IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 115

Tribunal Appeal No 13 of 2016

In the matter of Section 29(1) of the Work Injury Compensation Act (Cap 354)

And

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

And

In the matter of the Learned Assistant Commissioner for Labour, Ms Tan Lee Lian's decision made on 23 June 2016 under Section 3(1) of the Work Injury Compensation Act (Cap 354)

And

In the matter of the Next of Kin of Rahman Azizur, MST Ruma Khatun

Between

MST Ruma Khatun

… *Applicant*

And

(1) T & Zee Engineering Pte Ltd
(2) Liberty Insurance Pte Ltd

… *Respondents*

GROUNDS OF DECISION

[Employment Law] – [Work Injury Compensation Act]

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MST Ruma Khatun
v
T & Zee Engineering Pte Ltd and another

[2017] SGHC 115

High Court — Tribunal Appeal No 13 of 2016
Woo Bih Li J
26–27 April 2017

23 May 2017

Woo Bih Li J:

Introduction

1 This appeal touched on important matters relating to the operation of the scheme under the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("WICA"). The appellant was one of the next-of-kin of a deceased worker, the late Rahman Azizur ("the Worker"). The appellant appealed against the decision of an Assistant Commissioner for Labour ("AC") that the second respondent, Liberty Insurance Pte Ltd ("Liberty"), was not liable for the claim in relation to the Worker on the basis that its insurance policy with the first respondent, T & Zee Engineering Pte Ltd ("T & Zee"), was not engaged. The AC's written grounds of decision are dated 23 June 2016.[1]

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[1] Record of Appeal ("ROA"), Tab B.

2 After hearing the parties, I allowed the appeal and set aside the decision of the AC. I now set out the grounds of my decision.

A brief overview of the WICA framework

3 Before setting out the facts it would be useful to first describe how the compensation scheme under the WICA is implemented in practice. With the consent of all parties, I had the benefit of hearing from representatives from the Ministry of Manpower ("MOM").

4 The WICA sets out the scheme under which compensation is paid out to employees for injury suffered in the course of their employment. It is administered by the Commissioner for Labour ("the Commissioner") and any public officers he appoints as Assistant Commissioners: s 2A of the WICA. Subsequent references to the Commissioner will also refer to an Assistant Commissioner.

5 Under s 3(1) of the WICA, an employer is liable to pay compensation for any personal injury caused to an employee by accident arising out of and in the course of the employment. The quantum of compensation is computed in accordance with the Third Schedule, per s 7 of the WICA.

6 Section 23(1) of the WICA requires every employer to insure and maintain insurance against all liabilities which he may incur under the WICA in respect of any employee employed by him, unless this requirement is waived by the Minister. Where the employer has incurred liability to pay compensation, proceedings to enforce a claim in respect of that liability may be brought (presumably by the persons claiming compensation) against the insurer as if he were the employer: s 32(1) of the WICA.

7 When a workplace accident has occurred, the employer files an incident report to MOM. This is pursuant to s 12(1) of the WICA. The incident report contains information such as the employee's age and his average monthly earnings, as well as the name of the insurer. Based on the information contained in the incident report, MOM's system automatically generates the quantum of compensation due to the employee. The system will also automatically send a copy of the incident report to the insurer.

8 MOM will then contact the injured employee with an application form asking whether he wishes to claim compensation under the WICA or common law. Where a fatal incident has occurred, this application form will be sent to the deceased's next-of-kin. Subsequent references to an employee will include his next-of-kin.

9 If the employee opts to claim compensation under the WICA, MOM will then issue a notice of assessment. This notice of assessment states, *inter alia*, the quantum of compensation payable to the employee. The Commissioner's 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 is pursuant to s 24(1) of the WICA.

10 Section 24(2) of the WICA further provides that the notice of assessment should be served on the "employer" and the "person claiming compensation". It appears that in practice, the notice of assessment is also issued to the insurer. In fact, one of the fields in the notice of assessment is the "payer". Apparently, where there is an insurer, it is MOM's practice to designate the insurer as the "payer" in the notice of assessment. Presumably, this is based on an assumption that the insurer is in a better position to pay the employee his compensation. At this stage, however, it has not yet been

determined whether the insurer's liability under the insurance policy is in fact engaged.

