IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 123

Tribunal Appeal No 11 of 2018

Between

(1) Taishan Sports Engineering Pte Ltd

… Applicant

And

(2) Sivalingam Pragadesh Vinoth

… Respondent

GROUNDS OF DECISION

[Employment Law] — [Application for Adjournment]

TABLE OF CONTENTS

Taishan Sports Engineering Pte Ltd
v
Sivalingam Pragadesh Vinoth

[2019] SGHC 123

Tribunal Appeal No 11 of 2018
Lee Seiu Kin J
29 April 2019

13 May 2019

Lee Seiu Kin J:

1 This is an appeal under s 29(1) of the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("the Act") against the decision of the assistant commissioner ("the AC") on 22 June 2018 by Taishan Sports Engineering Pte Ltd ("the Applicant").

2 The Applicant was the employer of Mr Sivalingam Pragadesh Vinoth ("the Respondent") at the material time. On 21 June 2016, the Respondent was injured in the course of handling heavy items belonging to the Applicant. The Respondent then filed a claim under the Act.

Procedural Background

3 On 5 July 2017, the Ministry of Manpower issued a notice of assessment stating that the Applicant was liable to pay compensation of $81,220 to the

Respondent. The Applicant promptly filed a notice of objection pursuant to s 25 of the Act.

4 The AC conducted hearings over five days in March and April 2018 and, on 22 June 2018, ordered the Applicant to pay the sum of $86,220 to the Respondent, comprising the compensation sum and costs of $5,000. On 20 July 2018, the Applicant filed this originating summons to appeal against the decision of the AC under s 29(1) of the Act.

5 As this involved compensation for personal injury to a workman, the application was actively managed by the Supreme Court Registry ("the Registry"). A total of eight pre-trial conferences ("PTC") were conducted by the Registry in order to ensure that the matter would be disposed of expeditiously. These were held on 7 August, 23 October, 19 November and 18 December 2018, and on 2, 15, 29 January and 20 March 2019. The accounts below of those PTCs are taken from the minutes recorded by the assistant registrars who conducted them.

6 By 15 November 2018, the notes of evidence of the hearings conducted by the AC were available. The grounds of decision were available by 18 December 2018. During the PTC on 15 January 2019, counsel for the Applicant, Mr Peter Ezekiel ("Mr Ezekiel") informed the court that he would be making an application to adduce further evidence at the appeal. The court directed him to file the application by 22 January 2019.

7 At the PTC on 29 January 2019, Mr Ezekiel, informed the court that he would be suspended from practice from 1 April 2019. He said that he would hand over conduct of the matter to another solicitor, Mr David Gan ("Mr Gan")

of DG Law LLC after that date. The court pointed out to Mr Ezekiel that the Applicant had not filed the application to adduce further evidence as directed and ordered that this be done by 7 February 2019. The Applicant complied with that order by filing summons no 638 of 2019 on that date. This application was heard by assistant registrar Gan Kam Yuin ("AR Gan") on 18 March 2019. She dismissed the application with costs fixed at $4,000 plus disbursements. The Applicant did not appeal against this decision.

8 On 20 March 2019, at the eighth and final PTC, Mr Ezekiel confirmed that Mr Gan would be taking over the matter from him. After consulting Mr Ezekiel, who had with him Mr Gan's diary, and with the Respondent's counsel, the court fixed this appeal to be heard on 29 April 2019. The Court gave detailed directions on the matters to be carried out by the Applicant before that date, in particular, the need to comply with para 84 of the Supreme Court Practice Directions relating to filing of record of proceedings and bundle of documents, which were to be filed and served by 18 April 2019. The court directed Mr Ezekiel to keep Mr Gan informed of these directions.

9 At the hearing of the appeal before me on 29 April 2019, no record of proceedings or bundle of documents had been filed by the Applicant. Mr Gan did not turn up for the hearing. Instead, one Ms Wong Lai Heng ("Ms Wong"), who said that she was the general manager of the Applicant, appeared in court. She informed me that she represented the Applicant for the purpose of the appeal.

