NTUC Income Insurance Co-operative Ltd and Another v Next of kin of Narayasamy s/o Ramasamy, deceased
[2006] SGHC 162

Case Number : OS 238/2006

Decision Date : 13 September 2006

Tribunal/Court : High Court

Coram : Sundaresh Menon JC

Counsel Name(s) : Anparasan s/o Kamachi and Amy Lim (KhattarWong) for the applicants; Lim Seng Siew (instructed) with S K Kumar (S K Kumar & Associates) for the respondent

Parties : NTUC Income Insurance Co-operative Ltd; Asia Coach Services PL — Next of kin of Narayasamy s/o Ramasamy, deceased

Employment Law – Claim for compensation under s 3(1) of Workmen's Compensation Act – Workman engaged in strenuous work immediately prior to suffering heart attack – Work part of workman's work scope – Workman dying from heart attack – Workman shown to have pre-existing heart condition – Whether heart attack amounting to accident arising in course of work and causing injury – Section 3(1) Workmen's Compensation Act (Cap 354, 1998 Rev Ed)

13 September 2006

Sundaresh Menon JC:

Background

1 The Workmen's Compensation Act (Cap 354, 1998 Rev Ed) ("the Act") provides that an employer shall be liable to his workman who suffers personal injury by an accident arising out of his employment. No difficulty arises where the workman has been in an accident as that term is commonly understood. However, difficulties can arise where an injury is sustained that is closely related to the workman's pre-existing medical condition. In such cases, the line between wear and tear on the one hand and an accident in the course of employment on the other can seem very thin. This is such a case.

2 Narayasamy s/o Ramasamy ("the deceased") was a 58-year-old male working as a coach driver for Asia Coach Services Pte Ltd, the second applicant. He had been so employed for some years. It was within his work scope to ferry specified airline crew between the airport and the hotels at which they were staying and in this context to help with the carriage, loading and stowage of the luggage of an entire crew from the kerbside onto the luggage compartment of his coach at the start of each journey and to do the converse when he reached his destination.

3 On 4 March 2004, the deceased started work at about midnight. He made a number of trips ferrying crew and luggage between hotels in the city and the airport. An eyewitness testified that the deceased had been loading bags at the airport on one of these trips and had felt uncomfortable then. The witness in question had assisted him with some bags at that time.

4 The same witness testified that a couple of hours later, he saw the deceased for the second time that morning. He was carrying a piece of luggage to the luggage compartment of the coach. He then felt breathless and was unable to continue with his work. An ambulance was called and he was brought to a nearby hospital where he was pronounced dead at about 4.30am.

5 It cannot be disputed that the deceased had been engaged in heavy work for some hours prior to his death. There was evidence before the learned Deputy Commissioner of Labour ("the

Commissioner") who heard the matter at first instance that the deceased would typically have ferried a crew of between 15 and 20 members, with at least two bags each. These bags tended to weigh between 10kg and 30kg or more each. The evidence was that the deceased typically had to load and unload all that luggage on each trip with little, if any, assistance. He had been doing such work on the morning in question just hours prior to his death.

6 An autopsy was duly performed. The cause of death was identified as a recurrent myocardial infarction. In short, he had sustained a heart attack but the effects of this were superimposed on one he had suffered previously. It was also learnt that some major coronary blood vessels of the deceased were already severely narrowed prior to his death. He was therefore not in good health to begin with.

The proceedings before the Commissioner

7 The deceased by his next of kin ("the respondent") brought a claim for compensation but this was assessed at "nil" by the Ministry of Manpower on the basis that the injury was not work-related. The respondent challenged this and it then went before the learned Commissioner. The central issue before the Commissioner was whether the heart attack had been sustained in the course of the employment of the deceased as required by s 3(1) of the Act. NTUC Income Insurance Co-operative Ltd, the first applicant, was the insurer. It did not dispute that the heart attack was an accident. However, it did dispute that the heart attack had arisen in the course of his employment. In the first applicant's view, he had died of causes unrelated to his employment, it being purely coincidental that he had suffered the heart attack while working.

