IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 163

Tribunal Appeal No 21 of 2019

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

And

In the matter of Order 55, Rule 1 of the Rules of Court (Cap 322, Rule 5)

And

In the matter of the decision of the Learned Assistant Commissioner for Labour, Manoj s/o P N Rajagopal, made on 14 October 2019 under Section 3(1) of the Work Injury Compensation Act (Cap 354)

Between

(1) Great Eastern General Insurance Ltd
(2) Pavo Security Agency Pte Ltd

… *Appellants*

And

Next of kin of Maripan Ponnusamy, deceased

… *Respondents*

JUDGMENT

[Employment Law] — [Work Injury Compensation Act]

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Andre Maniam JC:

Introduction

1 The appellants challenged an award of work injury compensation in favour of the respondents, who were the next of kin of the deceased, Mr Maripan Ponnusamy ("Mr Maripan"). Mr Maripan had been employed as a security officer by the second appellant ("Pavo"). The first appellant was Pavo's work injury compensation insurer.

2 On 5 December 2017, Mr Maripan fell and hit his head whilst patrolling premises as part of his work. This caused tetraparesis from cervical spine injury ("the injury"). He was 65 years old at the time.

3 Two weeks later, Mr Maripan submitted a work injury compensation claim pursuant to the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("the Act"). A notice of assessment was issued in his favour on the basis of

permanent incapacity. The appellants objected, contending that Mr Maripan had not suffered personal injury "by accident arising out of and in the course of the employment" within s 3(1) of the Act.

4 The case proceeded to a hearing before an Assistant Commissioner ("the Commissioner"), but before that hearing Mr Maripan passed away from bacterial pneumonia, and his next of kin continued as the claimants.

5 The Commissioner heard evidence, including medical evidence, from both sides and allowed the claim for compensation.

Issues to be determined

6 The appellants challenged the Commissioner's decision on some 31 grounds, the first of which was: "[t]hat the Learned Assistant Commissioner for Labour had erred in law and in fact in deciding that Mr Maripan's accident (for which the work injury compensation was initially awarded) arose out of and in the course of Mr Maripan's employment". The appellants' other grounds of appeal were an elaboration on the various ways in which they contended that the Commissioner had erred.

7 After hearing submissions and reserving my decision, I dismiss the appellants' challenge to the Commissioner's decision.

8 In doing so, I considered the following issues:

(a) What is a "substantial question of law" such that an appeal lies under s 29(2A) of the Act?

(b) Did the Commissioner commit any appealable error in finding that there was an "accident" within s 3(1) of the Act?

(c) Did the Commissioner commit any appealable error in finding that the accident arose *in the course* of employment within s 3(1) of the Act?

(d) Did the Commissioner commit any appealable error in finding that the accident arose *out of* employment within s 3(1) read with s 3(6) of the Act?

What is a "substantial question of law" such that an appeal lies under s 29(2A) of the Act?

9 Section 29(2A) of the Act provides as follows: "No appeal shall lie against any order unless a substantial question of law is involved in the appeal and the amount in dispute is not less than $1,000."

10 As to what a "substantial question of law" is for the purposes of s 29(2A) of the Act, I respectfully agree with the decision of Kan Ting Chiu J in *Karuppiah Ravichandran v GDS Engineering Pte Ltd and another* [2009] 3 SLR(R) 1028 ("*Karuppiah*") at [13]–[15], citing *Halsbury's Laws of England* vol 1(1) (Butterworths, 4th Ed Reissue, 1989) at paragraph 70 and *Edwards v Bairstow* [1956] AC 14 ("*Edwards*") at 35–36.

11 Errors of law that may justify an appeal include "misinterpretation of a statute", "taking irrelevant considerations into account", and "failing to take relevant considerations into account"; but as cautioned by Kan J in *Karuppiah* at [15]: "I do not think the passage from *Halsbury* means that any one of the listed errors would constitute a ***sufficient*** error of law for an appeal. The nature and effect of the error should be considered and there will be appeals when there are errors which have a bearing on the ultimate decision. For the present purposes, the requirement for there to be a *substantial* question of law makes

that abundantly clear." [emphasis in original in italics; emphasis added in bold italics]

12 Additionally, as Kan J recognised at [16] of *Karuppiah*, an appeal is also permissible if, citing *Edwards* at 36, "the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination upon appeal" [emphasis in original omitted], which Kan J paraphrased as follows: "… findings that no person would have come to if he had applied the law properly".

