IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 242

Tribunal Appeal No 3 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 Certificate of Order made under the Work Injury Compensation Act (Cap 354) by the Learned Assistant Commissioner, Ms Elaine Cai Mingyu on 7 February 2019

Between

Bintai Kindenko Private Limited

… *Applicant*

And

Biswas Dipu

… *Respondent*

JUDGMENT

[Employment Law] — [Work Injury Compensation Act] — [Principal liability]

Bintai Kindenko Pte Ltd
v
Biswas Dipu

[2019] SGHC 242

High Court — Tribunal Appeal No 3 of 2019
Choo Han Teck J
25 September, 3 October 2019

14 October 2019 Judgment reserved.

Choo Han Teck J:

1 This is an appeal by the applicant, Bintai Kindenko Private Limited ("Bintai") against the Assistant Commissioner of Labour's ("ACL") order that it compensate the respondent, Biswas Dipu ("Biswas"), for injuries sustained in the course of his employment, pursuant to s 17 of the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("the Act").

2 Bintai was hired to carry out air-conditioning and mechanical installation work at a project site at 2 Kallang Sector ("the Project Site)". On 1 April 2016, Bintai entered into a subcontract ("the Subcontract") with Ling United Pte Ltd ("Ling United") to fabricate air-conditioning ducts and install them at the Project Site.

3 Biswas is a Bangladeshi worker who was an employee of Ling United. He testified that on 4 November 2016, he sustained an injury at Ling United's

workshop at Tuas South Avenue 2 ("the Workshop"). He was using a machine that fabricated air-conditioner ducts when a malfunctioning foot pedal caused part of the machine to fall onto his right hand, injuring his hand and fingers. A medical report by Dr Amitabha Lahiri of the National University Hospital indicated that he suffered permanent incapacity of 13%.

4 The Ministry of Manpower ("MOM") sent a Notice of Assessment ("NOA") to Ling United and Biswas, ordering Ling United to pay compensation of $21,174.89 to Biswas. Subsequently, Ling United became uncontactable. Biswas then filed an objection to the NOA that stated simply, "I do not want Employer to be payer." Bintai was directed to send representatives to attend several pre-conference hearings.

5 After several hearings where both Bintai and Biswas called witnesses to testify on their behalf, the ACL found that Bintai was liable to pay Biswas the full sum of $21,174.89 as a principal under s 17(1) of the Act, and ordered them to do so on 7 February 2019. On 29 May 2019, the ACL's order was amended to reflect that the accident occurred on 4 November 2016.

6 Counsel for Bintai, Mr Ramesh Appoo, submits that the NOA was not served on Bintai and it did not have an opportunity to file an objection. He submits that this is grounds for setting aside the order.

7 Section 17(2) of the Act states:

> Where a claim has been determined by the Commissioner to be made against the principal for compensation under subsection (1), this Act shall apply as if references to the principal were substituted for references to the employer…

Under s 24 of the Act, any notice of assessment must be "served on the employer

and the person claiming compensation for any injury resulting from an accident". Counsel for Biswas, Mr Pang Khin Wee, submits that s 17(2) only operates after the Commissioner of Labour ("the Commissioner") has determined the claim against the principal. However, s 17(2) does not require the Commissioner to determine the claim itself, but only that a claim has been made against the principal. Once it was clear that Biswas sought compensation from Bintai, a fresh NOA should have been served on Bintai and Biswas.

8 However, I do not accept Mr Appoo's submission that this irregularity is sufficient grounds to set aside the ACL's order. Bintai attended several pre-hearing conferences and several hearings before the ACL before the order was made and never raised the issue of the NOA. Proper service of the NOA is necessary because pursuant to s 24(3) of the Act, if neither party objects to the NOA within 14 days of service, they are deemed to agree to the amount and the NOA will have the legal effect of an order by the Commissioner that is made under s 25D after a proper hearing. In fact, although a party can appeal against an s 25D order, pursuant to s 24(3B) there can be no appeal against a final NOA. Failing to serve the NOA on the correct party creates the risk that an employer will be made liable for compensation without the chance to make its case. In the present case, the NOA did not become a final order and the ACL conducted several hearings with Bintai before making an order under s 25D. Bintai had notice of the claim against them and the opportunity to call witnesses and present evidence. They therefore did not suffer any prejudice as a result of this irregularity.