11 Section 25(1) of the WICA stipulates that if the employer or person claiming compensation wishes to object to the notice of assessment, he shall do so within 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). Notice of such objection must be given in the prescribed form and manner. The Commissioner shall disregard any ground of objection made outside this period: s 25(2) of the WICA.

12 Although s 25(1) of the WICA refers to any employer or person claiming compensation giving notice of objection to the notice of assessment, the practice of MOM is to allow the insurer also to object. Thus, apparently, the notice of objection has a box for the insurer to indicate that he is objecting and the insurer is required to state his reasons.

13 Under s 25B of the WICA, the Commissioner may direct "parties" to attend a pre-hearing conference ("PHC"). It is not clear from that provision or the WICA as to who the "parties" are. Is the expression confined to the employer and any person claiming compensation or does it include the insurer? Apparently, as a matter of practice, the Commissioner includes the insurer in a PHC. At a PHC, the Commissioner may give directions and if any party defaults, the Commissioner may make a decision concerning the claim and make an order for payment of compensation. A settlement may also be reached during a PHC.

14 Under s 25D of the WICA, the Commissioner may conduct a hearing and hand down a decision as well as make an order for payment of

compensation. Again, as a matter of practice, the Commissioner allows all three parties, *ie*, the employer, the person claiming compensation and the insurer, to attend the same hearing and to ask questions of the witness of any other party. Thus, for example, the insurer is permitted to argue that the insurance policy is not engaged (if that ground has been stated previously in a notice of objection) and the person claiming compensation is permitted to argue that the policy is engaged. This takes place although under the common law, there is no contractual relationship between the insurer and the person claiming compensation. Presumably, the Commissioner has been adopting such a practice because s 32(1) of the WICA allows proceedings to enforce a claim for compensation to be brought against an insurer directly as if he were the employer.

15 The practice seems to deviate from the terms of s 32 of the WICA which provides that "proceedings to enforce a claim in respect of [the employer's liability] may be brought against the insurer as if he were the employer." The terms contemplate that the process of the person claiming compensation against the insurer is separate from the process between the person claiming compensation and the employer.

16 As discussed above, various steps taken in practice do not match the terms of the WICA in various ways and the question of *locus standi* between an insurer and a person claiming compensation has not been addressed in the WICA. I suggest that all these matters be properly addressed by primary or subsidiary legislation instead of being left to practice.

The facts

17 On 2 October 2013, the Worker was found dead in a worksite. On

6 October 2013, T & Zee submitted an online incident report to MOM. The incident report stated, amongst another information, that T & Zee was the Worker's employer and that the Worker's occupation was "Electrical Worker".[2]

18 After concluding its investigations, MOM issued a notice of assessment stating that the claim was found valid and that the compensation payable was $170,000.[3] I should add that although the date of service of the notice of assessment was stated to be 19 March 2015, the notice of assessment was in fact sent out earlier on 9 March 2015. This practice of postdating the notice of assessment is, apparently, to give the parties more time to file their objections if any. I digress to observe that if the intention is to give parties more time to object, then this should be done by amending s 25(1) of the WICA and not by some extra-legal process such as the postdating of the notice of assessment. It is not a good idea to issue a post-dated document as that may undermine the integrity of the process or cause confusion. Coming back to the notice of assessment, it was addressed to Liberty as "Payer", T & Zee as "Employer" and the appellant, together with others, as "Claimants".

19 On 20 March 2015, Liberty filed its written notice of objection using the prescribed form attached to the notice of assessment. In its notice of objection, Liberty checked the box indicating "Admissibility under the [WICA]" as its general ground of objection. Liberty further elaborated that its objection was on the basis that the Worker was not an employee of T & Zee at the material time of the incident ("the Employee Objection").[4] Subsequently,

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2 ROA, Tab K.

