Huationg (Asia) Pte Ltd *v* Lonpac Insurance Bhd
[2015] SGHC 326

Case Number : District Court Appeal No 8 of 2015

Decision Date : 23 December 2015

Tribunal/Court : High Court

Coram : George Wei J

Counsel Name(s) : Teo Weng Kie and Loh Ling Wei (Tan Kok Quan Partnership) for the appellant; Raymond Wong and John Lo Ying Xi (Wong Thomas & Leong) for the respondent.

Parties : HUATIONG (ASIA) PTE LTD — LONPAC INSURANCE BHD

Contract – Contractual terms

Insurance – Liability insurance – Employer's

23 December 2015 Judgment reserved.

George Wei J:

1 This is an appeal against the decision of the learned District Judge ("the DJ") to allow an insurer's claim against an employer for the reimbursement of a sum of $140,000 which the insurer had paid in respect of a Work Injury Compensation Insurance Policy.

Background

Parties

2 Lonpac Insurance Bhd ("the Respondent") is a Malaysia-incorporated company and carries on, in Singapore, the business of insurance as authorised by the Monetary Authority of Singapore in accordance with the Insurance Act (Cap 142, 2002 Rev Ed).

3 Huationg (Asia) Pte Ltd ("the Appellant") is a Singapore-incorporated company and carries on the business of, *inter alia*, supplying cranes and operators of such cranes for use in the construction industry.

4 From 22 August 2010 to 21 August 2011, the Appellant maintained a Work Injury Compensation Insurance policy with the Respondent ("the Policy") in accordance with s 23 of the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("the Act"). For ease of narration, I will refer to the regime established by the Act, including the relevant subsidiary legislation, as the "WICA Regime". Under the Policy, the Respondent agreed to indemnify the Appellant against all liabilities that the Appellant might incur under the Act in respect of any injury suffered by, *inter alia*, the Appellant's employees as a result of any accident arising out of and in the course of his employment.

5 Under s 23(1) of the Act, the employer is obligated to insure and maintain insurance under an approved policy with an insurer against all liabilities which he may incur under the Act in respect of any employee employed by him. An "approved policy" is defined in s 23(4) as a policy of insurance not subject to any conditions, exclusions or exceptions prohibited by regulations made under the Act. I note in passing that the reference to "exclusions" was added in 2012. I also note that an employer

who fails to maintain an approved policy is guilty of an offence under s 35(1)(*b*).

Circumstances leading up to the Suit

6 The following facts are undisputed. The Appellant was the employer of Tan Thian Kok ("the Deceased Employee") who had been deployed as a crane and hoist operator at a work site at Halifax Road.

7 On 26 June 2011, the Deceased Employee's deployment began at 8pm and was scheduled to end at 8am the following day. During the deployment, the Deceased Employee sought and was granted permission to leave the worksite on his motorcycle to purchase food. There was no canteen or food available at the work site. While travelling on his motorcycle, the Deceased Employee met with a fatal road traffic accident in the early hours of 27 June 2011 ("the Accident").

8 On or about 31 October 2011, the Commissioner of Labour ("the Commissioner"), in the exercise of his power under s 24 of the Act, assessed the amount of compensation payable to the dependants or the estate of the Deceased Employee to be $140,000 ("the Assessed Compensation"). Thereafter, a Notice of Assessment of Compensation ("the Notice of Assessment") was served on both the Appellant and Respondent.

9 On 11 November 2011, the Respondent lodged an objection to the Notice of Assessment. Consequently, the Commissioner directed parties to attend pre-hearing conferences which were conducted by an Assistant Commissioner.

10 During the pre-hearing conferences, the Respondent, through its representatives, averred that it was not liable to pay the Assessed Compensation by virtue of an exception ("the Motorcycling Exception") found under the "Travelling To & From Work Extension (Within Singapore Only)" extension clause ("the Travelling Extension") within the Policy Schedule. The Travelling Extension reads as follows:

> TRAVELING TO & FROM WORK EXTENSION (WITHIN SINGAPORE ONLY)
>
> IT IS HEREBY DECLARED AND AGREED THAT THIS INSURANCE SHALL ONLY APPLY TO AN EVENT HAPPENING TO A WORKMAN ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT BY THE [APPELLANT].
>
> THE FOLLOWING EVENTS SHALL ALSO BE DEEMED TO BE ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WHEN OCCURRING WHILST THE WORKMAN ON ANY WORKING DAY :–
>
> (1) IS TRAVELLING DIRECTLY BETWEEN HIS PLACE OF RESIDENCE AND PLACE OF EMPLOYMENT AND ANY OTHER PLACE FOR THE PURPOSE OF HIS EMPLOYMENT AND VICE VERSA
>
> (2) IS HAVING A MEAL BREAK
>
> PROVIDED THAT :–
>
> A) ANY SUCH EVENT GIVING RISE TO A CLAIM UNDER THIS POLICY IS NOT INCURRED DURING OR AFTER ANY SUBSTANTIAL INTERRUPTION OR DEVIATION FROM THE JOURNEY MADE FOR A REASON UNCONNECTED WITH HIS EMPLOYMENT WHICH WOULD ORDINARILY HAVE MATERIALLY ADDED TO THE RISK OF INJURY
>
> B) THE INSURED BENEFITS SHALL BE ASSESSED IN ACCORDANCE WITH THE ACT BUT ALWAYS

LIMITED TO S$10,000.00 PER WORKMAN IN RESPECT OF DEATH, PERMANENT INCAPACITY AND MEDICAL EXPENSES (EXCLUDE INDEMNITY FOR WAGES).

NOTWITHSTANDING THE ABOVE, THE [RESPONDENT] WILL NOT INDEMNIFY THE WORKMEN INSURED UNDER THE POLICY FOR ANY INJURY ARISING OUT OF OR IN CONNECTION WITH MOTORCYCLING OR PILLION RIDING OR ANY FORMS OF TWO WHEELER TRANSPORT.

SUBJECT OTHERWISE TO THE TERMS, CONDITIONS AND EXCEPTIONS OF THE POLICY.

[emphasis added in bold italics]

The Respondent took the view that the Motorcycling Exception (highlighted in bold italics above) excluded its liability under the Policy from any injury arising out of or in connection with motorcycling. On that basis, the Respondent contended that it was not liable to pay the Assessed Compensation since the Deceased Employee had been travelling on his motorcycle when he met with the Accident.

11 On 19 March 2012, at the third pre-hearing conference, the Assistant Commissioner indicated that the Respondent was compellable under the Act to pay the Assessed Compensation to the dependants of the Deceased Employee. In those circumstances, and in order to save costs, the Respondent consented at the third pre-hearing conference to pay the Assessed Compensation.

