IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 137

Tribunal Appeal No 20 of 2018

Between

(1) Arpah bte Sabar
(2) Famillia bte Abu Samad
(3) Fazlin bte Abu Samad
(4) Muhammad Faizzul bin Abu Samad

… *Claimants*

And

Colex Environmental Pte Ltd

… *Respondent*

JUDGMENT

[Employment Law] — [Work Injury Compensation Act] — [Substantial question of law]

[Employment Law] — [Work Injury Compensation Act] — [Employer's liability for compensation] — [Accident arising out of employment]

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v
Colex Environmental Pte Ltd

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29 May 2019 Judgment reserved.

Chan Seng Onn J:

Introduction

1 What was expected to be an ordinary day at work for 62 year-old Abu Samad bin Omar ("the Deceased") took an unfortunate turn when he succumbed to his ischaemic heart disease at his workplace.[1]

2 The Assistant Commissioner decided that the Deceased's death was caused by his own medical condition and did not arise out of his employment. Accordingly, the Deceased's next-of-kin ("the claimants") were not entitled to a payout by Colex Environmental Pte Ltd ("the employer") and NTUC Income Insurance Co-operative Limited ("the insurer"), the employer's insurer.[2] They filed the present appeal against the Assistant Commissioner's decision.

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1 Defendant's Bundle of Documents ("DBOD") at Tab D, p 22.

2 Record of Appeal ("ROA") at p 15, para 36.

Facts

3 On the fateful morning of 19 July 2017, the Deceased reported to work at about 7.30am. At about 8.00am, he had breakfast with three other colleagues, Shamsudin bin Sumri ("Shamsudin"),[3] Marof bin Atan ("Marof") and Munusamy A/L Perumalu[4] ("Munusamy").[5] The mood was jovial, as the parties were discussing the upcoming Hari Raya celebrations, and were joking and laughing with one another.[6]

4 After breakfast, at about 9.00am, Shamsudin, Marof and Munusamy (collectively, "the trio") went to a shed where four green refuse bins were located. Shamsudin upturned all four bins so that their wheels were facing skywards. After upturning the bins, the trio's task was to remove their wheels by using implements to unscrew and dislodge the wheels from the bins.[7]

5 Each of the three of them attended to one bin each, leaving one bin ("the fourth bin") unattended.[8]

6 At about 9.30am, the Deceased, who was employed as a driver,[9] arrived at the shed and offered his assistance,[10] as he sometimes did.[11] Nobody had asked the Deceased to remove the wheels.[12] According to the trio, the Deceased helped

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3 Name incorrect in GD. See ROA p 27.

4 Name incorrect in GD. See ROA p 41.

5 ROA p 4, para 4.

6 ROA p 4, para 4.

7 ROA p 5, para 4.

8 ROA p 30.

9 ROA p 4, para 2.

10 ROA pp 29, 39, 42.

11 ROA pp 44.

to unscrew the screws on the fourth bin.[13] While helping, he was also laughing and joking with the trio,[14] who had their backs turned against him.[15]

7 Suddenly, the Deceased stopped talking.[16] When Shamsudin and Munusamy turned around, they saw the Deceased collapsing, and they supported him and put him on the ground.[17] Shamsudin and Marof then went to the office to report the incident, and an ambulance was called.[18]

8 The Deceased was sent to Ng Teng Fong General Hospital, where he was subsequently pronounced dead. The cause of his death was ischaemic heart disease.[19] According to the report of Dr Audrey Yeo, prepared on 24 August 2017, shortly after the Deceased's death, the Deceased's "[i]schaemic heart disease can give rise to heart failure or potentially fatal cardiac arrhythmias, the latter manifesting as sudden unexpected death, be it at rest, or with physical exertion. Accordingly, it would not be possible to predict if any specific activity at work contributed to his death."[20]

9 On 12 October 2017, the Ministry of Manpower issued a Notice of Assessment of Compensation, stating that the employer was to pay $181,421.73[21] ("the assessed sum") as compensation to the Deceased's

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12 ROA pp 30, 37, 43.

