Lee Keng Hiong trading as William Trade & Tran-Services v Ramlan bin Haron [2002] SGHC 33

Case Number : DA 600017/ 2001

Decision Date : 22 February 2002

Tribunal/Court : High Court

Coram : Woo Bih Li JC

Counsel Name(s) : Boon Khoon Lim and Dora Boon (Dora Boon & Co) for the Appellant; Suchitra Ragupathy (Palakrishnan & Partners) for the Respondent

Parties : Lee Keng Hiong trading as William Trade & Tran-Services — Ramlan bin Haron

Employment Law – Employees' liabilities – Workmen's compensation – Third party employing workman – Workman's claim for personal injury by accident – Whether respondent liable to pay compensation – Whether third party an employee or independent contractor of respondent – Factors to consider – Whether injury arising out of and in the course of employment – Presumption that injury arising in of course of employment also arose out of that employment – ss 3(1) & 3(6)Workmen's Compensation Act (Cap 354, 1998 Ed)

Employment Law – Liabilities – Principals – Workmen's compensation – Workman's claim for personal injury by accident – Whether principal liable to pay compensation to workman employed by independent contractor – Whether injury arising out of and in course of employment – Presumption that injury arising in course of employment also arose out of that employment – ss 3(6) & 17(1)Workmen's Compensation Act (Cap 354, 1998 Ed)

Judgment

GROUNDS OF DECISION

1. This is a matter involving a claim by an injured worker Ramlan bin Haron ('the Claimant') under the Workmen's Compensation Act ('the Act'). At the time of the incident at about 8.15pm on 26 January 1998, he was 55 years of age.
The Respondent was Lee Keng Hiong also known as William Lee. He was the sole proprietor of William Trade & Tran-Services ('WTTS') with its office at 1 Sophia Road #03-09 Peace Centre, Singapore.

2. The Claimant was injured during the unloading of three huge and heavy pieces of cargo comprising membranes which were used in the fabrication of platforms. The cargo was to be unloaded from the vessel MV Ocean Ady ('the Vessel') onto a barge Intermac 200 ('the Barge') at Berth PT 1 of the Pasir Panjang Wharves.

3. The act which allegedly cause the injury arose from the Claimant's unshackling of a piece of cargo. He had climbed up a ladder to do the unshackling after which he jumped down to avoid the shackle which was on a swinging rope or cable. He landed on his feet, slipped, fell backwards onto a sitting position and fell backward again with the result that his head hit the floor of the Barge.

4. The evidence as to how the injury arose came from one Putiyan Bin Soeri ('Putiyan') who was assisting the Claimant with the ladder. They were the two persons on the side of the Barge where the Claimant had fallen.

5. The Claimant was left severely incapacitated and on 12 May 1999, his wife, Zaleha Binti Ibrahim, was appointed to be his Committee of his Estate pursuant to the Mental Disorders and Treatment Act (Cap 178).

6. WTTS denied liability but not quantum which was fixed at $134,000. WTTS denied that the

Claimant was its employee. It was not seriously disputed that the Claimant was employed by Putiyan and that Putiyan received instructions from WTTS. However, one of the main questions of fact was whether Putiyan was in turn employed by WTTS. WTTS' position was that Putiyan was its independent contractor.

7. The Commissioner for Labour Ms Beverly Wee found that Putiyan was an employee of WTTS and, consequently, that Putiyan had employed the Claimant for WTTS. The Commissioner also found that the act which caused the injury was within the course of the Claimant's employment.

8. WTTS appealed to the High Court. After hearing arguments, I dismissed the appeal with costs on 21 November 2001.

How many workers did Putiyan employ for the job in question and did WTTS tell him to employ them?

9. In January 1998, McDermott South East Asia Pte Ltd ('McDermott') was the consignee of the three pieces of cargo. It was not the ultimate end-user and it was supposed to take delivery of the cargo which was to be unloaded onto the Barge and tow the cargo to Bintan. McDermott owned the Barge.

10. McDermott in turn engaged WTTS to be its clearing agent. This meant that WTTS was to do the documentation to clear the cargo and to take delivery of the cargo.