12 A Certificate of Order was made on 21 March 2012 on the following terms:

> By consent, without admission of any liability, and without prejudice to any recourse which [the Respondent] may have against [the Appellant] in civil proceedings, [the Respondent] to pay … the [Assessed Compensation]…

13 On 9 April 2012, the Respondent paid to the Commissioner the Assessed Compensation in accordance with the said Certificate of Order. It is not disputed that the Respondent's payment sufficiently discharged the Appellant's liability to pay the Assessed Compensation to the dependants of the Deceased Employee.

The Suit

14 On 3 August 2012, the Respondent brought an action against the Appellant for reimbursement for the sum of $140,000 which they had paid as the Assessed Compensation ("the Suit"). The Respondent's case was that it was not contractually obliged to pay the compensation but did so by virtue of legislation. Therefore, the Respondent claimed to be entitled to a reimbursement by the Appellant under the Policy.

15 The Appellant resisted the claim on the basis that the Motorcycling Exception was only applicable to cases that fell within the Travelling Extension and was not of general application to all cases that would be covered by the Policy independent of the Travelling Extension. Since it was conceded that the Accident clearly "arose out of and in the course of employment", it fell outside of the Travelling Extension and the Motorcycling Exception was consequently inapplicable. Further and in the alternative, the Appellant claimed that the Motorcycling Exception was prohibited by law, *viz*, reg 2(1) of the regulations made under the Act ("the WICA Regulations"). For these reasons, the Appellant contended that the Respondent had no right of recovery against the Appellant.

16 As mentioned earlier, the DJ rendered his judgment in favour of the Respondent in the sum of $140,000. The DJ's key findings are summarised below:

(a) The Motorcycling Exception was not prohibited by reg 2(1) of the WICA Regulations.

(b) The Motorcycling Exception applied to incidents that were covered by the entire Policy, not only those that were covered by the Travelling Extension.

(c) The Respondent had paid the Assessed Compensation as it was legally compellable to do so and in doing so, the Respondent had discharged the Appellant's liability under the Act.

(d) The Respondent was entitled to recover the sum it had paid as the Assessed Compensation as it is a contractual term that the Appellant shall repay to the Respondent all sums paid by the Respondent which the Respondent would not have been liable to pay but for the legislation ("the Avoidance and Recovery Clause").

17 Where necessary, I will discuss the DJ's findings in greater detail.

Issues arising in this appeal

18 The appeal turns largely on a construction of two clauses, namely: (1) the Motorcycling Exception that is found within the Travelling Extension; and (2) the Avoidance and Recovery Clause. The Appellant's arguments on appeal may be broadly characterised as follows:

(a) First, the DJ erred in construing the Motorcycling Exception as being of general application to all cases that would be covered by the Policy.

(b) Second, the Respondent was not entitled to rely on the Avoidance and Recovery Clause in the Policy.

19 The crux of the matter is whether the DJ was correct in determining that the Respondent was entitled, under the Policy and in these circumstances, to recover what it had paid out to the estate of the Deceased Employee. With this in mind, I turn now to the legal issues engaged by this appeal.

Analysis and decision

The legal and regulatory backdrop

20 The employer's liability for compensation under the Act is set out in s 3 of the same. The relevant portions of s 3 read as follows:

> **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.
>
> (2) An accident happening to an employee while he is, with the express or implied permission of his employer, travelling as a passenger by any means of transport to or from his place of work ***shall be deemed*** to arise out of and in the course of his employment if at the time of the accident the means of transport is being operated by or on behalf of his employer or by some other person by whom it is operated in pursuance of arrangements made with his employer and is not being operated in the ordinary course of a public transport service. …

[emphasis added in bold italics]

21 In brief, an employer is liable to compensate his employee for accidents "arising out of and in the course of the employment": s 3(1) of the Act. Journeys undertaken by an employee to and from work are deemed to arise out of and in the course of employment only where the transport was operated or arranged by the employer: s 3(2) of the Act. At this juncture, it is apposite to note that the transport in question (*ie*, the motorcycle that was operated by the Deceased Employee) was not operated or arranged by the Respondent. This brings the Accident outside the scope of s 3(2) of the Act. That said s 3(2) is merely a deeming provision. This is discussed further below at [34].

22 Prior to 2011, in Singapore, there was no judicial definition of the words "arising out of and in the course of employment" under the Act. There were, however, English cases that had interpreted a similar or equivalent expression.

23 The first local exposition of the meaning of the above phrase was only decided after the issuance of the Policy. In *Allianz Insurance Co (Singapore) Pte Ltd v Ma Shoudong* [2011] 3 SLR 1167 ("*Ma Shoudong*"), Lai Siu Chiu J (as she then was) found that the phrase contained two operative concepts, *viz*: arising in the course of employment; and (b) arising out of employment. An accident has to satisfy both requirements before it qualifies for compensation under s 3(1) of the Act. After reviewing a number of English authorities, Lai J found:

> 1 5 *On the authorities, it is clear that an accident arising out of the employment requires a causal connection between (a) the employment (and its incidents) and (b) the accident.* A direct or physical causation is not necessary: *Smith v The Australian Woollen Mills Limited* (1933) 50 CLR 504 at 517–518 per Starke J. But the causative standard is higher than the "but for" test. The accident must have arisen because of some intrinsic risk in the nature of the employment. As Lord Sumner put it in *Lancashire and Yorkshire Railway v Highley* [1917] AC 352 (at 372):
>
> > Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury?
>
> 1 6 *In contrast, 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. An elaboration of this test was provided by Lord Wright in *Weaver v Tredegar Iron and Coal Company, Limited* [1940] AC 955 (at 973):
>
> > It has long been held that the course of the employment is not determined by the time at which a man is actually occupied on his work. There may be intermissions during the working hours when he is not actually working as, for instance, ***times for meals or refreshments*** , or absences for personal necessities. And the course of the employment may begin or end some little time before or after he has downed tools or ceased actual work.
>
> [emphasis added in italics and bold italics]

24 I pause briefly to note that it appears to be well-settled in English law that in the absence of special circumstances, meal breaks are generally considered to be arising out of and in the course of employment. Indeed, the Appellant accepts that this is the position at common law. [note: 1] The significance of this observation will become clearer later in this judgment.