13 ROA pp 30, 37, 44.

14 ROA pp 31, 37, 43.

15 ROA pp 31, 38.

16 ROA pp 31, 38, 43.

17 ROA pp 31, 38, 43.

18 ROA p 43.

19 DBOD Tab D, p 22.

20 DBOD Tab F, p 27, paras 4–5.

21 DBOD Tab H, p 32.

surviving next-of-kin, who are the claimants in the present suit.

10 On 26 October 2017, the employer's insurer submitted its objection to the Notice of Assessment as it was of the "view that [the Deceased's] death was due to his own medical condition and not caused by or aggravated arisen [*sic*] out of and in the course of his employment."[22]

11 A hearing was thus arranged before the Assistant Commissioner.

The Assistant Commissioner's decision

12 An employee's entitlement to compensation for workplace injury is founded on s 3(1) of the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("WICA"), which provides:

> **Employer's liability for compensation**
>
> 3.—(1) If in any employment personal injury by *accident arising out of and in the course of the employment* is caused to an employee, his employer shall be liable to pay compensation in accordance with the provisions of this Act. [emphasis added]

13 The key dispute before the Assistant Commissioner was whether the Deceased's injury had arisen "out of and in the course of his employment".

14 In this regard, the Assistant Commissioner found that "[t]here is no evidence of exertion by the Deceased" as "[n]o one had seen the Deceased removing any screws or any wheels."[23] Further, he found that there was an "absence of a triggering event connected to the Deceased's employment".[24] This was on the basis that "the so-called "work" that the Deceased was going to

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22 DBOD Tab I, p 37.

23 ROA pp 9 – 10, para 23.

24 ROA p 15

perform at the place of employment had not yet commenced",[25] and that the Deceased's "heart condition was in a very bad condition before his demise".[26] Accordingly, he dismissed the claimants' claim as they had "failed to establish the causal link between the heart attack and the Deceased's employment."[27]

15 The claimants appealed against the Assistant Commissioner's decision.

Preliminary issue: substantial questions of law raised

16 Before considering the substantive issues proper, the preliminary issue is whether there is a substantial question of law raised in the present case. In this respect, s 29(2A) WICA stipulates that

> No appeal shall lie against any order [of the Commissioner] unless a *substantial question of law* is involved in the appeal and the amount in dispute is not less than $1,000. [emphasis added]

Hence, an appeal against the Assistant Commissioner's decision must be based on "a substantial question of law" and the amount in dispute must not be less than $1,000. The latter requirement is not disputed in this case, as the assessed amount payable to the claimants far exceeds $1,000 (see [9] above).

17 As for the substantial question of law, the courts have described the following as constituting errors of law (*Karuppiah Ravichandran v GDS Engineering Pte Ltd* [2009] 3 SLR(R) 1028 ("*Karuppiah*") at [13], also cited in *Pang Chew Kim v Wartsila Singapore Pte Ltd* [2012] 1 SLR 15 ("*Pang Chew Kim*") at [20]):

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[25] ROA p 11, para 28.

[26] ROA p 12, para 30.

[27] ROA p 15, para 36.

> Errors of law include misinterpretation of a statute or any other legal document or a rule of common law; asking oneself and answering the wrong question, taking irrelevant considerations into account or *failing to take relevant considerations into account* when purporting to apply the law to the facts; admitting inadmissible evidence or *rejecting admissible and relevant evidence*; exercising a discretion on the basis of incorrect legal principles; giving reasons which disclose faulty legal reasoning or which are inadequate to fulfil an express duty to give reasons, and *misdirecting oneself as to the burden of proof*. [emphasis added]

18 In addition, "a factual finding which was such that 'no person acting judicially and properly instructed as to the relevant law could have come to the determination upon appeal' amount[s] to a misconception or error in point of law" (*Pang Chew Kim* at [20]). These must be "findings that no person would have come to if he had applied the law properly. It does not mean that every manifestly wrong finding of fact amounts to an error of law" (*Karuppiah* at [16]).