8 Much of the facts were not ultimately controversial. The real issue on the facts turned on the medical evidence that went to the immediate cause of the death; specifically, was the heart attack caused or contributed to by the work that the respondent had been doing during and just prior to his untimely demise?

9 The only medical evidence led was that of Dr Wee Keng Poh ("Dr Wee"), a principal forensic consultant with the Centre for Forensic Medicine of the Health Sciences Authority and one of two doctors who conducted the autopsy. Dr Wee was called on behalf of the respondent and was cross-examined by the applicants' counsel. The applicants did not call any medical evidence.

10 I propose to set out the essence of Dr Wee's evidence in a little detail. When the autopsy report was submitted to the first applicant, it had taken issue with the claim on the basis that the death appeared to have been brought about by natural causes. Dr Wee was therefore asked by the respondent's counsel to clarify if the deceased's heart attack could have been caused by strenuous work. Dr Wee responded that it most certainly could have been. However, he added that for him to conclude that the deceased had *in fact* sustained the heart attack because of the strenuous work he was said to be doing that morning, it would be helpful to show that he had been exerting himself "over and above what he was used to". It should be noted that this was a comment made months before the hearing; and it was made at a time when Dr Wee was not clear from the materials he was presented with just what the deceased had been doing prior to and at the time he sustained the heart attack.

11 Before the Commissioner, Dr Wee specifically testified to the effect that:

(a) exertion could have triggered the heart attack;

(b) had the deceased, shortly before the injury, been carrying ten to 15 bags weighing

between 15 and 25 kilograms each, that "would have contributed to … the heart attack"; and

(c) the degree of strain that a person could endure without sustaining a heart attack would depend on the state of health of that person's heart.

12 Under cross-examination, he added that what would be strenuous would be subjective and would depend on the age and fitness of the particular patient at the time of the incident. He also said that given the state of the deceased's heart, the attack could have occurred with or without exertion. Indeed, it could even have happened while the deceased was sleeping. He was then asked if the exertions of the deceased had to be over and above what he was used to in order for it to be identified as a cause. He responded that if it was, "there would certainly be exertion that contributed significantly to his heart attack". When asked to clarify this by the learned Commissioner, he said:

> If it can be proven that he was exerting over and above what he was used to, then I have no hesitation to say that physical exertion was a contributory cause.
>
> If it cannot be proven, then [it is] difficult for me to say *with certainty* though … heart disease is not static, it can deteriorate [to such a point that] what he was used to can be strenuous.
>
> [emphasis added]

13 The Commissioner quite rightly in my view regarded the evidence on this issue as unclear. He therefore directed the parties to seek certain written clarifications. This was done and Dr Wee duly clarified that, in his opinion, having regard to the actual medical condition of the deceased's heart, at the time of the accident it had deteriorated to such a stage that even the work he had been accustomed to had become too strenuous for him.

14 On this basis, the Commissioner formed the view that the deceased's heart attack had been caused or contributed to by the work he was doing at the time of the injury. Having considered the arguments and authorities submitted to him, he held that the respondent was entitled to be compensated under the Act. He fixed the compensation payable at $87,360 based on the average monthly salary the deceased was found to be drawing at the time. The applicants then brought the present application to reverse the learned Commissioner's decision.

The present application

15 Mr K Anparasan appeared before me on behalf of the applicants. Mr Lim Seng Siew (instructed) was for the respondent.

16 Mr Anparasan's principal arguments before me may be summarised as follows:

(a) The Commissioner erred in finding that the injury sustained by the deceased had been *caused* by the work he was doing. The fact that the work had become too strenuous for him did not mean that it was the cause or even a contributing factor to the injury given his pre-existing medical condition. The causal link between the work and the injury had to be specifically proved and could not be assumed or taken on the basis of speculation or conjecture.

(b) Given Dr Wee's evidence that the heart attack was, loosely put, waiting to happen, in the sense that it could have occurred even while the deceased was asleep, there was no basis to conclude that strenuous work was the operating or a contributing cause of the injury.