25 In *Armstrong, Whitworth & Co v Redford* [1920] 1 AC 757, a machinist left the works where she was employed during the dinner hour, as the rules required, and went to a canteen provided by the

employers in another part of the premises. The workers were invited, but not obliged, to use the canteen. After finishing her dinner, the girl was hurrying down a flight of stairs in order to return to her work when she slipped and broke her ankle. She claimed compensation under the Workmen's Compensation Act 1906. The dispute centred on the issue of whether the injury arose in the course of as well as out of the employment. By a majority of 3:2, the House of Lords held in the affirmative. Lord Parmoor (part of the majority) said (at 778):

> "'In the course of employment' does not mean during the currency of the engagement, but means in the course of the work which the workman is employed to do and what is incident to it." I think that a mid-day meal may be incidental to an employment such as that of the respondent, which commenced at six in the morning, and that *the taking of such a meal did not as a matter of law in itself, and apart from special circumstances, create an interruption in the course of her employment.* There are no special circumstances in the present case such as for instance arise when an employee is away from his work not in the course of employment, but for his own pleasure or business.

26 In *Weaver v Tredegar Iron and Coal Company, Limited* [1940] AC 955 ("*Weaver*"), a case that was referred to in *Ma Shoudong*, the House of Lords held that breaks for meals or refreshments are deemed to be "in the course of employment". At 973, it was said:

> It has long been held that the course of the employment is not determined by the time at which a man is actually occupied on his work. There may be intermissions during the working hours when he is not actually working as, for instance, times for meals or refreshments, or absences for personal necessities. And the course of the employment may begin or end some little time before or after he has downed tools or ceased actual work.

27 It was subsequently held in *Harvey v O'Dell (RG), Galway, Third Party* [1958] 2 QB 78 that an accident during a journey from one work site to another with a deviation to collect tools and have a meal break had arisen in the course of employment under the equivalent English Act. It was further held that the same result would follow if the primary purpose of the journey was to get a meal since the journey was fairly incidental to the work that the employees were instructed to do (at 102). It was an all-day job and no instructions were given that the men should take food with them. Further, the employees were paid subsistence money and their travelling time was counted as working time.

28 Keeping in mind the employer's liability for compensation under s 3(1) of the Act, s 23 as noted earlier obligates an employer to insure and maintain insurance against all liabilities which he may incur under the provisions of the Act in respect of his employees unless the obligation is waived by the Minister. It was in this regulatory context that the Appellant purchased insurance coverage from the Respondent. The insuring clause of the Policy ("the Insuring Clause") provides:

> **NOW THIS POLICY WITNESSETH** that if any employee described in the Schedule in the Insured's employment shall sustain personal injury by accident or disease caused during the Period of Insurance and arising out of and in the course of his employment by the Insured in the Business, the Company will subject to the terms exceptions conditions and warranties, and any memorandum if applicable, contained herein or endorsed hereon (all of which are hereinafter collectively referred to as the Terms of this Policy) *indemnify the Insured against all sums for which the Insured shall be liable to pay compensation either under the Legislation or at Common law*, and will in addition pay all costs and expenses incurred by the Insured with the written consent of the Company.
>
> [emphasis added]

The effect of the Motorcycling Exception

29 It bears recalling that the DJ determined that, notwithstanding the fact that the Motorcycling Exception was found in the Travelling Extension, it applied to the entire Policy. For ease of reference, I set out the Travelling Extension again:

> TRAVELING TO & FROM WORK EXTENSION (WITHIN SINGAPORE ONLY)
>
> IT IS HEREBY DECLARED AND AGREED THAT THIS INSURANCE SHALL ONLY APPLY TO AN EVENT HAPPENING TO A WORKMAN ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT BY THE [APPELLANT].
>
> THE FOLLOWING EVENTS SHALL ALSO BE DEEMED TO BE ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WHEN OCCURRING WHILST THE WORKMAN ON ANY WORKING DAY :–
>
> (1) IS TRAVELLING DIRECTLY BETWEEN HIS PLACE OF RESIDENCE AND PLACE OF EMPLOYMENT AND ANY OTHER PLACE FOR THE PURPOSE OF HIS EMPLOYMENT AND VICE VERSA
>
> (2) IS HAVING A MEAL BREAK
>
> PROVIDED THAT :–
>
> A) ANY SUCH EVENT GIVING RISE TO A CLAIM UNDER THIS POLICY IS NOT INCURRED DURING OR AFTER ANY SUBSTANTIAL INTERRUPTION OR DEVIATION FROM THE JOURNEY MADE FOR A REASON UNCONNECTED WITH HIS EMPLOYMENT WHICH WOULD ORDINARILY HAVE MATERIALLY ADDED TO THE RISK OF INJURY
>
> B) THE INSURED BENEFITS SHALL BE ASSESSED IN ACCORDANCE WITH THE ACT BUT ALWAYS LIMITED TO S$10,000.00 PER WORKMAN IN RESPECT OF DEATH, PERMANENT INCAPACITY AND MEDICAL EXPENSES (EXCLUDE INDEMNITY FOR WAGES).
>
> ***NOTWITHSTANDING THE ABOVE, THE [RESPONDENT] WILL NOT INDEMNIFY THE WORKMEN INSURED UNDER THE POLICY FOR ANY INJURY ARISING OUT OF OR IN CONNECTION WITH MOTORCYCLING OR PILLION RIDING OR ANY FORMS OF TWO WHEELER TRANSPORT.***
>
> SUBJECT OTHERWISE TO THE TERMS, CONDITIONS AND EXCEPTIONS OF THE POLICY.
>
> [EMPHASIS ADDED IN BOLD ITALICS]

Location of the Motorcycling Exception

30 The Appellant's first argument was based on the location of the Travelling Extension. It argued that if the Motorcycling Exception were intended to apply to the entire Policy, it ought to have been placed within the General Exclusions section (that is found in another part of the Policy) *or* inserted as a standalone endorsement. In its view, the failure to do so meant that the Motorcycling Exception only applied to the Travelling Extension.

31 This argument is premised on the Appellant's view that the Travelling Extension was meant to broaden the insurance coverage to cover accidents which would otherwise *fall outside* of the scope of the employer's liability under the Act. In other words, the injuries falling within the Travelling Extension are separate and distinct from those falling within the rest of the Policy. The Appellant cites

the following examples to illustrate its point.

(a) The Travelling Extension covers events occurring whilst the workman "is travelling directly between his place of residence and place of employment and any other place for the purpose of his employment". In the Appellant's view, this is broader in scope as compared to s 3(2) of the Act which only includes journeys undertaken by an employee to and from work where the transport was operated or arranged by the employer.

(b) The Travelling Extension also covers meal breaks. In the Appellant's view, this part of the Travelling Extension was intended to cover the meal breaks that fall outside of the scope of the common law definition of "in the course of employment". This argument flows from Lord Parmoor's observation (mentioned at [25] above) that there may be "special circumstances" that take a meal break outside of the course of employment.