3 ROA, Tab H.

4 ROA, Tab I.

on 24 March 2015, T & Zee filed its own notice of objection, indicating as its general ground of objection that the deceased worker was not employed by T & Zee.[5]

20 As parties were unable to resolve this dispute, the matter was fixed for hearing before the AC. The parties attended a total of eight PHCs between September 2015 and February 2016. On three of these occasions (16 November 2015, 30 November 2015 and 14 December 2015), Liberty raised two additional grounds of objections orally. The first was that the insurance policy only covers workers working as "tilers", but the deceased was performing electrical works before his death ("the Tiler Objection"). The second was that the insurance policy only insures up to five employees, but T & Zee had more than five employees under its employment at the material time of the incident ("the Headcount Objection").

21 On 17 March 2016, which was the first day of the first tranche of the hearing, Liberty made an application to the AC to hear a preliminary issue as to whether Liberty's liability under the insurance policy was even engaged for the claim in relation to the Worker. Liberty relied on the Employee Objection, the Tiler Objection and the Headcount Objection. The next-of-kin of the Worker objected to the latter two grounds on the basis that Liberty was out of time to raise any additional ground of objection to the notice of assessment. Each of these parties was represented by solicitors by then.

22 After hearing submissions on the preliminary issue, the AC allowed Liberty to raise the Tiler Objection. She then proceeded to hear the issue of liability. The second tranche of the hearing took place on 15 and 17 June 2016,

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5 ROA, Tab J.

following which the AC issued her written grounds of decision and the certificate of order on 23 June 2016.[6]

The AC's decision

23 The AC concluded that she had the discretion to extend the prescribed period of 14 days under s 25(1) of the WICA for any objection to be raised until the day of the hearing.[7] The AC then decided to exercise her discretion to grant Liberty an extension of time to make the additional objections for two reasons. The first was that Liberty had already filed an initial written objection on liability, and followed up orally with additional grounds at the hearing. The second was that the initial written objection was concerned with policy coverage, and was related to the additional grounds raised orally at the hearing which were also on policy coverage. The AC observed that Liberty could not be said to have attempted to "sneak in" any fresh or totally unrelated grounds. Accordingly, the AC allowed Liberty to raise these two additional grounds of objection.[8] I add that the AC relied on an unreported decision of the High Court in the *Next-of-Kin of Tian Wei v EQ Insurance* HC/OS 883/2011/H ("*Tian Wei*") for her two reasons. I will elaborate later on that decision.

24 The AC then considered whether any of the three objections raised by Liberty allowed it to repudiate its liability under the policy. The AC briefly dealt with and disregarded the Headcount Objection.[9] The AC then considered the Tiler Objection. For present purposes it is not necessary to set out the AC's reasoning in full. Suffice it for me to say that the AC concluded that Liberty

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6 ROA, Tabs B and C.

7 ROA, Tab B, [9].

8 ROA, Tab B, [12]–[13].

9 ROA, Tab B, [15].

was entitled to rely on the Tiler Objection to repudiate its liability as the Worker was not engaged in tiling works at the material time.[10] The AC did not decide on the Employee Objection yet, observing that this was a matter that needed to be dealt with by way of hearing.[11] However, on the basis of the Tiler Objection alone, the AC concluded that the policy issued by Liberty was not engaged for the claim in relation to the Worker and a certificate of order was issued on 23 June 2016 to that effect.[12]

The parties' cases on appeal

25 Counsel for the appellant, Mr Singh, argued that the AC did not have the discretion to allow Liberty to make additional oral objections outside of the prescribed period in s 25(1) of the WICA unless an application for an extension of time was made before the expiry of that period. Even if the AC did have such a discretion, she had wrongly exercised that discretion because Liberty had no good reason for its delay in raising the Tiler Objection.

26 Counsel for Liberty, Mr Loh, raised a preliminary issue that the appellant's appeal against the AC's decision was out of time. He also argued that the AC had the discretion to allow Liberty to make additional oral objections outside of the prescribed period, and that she had correctly exercised her discretion in doing so.

Issues to be determined

27 The two main issues that arose for determination were as follows:

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10 ROA, Tab B, [39].