17 Mr Anparasan relied in the main on the authorities of *Clover Clayton & Co, Limited v Hughes* [1910] AC 242 ("*Clover Clayton*"), *Ormond v CD Holmes & Co, Ltd* [1937] 2 All ER 795 ("*Ormond*") and *Hawkins v Powells Tillery Steam Coal Company, Limited* [1911] 1 KB 988 ("*Hawkins*") in support of his arguments. Several other cases were also referred to.

18 At the conclusion of the arguments, I was satisfied that the learned Commissioner's decision was not shown to be in error in any way. I therefore dismissed the application with costs. Nonetheless, I thought it appropriate to explain my reasons for doing so in order to clarify some of the applicable principles.

Analysis

19 The starting point of the analysis is s 3(1) of the Act which provides as follows:

> If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall be liable to pay compensation in accordance with the provisions of this Act.

20 It will be seen that to trigger the employer's liability to pay compensation, the workman must show:

(a) he has suffered a personal injury;

(b) that has been caused by an accident; and

(c) which arose out of and in the course of his employment.

21 Turning to the cases, it is appropriate to begin with *Clover Clayton* ([17] *supra*), a decision of the House of Lords of some vintage. That was a case where a workman suffering from serious aneurism was tightening a nut using a spanner when the aneurism ruptured and he died on the spot. There was some conflict of evidence as to what had caused the death but the court of first instance found that the death had been caused by the strain in tightening the nut which operated upon the workman's pre-existing condition and this had rendered the strain fatal. The House of Lords was sharply divided in finding for the workman that this was a case of "personal injury by accident arising out of and in the course of … employment".

22 The facts of the case bear more than a passing resemblance to the present case. But what makes it of interest is that it addressed the very issues raised by Mr Anparasan and, albeit by a slim majority, had disposed of them.

23 Lord Loreburn LC, speaking in the majority, first considered whether this could be described as an accident and held that it could following the decision of the House of Lords in *Fenton v Thorley & Co Ltd* [1903] AC 443. His Lordship noted as follows at 245–246:

> The first question here is whether or not the learned judge was entitled to regard the rupture as an "accident" within the meaning of this Act. In my opinion, he was so entitled. Certainly it was an "untoward event." It was not designed. It was unexpected in what seems to me the relevant sense, namely, that a sensible man who knew the nature of the work would not have expected it. I cannot agree with the argument presented to your Lordships that you are to ask whether a doctor acquainted with the man's condition would have expected it. Were that the right view, then it would not be an accident if a man very liable to fainting fits fell in a faint from a ladder

and hurt himself. No doubt the ordinary accident is associated with something external; the bursting of a boiler, or an explosion in a mine, for example. But it may be merely from the main's own miscalculation, such as tripping and falling. Or it may be due both to internal and external conditions, as if a seaman were to faint in the rigging and tumble into the sea. I think it may also be something going wrong within the human frame itself, such as the straining of a muscle or the breaking of a blood vessel. If that occurred when he was lifting a weight it would be properly described as an accident. So, I think, rupturing an aneurism when tightening a nut with a spanner may be regarded as an accident.

24 It is thus apparent that an "accident" within the meaning of the English statute (which is *in pari materia* with s 3(1) of the Act) would include an internal medical condition that caused an unexpected injury while the workman was carrying out his work.

25 As to whether the accident had been one that arose in the course of the workman's employment, Lord Loreburn had this to say at 246–247:

> But it does not establish that the accident was one "arising out of the employment." It is in these words that the stress of the case mainly lies, as Mr. Simon in one passage of his argument partially indicated. When the man's condition was such that he might have died in his sleep, and the mere tightening the nut with no more strain than ordinary in such work caused the accident, can it be said that the accident was one "arising out of" the employment? That seems to me to be the crucial point.
>
> I do not think we should attach any importance to the fact that there was no strain or exertion out of the ordinary. It is found by the county court judge that the strain in fact caused the rupture, meaning, no doubt, that if it had not been for the strain the rupture would not have occurred when it did. If the degree of exertion beyond what is usual had to be considered in these cases, there must be some standard of exertion, varying in every trade. Nor do I think we should attach any importance to the fact that this man's health was as described. If the state of his health had to be considered, there must be some standard of health, varying, I suppose with men of different ages. An accident arises out of the employment when the required exertion producing the accident is too great for the man undertaking the work, whatever the degree of exertion or the condition of health.