32 The Respondent disagrees with the Appellant's view that the Travelling Extension may be separated from the rest of the Policy. It argues instead that there is only one single contract of insurance that is ultimately subject to the terms contained therein. In its view, the Travelling Extension was not intended to broaden the insurance coverage; it was meant to clarify, *inter alia*, that meal breaks were considered to be arising out of and in the course of employment. This clarification was necessary since, according to the Respondent, there was uncertainty in the law as to the definition of "arising out of and in the course of employment" at the material time. It bears recalling that as at the date on which the Policy was issued, the phrase "arising out of and in the course of employment" had not been judicially defined in Singapore.

33 I agree with the Respondent's argument that there is one single contract that cannot be divided into a "main policy" and an "extension". The Travelling Extension should not be construed as an "extension" in its literal sense. Rather, in my view, the Travelling Extension serves to define, with greater precision, the scope of indemnity provided by the Policy. My view is fortified by the structure and the plain words of the Travelling Extension.

(a) The first paragraph repeats the scope of the employer's liability under the Act: "this insurance shall only apply to an event happening to a workman arising out of and in the course of employment by the [Appellant]".

(b) The second paragraph begins with the statement that "[t]he following events shall also be *deemed* to be arising out of and in the course of his employment when occurring whilst …" It then goes on to deem *meal breaks* and *journeys to and from work* as events arising out of and in the course of employment.

34 I note that the language and the structure of the Travelling Extension mirror that of s 3 of the Act. It will be recalled that s 3(1) provides that the employer's liability to compensate is engaged when the event arises out of and in the course of employment. Section 3(2) further provides that journeys to and from work on transport provided or operated by the employer are *deemed* to be arising out of and in the course of employment. Taken to its logical conclusion, the Appellant's contention would mean that s 3(2) effectively extends the scope of events that fall within s 3(1), and should be regarded as an extension that is separate from s 3(1). Surely that cannot be right. Section 3(2) sets out a deeming provision. It is not exhaustive of what constitutes an event arising out of and in the course of employment. In the absence of such a deeming provision, it does not necessarily mean that journeys to and from work other than on transport provided or operated by the employer can never be regarded as an event arising out of and in the course of employment. In such a case, it will be necessary to show that the travelling event did arise out of and in the course of

employment. Take for example an employed worker who, during his working hours, is required to leave the work site to pick up a spare part from a warehouse and uses his motorcycle as transport for that purpose. An accident occurs whilst he is travelling back from the off-site warehouse. It is hard to see why such an event, in the circumstances as proved, does not amount to an accident arising in the course of and out of the employment even in the absence of a deeming provision.

35 In my judgment, the purpose of the Travelling Extension is to expressly clarify that the Policy covers journeys to and from work as well as meal breaks, not to extend the scope of indemnity beyond what is required under the Act or common law. I would add that the Appellant's argument fails for a further reason. The Insuring Clause states that "the [Respondent] will subject to the terms exceptions conditions and warranties, and any memorandum if applicable, … *indemnify the [Appellant] against all sums for which the [Appellant] shall be liable to pay compensation either under the Legislation or at common law*". Should the event/injury fall outside the scope of the employer's liability under the Act or common law, the employer would have no liability to speak of. It would thus be pointless to broaden the insurance coverage to encompass incidents that do not fall within the scope of the employer's liability to compensate under the Act or common law.

36 I turn now to consider the Motorcycling Exception which is set out in the penultimate paragraph of the Travelling Extension. It states: "[n]otwithstanding the above, the [Respondent] will not indemnify the workmen insured under *the Policy* for any injury arising out of or in connection with motorcycling or pillion riding or any forms of two wheeler transport" [emphasis added]. On a plain reading, the Motorcycling Exception suggests that it is meant to circumscribe the scope of indemnity provided by the Policy, that is, events arising out of or in the course of employment as clarified and defined by the preceding paragraphs. The language of the Motorcycling Exception does not limit its application to events that are named in the Travelling Extension, *viz*, meal breaks or journeys to and from work.

37 In essence, I am of the view that the Appellant's interpretation of the Travelling Extension and the Motorcycling Exception contained therein is not borne out by the plain meaning of the same.

38 At this juncture, it is convenient to address the Appellant's argument on the *contra proferentum* rule of construction. In brief, the Appellant argues that if the court finds that there is ambiguity as to whether the Motorcycling Exception applies to the entire Policy or only the Travelling Extension, the *contra proferentum* rule of construction applies in its favour since the Respondent is the creator of the document. This argument fails as there is no such ambiguity. I have earlier determined that the Respondent's view (that the Motorcycling Exception applies generally to all events covered by the Policy) is borne out by the plain words of the Travelling Extension. Indeed, I am mindful that one must not use the rule to create the ambiguity – one must find the ambiguity first: *Cole v Accident Insurance Co* (1889) 5 TLR 736 at 737.

Regulatory context

39 The Appellant also argues that its interpretation of the Motorcycling Exception comports with the parties' intention as well as the regulatory context in which the Policy was drafted.

40 As mentioned earlier, by virtue of s 3(2) of the Act, accidents whilst travelling to and from work on transport provided or operated by employers are deemed to be arising out of and in the course of employment. Employers are therefore liable to compensate employees for such accidents. It has also been mentioned earlier that employers are statutorily obligated to insure against all liabilities which he may incur under the Act. If the Motorcycling Exception applies to all events occurring under the Policy, an accident that occurs whilst the employee is travelling on a motorcycle would not be

covered by the Policy even if that particular form of transport was provided or operated by the employer. Therefore, the insurance coverage would fall below what is necessary to insure against *all* liabilities that the employer would incur under the Act.

41 The Appellant appears to suggest that the parties had entered into the contract with the intention to purchase/provide an insurance policy that discharged the Appellant's statutory obligation to insure against all liabilities that it may incur under the Act. To support that contention, the Appellant points to its Group General Manager's evidence in the court below that the Appellant had purchased the Policy with the intention that the Travelling Extension expands insurance coverage beyond what is required under the Act, and not expand its risk to liability. [note: 2] The Appellant contends that the Respondent, on the other hand, had failed to discharge their burden of proving their intention and understanding of the relevant contractual provisions.

42 For these reasons, the Appellant argues that the Motorcycling Exception should not be applied to the entire policy since this interpretation would defeat the parties' intention as it would effectively mean that insurance coverage would fall below what is required by the Act.