11. According to William Lee, he had instructed his operations manager Heng Hua Lee, also known as David Heng, to give Putiyan the job. This allegedly meant that Putiyan was to check the markings of the cargo and take delivery of the cargo. He was also to make sure that the Barge was properly balanced after loading of the cargo. William Lee's evidence was corroborated by David Heng.

12. WTTS' position was that the unloading of the cargo was done on 'liner's terms' meaning that it was the carrier's responsibility to discharge the cargo onto the Barge. Accordingly, the carrier or its shipping agent had engaged a contractor Asian Lift Pte Ltd ('Asian Lift') to do the unloading of the cargo from the Vessel onto the Barge. Asian Lift owned and operated a floating crane on the Smit Typhoon. The floating crane was to be used to unload the cargo from the Vessel onto the Barge.

13. It was not disputed that Asian Lift was engaged to do this. It was engaged by Canlion Worldwide Project Management Services ('Canlion') who were in turn likely to have been engaged by the shipping agent Elite Shipping Pte Ltd. The actual identity of the party who engaged Canlion was not material.

14. At one point WTTS suggested that the Claimant might have been employed by Asian Lift but this was denied by Asian Lift. As I have said, the fact that Putiyan had employed the Claimant was not seriously disputed by WTTS. It was clear to me that the Claimant was employed by Putiyan. Whether Putiyan was an employee of WTTS is another matter.

15. It was not disputed that WTTS gave instructions to Putiyan for the job in question. Whether WTTS had given instructions to Putiyan to employ workers for the job in question was also another matter.

16. According to Putiyan, he was told by David Heng to engage three workers for the job in question which included the release and unshackling of the cargo. David Heng denied that he had told

Putiyan to engage any worker but he contradicted himself on this point (Record of Appeal ('RA') 376) when he admitted that the job required workers. I would add that WTTS did not accept that two other workers were also employed by Putiyan for the job in question.

17. It was the evidence of Ruby Chan that Putiyan would decide the amount to be paid to workers he employed and it was he who decided who to employ (RA 288, 291 and 241).

18. However this evidence was contradicted by the evidence of David Heng (at RA 376 and 384) and William Lee (at RA 399). It was clear from their evidence that WTTS decided on the number of workers whom Putiyan was to engage for each job and the amount to be paid to the workers.

19. Indeed, even the amount to be received by Putiyan for refreshments for the workers would have to be approved by WTTS (see the evidence of Ruby Chan at RA 284 and 322).

20. While WTTS could produce payment vouchers for advance clearance, refreshment and mobile escort for the job in question, it did not produce any payment voucher for payment of Putiyan's salary or fee for the job in question. The reason given was that the voucher was missing. Neither was any accounting document produced in respect of such a payment. I was of the view that WTTS had deliberately chosen not to disclose the payment voucher or any accounting document regarding such a payment because it would reveal that Putiyan had employed workers for the job.

21. In the circumstances, it was clear to me that Putiyan did employ the Claimant and two others for the job in question. Also, he would not have employed them if WTTS had not told him to do so. The fact that he could not remember the names of the other two workers at the hearing before the Commissioner was neither here nor there.

Was Putiyan an employee or independent contractor of WTTS at the material time?

22. As regards whether Putiyan was an independent contractor, the Commissioner found the judgment of Chief Justice Yong Pung How in a criminal case helpful. At paragraphs 94 and 95 of her grounds of decision, she said:

> '94. Hence, in determining the nature of the relationship between the Respondent and CW2, I was guided by the principles enunciated by the Honourable Chief Justice in the decision of *Lee Boon Leong Joseph v PP* *1997 1 SLR 445* at page 454B to 454E as follows:
>
> "The definition of the term "employ" applicable at the time the appellant was arrested is to be found in s 2 of the Act and reads:
>
> > 'employ' means to engage or to use the service of any person and to pay such person for services rendered or work done or to remunerate such person on a piece rate or on a commission basis.
>
> In *PP v Heng Siak Kwang* *[1996] 2 SLR 274*, I had occasion to consider this definition. In the course of that judgment, I said at p 280:
>
> > **The manner of remuneration and control over the workers would often be of great significance**
> >
> > . If an employer merely paid the foreman a lump sum for the workers, and left it to him to decide how much to pay the workers and how many workers

> to employ, it is a strong indication that the foreman was a sub-contractor if the foreman was allowed to keep the excess. This suggests that it was the foreman who employed the workers. If the employer decided how much to pay each worker and merely used the foreman as a conduit, then it might well be the case that the foreman was not a sub-contractor even if he might have physically recruited the workers … What was, however, reasonably clear in the present case, was that in order for the respondent to have said to have employed the workers, there must be a contract of some sort between him and the workers.