11 ROA, Tab B, [18].

12 ROA, Tab C.

(a) Whether the appeal against the AC's decision to the High Court was out of time, and, if so, whether an extension of time ought to be granted; and

(b) Whether the AC had the discretion to allow Liberty to make additional oral objections outside of the prescribed period and not in the prescribed form, and, if so, whether the AC had correctly exercised her discretion in allowing the Tiler Objection to be made.

My decision

Issue 1: Whether the appeal against the AC's decision to the High Court was out of time and, if so, whether an extension of time ought to be granted

28 The present appeal was brought under O 55 of the Rules of Court (Cap 322, R5, 2014 Rev Ed) ("ROC"). Such an appeal must be brought by originating summons which must be served within the prescribed time limit, *ie*, 28 days after the date of the judgment, order, determination or other decision: O 55 r 3(2) of the ROC. A question arose as to how the 28-day period specified in O 55 r 3(2) of the ROC ought to be calculated. There were two possible applicable provisions, *ie*, O 55 r 3(3) or O 55 r 3(4) of the ROC. These provisions state:

> 3.—(3) In the case of an appeal against a judgment, order or decision of a Court, the period specified in [O 55 r 3(2)] shall be calculated from the date of the judgment or order or the date on which the decision was given.
>
> (4) In the case of an appeal against an order, determination, award or other decision of a tribunal, Minister, Government department or other person, the period specified in [O 55 r 3(2)] shall be calculated from the date on which the notice of decision was given to the appellant by the person who made the decision or by a person authorised in that behalf to do so.

29 Mr Loh argued that the operative provision was O 55 r 3(3) of the ROC because the decision being appealed against had been given by the "Labour Court" which is a "court" within the meaning of O 55 r 3(3) of the ROC.

30 Mr Loh further contended that although the AC's grounds of decision and the certificate of order were both dated 23 June 2016, the AC's actual decision to allow the additional grounds of objection had been made earlier on 17 March 2016 at the first tranche of the hearing. Therefore the originating summons ought to have been served within 28 days from 17 March 2016. Since the appellant only filed the originating summons on 15 July 2016, it was out of time.

31 On the other hand, Mr Singh argued that the AC's decision was a decision made by a tribunal, in which case the relevant provision was O 55 r 3(4) of the ROC.

32 The AC's certificate of order was issued on 23 June 2016. The appellant had filed the originating summons on 15 July 2016, which was within 28 days from 23 June 2016. Thus, according to Mr Singh, the originating summons was not filed out of time.

33 I make two observations. The first is that the term "Labour Court" is not an official name. It is used colloquially by members of the public and also by MOM itself when referring to hearings that take place before the Commissioner. However, the "Labour Court" is not a court constituted by any statute or subsidiary legislation. Decisions of the "Labour Court" are more accurately referred to as decisions of the Commissioner. Furthermore, in MOM's website, MOM seems to take the view that the "Labour Court"

operates as a tribunal. Although I recognise that the term "Labour Court" is a convenient shorthand for everyday use, the inaccurate use of nomenclature should cease so as to avoid confusion.

34 The second observation is that it was not entirely clear what the term "Court" in O 55 r 3(3) of the ROC refers to. Although Mr Loh referred to the definition of "Court" in O 1 r 9(6) of the ROC, that definition applies only to that rule. The applicable definition of "Court" is found in O 1 r 4(2) of the ROC which states:

> In these Rules, unless the context otherwise requires, "Court" means the High Court or a District Court, or a judge of the High Court or District Judge, whether sitting in Court or in Chambers, and includes, in all cases where he is empowered to act, a Magistrate or the Registrar …

35 However, the term "Court" in O 55 r 3(3) of the ROC cannot be a reference to the High Court. This is because O 55 applies to appeals which under any written law lie *to* the High Court from any court, tribunal or person: O 55 r 1(1) of the ROC. Similarly, the term "Court" cannot refer to the District Court. This is because O 55 r 1(2) of the ROC provides that O 55 does not apply to an appeal from a State Court constituted under the State Courts Act (Cap 321, 2007 Rev Ed).

36 It seems that the term "Court" in O 55 r 3(3) ought to be given a different meaning from the general definition in O 1 r 4(2) of the ROC. In other words this was a situation where the proviso "unless the context otherwise requires" operates. However, it was not entirely clear whether the "Labour Court" was a "Court" within the meaning of O 55 r 3(3) of the ROC, given the above observation that "Labour Court" is an unofficial term.