43 In my view, the Appellant's argument fails for the simple reason that the contract is to be construed objectively, not by reference to the subjective intentions of the parties. An objective interpretation of the terms "is quite different from listening to the parties' version of what they each meant": *Quainoo v NZ Breweries Ltd* [1991] 1 NZLR 161 at 165, line 18. The distinction is further explained in the following passage from *Chitty on Contracts* vol 1 (Hugh Beale gen ed) (Sweet & Maxwell, 31st Ed, 2012) at para 12-043:

> **"Intention of the parties".** The task of construing a written agreement has often been said to be that of ascertaining the "common intention of the parties" to the agreement. But this may to some extent be misleading since it is clear that the agreement must be interpreted objectively: the question is not what one or other of the parties meant or understood by the words used but rather what a reasonable person in the position of the parties would have understood the words to mean. In *Investors Compensation Scheme Ltd v West Bromwich Building Society* Lord Hoffmann said:
>
> > "Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.
>
> The cardinal presumption is that the words of the agreement mean what the parties have in fact said, so that their words must be construed as they stand. That is to say the meaning of the document or of a particular part of it is to be sought *in the document itself*: "[o]ne must consider the meaning of the words used, not what one may guess to be the intention of the parties". However, this is not to say that the meaning of the words in a written document must be ascertained by reference to the words of the document alone. The courts will, in principle, look at all the circumstances surrounding the making of the contract and available to the parties (usually referred to as the "factual matrix" or "available background") which would assist in determining how the language of the document would have been understood by a reasonable person in their position.

44 In a similar vein, *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) at para 06.042 stresses that the task of ascertaining the intended meaning of terms and words is not simply a matter of consulting a dictionary. The purpose of the process of construction is to identify and give effect to the parties' intentions, objectively

ascertained. The resultant meaning "may or may not accord with either party's *subjective* intention" [emphasis in original].

45 In any case, whilst the Appellant has pointed to the evidence of its Group General Manager as evincing an intention to purchase insurance that would indemnify the company against liabilities arising under the Act, there is absolutely no evidence that the Appellant's intention was shared by the Respondent. The Appellant's position is that the purpose of the Travelling Extension was to expand the insurance coverage beyond what was required under the Act. By this, what the Appellant appears to mean is that the cover under the Travelling Extension for travelling to and from work and meal breaks was more than what was required under the Act. The Appellant thought that this was desirable since the insurance coverage was wider than what was provided in the Act. [note: 3] That being so, the Motorcycling Exception only applied to events falling within the Travelling Extension as opposed to the main part of the Policy.

46 For the reasons given earlier, together with my reading of the Travelling Extension (that was discussed above from [33] to [38]), I do not accept the argument that the application of the Motorcycling Exception is confined to events arising under the Travelling Extension.

Public interest and statutory allocation of risks

47 The Appellant submits that it would be contrary to public interest and the WICA Regime if the Motorcycling Exception is applied to the entire policy as *the employee* is deprived of access to an insurance fund. In support of its submission, the Appellant relies on the following:

(a) reg 2 of the Work Injury Compensation Insurance Regulations ("WICIR") which prohibits clauses in an insurance policy that seeks to absolve the insurer from any liability it may incur under the Act;

(b) the observation in *Kee Yau Chong v S H Interdeco Pte Ltd* [2014] 1 SLR 189 ("*Kee Yau Chong*") (at [45]) that the Act is a social legislation which should be interpreted purposively in favour of employees who have suffered injury in their employment;

48 The Appellant submits that reg 2 of the WICIR prohibits clauses in an insurance policy that seeks to absolve the insurer from any liability it may incur under the Act ("the Exclusion Clauses"). [note: 4] I pause to note preliminarily that the version of reg 2 on which the Appellant relies is the product of amendments that were made to the WICA Regime that came into effect in mid-2012. It bears recalling that the Policy was issued in 2010 and the Accident happened in 2011. The assessment hearings were held and the Order was made before the amendments came into force. Accordingly, the operative provision is the pre-2012 version of reg 2.

49 In any case, the Appellant's reliance on reg 2 of the WICIR is misplaced. ***First*** , it is clear that the Motorcycling Exception does not fall within the definition of a prohibited clause set out in reg 2 as it stood on the date the Policy was issued. The earlier version of reg 2 reads as follows:

Prohibition of certain conditions and exceptions in policies of insurance

2.—(1) Any condition or exception in a policy of insurance issued or renewed for the purpose of section 23 of the Act which provides, in whatever terms, that no liability shall arise under the policy, or that any liability so arising shall cease —

(a) in the event of some specified thing being done or omitted to be done after the

happening of the event giving rise to a claim under the policy;

(b) unless the policy holder takes reasonable care to protect his employees against the risk of bodily injury or disease in the course of their employment;

(c) unless the policy holder complies with the requirements of any written law for the protection of his employees against the risk of bodily injury or disease in the course of their employment; and

(d) unless the policy holder keeps specified records or provides the insurer with or makes available to him information therefrom,

is hereby prohibited.

(2) Nothing in paragraph (1) shall be taken as prejudicing any provision in a policy of insurance requiring the policy holder to pay to the insurer any sums which the insurer may have become liable to pay under the policy and which have been applied to the satisfaction of claims for compensation under the Act or any costs and expenses incurred in relation to such claims.

50 ***Second*** , even if the Motorcycling Exception falls within the definition of a "prohibited condition or exception" in reg 2 (as it then existed and which to be clear, it does not), the clause remains valid and enforceable *vis-à-vis* the employer. Section 23(5) of the Act (as it then existed) provided that "any conditions or exceptions imposed in a policy of insurance by any insurer which are prohibited by regulations made under this Act shall not absolve the insurer's liability under the policy."

51 Section 23(5) as it then existed appears to have the effect that the insurance policy remains valid even if there is an exception which is prohibited by the Act. The insurer's liability under the policy remains. The policy is not void as such. The question that arises is whether the insurer can claim that he has escaped liability under the Act to pay assessed compensation where the event giving rise to the accident is an excepted event on the basis that the policy was not an approved policy which covered that particular liability.

52 One view is that s 23(5) and reg 2(2) were intended to draw a distinction between (a) the relationship (and rights) of the injured employee against the employer (and the insurer); and (b) the relationship and rights as between the employer and the insurer under the contract of insurance. Even if the insurer remained liable under the Act to the injured employee, the insurer is not left without recourse as he is permitted to subsequently enforce the prohibited condition or exception against the employer. Viewed broadly, the provisions were intended to shift to the insurer the risk of employers' insolvency or lack of financial ability to pay.