The **manner of remuneration and the degree of control of the workers** are therefore **two significant considerations in determining the existence of any employment relationship** for the purposes of the Act. … It is further important to recognise that **the inquiry is always one into the substance of the relationship and not its form** (see *PP v Baby Yap [1993] 3 SLR 633* (emphasis mine)

95. Whilst the cases which promulgated these principles were criminal cases involving charges under the Immigration Act, Cap 133, these principles are equally applicable in the present case since it is the existence or lack thereof of any employer-employee relationship between the Respondent and CW2 that needs to be established.'

23. Under s 3(1) of the Act, an employer is liable for personal injury by accident caused to a workman arising out of and in the course of his employment.

24. The word used is 'workman' not 'employee'. However, for present purposes, the distinction is not important especially since it was not seriously disputed that the Claimant was a workman employed by Putiyan and the question was whether Putiyan did so as an employee or independent contractor of WTTS.

25. I accepted that the factors enunciated by the Chief Justice should be considered in determining whether Putiyan was an employee of WTTS when he employed the Claimant. However, other factors should also be considered.

26. In the case before me, I considered the following:

(a) WTTS would dictate how many workers Putiyan was to employ and the amount to be paid to the workers. WTTS would also decide how much was to be paid for expenses such as refreshments for the workers.

(b) (i) Prior to January 1998, Putiyan was employed by a company Foreign Freight Forwarders (S) Pte Ltd ('FFF"). This company was controlled by William Lee and his wife Ruby Chan. Ruby Chan was also considered as one of the bosses of WTTS. WTTS alleged that Putiyan worked for FFF as a wharf clerk until about September 1997 when Putiyan resigned. Subsequently Putiyan answered an advertisement by WTTS and, out of pity, WTTS gave him work from January 1998.

(ii) Putiyan was supposed to have resigned from FFF in about September 1997 and his letter of resignation dated 2 October 1997 said this was 'due to medical problem'. Yet he purportedly responded to an advertisement by WTTS and agreed to work for it doing the same thing that he had been doing in the past for FFF. Indeed FFF and WTTS shared the same office premises and the evidence indicated that in the past Putiyan did work for FFF or WTTS.

(iii) It was my view that the alleged resignation was probably a ploy to allow WTTS (and

FFF) to use Putiyan without WTTS having to make any payment to the Central Provident Fund under the relevant legislation. This is reinforced by the fact that as at January 1998, Putiyan was still using a PSA pass which described him as a wharf clerk of FFF.

(c) On 23 January 1998, Putiyan had signed a request for permission to park a vehicle. He continued to describe himself as a 'W/Clerk' meaning wharf clerk. Ruby Chan said that when she was aware of this, she had scolded him but I did not accept her evidence on this.

(d) In a report by Putiyan dated 26 January 1998 to PSA Corporation Limited ('PSA'), he described himself as being employed by WTTS.

(e) A work chit dated 26 January 1998 was produced in evidence by Putiyan. It had WTTS' name typed at the heading. The work chit was also stated to be from WTTS (whose name was written in by hand) to the officer-in-charge, Gate 3, PSA Police. The work chit stated:

'Please allow bearer Ramlan Bin Haron NRIC 0065936A who is employed by my Company to enter PSA for the purpose of working at MV Ocean Ady @ Intermac 200 from 26/1/98 @ 1800 hrs to 27/1/98 @ 0230 hrs'.

WTTS' name was stamped onto the work chit and signed by Putiyan. WTTS' witnesses denied any knowledge of this work chit but accepted that Putiyan was allowed to be in possession of WTTS' stamp. I was of the view that WTTS had known that Putiyan would be issuing these work chits under WTTS' name from time to time when extra labour was required to do a job for WTTS.