37 I was tentatively of the view that the word "Court" means one that is established by legislation as it has a formal meaning in the ROC. It does not apply to any tribunal or person or committee or organisation which conducts a hearing. Otherwise, there will be more uncertainty as to whether O 55 r 3(3) or O 55 r 3(4) of the ROC applies.

38 There was further uncertainty. Even if the AC could be considered a "Court", was the applicable date from which time begins to run the date when she decided to allow Liberty to raise the additional oral objections, or the date when she made the substantive decision to uphold the Tiler Objection? The appeal to the High Court was against the substantive decision of the AC because if the AC had eventually dismissed the Tiler Objection, it would not matter to the appellant that she had allowed Liberty to make the Tiler Objection late. Hence, from one point of view, the time would run from the date of the substantive decision. Otherwise, the parties would be faced with a time constraint each time a ruling was made on a point of procedure or evidence. For the above reasons, I was inclined to that view. However, it was arguable that the time would begin to run from the date of the AC's decision to allow the Tiler Objection to be made.

39 It was not necessary for this court to decide whether O 55 r 3(3) or r 3(4) of the ROC was engaged or, if the former, when time began to run. This was because even if the originating summons for the appeal to the High Court had been served out of time, I would have granted an extension of time. The four factors to be considered for an extension of time are (see *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2008] 1 SLR(R) 757 at [18]):

(a) The length of the delay;

(b) The reasons for the delay;

(c) The chances of the appeal succeeding if the extension of time were granted; and

(d) The prejudice caused to the would-be respondent if the extension of time were granted.

40 The reason for the delay was the most important in the circumstances. That reason in turn resulted in the length of the delay. The reason was that it was not clear when the time to serve the originating summons began to run and it was understandable why the appellant's solicitors thought that time would not run until 23 June 2016 when the AC issued the certificate of order. Furthermore, the chances of the appeal succeeding, if an extension of time were granted, were not weak. There was also no undue prejudice to Liberty beyond the usual prejudice if an extension of time were granted. In the circumstances, I held that even if the appeal was out of time, I would have granted an extension of time to the appellant to file and serve the originating summons.

Issue 2: Whether the AC had the discretion to allow Liberty to make additional oral objections outside of the prescribed period and not in the prescribed form, and, if so, whether the AC had correctly exercised her discretion in allowing the Tiler Objection to be made

41 As already mentioned, under s 25(1) of the WICA, any objection to the notice of assessment must be raised within 14 days from the date of service of the notice of assessment in the prescribed form. Section 25(2) of the WICA further mandates that the Commissioner is to disregard any objection made outside this period. Both sub-sections are reproduced in full below:

> **Objection to notice of assessment**
>
> 25.—(1) If any employer or person claiming compensation objects to any notice of assessment 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.
>
> (2) The Commissioner shall disregard any ground of objection that is contained in any notice of objection given outside of the period allowed for objections under subsection (1).

42 To recapitulate, the notice of assessment was dated 19 March 2015. Liberty filed its notice of objection in the prescribed form setting out the Employee Objection on 20 March 2015. It subsequently raised the Tiler Objection and the Headcount Objection for the first time during a PHC on 16 November 2015. It did so again on two subsequent PHCs in November and December 2015, and finally on the first day of the hearing on 17 March 2016. On all these occasions the objections were made orally and Liberty never gave notice of its objections in the prescribed form. Accordingly, the Tiler Objection and Headcount Objection were problematic on two fronts: they were raised only after the prescribed period for raising objections, and not in the prescribed form.