53 This intention may be gleaned from the following extract taken from *Singapore Parliamentary Debates, Official Report* (21 November 2011) vol 88 at p 597 (BG [NS] Tan Chuan-Jin):

> While section 23 currently requires employers to have insurance against all liabilities that they may have under the Act, MOM has encountered cases where the WIC insurance policy does not cover critical aspects of the scope of work carried out by the insured company. For example, an insurance policy for a spray-painting company excluding coverage for flammable substances, or an insurance policy for a construction firm excluding coverage for works exceeding one storey in height. Well, this could be due to several reasons: insurers may not have had the opportunity to explain the exclusion clauses fully or employers may have conveniently relied on their agents to secure the lowest quote without fully understanding the coverage.

> When a worker gets injured, the insurer will disclaim liability and the employer will have to compensate the injured worker from his own pocket. If employers lack the financial ability to pay compensation, their injured workers may not receive compensation for their injuries. MOM sees about 200 cases a year where insurers dispute liability on the grounds that the work activity that caused the injury was excluded from the insurance policy.
>
> *With the amendments to section 23 and the WIC Insurance Regulations, insurers will be liable to compensate injured workers even if such exclusion clauses exist in the policy.* ***Nonetheless, insurers will continue to have the flexibility to recover from the employer any such compensation paid out, if such recovery is allowed for in the insurance policy.***
>
> [emphasis added in bold italics and italics]

54 The above comment was made in the context of the 2012 amendments to the WICA Regime. The essence of the 2012 amendments was to expand the scope of prohibited conditions and exceptions such that the insurer will be liable to compensate workers notwithstanding the existence of exclusion clauses in the policy. The amended reg 2 did not set out a blanket prohibition on clauses which sought to exclude liability under the Policy. What it did, *inter alia*, was to set out an extended list of prohibited conditions and exceptions. For example, one important addition to the list of prohibited conditions and exceptions in reg 2(1) was the category of exclusion clauses that pertains to the nature of the work or activity:

> (*e*) the event of any employee of the policy holder being engaged in a certain kind or description of work or activity, or being engaged in work or activity under certain conditions relating to the nature, scope, environment, processes or procedures of the work or activity, at the time of the happening of the event giving rise to a claim under the policy

55 One example given in the parliamentary debates to illustrate the problem was an insurance policy for a construction firm that excluded cover for works exceeding one storey in height. The insurer could try to disclaim liability. Under s 32(1) (as it then existed), where "an employer has incurred any liability to pay compensation or interest under this Act in respect of any accident occurring while there was in force an approved policy of insurance *covering that liability*, proceedings to enforce a claim in respect of that liability … may be brought against the insurer as if he were the employer" [emphasis added]. The argument presumably was that the approved policy did not cover that liability. The perceived problem was that when an employee was injured and the insurance company disclaims liability, the employer would have to compensate the injured worker from its own pocket. In the event that it lacked the financial ability to do so, the employee would be left without recourse. This appears to have been the impetus for the changes to s 23 of the Act and the relevant provisions under the WICIR.

56 It is noted that s 23(5) was also amended in 2012 to provide that: "[a]ny conditions, exclusions or exceptions imposed in a policy of insurance by any insurer which are prohibited by regulations made under this Act shall not absolve the insurer from any liability under the policy *which the insurer may incur under the provisions of this Act*" [emphasis added]. It was thus made clear that an insurer remained liable to pay the assessed compensation even where the exclusion clause amounted to a prohibited condition or exception.

57 For the sake of clarity, I add that the question as to whether the Motorcycling Exception is caught by the amended reg 2 is not before me. That said, whilst the position of an insurer under the pre-2012 amendments is perhaps less clear, it bears repeating that the DJ held below that the Motorcycling Exception was not prohibited under reg 2(1) as it then existed. I agree. It follows that

the insurance policy did not cease to be an approved policy because of the Motorcycling Exception. As will be seen, the DJ held that the insurer was compellable under the Act to pay the assessed compensation presumably in reference to s 32(1). This is a point to which I shall return later at [75]–[83].

58 I pause here to mention in passing the decision of VK Rajah JC (as he then was) in *Mayban General Assurance Berhad v Sumathira & Anor* OM 10 of 2004 ("*Sumathira*") (an unreported decision prior to the 2012 amendments) as it was placed before me and argued in the submissions by the Respondent. In the brief reasons for the decision appended to the Notes of Argument, the learned judge states: "For the purpose of s 32 of the WCA, an insurance policy "was in force" if the insurer and insured act on that basis at the material time. A purported repudiation of the policy subsequent to an accident by either insurer or insured will not have the effect of exonerating the insurer from its obligation to honour the terms of the subject policy; the repudiation even if effective, is relevant only for the purposes of determining contractual incidents between the insured and the insurer. The workman stands outside this dispute."

59 Whilst I accept that the context in which the above statement was made in *Sumathira* is not clear (there are no detailed reasons provided) the point remains that the law in this area (work related accidents and liability of the employer and insurer under the Act) is generally cognisant of the distinction between the relationship between the injured workman and his employer and the relationship between the insurer and the insured employer. That said, I say no more about the holding as this is not a case of repudiation.

60 As mentioned earlier, under the WICA Regime, the insurer will be able to subsequently recover the amount paid from the employer if the insurance policy in question allows such recovery. Parliament's intention was to preserve the terms of the legal bargain struck between the insurer and employer as reflected in the insurance contract. This is perfectly consistent with the Respondent's claim in the case at hand. Indeed, reg 2(2) expressly states that nothing in reg 2(1) "shall be taken as prejudicing any provision in a policy of insurance requiring the policy holder to pay to the insurer any sums which the insurer may have become liable to pay under the policy and which have been applied to the satisfaction of claims for compensation under the Act or any costs and expenses incurred in relation to such claims." This provision was not affected by the 2012 amendments.

61 Here, the estate or the dependants of the Deceased Employee has received the compensation pay-out from the Respondent and consequently, they have not suffered any prejudice. It bears emphasising that the claim before me is one that is between the insurer and the insured employer, and does not affect the position of the employee. The fact that as between the insured employer and insurer disputes have arisen over the scope of the indemnity does not concern the injured workman.

62 Whilst the Appellant has raised the issue of public interest, I have doubts about its relevance to the particular dispute that has arisen between the insured employer and its insurer. The insurance coverage under the Policy is a bargain that had been struck between the parties and the court's role is to ascertain the scope of that bargain. In the absence of statutory prohibitions or illegality, the court cannot possibly rewrite the entire Policy with the aim of assisting the Appellant in meeting its interest to maintain adequate insurance.

63 The Appellant further relies on the case of *Kee Yau Chong* for the proposition that the Act is a social legislation which should be interpreted purposively in favour of employees who have suffered injury in their employment.