10 Ms Wong applied for the hearing to be adjourned for three to four weeks because she had only met up with Mr Gan a week earlier. She said that he told her that he needed more time to look at the matter in order to advise the

Applicant on the matter. Ms Wong said that the Applicant had consulted Mr Gan only a week earlier because they had tried to find out whether other lawyers could handle the matter on their behalf. It would appear from this that the Applicant decided to brief Mr Gan only a week prior to the date fixed for the hearing of the appeal.

11 Counsel for the Respondent, Mr Muhammad Fadli ("Mr Fadli"), objected to the application for adjournment. He pointed out that throughout the PTCs, Mr Ezekiel had represented to the court that Mr Gan would be taking over. Indeed, as I have noted above, up to the last PTC on 20 March 2019, the court was informed by Mr Ezekiel, who was still acting for the Applicant, that Mr Gan was available to conduct the appeal on behalf of the Applicant on 29 April 2019. Mr Fadli submitted that to allow an adjournment on the basis of what Ms Wong said would be an abuse of the process of Court.

12 Mr Fadli raised another point, that the Applicant had not complied with s 29(3) of the Act, which provides as follows:

> (3) Notwithstanding any appeal under this section, the employer shall deposit with the Commissioner the amount of compensation ordered by the Commissioner under section 25A, 25B, 25C or 25D within 21 days from the date of the Commissioner's decision, and the deposit shall be held by the Commissioner pending the outcome of the appeal.

13 This provision requires the Applicant to deposit with the Commissioner the sum of $81,220 awarded by the AC within 21 days of the award, *ie* by 13 July 2018. Up until the day of the hearing of the appeal, the Applicant had not deposited a single cent.

14 Mr Fadli also pointed out that not only was this not done, but that the Applicant had not paid the $5,000 costs ordered by the AC, or the $4,000 costs ordered by AR Gan when she dismissed the application to adduce further evidence. Ms Wong said that the Applicant did not deposit the $81,220 with the Commissioner, and also did not pay the costs of $5,000 and $4,000 because it did not have the funds to do so.

My decision

15 The issue before me was whether to grant the Applicant's application for an adjournment of four weeks.

16 In general, I would be inclined to grant a short adjournment of four weeks so that the Applicant may be given an opportunity to have their appeal heard. However, there are three factors that, in my view, weigh against such indulgence.

17 The first and most important factor is the nature of the matter. It is an award under the Act, which enables employees to obtain, in the words of the long title of the Act, "compensation … for injury suffered in the course of their employment". Section 3(1) of the Act makes an employer liable to pay compensation in accordance with the formulae set out therein. The only requirement is that the injury be sustained in the course of employment and there is no requirement of any fault on the part of the employer. Indeed, s 3(4) of the Act states that the employer is liable notwithstanding that the employee had acted contrary to the express instructions of the employer. The quantum of such compensation is computed in accordance with the Third Schedule of the Act which, in the case of death or total permanent incapacitation, is a fixed formula

based on the age of the employee and his monthly earnings. For permanent partial incapacitation, the First Schedule provides a formula based on the nature of the injury and the employee's monthly earnings. By electing to make a claim under the Act, the employee forgoes any right of action against the employer under law. This is essentially the effect of s 33 of the Act.

18 Although a right of appeal to the High Court is given to an aggrieved party, be it an employer or employee, that right is a limited one. Under s 29(2A) of the Act, any appeal must pertain to an amount not less than $1,000 and must concern a substantial question of law. To protect the employee, s 29(3) of the Act provides that an employer filing an appeal "shall deposit with the Commissioner the amount of compensation ordered … within 21 days … of … the decision, and the deposit shall be held by the Commissioner pending the outcome of the appeal".

19 From the foregoing, it can be seen that the Act provides a relatively fast and inexpensive mechanism for employees to obtain compensation for injuries suffered in the course of their employment in lieu of taking out a claim in court under common law. For this reason, the court must ensure that an appeal by an employer is not taken out in order to delay or frustrate eventual payment of compensation to the employee.