19 For example, in *Next of kin of Ramu Vanniyar Ravichandran v Fongsoon Enterprises (Pte) Ltd* [2008] 3 SLR(R) 105 ("*Ramu Vanniyar*"), Choo Han Teck J found that errors in finding of fact that stemmed from errors of law had been made by the Commissioner. Accordingly, Choo J held that there were substantial questions of law that had been raised, and allowed the appeal.

20 In *Ramu Vanniyar*, the deceased workman had been engaged on a part-time basis by Meera, the foreman of the respondent company. The key issue was whether the deceased was in the employment of the respondent company. This issue turned on whether Meera had authority to engage the services of the deceased.

21 The Commissioner held that Meera had no such authority, and that the deceased was therefore never in the respondent's employment. Further, even if

the deceased was an employee of the respondent, his death did not arise "out of and in the course" of that employment as he had gone on a frolic of his own in using the forklift which he was not authorised to handle. The Commissioner thus concluded that the respondent was not liable to pay compensation to the claimants.

22 On appeal, Choo J held that questions of law had been raised as the Commissioner had erroneously applied agency principles and failed to consider the presumption in s 3(4) WICA. The Commissioner's misapplication of the law led to the erroneous findings of fact that Meera had no authority to engage the deceased, and caused him to fail to find, pursuant to the unrebutted s 3(4) WICA presumption, that the accident had arisen in the course of the deceased's employment. Accordingly, the appeal was allowed.

23 The decision of *Ramu Vanniyar* thus demonstrates that errors of fact may constitute errors of law if they flow from errors of law in the first place.

24 In this case, for reasons to be elaborated on at [43] to [45], the Assistant Commissioner had similarly failed to apply the presumption in s 3(6) WICA correctly, with the result that he wrongly placed the burden of proof on the claimants rather than the employer.

25 Additionally, the Assistant Commissioner's observation that there was "a *clear absence* of uncontroverted evidence that the deceased was working *before* he collapsed"[28] [emphasis added] was directly contradicted by the evidence proffered by the trio. In fact, as will be explained at [49] to [55] below, it appears that the Assistant Commissioner had completely ignored the trio's evidence to the contrary (*ie,* that they had seen the Deceased working before he

[28] ROA p 11, para 28.

collapsed). This amounts to a failure to take into account relevant considerations as well as a disregard of admissible and relevant evidence: namely, the evidence of the trio as to whether the Deceased had been working prior to his collapse.

26 Given that the Assistant Commissioner's erroneous application of the s 3(6) WICA presumption and his failure to take into account the relevant evidence of the trio directly led to his complete denial of the claimants' claim, "substantial questions of law" are raised. The court is thereby vested with jurisdiction to entertain the appeal.

Elements of a work injury compensation claim

27 Turning to the substantive dispute, the present claim is based on s 3(1) WICA. In *NTUC Income Insurance Co-operative Ltd and another v Next of kin of Narayasamy s/o Ramasamy, deceased* [2006] 4 SLR(R) ("*NTUC Income*") at [20], Sundaresh Menon JC ("Menon JC") (as he then was) stipulated three requirements for triggering an employer's liability to pay compensation:

> (a) the workman has suffered a personal injury (the "first requirement");
>
> (b) the injury has been caused by an accident (the "second requirement"); and
>
> (c) the accident arose out of and in the course of his employment (the "third requirement").

28 It is not disputed that the Deceased, who succumbed to a heart attack,[29] suffered a personal injury in the form of his death. The first requirement is thus satisfied.

The injury was caused by an accident within the meaning of WICA

29 The second requirement pertains to whether the Deceased's death (*ie,* the injury) had been caused by an accident.[30]

30 One important question is what is an "accident" under s 3(1) WICA.

31 In *NTUC Income* at [24], Menon JC observed that an accident "would include an *internal medical condition that caused an unexpected injury* while the worker was carrying out his work" [emphasis added]. Two observations can be made about this passage.

(a) First, "in assessing whether an event is an accident within the meaning of the Act, it is material to consider this from the *point of view of the workman* and not from the point of view of one with actual knowledge of the circumstances including any pre-existing medical conditions" [emphasis added] (*NTUC Income* at [30]).