26 There are two key points in this passage that bear highlighting:

> (a) There can be no requirement in such cases that the workman must have been under a strain or an exertion that was out of the ordinary. Otherwise, there would be an intolerable variety of standards dependent upon the age, strength and fitness level of the workman which had to be considered in each case and against which the level of exertion that had been applied was to be measured.
>
> (b) An accident arises out of the workman's employment when the exertion that results in that accident proves to be too great for that man at the time of the accident. It does not matter what he is accustomed to.

27 Lord Atkinson who led the dissent noted as follows at 252–253:

> [T]he disease was so far advanced that the rupture might happen from natural causes, even when the deceased was asleep and quiescent, but that muscular exertion, even so slight as that involved in walking, might accelerate the fatal end, and that the slight exertion of turning the nut

did, in the opinion of the doctor, in fact accelerate it in this case. Now, what was the nature of this slight exertion? It was normal in deceased's employment. It was not sudden. It was not severe. It was neither unexpected nor unlooked for. On the contrary, it was the very exertion which he was employed to make and it was contemplated that he should make.

28 He then went on at 254 to state:

> In order that the "mishap" should be "unlooked for" or the event "be unexpected," so as to make an injury "an injury by accident" within the meaning of this Act, the mishap must, I think, be "unlooked for" or the "event" be "unexpected" by some person with knowledge of the facts and capable of judging reasonably of them.

29 This may be set against what was said by Lord Macnaghten at 250, who also was in the majority, on this point:

> [T]he accident was unexpected by the workman. It can hardly be supposed that he intended to kill himself. The fact that the result would have been expected, or indeed contemplated as a certainty, by a medical man of ordinary skill if he had diagnosed the case is, I think, nothing to the purpose. *An occurrence I think is unexpected if it is not expected by the man who suffers by it, even though every man of common sense who knew the circumstances would think it certain to happen.* [emphasis added]

30 From the ruling of the majority on this issue, it is clear that 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.

31 Even though the decision in *Clover Clayton* was reached by a bare majority, it has stood the test of time and a long line of cases that have come in its wake have consistently stayed within the principles established there.

32 In *Ormond* ([17] *supra*) which was relied on by Mr Anparasan, a blacksmith's striker had been employed in a fairly strenuous occupation for some years. In September 1935, he suffered a stroke at home. He returned to work some two weeks later. Then two months later, on 20 December 1935, he became ill at work, collapsed and died. On the medical evidence, it was found as a fact that the work he was in fact engaged in neither caused nor contributed to nor accelerated the second stroke. In my view, this was critical to the English Court of Appeal's finding that the workman was outside the ambit of the statute in question. It was also found as a fact that he had been looking visibly ill when he reported for work and got progressively worse thereafter. The court also found on the medical evidence that the thrombosis was coming on that morning when he came to work and would inevitably have resulted in what happened later that day.

33 This fact distinguishes *Ormond* from the present case where there was no evidence to warrant a finding that the work the deceased was engaged in was neither a causative nor even a contributory factor to the heart attack that he had sustained.

34 However, there is one other aspect of the decision in *Ormond* that is worth noting and which was relied upon by Mr Anparasan. The medical evidence in *Ormond* was that the work that had been done since the first stroke, as a whole, had accelerated the second stroke. But the court nonetheless concluded that the injury was outside the scope of the statute. This was because although the injury might have been accelerated by the general "wear and tear" of previous work, nothing had transpired

on the morning that the workman had come to work which had caused or contributed to it.