64 Indeed, it is indisputable that the Act is a piece of legislation that seeks to achieve the social

objective of providing low-cost and expeditious resolution of work-related injury claims: see *Singapore Parliamentary Debates, Official Report* (21 November 2011) vol 88 at p 594 (BG [NS] Tan Chuan-Jin). That said, whilst there are compelling reasons why the Act should be construed purposively in favour of injured employees, this is not what the Appellant is urging this court to do in the present case. In contrast, as has been mentioned several times earlier, this dispute turns on a construction of the terms in the Policy, not the provisions of the Act. Therefore, the observation in *Kee Yau Chong* has no special relevance to the present case.

65 The Appellant also argues that the risks have been statutorily allocated such that road accidents arising out of and in the course of employment should fall under the WICA Regime whereas other forms of accidents on the road are governed by insurance under the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed) ("MVTPA"). Section 4(4) of the MVTPA provides:

> (4) A policy of insurance shall not, by virtue of subsection (1)(*b*), be required to cover —
>
> (a) liability in respect of the death, arising out of and in the course of his employment, of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person *arising out of and in the course of his employment*; or
>
> …
>
> [emphasis added]

66 Again, the MVTPA argument does not bring the Appellant's case any further. I accept that the risk of injury arising out of and in the course of employment has been statutorily allocated to fall within the purview of the WICA Regime. However, as I have explained earlier, this does not mean that the insurer has to indemnify the employer's liability for every single injury that arises under the WICA Regime. The scope of indemnity, ultimately, depends on the bargain that has been struck between the parties.

67 To briefly sum up the discussion, I find that the Respondent's exclusion of liability for accidents arising out of or in connection with motorcycles is not contrary to the public interest or the WICA Regime. The exclusion of liability is a contractual incident between the insurer and the employer; the worker stands outside of such disputes.

Red hand rule

68 The Appellant also contends that the "onerous nature" of the Motorcycling Exception had not been explained. The Appellant relies on the case of *Spurling Ltd v Bradshaw* [1956] 1 WLR 461, best known for Lord Denning's "red hand" comment (at 466):

> I quite agree that the more unreasonable a clause is, the greater the notice which must be given of it. Some clauses which I have seen would need to be printed in red ink on the face of the document with a red hand pointing to it before the notice could be held to be sufficient.

69 More specifically, in the insurance context, the Appellant draws my attention to the following observation made by Woo Bih Li J in the case of *NTUC Co-operative Insurance Commonwealth Enterprise Ltd v Chiang Soong Chee* [2008] 2 SLR(R) 373:

> 50 I accept that some members of the public may be unaware that their life policies with such

a benefit have a strict interpretation. On this score, insurers who rely on the strict interpretation should educate the public of the limited scope of the disability benefit in their policies so that the public can take further steps to see if the requisite cover is available. Of course, such education may well in turn make the existing policies marketed less attractive to the public but I think insurers must take a proactive and responsible approach. Besides highlighting what the cover of each policy extends to, insurers should also highlight the more obvious areas which the cover does not extend to, although this may be counter-intuitive to them, and not wait for legislation to compel them to do so. According to Fotheringham's article, there is a law reform commission report in Australia that recommends that insurers be required to provide a certain cover unless the insurer advises the insured that the contract does not cover that risk.

70 Woo J's observation was endorsed by the Court of Appeal in *Tay Eng Chuan v Ace Insurance Ltd* [2008] 4 SLR(R) 95. There, it was held that just as an insured is under a legal obligation of full disclosure to the insurer, on an *uberrima fides* basis, of all material facts relating to his personal conditions and circumstances, similarly, the insurer must also inform the insured of any unusual clause(s) in an insurance policy that may deprive the insured of his right to make a claim (at [30]).

71 The Respondent, on the other hand, argues that the red hand rule is inapplicable here. The Respondent refers me to the case of *Press Automation Technology Pte Ltd v Trans-Link Exhibition Forwarding Pte Ltd* [2003] 1 SLR(R) 712 ("*Press Automation*") in which Judith Prakash J, after a thorough survey of the authorities, held that the principle of drawing the attention of the contracting party specifically to onerous and unusual conditions is not applicable where there is a signed contract with an explicit incorporation clause:

> 39 Having considered the authorities, I am of the opinion that the fact that the incorporating clause here was contained in a document that was signed by Patec, resulted in the conditions being incorporated as part of the contract between the parties notwithstanding that Patec did not have a copy of them and had not read them. *I hold that the conditions were incorporated as a whole and that the line of authorities that decides that onerous and unusual conditions cannot be incorporated unless the attention of the party sought to be bound has been specifically drawn to them does not apply to a case like this where there is a signed contract with an explicit incorporating clause.* As far as the authorities are concerned, as I have shown above, all those that apply the specific notice requirement for onerous clauses are cases in which there was no signed contract. The only exception is the *Tilden* case. I do not consider the Trident case an exception as the contract that was found to exist by the court was a contract which was concluded partly orally and partly in writing and the written part did not contain an express incorporation clause referring to Danand's standard term contract. The court there, as was clear from the judgment of the Court of Appeal, was asked to make a finding of incorporation by implication which would be supported by evidence on a previous course of dealing.
>
> 40 Whilst *Tilden* directly supports Patec's position, I decline to follow it. In my judgment, it is not in accordance with the common law position in England and in Singapore. Where a party has signed a contract after having been given notice, by way of a clear incorporating clause such as the one used in the present case, of what would be included among the contractual terms, that party cannot afterwards assert that it is not bound by some of the terms on the ground that the same are onerous and unusual and had not been drawn specifically to its attention. *Contracting parties must have a care for their own legal positions by ascertaining what terms are to be part of a contract before signing it. If they do not do so, they will be bound by those terms except to the extent that the UCTA offers them relief.* In *AEG (UK) Ltd v Logic Resource Limited* [1996] CLC 265, Hobhouse LJ expressed the opinion that whilst in the past there may have been a tendency to introduce more strict criteria in relation to the question of whether particular terms

had been incorporated into a contract by reference:

> … this is no longer necessary in view of the Unfair Contract Terms Act. The reasonableness of clauses is the subject matter of the Unfair Contract Terms Act and it is under the provisions of that Act that problems of unreasonable clauses should be addressed and the solution found.

Whilst Hobhouse LJ was in the minority in that case (one which involved conditions printed at the back of a confirmation of order document), I respectfully agree and adopt his view which accords with common sense.