(b) Secondly, while Menon JC's observation included the phrase "while the worker was carrying out his work", I do not think this is an additional requirement for an incident to constitute an accident for the purposes of s 3(1) WICA. As Menon JC noted in the same decision, even "rupturing an aneurism when tightening a nut with a spanner may be regarded as an accident" (*Clover Clayton & Co, Limited v Hughes* [1910] AC 242 at 245–246, per Lord Loreburn LC; cited with approval in *NTUC Income* at [23]). Similarly, in *Pang Chew Kim*, where it was shown that the workman's death (*ie,* the injury) was, on a balance of probabilities, caused by cardiac arrest (*ie,* the accident that stemmed

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29 ROA p 8 para 16.

30 Defendant's Written Submissions at para 45.

from an internal medical condition), Tay Yong Kwang J (as he then was) had no hesitation in finding that the workman's death was caused by an accident within the meaning of s 3(1) WICA (see *Pang Chew Kim* at [25]). Hence, that "the worker was carrying out his work" is *not* an essential element for an incident to constitute an accident (see the second requirement). Instead, whether the worker was carrying out his work at the time of his accident falls properly to be considered at the third stage, where the query turns to whether the accident arose *out of* and *in the course* of the workman's employment (see the third requirement).

This reading is consistent with the ordinary meaning of "accident". The Oxford English Dictionary defines an accident as an unfortunate incident that happens unexpectedly and unintentionally, typically resulting in damage or injury. An accident is basically an unexpected mishap that happens by chance and is unintentional in nature. It is irrelevant in this regard whether the person was carrying out any work at the time when the incident occurred.

32 In this case, the Deceased suffered from "severe coronary heart disease" (the "internal medical condition"), which meant that "even low level exertion" could trigger a heart attack.[31] On the day in question, the Deceased met with an unfortunate accident in the form of a heart attack, which eventually led to his unexpected (from the point of view of the workman) death (*ie,* the personal injury). Clearly, no foul play was involved in this case. Hence the Deceased's injury was caused by an accident, thus satisfying the second requirement.

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[31] DBOD p 67.

33 The real question in dispute is therefore whether the accident (*ie,* the heart attack) *arose out of* and *in the course of* the Deceased's employment (*ie,* the third requirement). It is to this point which I now turn.

The accident arose out of and in the course of the Deceased's employment

34 There are two aspects to the third requirement of s 3(1) WICA:

(a) the accident must arise *in the course of* the workman's employment (the "first aspect"); and

(b) the accident must arise *out of* the workman's employment (the "second aspect").

The accident arose in the course of the Deceased's employment

35 In relation to the first aspect, "in the course of employment" includes work which a man is employed to do, and "natural incidents connected with the class of work" (*Charles R Davidson and Company v M'Robb or Officer* [1918] AC 304 at 321, per Lord Dunedin, cited with approval in *Pang Chew Kim* at [33]). In this regard, "WICA is a social legislation which should be interpreted purposively *in favour of employees* who have suffered injury during their employment" [emphasis added] (*Pang Chew Kim* at [37]). Broadly, "[a] simple test would be whether the accident occur[ed], as a matter of common sense, while the employee [was] at work" (*Hauque Enamul v China Taiping Insurance (Singapore) Pte Ltd and another* [2018] 5 SLR 485 at [68], citing *Allianz Insurance Co (Singapore) Pte Ltd v Ma Shoudong* [2011] 3 SLR 1167 at [16]).

36 Here, it is not disputed that the accident (*ie,* the heart attack) occurred during the time that the Deceased was on scheduled work for the employer and that it also occurred whilst he was within his employer's premises. While the

Deceased was employed as a driver, it was Shamsudin's undisputed evidence that he commonly volunteered for bin duty, and that the employers knew about his volunteering.[32] Hence, the accident clearly arose *in the course of* the Deceased's employment. The first aspect of the third requirement is satisfied.