43 Mr Loh argued that the AC had the discretion to allow objections to be made by Liberty out of time. He sought to distinguish the present case from *Goh Yee Lan Coreena and others v P & P Security Services Pte Ltd* [2016] 4 SLR 1065 ("*Coreena*"). In *Coreena*, the defendant (*ie*, the employer) did not file any notice of objection to the notice of assessment within the 14-day period. The insurer filed an objection in its own name and disclaimed liability under the policy. Subsequently, the defendant informed the Commissioner orally at a PHC of its objection and the grounds of objection. Chua Lee Ming

JC (as he then was) held that the objection filed by the insurer was filed in its own name, not the defendant's name, and thus did not discharge the defendant's obligation to file an objection under s 25(1) of the WICA in its own name (at [38]). The defendant could not rely on its oral objection and grounds of objection as they had not been given in the prescribed form and had been made after the 14-day period (at [44]). Accordingly, pursuant to s 24(3) of the WICA, the notice of assessment was deemed to have been agreed upon by the employer and the person claiming compensation, and thus had the effect of a non-appealable order for compensation (at [3] and [45]).

44 Mr Loh argued that *Coreena* should be confined to its facts. He suggested that the position would be different if a notice of objection had already been filed within the 14-day period and the defendant there had simply sought to raise further objections thereafter. He relied instead on *Tian Wei*. In *Tian Wei*, the employer filed a notice of objection within the prescribed period while the insurer did not. Subsequently, at a hearing before the Commissioner, the insurer raised an oral objection that its liability was not engaged. The insurer argued that its objection was not late *per se* as it had informed MOM as to its position on liability prior to the issuance of the notice of assessment. The insurer was allowed to make the objection. On appeal, Chan Seng Onn J held that the Commissioner had the discretion to extend the objection period to such longer time beyond the prescribed 14 days, and by doing so, any grounds formerly raised outside the prescribed 14 days became valid objections within the extended period and would no longer be late. According to Mr Loh, so long as the matter is kept alive by the filing of a notice of objection by any one, then any party can file another notice of objection after the prescribed period but before the matter is concluded. This party would be required to seek an extension of time.

45 Mr Loh further argued that there may be material arising only after the prescribed period which might form the pillar of a defence for an employer or insurer. He suggested that procedure should not be allowed to trump substance unless the late objection causes prejudice to the other party.

46 In response, Mr Singh pointed to the wording of s 25(1) of the WICA that objections had to be made within the prescribed period. He further relied on *Coreena* at [44] to argue that any application for an extension would have to be made within the original prescribed period. In the absence of any such application or extension, s 25(2) of the WICA clearly mandated that the AC disregard any other ground of objection made outside the prescribed period. This would be the case even if new information was discovered thereafter.

47 I noted that in *Coreena,* Chua JC did say that an application for an extension of time would have to be made within the prescribed period (at [44]). He reached this conclusion because he noted that under s 24(3) of the WICA, a notice of assessment would be deemed to have been agreed and should have the effect of an order (under s 25D of the WICA) on the 15th day after the notice is served where no objection is received within the prescribed period, or on the 29th day after the notice is served where all objections are withdrawn within a period of 28 days after the service of the notice. In his view, the mandatory nature of s 24(3) of the WICA led to his conclusion that an application for an extension of time would have to be made within the prescribed period. He also noted from parliamentary debates that one key principle of the WICA is "to ensure that the WICA framework remains expeditious and workers are able to receive compensation promptly" (at [46]). Therefore, it would be contrary to the provisions in the WICA as well as its objectives if an employer who had not filed an objection were allowed to raise an objection orally after the prescribed period (at [47]).

48 Therefore, there seemed to be two different conclusions from the unreported case of *Tian Wei* and from *Coreena*. The former suggested that an objection may be raised at any time even after the prescribed period in view of the discretion given to the Commissioner in s 25(1) of the WICA while the latter suggested that an objection may not be raised after the prescribed period unless an application for an extension of time is made within the prescribed period.

49 In *Coreena*, no objection was made by the employer within the prescribed period although the insurer did make an objection within that period. Chua JC decided that s 24(3) of the WICA applied notwithstanding the insurer's objection. He was of the view that the insurer's objection was not an objection of the employer. It appears that Chua JC had construed s 25(1) of the WICA which refers to objection being raised by "any employer or person claiming compensation" to be confined to such persons only and that an insurer was not entitled to raise an objection thereunder even if made within the prescribed period. Accordingly, in the absence of an objection from the employer (and the person claiming compensation), the notice of assessment took effect as an order for payment notwithstanding the objection of the insurer (see [5] and [52] of *Coreena*). In other words, as the notice of assessment was dated 18 March 2013, Chua JC concluded that it became an order for payment on 2 April 2013 since no objection was made by the employer within the prescribed period.