35 The distinction between injury by accident and that which is the result of "wear and tear" is brought out by Luxmoore J in *Ormond* when he quoted at 806, the following passage from the judgment of Lord Aitchison in *Robert Miller v The Carntyne Steel Castings Company, Ltd* [1935] SC 20 at 26:

> In every case in which the machine runs down, the work is a contributing cause of the incapacity, and that is equally so whether the workman has a diseased condition of heart, as has the appellant in this case, or whether the workman suffers from no disease but the body becomes, through age or other cause, unequal to the continuing strain. I think it would be extending the notion of injury by accident unduly to apply it to the case of an incapacity which results from the ordinary tear and wear of a man's work, in the absence of some incident or event or happening in the course of the employment to which the term accident in its ordinary meaning can reasonably be applied. It will be found when *the cases are examined that, in each case in which accident has been affirmed, there has been something of the nature of an occurrence of some kind that could satisfy the meaning of accident*. [emphasis added]

36 Mr Anparasan also relied on what was said on this issue albeit from the perspective of causation in *Hawkins* ([17] *supra*). That was a case where an elderly man working in a colliery had been helping to push some empty trucks up an incline. He was then asked to cut some timber when he complained of pain. He died of angina pectoris that evening. The medical evidence was that the man's heart was diseased; that any slight exertion could bring on a fatal heart attack; and that the symptoms did not always appear immediately.

37 What was not clear from the medical evidence was whether or not the injury had been caused by something the workman had been doing at work and this was what was fatal to the claim. The point is neatly captured in the judgment of Buckley LJ at 996–997 as follows:

> The decision in *Clover, Clayton & Co., Ld.* v. *Hughes* is easy of summary. The bowstring was so frayed and worn that it had well nigh parted. One drew the bow and the string snapped. Did the string snap by accident? … The sequence of events was not in dispute. The man was engaged in doing an act involving very slight exertion, but as the result the aneurism ruptured. Was that an accident? That was the sole question for decision. The House of Lords held that it was.
>
> The question for decision here is very different; it is this: Fact A was succeeded by fact B. Is it proved that B was the consequence of A? … When it is said that a person who comes to the Court for relief must prove his case, it is never meant that he must prove it with absolute certainty. No fact can be proved in this world with absolute certainty. All that can be done is to adduce such evidence as that the mind of the tribunal is satisfied that the fact is so. This may be done either by direct evidence or by inference from facts. But the matter must not be left to rest in surmise, conjecture, or guess. Here there was no evidence to prove that this man's death resulted from an accident arising out of and in the course of his employment. It may have so resulted or it may have resulted from a different cause. According to the medical evidence wind in the stomach would produce the belching from which the man suffered at the time; that may have produced such pressure upon the heart as to lead to a fatal result. That was one possible cause. The exertion arising from the employment was another possible cause. It is not enough to say that the latter is a possible cause. It must be established to my satisfaction that it was the cause. Is it proved, that is to say, is it established to my satisfaction by facts which are given in evidence, that the death of the man resulted from the employment? In my opinion there is no evidence to prove it. It is simply a guess.

38 In my judgment, the passages in *Ormond* and *Hawkins* which I have just cited go to establish the important principle that to come within the Act, it must be shown that there was some occurrence which caused the injury in question. Thus, mere wear and tear would not constitute an accident. Further, an occurrence which could constitute an accident but which has not been shown on a balance of probabilities to have *caused* the injury would also not bring the workman within the protection of the Act. However, the occurrence need not be the sole or even the dominant cause. It will be sufficient to show that the accident was an operating or contributory cause of the injury. It must further be shown that the injury was in some way connected with the employment.

39 It is useful here to refer briefly to the decision of the English Court of Appeal in *Wilson v Chatterton* [1946] 1 KB 360 which involved an epileptic workman who was working in a field when he had a fit, fell face down in water and was drowned. Notwithstanding his predisposition to the fits, the employer was held liable and Scott LJ delivering the judgment of the court noted as follows at 366:

> 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]

40 In the present case, given the evidence that the deceased was engaged in strenuous work just prior to and at the time he suffered the heart attack, there was no doubt that the respondent had showed that there had been an occurrence. This was therefore not an instance of simple "wear and tear". However, Mr Anparasan argued in reliance upon *Hawkins*, that in the present case it was nothing more than a guess or conjecture that the heart attack which ultimately claimed the deceased's life was caused by or connected to the exertions he had endured in the hours prior to his death. I do not think that is correct.

