

Vadivel Ramesh and Another v Aegis Equipment Pte Ltd and Another
[2003] SGHC 3

Case Number : DC Suit 2264/2000; RAS 43/2002
Decision Date : 14 January 2003
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Perumal Athitham (Yeo Perumal Mohideen & Partners) for the Plaintiff/Appellant;
P.E. Ashokan (Khattar Wong & Partners) for the Second Defendant/Respondent
Parties : Vadivel Ramesh; Andiappan Muthiah — Aegis Equipment Pte Ltd; Seletar Engineering Pte Ltd

Civil Procedure – Appeals – Whether leave to appeal to the Court of Appeal should be granted.

1 This matter came before me on appeal from a District Judge's decision. The District Judge had affirmed an order of a Deputy Registrar striking out the plaintiff's claim against the second defendant. After I dismissed the appeal, the plaintiff could not appeal further to the Court of Appeal without leave from the High Court or the Court of Appeal. After I declined to give leave, an application has been made to the Court of Appeal for that purpose.

2 This is a tale of an industrial accident injury claim under the common law that cannot get going. The claim was filed in the District Courts as DC Suit No. 2264/2000V ("the action").

3 The facts are not complicated –

(i) 1.10.1999 – the plaintiff was injured by something called a cherry picker whilst he was working for the second defendant. The cherry picker was supplied by the first defendant.

(ii) 30.11.1999 – the plaintiff filed a claim for compensation under the Workmen's Compensation Act.

(iii) 15.09.2000 – the plaintiff commenced the action against the first defendant.

(iv) 14.10.2000 – the plaintiff's solicitors informed the Commissioner of Labour ("the Commissioner") of the common law action and undertook to inform him of the outcome.

(v) 23.01.2001 – the plaintiff joined the second defendant in the action.

(vi) 8.03.2001 – the Commissioner wrote to the plaintiff's solicitors stating

We refer to your letter of 14.10.2000.

2. Since your client wishes to claim damages under Common Law in respect of the above accident, please note that this office will take no further action on this matter.

3. Please let us know the terms of settlement under the Common Law and a copy of the Court judgment, if any, in due course.

(vii) 3.08.2002 – the Commissioner informed the solicitors for the first defendant that

The injured worker, Vadivel Ramesh had applied for Workmen's Compensation claim on 30/11/1999. His solicitors, M/s Yeo Perumal Mohideen and Partners has subsequently informed us that his client has commenced proceedings under Common Law, as such we take no further action on this matter.

We confirm that the Workmen Compensation is still pending and held in abeyance pending the outcome of the Common Law action.

(viii) 3.09.2002 – the Commissioner informed the solicitors for the plaintiff that after the decision of *Chua Ah Beng v Commissioner of Labour* [2002] 4 SLR 854 claims are not held in abeyance pending the outcome of common law actions, and the claimant is required to withdraw or discontinue his claim under the Workmen's Compensation Act.

4 The application to strike out the claim against the second defendant was made on 5 August 2002, before the decision in *Chua Ah Beng's* case was delivered on 30 August 2002 and before the Commissioner's letter of 3 September 2002.

5 The application was made in reliance on an unreported case of *Rahenah binte L Mande v Baxter Healthcare Pte Ltd* in which Judith Prakash J made her decision on 20 September 2001 and delivered the grounds of decision on 21 August 2002.

6 An issue before the judge was whether under s 33(2)(a) of the Workmen's Compensation Act, a claim for compensation was a bar to the commencement of a common law action.

7 Sections 33(1) and (2) read

Limitation of workman's right of action.

(1) Nothing in this Act shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted an action for damages in respect of that injury in any court against his employer or if he has recovered damages in respect of that injury in any court from his employer.

(2) No action for damages shall be maintainable in any court by a workman against his employer in respect of any injury –

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

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

8 Prakash J referred to the Court of Appeal decision in *Ying Tai Plastic & Metal Manufacturing (S) Pte Ltd v Zahrin bin Rabu* [1982-1983] SLR 117 where the question was addressed. F A Chua J delivering the judgment of the Court held at p 121

Under s 33(1)(a) the worker is debarred from bringing a common law action for damages so long as there is an application by the workman before the Commissioner for compensation. But this debarment in no way affects the cause of action already vested in him. The Act does not prohibit the withdrawal of the application for compensation. As soon as the application for compensation is withdrawn, the right to maintain an action revives and the workman can then

proceed with his action for damages in the court. The workman's right to compensation under the Act lies dormant while he pursues his common law action but should he lose the action he may choose to ask the court, under s 33(2), to assess compensation under the Act.

and she held at para 16 that

That passage makes it plain that by choosing to make an application to the Commissioner for compensation, an injured employee deprives himself of the ability to exercise his right to sue his employer at common law for the period that the application remains alive. If he changes his mind about his course of action, the employee is at liberty to withdraw his claim for compensation and then start a civil suit. Until such withdrawal he cannot start the civil suit. The construction which Chua J gave to s 33(2)(a) was based on the dual purpose of the legislation. First, it gave the worker an absolute right to obtain compensation without having to prove negligence on the part of his employer. At the same time, however, it protected the employer against the expense of fighting on two fronts by providing that the claim for compensation and the common law suit could not be resorted to simultaneously.

9 She continued at para 18 that the withdrawal must be expressly notified to the Commissioner and that it was not enough that the claimant formed the intention not to proceed with the claim.

10 It has also been made clear that a claim is not considered withdrawn when the claimant allows it to be dormant. Tay Yong Kwang JC (as he then was) held in *Chua Ah Beng v Commissioner for Labour* [2002] 4 SLR 854 at para 38 that

As long as an application exists before the Commissioner for Labour, whether it is active or dormant, the plaintiff cannot maintain his action in court. In the *Ying Tai Plastic* case, the Court of Appeal said the 'right to compensation under the Act lies dormant while he pursues his common law action'. It is the 'right to compensation' and not 'the claim filed' that lies dormant. The Court of Appeal also made it clear that the right to maintain a court action revives only when the application under the WCA is withdrawn.

11 In the light of the decisions in *Ying Tai Plastic*, *Chua Ah Beng* and *Rahenah*, all of which I humbly agree with, the plaintiff, having made his claim for compensation, cannot maintain his action under the common law without first withdrawing the compensation claim.

12 Even if he or his solicitors were not aware of the decisions, they were advised of the correct position by the Commissioner's letter of 3 September 2002. At that time steps could have been taken to withdraw the claim for compensation and to file a fresh common law action, but the plaintiff did not withdraw his claim and elected simply to continue with the action. Now he is in a less satisfactory position as the common law action may be time-barred. He may be left with only the compensation claim to look to, but that is the result of his own inaction.

13 I do not see why the clearly established position should be changed to allow the plaintiff to continue with his action. It appears to me that a further appeal to have the question argued for the fourth time is unlikely to bring about a different outcome.

14 I also refused to give leave to appeal because there is no issue of public interest involved. The law is clear and certain. The appellant found himself in difficulty only because he refused to withdraw his claim. This is not a problem that other injured workmen need to encounter. Further expenditure of

time and costs that a further appeal will entail is not justified.

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