50 Although it is correct that it was only after 2 April 2013 that the insurer in *Coreena* was allowed to be excused from further participation in the matter on the basis that the policy was not engaged, it appears that this development did not feature in the reasoning of Chua JC when he concluded that the notice of assessment had become an order for payment on 2 April 2013. In other

words, he was of the view that the notice of assessment had become an order for payment on 2 April 2013 regardless of the fact that the Commissioner had been holding PHCs subsequent to that date in view of the objection of the insurer, until the date when the Commissioner excused the insurer from further participation. Even thereafter, the Commissioner had scheduled a hearing between the employer (based on the employer's late objection) and the person claiming compensation until the latter's appeal to the High Court succeeded and the decision to schedule the case for hearing was set aside.

51 While I accept that the literal interpretation of s 25(1) of the WICA would mean that only an employer and the person claiming compensation may object to a notice of assessment, the practice is different, as I have mentioned. The practice has been to allow the insurer to object too in his own name. I do not think we can ignore the practice especially if the person claiming compensation had not objected to the insurer's *locus standi* to object to a notice of assessment at the time when the insurer first made an objection. Indeed, that was the situation before me.

52 Furthermore, if the person claiming compensation were entitled to say that the insurer has no *locus standi* to object, then would the insurer not equally be entitled to insist that that person has no *locus standi* to challenge an insurer's repudiation of the policy since the contract of insurance is only between the insurer and the employer of the worker?

53 In the appeal before me, counsel for the appellant initially questioned Liberty's *locus standi* to object to the notice of assessment but then decided not to pursue this argument when I asked him whether, if he were correct, this would in turn mean that the appellant had no *locus standi* to challenge Liberty's repudiation.

54 Furthermore, it must be borne in mind that Liberty was not objecting to the quantum stated in the notice of assessment as such. Rather, Liberty was disputing any liability under the policy. Surely Liberty was entitled to do that. I add that if Liberty were not entitled to object under s 25(1) of the WICA, then the prescribed period to make any objection would not apply to it and Liberty would then be entitled to raise its objection when the person claiming compensation commences proceedings against it under s 32(1) of the WICA.

55 Therefore, my tentative view was that if all parties have proceeded on the premise that an insurer may object to a notice of assessment in his own name, then if an insurer has objected, but an employer has not, the deeming provision under s 24(3) of the WICA still does not apply. Once again, there is a mismatch between the practice and provisions in the WICA and the sooner this is resolved the better.

56 In any event, it was not necessary for me to reach a conclusion on that issue as the facts before me were different. In the present case, both T & Zee and Liberty had made their respective objections in the prescribed form. Hence the deeming provision in s 24(3) of the WICA still had not kicked in. The problem was that Liberty wanted to raise additional grounds of objection after the prescribed period.

57 In such circumstances, would it be correct to say that an application for an extension of time has to be made within the prescribed period? In the first place, s 25(1) of the WICA does not mention that a formal application for extension of time has to be made. It simply refers to "such longer period as the Commissioner may, in his discretion allow".

58 Leaving aside the question of whether a formal application must be made, the more substantive issue is whether an objection may be made after the prescribed period when s 24(3) of the WICA has not kicked in yet.

59 If objections may be made after the prescribed period, then another question that arises is whether such a late objection may be made orally. It seems to me that since an objection made within the prescribed period is to be made in the prescribed form (as stipulated in s 25(1) of the WICA), then, likewise, a late objection should also be made in the prescribed form. A party making a late objection should not be in a better position than one who makes an objection in time. It appears that various parties have assumed that an objection may be raised orally whether at a PHC or at the substantive hearing itself. Hence, Liberty argued that it had first orally raised the additional objections at a PHC on 16 November 2015 and at subsequent PHCs and again at the first tranche of the hearing on 17 March 2016. Apparently, the AC was also prepared to proceed to hear arguments on the late objections even though they had not been made in the prescribed form. Again, I think that this state of affairs is not satisfactory and it should be made clear that late objections must also be made in the prescribed form. Be that as it may, the more substantive issue, as I have said, is whether an objection may be made after the prescribed period when s 24(3) has not kicked in yet.