20 The second factor pertains to the requirement under s 29(3) of the Act for an appellant employer to deposit the award with the Commissioner pending an appeal. Such deposit, if made, removes the uncertainty that an employee would be prevented from eventually getting paid if the appeal failed, even though that payment may be delayed.

21 The Applicant was required to deposit the money within 21 days from the date of the award, which would be by 13 July 2018. However, up to the date of hearing of the appeal on 29 April 2019, this had not been paid. This was confirmed by Ms Wong, who frankly admitted that the Applicant simply did not have the money to do so. The Applicant had failed to deposit the awarded sum for more than nine months and had still not done so at the hearing of the appeal before me.

22 Even though the requirement to make the deposit under s 29(3) of the Act is stated in imperative terms, the Act is silent on the consequences of non-compliance. It seems to me that it is possible for an employee to apply to the court to strike out an appeal on the basis of non-compliance. As this was not an issue before me, this can only be an observation to be taken up in an appropriate future case. However, in my view, the non-payment of the deposit is an important factor in the exercise of my discretion to grant or refuse an application to adjourn this appeal.

23 The third factor is the conduct of the Applicant, which includes that of their legal representatives. I have set out the chronology of the matter above at [3] – [14]. It can be seen that the Applicant and their solicitors had notice well in advance of the date of this hearing. There can be scant excuse for the failure of the Applicant to instruct their replacement solicitors in time to conduct this appeal, which, in any event, is not complicated as it turns on a single issue: whether the Respondent was acting in the course of his employment when the accident happened.

24 The date for this appeal had been fixed in the final PTC, in which the court consulted and obtained confirmation from both sides on their availability.

There was no notice from the Applicant that they would be applying for an adjournment even though, according to Ms Wong, she was told by Mr Gan a week earlier to apply for an adjournment. Even in an ordinary civil suit, which does not normally have the urgency of a matter under the Act, such a cavalier attitude towards a date assigned by the court would attract scant sympathy, much less in the present case where the Registry had scheduled eight PTCs to ensure expeditious disposal of the appeal. I would presume that the Applicant had been advised of the attitude of the court in relation to applications for adjournments under such circumstances, and if not, then they would have to seek recourse from their solicitors.

25 These three factors overwhelmingly weigh in favour of refusing the application for adjournment. I therefore refused to adjourn the hearing of the appeal, whereupon Ms Wong stated that she would not be able to conduct the appeal herself.

26 Notwithstanding this, I conducted an examination of the possible case for the Applicant. Ms Wong provided assistance primarily with regard to the facts. Ms Wong stated that the Applicant had hoped that the quantum could be reduced. However, Mr Fadli pointed out that the notice of objection was made on the basis that the Respondent was not acting in the course of employment when the accident happened and this was the sole issue in the hearing before the AC. I was therefore constrained to consider only that issue.

27 There was no dispute that the Respondent was employed by the Applicant. On the day of the accident, he was despatched by his superior to supervise the unloading of the steel panels that were being delivered to the Applicant. It was during the unloading of the panels that the accident occurred.

The Applicant's case was simply that the Respondent was given express instructions not to take part in the loading or unloading process. The Respondent had given evidence that he was not given any such instruction.

28 However, even if the Applicant's evidence were accepted and the Respondent had indeed carried out the unloading of the panels against the express instructions of the Applicant's representative, as explained above at [17], s 3(4) of the Act would still make the Applicant liable. I was therefore satisfied that there was no merit to the Applicant's appeal. Accordingly, I dismissed the Applicant's appeal and ordered the Applicant to pay the Respondent the costs of the appeal which I fixed at $5,000 inclusive of disbursements.

Lee Seiu Kin
Judge

The Applicant unrepresented;
Muhammad Fadli Bin Mohammed Fawzi (I.R.B Law LLP) for the Respondent.