The accident arose out of the Deceased's employment

37 This immediately triggers the presumption in s 3(6) WICA, which provides that "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" [emphasis added]. As a result, it is presumed that the heart attack arose out of the Deceased's employment.

38 To rebut this presumption, the burden is on the employer, rather than the claimants, to furnish evidence to prove that the Deceased's internal medical condition was the *sole cause* of his heart attack that led to his death. As Scott LJ noted in *Wilson v Chatterton* [1946] 1 KB 360 ("*Wilson*") at 366 (cited with approval in *NTUC Income* at [39]):

> It is only if the accidental injury has no causal connexion with the employment at all that it can be said not to arise out of it, though it may occur in the course of it. It is for that reason that the employer cannot escape liability by showing that some factor such as a disease is a predisposing or even contributing cause of the injury; *he must show that it is the sole cause*, as has been said frequently in decided cases. [emphasis added]

39 That the underlying condition must have been the *sole cause* is evident from the facts of *Wilson*. There, the workman, who had a predisposition to fits, had a fit, fell face down in water, and subsequently drowned. Despite his predisposition to the fits, the employer was held liable for the workman's drowning.

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[32] ROA p 32.

40 The point is similarly captured in the following passage of Chagla CJ's decision in *Laxmibai v Chairman & Trustees, Bombay Post Trust* AIR (41) 1954 Bom 180 at 183 (cited with approval in *NTUC Income* at [43]):

> [W]here we have a case where death is due *solely* to a disease from which the workman is suffering and *his employment has not been in any way a contributory cause*, and if death is brought about by what might be called mere wear and tear, then it may be said that the death did not arise *out of* the employment of the workman. But where the death is due to *a strain* caused while the workman is *doing the work of his employer*, and if it is established that *that strain, however ordinary, accelerated the death or aggravated the condition of the workman*, then the death could be said to have resulted *out of* the employment of the deceased. [emphasis added]

41 Having reviewed the evidence, I find that the s 3(6) WICA presumption is not rebutted. As will be explained, there is insufficient evidence to show that the Deceased's heart condition was the *sole* cause of his death. Accordingly, I reverse the Assistant Commissioner's decision, and hold that the claimants are entitled to the assessed sum pursuant to s 3(1) WICA.

(1) Error of law on the Assistant Commissioner's part

42 Before detailing my reasons, it is helpful to detail an error of law committed by the Assistant Commissioner.

43 As explained above, when the accident arises *in the course* of an employee's employment, s 3(6) WICA presumption operates such that the burden shifts to the employer to furnish evidence that the accident (which caused the injury) did *not* arise out of his employment. The Assistant Commissioner noted that the s 3(6) WICA presumption would apply in the present case.[33]

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[33] ROA p 8, para 16.

44 Nonetheless, he concluded that the employer and the insurer had successfully rebutted the presumption:

> I could not find the Deceased's demise could, ever in any stretch of imagination, be said to have arisen out of and in the course of his employment, from the facts before me. Just because the Deceased died at his workplace due to a heart attack, it can't be said to be work-related *short of evidence to show as such*. Even if the *Claimants' solicitor could show* the Deceased was indeed working, the events that transpired immediately leading to his death must be strenuous enough on the facts to trigger the said heart attack.[34] [emphasis added]

45 The quoted passage reveals that while the Assistant Commissioner was cognisant of the s 3(6) WICA presumption which he said was applicable, he did not consider that the burden laid on the employers to furnish evidence to show that the Deceased's heart condition was the *sole cause* of his demise. Instead, he stipulated that the burden laid on the claimants to furnish evidence that there were work-related events strenuous enough to trigger the Deceased's heart attack. This fundamental misunderstanding that the burden laid on the claimants, rather than the employer, is a substantial error of law on the part of the Assistant Commissioner and is best seen in the conclusion of his decision as follows:[35]

> Accordingly, on the balance of probabilities, I find that there is an absence of a triggering event connected to the Deceased's employment in this case. The *Claimant has thus failed to establish the causal link between the heart attack* and the Deceased's employment. I therefore dismiss the claim. [emphasis added]

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34 ROA p 8, para 16.