[emphasis added]

72 I agree with and adopt Prakash J's holding in *Press Automation*. There is no scope for the application of the red hand rule where there is a signed contract with an explicit incorporating clause. If the contracting parties do not ascertain their own legal positions before signing a contract, they will be bound by those terms except to the extent that the Unfair Contract Terms Act (Cap 396, 1994 Rev Ed) ("UCTA") offers them relief. Notably, the Appellant has not argued that the Motorcycling Exception falls afoul of the provisions of the UCTA.

73 Returning to the case at hand, whilst the Appellant seeks to rely on the red hand rule, there is no evidence before me showing that it had not signed the Policy when it was issued. I further note that the Policy contained the Insuring Clause which made it clear that the scope of indemnity under the Policy was "subject to the terms exceptions conditions and warranties, and any memorandum if applicable, contained herein or endorsed here". That, in my view, is sufficient notice of the terms of the Policy, including the Motorcycling Exception.

74 In any event, I am of the view that the Motorcycling Exception is not so onerous or unreasonable that it requires special attention to be drawn to it. Insurance contracts do not cover every fathomable risk and an insurer often manages its exposure by excluding typically high-risk activities from the scope of indemnity. Motorcycling is generally known to be a high-risk mode of transport and it is, in my view, unsurprising that an insurer would limit its exposure by excluding accidents that involve motorcycling activities. The insurance premium will vary according to the insurance cover and risks involved and this is, at its heart, a commercial bargain that is struck between the parties. In these circumstances, I am of the view that there is no scope for the application of the red hand rule.

The effect of the Avoidance and Recovery Clause

75 The relevant portion of the Avoidance and Recovery Clause in the Policy reads:

> BUT the Insured shall repay to the Company all sums paid by the Company which the Company ***would not have been liable to pay but for the Legislation*** .
>
> [emphasis added in bold italics]

76 "Legislation" under the Policy is defined to mean "the Work Injury Compensation Act (Cap. 354), amendments and re-enactment thereof and [any] legislation made thereunder". [note: 5]

The parties' arguments

77 The Appellant submits that the Avoidance and Recovery Clause applies only where the insurer has paid the Assessed Compensation under compulsion. In this case, there was no such compulsion since the Respondent had *voluntarily* paid after receiving an indication from the Assistant Commissioner that the claim was payable. The fact that the payment was made pursuant to a settlement agreement was clearly recorded in the Certificate. Thus, the Respondent cannot rely on the Avoidance and Recovery clause.

78 Against that, the Respondent asserts that it did not pay the Assessed Compensation voluntarily. In its view, it had only paid because it was legally compellable to do so as indicated by the Assistant Commissioner at the third pre-hearing conference. At the trial in the court below, the Respondent's Witness, Lim Ching Ghee, had deposed that the learned Assistant Commissioner indicated that, despite the Respondent's objections, she would, if necessary, compel the Respondent to pay the Assessed Compensation. [note: 6] As noted by the DJ, this evidence was not challenged during cross-examination. [note: 7] Further, the Respondent had expressly reserved its rights by inserting the words "without prejudice to the [Respondent's] right of recourse against the [Appellant]" in the Certificate.

79 In any event, the Respondent stresses that the Avoidance and Recovery Clause, read literally, does not require the Respondent to have paid the Assessed Compensation under compulsion.

Decision

80 I accept the Appellant's point that the alleged voluntariness of the payment is not borne out by what transpired during the pre-hearing conferences as well as the eventual Certificate of Order that was issued by the Commissioner. In my judgment, the Respondent's payment is better characterised as a payment under protest, clearly expressed to be without admission of liability or prejudice to its right to seek recourse in civil proceedings against the Appellant. Thus, I reject the submission that the Respondent is barred from recovery because it had paid the Assessed Compensation voluntarily.

81 The clause allows recovery for sums which "the Company would not have been liable to pay but for the Legislation". Clearly, the Respondent may only exercise its contractual right of recovery if it was liable to pay under the Act. In *Jowitt's Dictionary of English Law Volume 2: J–Z* (Daniel Greenberg gen ed) (Sweet & Maxwell, 3rd Ed, 2010), "liability" has been defined broadly:

> … [t]he condition of being answerable in law, or actually or potentially subject to a civil obligation, either generally, as including every kind of obligation, or, in a more special sense, to denote inchoate, future, unascertained or imperfect obligations, as opposed to debts, the essence of which is that they are unascertained and uncertain. Thus, when a person becomes surety for another, he makes himself liable, though it is unascertained in what obligation or debt the liability may ultimately result. …

82 I note further that the spectrum of possible meanings of the word "liable" or "liability" is broad. It includes being "*answerable for*" to being "*legally amenable to*" and to "*arising from a court order*": see *Attorney-General v Chia Soo Choo* [1994] 2 SLR(R) 822 ("*Chia Soo Choo*") at [15]. In that case, it was held that the words "liable to contribute to the support of the infant" created a statutory liability to maintain regardless of whether or not there was in force a court order (at [18]). Given the broad spectrum of meaning of "liable", the appropriate meaning in each case should be determined by reference to the precise words used.

83 In the present case, there is nothing in the words of the Avoidance and Recovery Clause that

restricts the definition of "liable" therein. Thus, in my judgment, the condition of being "liable" under the Act and its subsidiary legislation is sufficiently broad to include the condition of being actually or potentially subject to a statutory obligation. Accordingly, the prospect of being compelled (by the exercise of a statutory power) to make payment would amount to liability under the relevant statute. Indeed, I note that the WICA Regime allows for proceedings to be commenced against an insurer as if he were the employer (s 32(1) of the Act) and further, confers upon the Commissioner the power to "make any order for the payment of compensation as he thinks just at or after the hearing" (s 25D(*b*) of the Act). Here, the Assistant Commissioner had clearly communicated her view that the Respondent was liable to make payment and that she was prepared to exercise her statutory power to compel such payment. Therefore, I find that the Respondent was in this sense liable under the Act and the Respondent is accordingly entitled, under the Avoidance and Recovery Clause, to recover the sum it had paid as the Assessed Compensation.

Conclusion

84 For the reasons set out above, I affirm the DJ's holding that the Respondent was entitled to recover $140,000, being the sum it paid as Assessed Compensation pursuant to legislation and the appeal is accordingly dismissed.

85 The costs order below is to stand and the Appellant shall pay to the Respondent the costs of this appeal which are to be agreed or taxed.

[note: 1] Appellant's case, para 33.

[note: 2] Appellant's case, para 67.

[note: 3] Appellant's case, para 67.

[note: 4] See Appellant's case at [70].

[note: 5] Appellant's Bundle of Documents, p 21.

[note: 6] Respondent's case, para 61.

[note: 7] DJ's Grounds of Decision, para 22.