60 While I appreciate the points made by Chua JC about the intention to expedite the payment of compensation to the person claiming compensation, it seems to me that, at least when s 24(3) of the WICA has not kicked in yet, it would be unduly restrictive to disallow any objection to be made after the prescribed period. As counsel for Liberty submitted, what happens if new information, giving rise to an additional ground to object, is obtained after the prescribed period and such new information was not available before?

61 I was of the view that it was not inconsistent with the terms of the WICA or the intention underlying the scheme to say that the Commissioner still has the discretion to allow a late objection to be made, at least when s 24(3) of the WICA has not kicked in.

62 However, that does not mean that there are no perimeters to the exercise of the power. The AC, relying on *Tian Wei*, appeared to consider that she was at complete liberty to allow a late objection. I did not think so.

63 In my view, the exercise of such a discretion must be subject to guidelines. The four factors relating to an extension of time to appeal as set out above at [39] were useful guidelines. These factors led me to the conclusion that the AC had wrongly exercised her discretion in allowing Liberty to raise the Tiler Objection late. The most important factor was that there was no good reason for the failure to raise the Tiler Objection within the prescribed time.

64 Liberty did not dispute that it would have received the incident report from T & Zee on 6 October 2013 or soon thereafter. It should have noticed that in the incident report, the Worker's job was stated as "Electrical Worker" and not "Tiler". Liberty had plenty of time to raise the Tiler Objection within the prescribed period if that was its intention. It did not raise the objection until 16 November 2015. This was more than two years from when it received the incident report.

65 Liberty proffered no good reason for this two-year delay. There was some suggestion that the Tiler Objection was raised after it had engaged solicitors but this was not a good reason at all. If indeed it was true that the occupation of the Worker was important to Liberty, the latter had no good

reason for not noticing the description of his job in the incident report. Unlike the AC, I did not accept the argument that Liberty may raise the Tiler Objection late since policy coverage had already been raised as an issue in the initial objection. Although policy coverage had been raised, the specific ground raised was quite different. On the face of Liberty's initial notice of objection, the only stated ground was that "Injured is not our Insured's employee …"[13] The email attached in support of this objection began with the following sentence: "We … understand that [the Worker] is not the employee of our Insured, T & Zee Engineering Pte Ltd."[14] In other words, that specific ground was that the Worker was not even employed by T & Zee.

66 As I have said, the purpose of the WICA scheme is to facilitate expeditious payment to a worker on a no-fault basis: *Coreena* at [46]. Having regard to this, I was of the view that the reasons for the delay in objecting to a notice of assessment for compensation must carry substantial weight. Liberty was unable to provide any good reason for its two-year delay.

67 Thus, even though it could not be said that the Tiler Objection was without merit and it could not be said that there would be undue prejudice to the appellant if Liberty was allowed to make the Tiler Objection late, these factors were insufficient to allow the late objection. In the circumstances, I ruled that the AC was incorrect to have allowed Liberty to raise the Tiler Objection outside of the prescribed period.

Conclusion

68 In the light of the foregoing, I allowed the appeal and set aside the

13 ROA, Tab I.

14 ROA, Tab I.

decision of the AC that the policy issued by Liberty was not engaged because of the Tiler Objection.

69 I made no order for costs of the hearing below. I ordered Liberty to pay costs of $3,000 plus reasonable disbursements to be agreed or fixed by the court to the appellant for this appeal. In arriving at this figure, I took into account the fact that the appellant eventually withdrew one of the arguments raised for the Worker about Liberty's lack of *locus standi*.

Woo Bih Li
Judge

Amerjeet Singh and Teo Ying Ying (Crossborders LLC) for the appellant;
M Nedumaran (M/s M Nedumaran & Co) for the first respondent;
Daniel Loh and Adnaan Noor (Bernard & Rada Law Corporation) for the second respondent.