35 ROA p 15, para 36.

(2) The evidence does not show that the heart condition was the sole cause of the Deceased's death

46 Returning to my reasons for allowing the claim, I turn to consider whether there is sufficient evidence furnished by the employer to show on a balance of probabilities that the Deceased's heart condition operated as the *sole* cause of his death. If so, the s 3(6) WICA presumption would be rebutted.

47 In its attempt to prove that the Deceased's work did not contribute in any way to his heart attack, the employer relies on Dr Yeo's report, where she had observed that given that the Deceased's ischaemic heart disease could "give rise to heart failure or potentially fatal cardiac arrhythmias, the latter manifesting as sudden unexpected death, be it at rest, or with physical exertion". As such, "it would not be possible to predict if any specific activity at work contributed to his death."[36]

48 Indeed, Dr Low Li Ping ("Dr Low"), who testified for the claimants, corroborated Dr Yeo's report and concluded that the Deceased could have suffered a heart attack at rest.[37]

(A) THE DECEASED WAS NOT AT REST

49 However, the evidence demonstrates that the Deceased was not resting immediately prior to the heart attack that led to his demise. Instead, I am satisfied on a balance of probabilities that the Deceased was helping the trio with removing the wheels of the fourth bin prior to the onset of his heart attack.

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36 DBOD Tab F, p 27.

37 ROA p 54.

50 In this regard, the Assistant Commissioner found that prior to the Deceased's heart attack, "[t]here is no evidence of exertion by the Deceased. He was joking and laughing with his co-workers. The Deceased was not holding on to any implements when he collapsed. No one had seen the Deceased removing any screws or any wheels."[38]

51 The Assistant Commissioner's finding is however directly contradicted by the evidence. First, the accident report submitted by the employer on 21 June 2017, just two days after the accident, states that the Deceased was working for his employer and helping out the bin delivery team at the time when he collapsed due to the heart attack, which eventually led to his death:[39]

> [The Deceased] *is helping out* the bin delivery team when he collapsed at around 930am. He was joking with the crew *while at work* when he suddenly collapsed… Samsudin, Munusamy, Marof were the witnesses. [emphasis added]

52 The words "is helping out" and "while at work" connote that the Deceased was in the process of removing the wheels from the fourth bin, even though he did not succeed in removing any one of them prior to his collapse and subsequent demise.[40] The accident report therefore strongly suggests that the Deceased must have been exerting himself at the material time before the onset of his heart attack.

53 This is corroborated by the evidence of the trio, who all testified that the Deceased was working on removing the wheels of the fourth bin.[41] While the trio had their backs facing the Deceased at the material time when he collapsed,[42]

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38 ROA pp 9–10, para 23.

39 DBOD Tab E, p 24.

40 ROA p 41.

41 ROA pp 30, 37, 44.

this does not mean that they had not earlier seen him work on the fourth bin. I note that all the upturned bins were about chest height. Accordingly, the vision of the trio would not be obstructed should any of the trio simply turn their heads to look at the Deceased who would have been standing next to the fourth bin if he was removing its wheels. In any event, reading the trio's evidence in the appropriate context, their evidence was that they had seen the Deceased start on removing the wheels of the fourth bin *before* subsequently turning their backs on him to continue on removing the wheels of the bins which they were working on. As a result, they did not see the Deceased's actual collapse which occurred after they had turned their backs on him. The trio only turned around to see what had happened to the Deceased when they realised that the conversation with the Deceased had come to an abrupt stop:

> Examination in chief of Shamsudin[43]
>
> Q: What did you *see* [the Deceased] do?
>
> A: *He did the same thing, opening the screws.*
>
> Q: How many bins?
>
> A: 4 bins.
>
> …
>
> Q: When [the Deceased] came, what did he do?
>
> A: He took the remaining bin.
>
> Q: Can you sketch out the location of the 4 bins?
>
> Witness drew a sketch of the positions of each member, their bins and the direction of the wheels of the bin. [Assistant Commissioner] noted that [the Deceased] was positioned at the back, with the overturned bins facing him and behind the three coworkers and their bins.
>
> A: He came to volunteer, laughing with Maarof [*sic*].
>
> Q: Did you see what was [the Deceased] doing?