41 As noted by Buckley LJ in *Hawkins*, one is concerned not with proof to a standard of absolute certainty; but with proof on a balance of probabilities and on the basis of evidence tendered that the fact claimed is so. Mr Anparasan's argument would have been sustainable had Dr Wee remained equivocal as to whether the work the deceased was engaged in had contributed to his heart attack. But the Commissioner came to the conclusion that the work the deceased did that morning had contributed to his heart attack and in my view this was entirely supported by the medical evidence before him. I should note that it was open to the applicants to have adduced medical evidence to contradict Dr Wee's evidence and his conclusions but they chose not to do so.

42 Some reference was also made by Mr Anparasan before the Commissioner to the case of *Persin Kaur v The Renong Tin Dredging Company Ltd* [1967] 2 MLJ 286 ("*Persin Kaur*"). That was a case of a workman who was employed as a watchman. He woke up early one morning, went to move his bowels and appeared then to have suffered a heart attack. There was some evidence that he also fell and hit his chest. No autopsy was performed. The only medical evidence before the court suggested that the death was not caused by the fall and was not due to his occupation. The Malaysian Federal Court held that there was no basis to conclude that the injury was within the ambit of the statute. In my view that case does not assist the applicants in the present case at all, since it turned on its own facts. As I have noted above, the evidence adduced before the Commissioner certainly supported the finding that the deceased succumbed to an injury that was caused by an accident in the course of his work.

43 Lastly, my attention was drawn by Mr Lim to the Indian decision of *Laxmibai v Chairman & Trustees, Bombay Post Trust* AIR (41) 1954 Bombay 180. This also concerned a watchman. He was

on night duty and on his feet when he complained of chest pain. He was asked to lie down and his condition deteriorated before he died a few hours later. The medical evidence showed that the deceased was suffering from heart disease. It also showed that the strain caused by the deceased being on his feet for a period of time had triggered the attack which led to his death. Chagla CJ considered the authorities before stating at 183:

> [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.

44 This short statement of the principle involved is correct in my view and is consistent with the long line of cases that have dealt with this issue including two other Malaysian decisions that were cited in argument – *Golden Hope Rubber Estate Ltd v Muniammah* [1965] 1 MLJ 5 where an exhaustive review of all the authorities were undertaken and *Gan Poh v Union Omnibus Co Ltd* [1970] 1 MLJ 188.

45 In my view, to the extent that there is a unifying principle in the authorities, it is this: an injury by accident within the meaning of the Act contemplates:

(a) an injury that was unexpected by the workman;

(b) which was caused or contributed to by something done by or to the workman in the course of his employment.

46 It does not matter whether that which was done entailed a level of exertion that was beyond that to which the workman was accustomed. 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.

47 Furthermore, it does not matter where the injury in fact occurred. Thus, the fact that the injury was suffered while the workman was at work will not be sufficient if the foregoing analysis points otherwise: see for example *Persin Kaur* ([42] *supra*) or *Ormond* ([17] *supra*). Equally, it does not matter if the injury manifests itself after the workman has left his place of work. In each case, the injury must be shown to be causally connected in some way to an occurrence in the course of the workman's employment in a way that is akin to that proverbial last straw which broke the camel's back.

48 Lastly, I should also make it clear that in approaching this inquiry, the proper view to take, in my judgment, is a broad one "free from over-nice conjectures" as noted by Lord Loreburn in *Clover Clayton* ([17] *supra* at 247).

49 The distinction between injury caused by "wear and tear" and that which results from an accident in the course of employment is of course a crucial one. The former is not compensable under the Act even if it accelerates the workman's death whereas the latter is. The "last straw" analysis I have just outlined serves to bring out this distinction and it explains the decision in *Ormond*.

50 In the present case, as I have noted above, there was clearly evidence to support the Commissioner's finding that the deceased's heart attack was triggered by his exertions at work on the fateful morning in question. Whatever may have been his state of health at that time, he certainly had no expectation that he was going to die from doing that which he had been doing. But the exertions of that morning proved to be the last straw and die he did as a result. In the premises, I dismissed the appeal with costs.

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