13 I refer to substantial errors of law such that an appeal lies, as "appealable errors". The appellants argued that there were appealable errors in the present case. Indeed, in the absence of appealable errors no appeal shall lie – the court cannot simply decide the matter afresh and arrive at its own decision.

14 In reviewing the Commissioner's findings, my focus is thus on whether the Commissioner committed appealable errors.

Did the Commissioner commit any appealable error in finding that there was an "accident" within s 3(1) of the Act?

15 The evidence, and in particular the medical evidence, showed that Mr Maripan had had a syncope (fainting spell), and that is what the Commissioner found.

16 The appellants contended that this was not an "accident" within s 3(1) of the Act, and that the Commissioner committed an appealable error in finding that it was. The appellants' case was that Mr Maripan had pre-existing medical conditions (in particular, hypertension and diabetes) that made it more likely for him to faint.

17 From his grounds of decision ("GD") at [23], the Commissioner duly considered the case of *NTUC Income Insurance Co-operative Ltd and another v Next of kin of Narayasamy s/o Ramasamy, deceased* [2006] 4 SLR(R) 507 ("*Narayasamy*"), from which he gleaned (amongst others) the following propositions:

(a) "Accident" would include an internal medical condition that caused an unexpected injury while the employee was carrying out work (*Narayasamy* at [24]).

(b) Whether there was an "accident" should be assessed from the point of view of the employee (*Narayasamy* at [30]).

18 *Narayasamy* has been followed in several other decisions, including *Arpah bte Sabar and others v Colex Environmental Pte Ltd* [2019] 5 SLR 509 ("*Arpah*"), which the Commissioner cited for its reference to the Oxford English Dictionary definition of "accident". I would add that the court in *Arpah* had cited the dictionary definition for the ordinary meaning of "accident" after considering the statement in *Narayasamy* that an accident "would include an internal medical condition that caused an unexpected medical injury".

19 The interpretation of "accident" in *Narayasamy* to include "an internal medical condition that caused an unexpected injury while the employee was carrying out work" is explicable in relation to the nature and purpose of the Act. As noted in *Pang Chew Kim (next of kin of Poon Wai Tong, deceased) v Wartsila Singapore Pte Ltd and another* [2012] 1 SLR 15 ("*Pang*") at [27], the Act is "a piece of social legislation" that "should be interpreted purposively in favour of employees who have suffered injury during their employment". That being the case, the system established by the Act is "not a 'fault-based' compensation system" (*Hauque Enamul v China Taiping Insurance*

(Singapore) Pte Ltd and another [2018] 5 SLR 485 ("*Hauque*") at [65]). Instead, the Act is meant to avail employees of compensation where they have sustained injuries in workplace accidents, "even if there is no one at fault for causing that injury, or even if he had himself been responsible for the mishap that caused him injury" (*Chua Jian Construction and another v Zhao Xiaojuan (deputy for Qian Guo Liang)* [2018] SGHC 98 ("*Chua Jian Construction*") at [10]).

20 Whether Mr Maripan was more prone to fainting is therefore quite beside the point. Under the Act, the court is not concerned with attributing fault. In determining if there was an "accident" within s 3(1) of the Act, the court's chief concern is whether there was "an untoward event that was not designed" (*Hauque* at [65]). In this case, there was.

21 In the following cases, our courts have accepted heart attacks and/or cardiac arrests as being "accidents" within s 3(1) of the Act: *Narayasamy*; *Arpah*; *Pang*; and *Allianz Insurance Co (Singapore) Pte Ltd and others v Ma Shoudong and another* [2011] 3 SLR 1167 ("*Ma Shoudong*"). The fact that the claimant has an internal medical condition does not mean that what happened to him was not an "accident".

22 *Narayasamy* ([17] *supra*) also contained a quote from Lord Loreburn LC's judgment (on behalf of the majority) in *Clover Clayton & Co, Limited v Hughes* [1910] AC 242 at 245–246, which is particularly apposite for its references to fainting (which the present case concerns). There the House of Lords was considering rupture of an aneurism, an internal and pre-existing medical condition, and his Lordship said:

> The first question here is whether or not the learned judge was entitled to regard the rupture as an "accident" within the meaning of this Act. In my opinion, he was so entitled … I

> cannot agree with the argument presented to your Lordships that you are to ask whether a doctor acquainted with the man's condition would have expected it. Were that the right view, then it would not be an accident if a man very liable to fainting fits fell in a faint from a ladder and hurt himself. No doubt the ordinary accident is associated with something external; the bursting of a boiler, or an explosion in a mine, for example. But it may be merely from the main's own miscalculation, such as tripping and falling. Or it may be due both to internal and external conditions, as if a seaman were to faint in the rigging and tumble into the sea. I think it may also be something going wrong within the human frame itself, such as the straining of a muscle or the breaking of a blood vessel …
>
> [emphasis added]

23 The Commissioner did not misdirect himself as to the applicable law on what constitutes an "accident". The appellants failed to show that he had committed any appealable error in finding that when Mr Maripan fainted, fell, and hit his head, there was an "accident" within s 3(1) of the Act.