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42 ROA pp 31, 37, 44.

43 ROA pp 30–31.

A: I heard them but I was facing the other way.

Q: In front of you?

A: *Behind me,* he was laughing, joking and suddenly [the Deceased] stopped, when I looked back, I saw him collapsing by the side of the bin.

…

Examination in chief of Marof[44]

Q: Did you *see* [the Deceased] in the morning?

A: He was the spare driver. He came and *started to dismantle* the bins. He was trying to help, I presume.

…

Q: Do you *know* what [the Deceased] was doing when he arrived?

A: *Dismantling wheels and opening the screws*.

…

Q: In which direction was [the Deceased] facing?

A: He was at the back, away from us. We were all facing to the front.

Q: Was [the Deceased] in front or behind?

A: He was *behind us. We can't see him*.

Q: All on one bin each?

A: Each person one bin.

Q: What happened next?

A: We were all looking in front, *we did not notice he had collapsed behind us*.

…

Examination in chief of Munusamy[45]

Q: What did [the Deceased] do?

A: When we were talking, [the Deceased] and Maarof were talking about Hari Raya. I didn't see them, suddenly the

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44 ROA pp 36–37.

45 ROA pp 43–44.

> conversation stopped and when *I turned around*, I saw him collapsing so I had to catch him.
>
> …
>
> Q: What [was the Deceased] doing *just before* he collapsed?
>
> A: He was *using the T-spanner also*.
>
> [emphasis added]

54 As such, rather than there being no evidence, the accident report and the unrebutted evidence of the trio show that the Deceased had in fact been at work in removing the wheels of the fourth bin at some point of time *prior* to his collapse. That the Deceased had not succeeded in or finished removing any of the wheels of the fourth bin[46] does not disprove the point that he had been working on removing the wheels shortly before he collapsed. This is particularly as Marof, for example, had only managed to dismantle one wheel when the Deceased collapsed.[47] It is therefore not out of the ordinary that no wheels had been removed by the Deceased prior to his sudden collapse.

55 Additionally, contrary to the employer's submission,[48] that the Deceased had been talking and joking with the trio prior to his sudden collapse does not prove the fact that he had not been working on removing the wheels of the fourth bin at some point of time before his collapse; talking and working are not mutually exclusive activities.[49]

56 This case is therefore distinguishable from *Chua Jian Construction and another v Zhao Xiaojuan (deputy for Qian Guo Liang)* [2018] SGHC 98 ("*Zhao Xiaojuan*"), which was relied on by the Assistant Commissioner in coming to

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46 ROA p 41.

47 ROA p 40.

48 Defendant's Written Submissions at para 104.

49 See ROA p 54, line 5.

his decision.[50] In *Zhao Xiaojuan*, the workman was employed in construction sites. On the material day, at about 5.00pm, his colleagues found him lying motionless on the ground. He was subsequently transmitted to National University Hospital and diagnosed as having an intracerebral haemorrhage. The Ministry of Manpower assessed that the employer was to compensate $272,500 to the workman under WICA. The employer objected to the compensation, but the Assistant Commissioner of Labour dismissed their objections.

57 On appeal, Choo J noted that in the case, there was only evidence of the workman's stroke, and "no evidence that it was brought about by an exertion" (*Zhao Xiaojuan* at [16]). As the evidence before the court only went to showing that the workman's injury was caused by his internal medical condition, the employer's appeal was allowed, and the workman was not entitled to a claim.

58 The present case is not one with a complete dearth of evidence; in fact, the evidence from the trio when read in its proper context was that the Deceased had been observed by the trio at certain intermittent points of time (albeit not continuously) to have been carrying out the work of removing the wheels of the fourth bin *prior* to his collapse (see [51]–[53] above). It is therefore immediately distinguishable from *Zhao Xiaojuan*.

59 Accordingly, I find that there was exertion on the Deceased's part prior to his heart attack, which was the accident that led to his death.

