *"exercise its powers of equity and justice, and to temper with mercy in its determination of the question of law that under section 18(1)(a) of*

the Act the employee 'shall not be entitled to recover both damages and compensation'".

48 While I was sympathetic to the 1st Plaintiff's plea, I was of the view that the law did not permit me to impute a meaning to a statutory provision which was clearly not in accordance with legislative intent. In my view, greater injustice would be occasioned if, in order to facilitate the Plaintiffs' claim, I had chosen to wilfully ignore the express wording and existing case law in relation to Section 18(1)(a).

49 As for the Plaintiffs' concerns conveyed through their counsel that the claim for compensation did not capture all heads of claim intended to be pursued and that damages against the Defendants would have been higher than the Compensation Amount received, I note the Minister for Manpower's response in 2010 to queries regarding the possibility of raising the compensation awards to be in tandem with awards of damages in the courts (see *Singapore Parliamentary Dates, Official Report* (16 September 2010) vol 87 at col 1207):

> … the Work Injury Compensation Act (WICA) is **a "no-fault" compensation system that expedites the determination of claims and payment of compensation**. However, this means that work injury compensation is payable by the employer or his insurer as long as the claimant can show that his injury arose out of and in the course of employment, regardless of whether the employer was at fault for the work injury. It is therefore necessary to limit the liability of employers under the Act. In contrast, under common law, compensation is awarded only if the claimant is able to prove that the employer is at fault. **Since the two systems are based on different principles, it would be inappropriate to directly benchmark WICA's compensation limits to awards for common law claims. Claimants may choose the appropriate avenue based on the specific circumstances of the injuries**.
>
> [Emphasis added.]

50 The Plaintiffs had the choice of pursuing one of two alternative avenues available to them. One avenue was more expeditious, presented fewer obstacles in terms of proof of entitlement, but compensation was capped. The other avenue was more protracted, less costs-efficient, presented greater obstacles in terms of proof of entitlement, but damages were limited only by the Plaintiffs' ability to prove such loss. The Plaintiffs had elected to pursue the former avenue, along with its benefits and limitations, and could not now seek the Court's sanction to combine the two alternative remedies. Further, I note that the Compensation Amount received by the 1st Plaintiff was, in fact, the maximum amount assessable for death of an employee under the scheme, at the material time. The Assistant Commissioner, in assessing the 1st Plaintiff's claim at its maximum, had therefore ensured the smallest possible gap between the 1st Plaintiff's compensation claim and her potential claim for damages. I am thus satisfied that the justice of the case neither permits nor requires this Court to intervene in the manner suggested by the Plaintiffs.

Conclusion

51 Accordingly, for the reasons set out above, in respect of the Plaintiffs' application in Summons 5230, prayer 1 on the question of law is answered in the negative and prayer 2 for summary judgment in favour of the Plaintiffs is dismissed.

52 As regards the Defendants' application in Summons 4978, I grant an order-in-terms of prayers 1 and 2. The Plaintiffs' claim is hereby struck out and the Plaintiffs are ordered to return the Interim Payment to AIG.

53 I will hear the parties on costs.