Did the Commissioner commit any appealable error in finding that the accident arose *in the course of* employment within s 3(1) of the Act?

24 Mr Maripan's fainting spell happened while he was on patrol, doing his job as a security officer. The accident thus arose in the course of his employment, and this is consistent with case law.

25 In *Ma Shoudong* ([21] *supra*), the court accepted that the employee had suffered a cardiac arrest/lethal arrhythmia *in the course of employment*, although the accident happened when he was taking a short break at the designated resting area after completing some delivery work. The court stated at [16]: "… an accident arises in the course of the employment if it bears a temporal relationship with the employment. A simple test would be whether the accident occurs, as a matter of common sense, while the employee is at work." This passage from *Ma Shoudong* has since been cited in *Hauque* ([19] *supra*) at [68],

where the employee was lifting pipes at work; and in *Arpah* ([18] *supra*) at [35], where the employee was removing the wheels of a refuse bin at work.

26 Here, Mr Maripan was at work at the time. This case is thus different from *Chua Jian Construction* ([19] *supra*), where the court held that there was no evidence that the accident arose *in the course of* employment. The employee in that case had commenced work at 8.00am and was found unconscious at his workplace at 5.00pm. He had suffered a stroke, as a result of hypertension which he had been suffering from for many years, and which was left untreated. The court found (at [16]) that "[t]here was no evidence that it was brought about by an exertion, and no evidence, in fact, of what [the employee] was doing before he collapsed."

27 There are two parts to that:

(a) First, there was no evidence that what happened was due to exertion.

(b) Second, there was no evidence of what the employee was doing at the time.

28 I do not read *Chua Jian Construction* ([19] *supra*) as requiring proof of exertion before a finding can be made that the accident occurred *in the course of employment* (if the accident stemmed from an internal medical condition). In *Pang* ([19] *supra*), there was no proof of exertion at the time. There, the court held that the employee suffered a cardiac arrest *in the course of his employment* when he was on an overseas working trip, waiting in his hotel to be picked up to go to a meeting. The court emphasised (at [40]) that "the fact that there was no *actual work* at that point in time does not mean that the Deceased could not be considered to have been in the course of employment" [emphasis in original].

The same point was underscored in *Hauque* ([19] *supra*) at [71], wherein the court stated that "[a]n employee at work who is taking his morning 'tea break' in the workplace canteen is clearly taking the tea break "in the course of his employment" … something done in the course of employment need not be actual work, but must be work or the natural incidents connected with the type of work."

29 The fundamental point in *Chua Jian Construction* ([19] *supra*) was this: not only was there no proof of exertion, there was "no evidence, in fact, of what [the employee] was doing before he collapsed" (at [16]). It was in those circumstances that the court accepted the employer's contention that there was no evidence that what happened had happened *in the course of employment*.

30 The present case is quite distinguishable: the evidence showed that Mr Maripan was on patrol when he fainted. If proof of exertion were required, there was exertion, as there was in *Arpah* ([18] *supra*), *Hauque* ([19] *supra*), and *Ma Shoudong* ([21] *supra*) (before the employee took a break). More fundamentally, there is no question that Mr Maripan fainted while fulfilling the very duty that his job entailed (*ie*, patrolling). That puts paid to any doubt as to whether the accident arose in the course of his employment.

Did the Commissioner commit any appealable error in finding that the accident arose *out of* employment within s 3(1) read with s 3(6) of the Act?

31 Section 3(6) of the Act provides that: "For the purposes of this Act, an accident arising in the course of an employee's employment shall be deemed, in the absence of evidence to the contrary, to have arisen out of that employment."

32 Once it is shown that the accident in question *arose* ***in the course of*** an employee's employment, a rebuttable presumption arises in favour of the employee that the accident *arose* ***out of*** that employment.