(B) A SLIGHT EXERTION WAS ENOUGH TO TRIGGER THE DECEASED'S HEART ATTACK

60 In relation to the exertion on the Deceased's part, Dr Leslie Tay ("Dr Tay"), who gave evidence for the employer, opined in his report that there was

[50] ROA p 11, para 27.

"no basis to conclude that any of [the Deceased's] activities at work on the day of demise caused or contributed to his death".[51] However, his opinion was based on him having been told that the Deceased was "not removing any of the wheels"[52] at the material time, which is directly inconsistent with my conclusion at [59] above.

61 During re-examination, Dr Tay was asked if his opinion would have changed had the Deceased been seen working.[53] In response, Dr Tay noted vividly that the Deceased's heart condition was "so poor that even a sneeze could cause his heart to collapse."[54] Similarly, Dr Low testified that any physical exertion, including "working on the garbage bins to unscrew the wheel", had a high chance of triggering the Deceased's heart attack.[55] Hence, on the basis that the Deceased was removing the wheels of the bin prior to his collapse, both doctors who testified for the employer and the claimants were in agreement that the Deceased's heart condition was so severe that even a slight exertion could trigger a heart attack.[56]

62 In summary, the medical evidence was thus as follows:

(a) First, the Deceased's heart attack could be caused solely by his heart condition when the Deceased was resting and doing no physical work such as working on the wheels of the bin prior to his collapse;

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51 DBOD p 63.

52 ROA p 60.

53 ROA p 60.

54 ROA p 58.

55 ROA p 54.

56 Dr Low Li Ping: ROA pp 46-47, 52, 55. Dr Leslie Tay: ROA pp 56, 58, 60

(b) Secondly, the Deceased's heart attack could have been triggered by a slight exertion, which would include the strain of him working on the wheels of the bin prior to his collapse.

63 That the Deceased's heart attack *could* have been caused solely by his heart condition while the Deceased was at rest is insufficient to rebut the s 3(6) WICA presumption. As Menon JC concluded in *NTUC Income* (at [46]), after reviewing the authorities:

> … It also *does not matter that the workman had a pre-existing medical condition such that the injury could have happened at any time, even in his sleep*. What is material is that something in fact transpired in the course of his work which made the injury occur when it did. [emphasis added]

64 Both doctors did not testify that if the Deceased had been removing the wheels of the bin, it remains improbable that the exertion and strain of doing so would have triggered the heart attack. If so, the employer would have succeeded in rebutting the presumption and the employer would have proved on a balance of probabilities that, notwithstanding the Deceased's act of removing the wheels of the bin, the Deceased's heart condition was the sole cause of the accident and the accident did not therefore arise out of his employment. Without such testimony on the doctors' part, it is mere speculation that the Deceased's death was caused *solely* by his heart condition.

65 In the circumstances, the s 3(6) WICA presumption is unrebutted, and I find that the Deceased's death which was caused by the accident in the form of a heart attack arose "out of … the employment" of the Deceased. Accordingly, the second aspect of the third requirement is also satisfied.

66 Although it is not necessary for me to do so, I am prepared to go further to find on the evidence that given (a) the Deceased's very poor heart condition,

(b) the Deceased's physical exertion of removing the screws to the wheels of the fourth bin, and (c) the short interval of time between that physical exertion and the onset of the Deceased's heart attack, the claimants have proven on a balance of probabilities that, even though the physical exertion was not the sole cause of the Deceased's heart attack, it had triggered his fatal heart attack. Hence, even if the s 3(6) WICA presumption does not apply to assist the claimants, I find that the accident arose out of the Deceased's employment.

Conclusion

67 All three requirements for establishing the employer's liability to compensate the claimants under s 3(1) WICA are made out. Accordingly, I allow the appeal, and order that the assessed sum be paid to the claimants.

68 I will hear parties on costs if not agreed.

Chan Seng Onn
Judge

Tan Sia Khoon Kelvin David and Sara Ng Qian Hui (Vicki Heng Law Corporation) for the claimants;
Appoo Ramesh (Just Law LLC) for the respondent.