9 Mr Appoo also submits that the ACL incorrectly amended her order to correct the date of the accident to 4 November 2016. Both "iReports" filed with MOM referred to the accident date as 11 November 2016 and so did the NOA

and original order. It was only after Bintai filed this application that the order was amended to reflect the date of 4 November 2016. According to Mr Appoo, the ACL's jurisdiction was limited to determining whether an accident occurred on 11 November 2016, and it should have dismissed Biswas' claim.

10 The Notes of Evidence indicate that the date of 4 November 2016 was repeatedly mentioned at the hearing as the date of the accident. Biswas tendered the medical report dated that day as evidence, and cross-examined Bintai's witnesses on whether there was a delivery of air-conditioning ducts on that same day. Given that both sides were aware that the issue was the alleged accident on 4 November 2016, I accept that the amendment to the ACL's order was the correction of a clerical mistake "arising from any accidental slip or omission" under reg 11(2) of the Work Injury Compensation Regulations (Cap 354, Rg 1, 2010 Rev Ed).

11 Mr Appoo's final and main submission is that Bintai is not a principal under s 17 of the Act. First, he submits that the ACL erred in finding that Biswas was injured "by accident arising out of and in the course of the employment" because there was no documentary evidence corroborating Biswas' claim that he was carrying out work for Bintai at the time of the accident.

12 Biswas explained that he was not able to produce documentary evidence because he was merely a worker in charge of fabricating ducts and did not have access to company documents. The ACL accepted his explanation and reached her conclusion on the basis of witness testimony and records of deliveries received by Bintai. It is not clear what other evidence Mr Appoo deems necessary, and I see no reason to disturb her conclusion.

13 Second, Mr Appoo submits that Bintai was not liable as a principle under

s 17(1) of the Act due to the operation of s 17(5), which states:

> This section shall not apply in any case where the accident occurred elsewhere than at or about the place where the principal has undertaken to execute work or which is under his control or management.

Mr Appoo submits that the "iReports" identified two different locations where the accident occurred, namely, the Workshop and the public road next to it. The ACL concluded that the accident occurred at the Workshop due to the machinery involved and the lack of reliability of Ling United's report, and I accept her finding. The issue is whether the Workshop is a place where Bintai has undertaken to execute work or is under Bintai's control or management.

14 In *Magaforce Construction v Khamso Wirat and others* [2005] SGHC 186 ("*Magaforce*"), the High Court considered whether a lorry driven by a main contractor's employee fell within the meaning of s 17(5), such that the principal was liable to compensate the subcontractor's employee for injuries sustained when the lorry was involved in a traffic accident. In that case, Woo Bih Li J concluded that a "place" in s 17(5) extends only to a fixed location, and provides examples of "a site next to the work site of the principal or another site where work is done for the purpose of the principal's job at the work site" that would not bar principal liability. As the moving lorry was not a fixed location, s 17(5) operated to bar principal liability.

15 Mr Pang relies on Clause 10.2.2.3 of Appendix C of the Subcontract which states:

> All ductwork shall be fabricated in [Ling United's] own workshop prior to delivering to site for assembly and installation. All ductwork shall be fabricated and run in sizes shown and in positions as indicated on the Specification Drawings. All ducts shall conform accurately to the dimensions

> indicated in the Specification Drawings and shall be straight and smooth on the inside with all joints neatly finished.

He submits that the clause shows that Bintai was aware that fabrication work would be carried out at the Workshop. The Subcontract did not just cover installation work at the Project Site, but also provided for fabrication work. Bintai therefore undertook to execute work at the Workshop and s 17(5) does not operate to bar Bintai from principal liability.

16 Mr Appoo submits that the Subcontract taken as a whole shows that Ling United's work is limited to the supply and installation of equipment at the Project Site. Yet to supply the equipment, Ling United could have obtained it from another manufacturer or it could have fabricated it itself. Bintai was aware that Ling United was fabricating the equipment itself because they set out detailed specifications for the fabrication process. Biswas and his colleagues testified that they were regularly rotated between the Project Site and the Workshop, depending on manpower needs.

17 The s 17(5) requirement that a principal must have "undertaken to execute work" at a place must be read with s 17(1), which provides for principal liability where the execution of any part of the work "undertaken by the principal" is contracted out. This is not a requirement for the principal to provide an undertaking. I find that the Workshop was a site where work was done for the purpose of the principal's job at the work site, as discussed in *Magaforce*, and Bintai therefore undertook to execute work there. Section 17(5) therefore does not operate, and Bintai is liable as a principal.

18 I dismiss the application and order costs to follow the event.

- Sgd -
Choo Han Teck
Judge

Ramesh Appoo (Just Law LLC) for the applicant;
Pang Khin Wee (Hoh Law Corporation) for the respondent.