33 The appellants contended that the Commissioner committed appealable errors in finding that they had failed to rebut the presumption. In particular, they alleged that the Commissioner:

(a) failed to take into account relevant considerations (namely, the testimony of their expert, Dr Teh Peng Hooi ("Dr Teh"), in re-examination); and

(b) took into account irrelevant considerations (in referring to the Employment Act (Cap 91, 2009 Rev Ed) when that was not put to the parties or their witnesses).

Did the Commissioner err in failing to take into account Dr Teh's evidence in re-examination?

34 The appellants' complaint that the Commissioner failed to take into account Dr Teh's testimony in re-examination must be viewed against the broader canvas of evidence before the Commissioner (medical and otherwise), and how he arrived at his decision.

35 The Commissioner had regard to the evidence of both doctors: Dr Yu Chun Sing ("Dr Yu") for Mr Maripan, and Dr Teh for the appellants. He noted at [63] of his GD that "[b]oth medical experts were willing to state that in [Mr Maripan's] case, tiredness from work may have played a part (albeit not "that significant" a part) in [Mr Maripan's] syncope. That was sufficient for me to arrive at my finding: [Mr Maripan] sustained the injury from a fall brought about

by a fainting spell that was in turn caused or contributed to by tiredness related to his employment with Pavo."

36 The Commissioner further noted (at [54] of his GD) that Dr Teh had said in his report that the syncope was "*due to medical cause or causes and can occur to Mr Maripan anytime and anywhere (even at home*)" [emphasis in original], and that Dr Teh had gone on to pronounce that the syncope was not work-related.

37 In cross-examination, however, Dr Teh's attention was drawn to the fact that Mr Maripan had been working 12-hour shifts for ten continuous days without a rest day. In response, Dr Teh mentioned tiredness:

> Q: Regarding being prone to fainting spells. These fainting spells could also be due to working continuously for 10 days, 12 hours shifts.
>
> A: May contribute a small part not a significant part. Lack of sleep, tired. 2 factors – not enough sleep, tiredness to fainting. And age. [Mr Maripan] is not young.

38 In re-examination, Dr Teh said he had not known that Mr Maripan was on permanent night shift, and that being the case Mr Maripan would have been used to working night shifts. Dr Teh also said that when he mentioned tiredness and lack of sleep in cross-examination, that was an "assumption" on his part, something he had assumed with "no basis".

39 The Commissioner did not however quote from or expressly refer to Dr Teh's evidence in *re-examination*. The appellants thus contended that he had failed to take it into account.

40 However, the Commissioner had evidently considered both Dr Teh's report and oral testimony, referring to and quoting from what Dr Teh had said in his report and under cross-examination.

41 I cannot conclude that the Commissioner failed to take into account Dr Teh's evidence in re-examination. He could very well have considered it and decided that he could still rely on Dr Teh's testimony in cross-examination notwithstanding Dr Teh's attempt to qualify it in re-examination.

42 It was open to the Commissioner, who heard Dr Teh's testimony, to decide that when Dr Teh mentioned "tired" and "tiredness" in response to being told that Mr Maripan had been "working continuously for 10 days, 12 hours shifts", that was not an "assumption" as Dr Teh characterised it in re-examination, but (as the Commissioner put it at [56] of his GD) an *inference*, and a *reasonable* one at that, based on proven or otherwise undisputed facts. Even if one were to discount Mr Maripan's being on *night* shift, a man of his age (65 years old at the time) had still been on 12-hour shifts for ten continuous days.

43 There was also Dr Yu's evidence in his examination-in-chief that "I don't think the working hours *contributed that much* to him losing consciousness … Tiredness can cause a person to lose consciousness but *I do not think it was that significant* in [Mr Maripan's] fall which even till now don't know why he fell …" [emphasis added] The Commissioner had quoted Dr Yu's reference to tiredness being not "that significant" and held (as he was entitled to) that Dr Yu was thereby not ruling out tiredness from work as a contributing factor to Mr Maripan fainting (see [48] of the GD).

44 I thus do not find any appealable error in the Commissioner's treatment of the medical evidence.

Did the Commissioner err in referring to the Employment Act as he did?

45 The evidence showed that Mr Maripan had performed overtime work of between 95 and 99 hours per month. That set the stage for the Commissioner referring to the Employment Act, which generally provides in s 38(5) that an employee shall not be permitted to work overtime for more than 72 hours a month ("the Employment Act point"). Notwithstanding the general rule, an exemption can be granted to allow for longer overtime work, as the Commissioner quite properly recognised. He further recognised that he was unaware whether any exemption had been granted in the present case, because there was no evidence on point before him.

46 From the grounds in their Originating Summons, the appellants' complaint in this regard was: "That [the Commissioner] had erred in law and in fact by assuming in his own mind that Mr Maripan's monthly overtime hours probably breached the Employment Act without querying [Pavo] or giving [Pavo] an opportunity to answer his internal, unvocalised query. If [the Commissioner] had raised this internal query of his to [Pavo], he would have discovered that [Pavo] had the relevant Exemption from the Ministry of Manpower to exceed 72 hours of overtime a month. [The Commissioner] was therefore clearly and unduly prejudiced against [Pavo] because of his own internal unvocalised query."

47 However, the Commissioner did not assume that there was a probable breach of the Employment Act: he properly recognised that he was unaware

whether any exemption had been granted in the present case, because there was no evidence on that before him.

48 Instead, the Commissioner had referred to the Employment Act simply for the general limit of 72 overtime hours per month ("the Employment Act point"). At [59]–[60] of his GD, he said:

> 59 In assessing whether [Mr Maripan] could have fainted due to fatigue from his employment, I also took note of the statutory prescriptions set out in the Employment Act (Cap. 91) ("EA"). Section 38(5) of the EA provides that an employee shall not be permitted to work overtime for more than 72 hours of overtime in a month.
>
> 60 … I referred to the EA only to obtain … a measure of the Legislature's starting position with regard to the reasonable hours of work and to consider if [Mr Maripan] could have been tired by reason of exceeding the same. The aforesaid statutory prescriptions in the EA therefore led me to make the inference that I did about [Mr Maripan's] physically tired state on the DOA leading to the accident.

49 The appellants' complaint was not about the Commissioner's reference to the general limit of 72 overtime hours per month: their complaint was that he had supposedly assumed that the Employment Act had been breached because Pavo lacked the relevant Exemption (which in fact Pavo had) – but he made no such assumption.

50 Moreover, the issue of tiredness from work was a live one, and both doctors had the opportunity of addressing it in their testimony.

51 The Employment Act point appears only to have *reinforced* the Commissioner's conclusion from the medical and factual evidence before him: namely, that tiredness from work caused or at least contributed to Mr Maripan fainting. The Commissioner said that the Employment Act point was something which he "*also* took note of", but that the medical experts' testimony about

tiredness from work was *sufficient* for him to arrive at his finding that "[Mr Maripan] sustained the injury from a fall brought about by a fainting spell that was in turn caused or contributed to by tiredness related to his employment with Pavo" (see [59] and [63] of the GD).

52 It would not have made a difference to the Commissioner's decision had he raised the Employment Act point with the parties and allowed them to address it. In the circumstances, there was no substantial question of law raised in this regard, for the purposes of s 29(2A) of the Act. As Kan J expressed in *Karuppiah* ([10] *supra*) at [15]: "The nature and effect of the error should be considered and there will be appeals when there are errors which have a bearing on the ultimate decision." It would have been preferable for the Commissioner to have raised the Employment Act point with the parties, but the point was ultimately not material to his decision to allow the claim for compensation.

53 The Commissioner did not need to find that tiredness from work caused or contributed to Mr Maripan fainting. It was enough for him to conclude that the appellants had failed to rebut the presumption arising under s 3(6) of the Act that the accident arose out of Mr Maripan's employment. In that regard, unless the appellants proved, on a balance of probabilities, that tiredness from work *did not cause or contribute* to Mr Maripan fainting, the presumption would remain unrebutted.

54 Thus, the Commissioner found (at [62] of his GD) that "the [appellants] did not discharge their burden of proving that the accident did not arise out of [Mr Maripan's] employment with Pavo. They failed to prove on a balance of probabilities that the accident arose out of something that was wholly unconnected with the incidents of [Mr Maripan's] employment."

55 On the material before the Commissioner, he did not make findings which no person properly instructed on the relevant law could have come to (*Karuppiah* ([10] *supra*) at [16]; *Ma Shoudong* ([21] *supra*) at [21]). The appellants did not demonstrate any appealable error in relation to his reference to the Employment Act, or more generally.

Conclusion

56 The appellants did not show any substantial question of law to be involved, such that an appeal lies against the Commissioner's order under s 29(2A) of the Act. Accordingly, I dismiss the appellants' challenge to the award. I will hear the parties separately on costs.

Andre Maniam
Judicial Commissioner

Hong Heng Leong (Just Law LLC) for the appellants;
Lalwani Anil Mangan and Ng Yuan Sheng (DL Law Corporation) for the respondent.