(f) In a letter dated 31 January 1996 from PSA to WTTS, PSA referred to the Claimant as a person 'who is employed by your company …'. PSA's letter also said that, 'As the entire cargo operation on the barge was supervised/handled by personnel of your company, PSA will not be liable for the accident and any claim that may arise thereof'. There was no reply by WTTS to this letter.

(g) In a report by Vincent Lee Kim Seng who was an Inspector with the PSA's Auxiliary Police, he referred to the Claimant as a casual worker in the employ of McDermott. However he did not have any personal knowledge of this 'fact' and it was clear from the evidence that the Claimant was not employed by McDermott.

(h) Putiyan had also prepared a handwritten report dated 5 February 1998 for the attention of William Lee and a typed report dated 13 February 1998 to WTTS on the condition of the Claimant. He said he was asked by Ruby Chan to put up a report but was subsequently asked to retain the reports. I noted that the handwritten report had also mentioned that Putiyan had given a sum of money 'on behalf of the company', meaning WTTS as it was on WTTS' letterhead, to help the Claimant's family out.

(i) There was no invoice or bill from Putiyan to WTTS for services rendered.

(j) There was no evidence that Putiyan made a profit from the jobs from WTTS. He was paid a sum per hour plus an additional sum for overtime.

(k) Putiyan did work only for WTTS and FFF.

(l) He had free access to the office premises of WTTS and FFF, although WTTS sought to explain this away by the fact that he had been employed by FFF before.

(m) He was in possession of a stamp of WTTS and stationery of WTTS.

(n) The fact that WTTS did not provide any equipment, gear or uniform to Putiyan and the three workers was neither here nor there because there was no suggestion that Putiyan provided these himself.

27. In the circumstances, the evidence was overwhelming that Putiyan was employed by WTTS and he in turn employed the Claimant, and two others, for WTTS.

28. However, even if Putiyan was an independent contractor, this would not absolve WTTS from liability because of s 17(1) of the Act.

29. Section 17(1) states:

'Liability in case of workmen employed by contractors

17(1) Where any person (referred to in this section as the principal) in the course of or for the purpose of his trade or business contracts with any other person (referred to in this section as the contractor) for the execution by the contractor of the whole or any part of any work, or for the supply of labour to carry out any work, undertaken by the principal, the principal shall be liable to pay to any workmen employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him.'

30. That is why WTTS also took the position that the Claimant's injury did not arise out of and in the course of his employment.

Did the Claimant's injury arise out of and in the course of his employment?

31. I had concluded that WTTS had directed Putiyan to employ the Claimant and two other workers. It was illogical for Putiyan and the three workers to be expected to be doing the following only: clearing documentation, checking the markings of the cargo and the positioning of the cargo when it was loaded on the Barge. All that could have been done by Putiyan himself.

32. WTTS' Counsel Mr Boon Khoon Lim drew my attention to a handwritten report by Putiyan dated 26 January 1998 to the PSA about the accident. The material part stated:

'My assistant, RAMLAN BIN HARON, NRIC 0063589H had volunteered to unsling the gear (one side) …. (It is the job of floating owner's crew).'

Mr Boon submitted that this showed that the unshackling was not part of WTTS' job.

33. I was of the view that while the unloading of the cargo, including the unshackling, was the primary responsibility of Asian Lift, this did not mean that WTTS had no responsibility whatsoever. The three workers were required by WTTS to help out in the unloading of the cargo onto the Barge. Otherwise, there would have been no need for the presence and assistance of the three workers.

34. While I had doubts as to whether Putiyan was specifically told that the three workers were required to unshackle the cargo, as alleged by Putiyan, I was of the view that the unshackling was part of their job to assist generally when the cargo was being loaded onto the Barge.

35. I would add that WTTS had spent some time in the hearing below to establish that the shackles were on top of each crate of cargo and not on the side as alleged by Putiyan. However, even if WTTS was able to establish this, this would mean that Putiyan was not to be believed on this point and his credibility would be affected. However, it would not have been affected to the extent that would have caused me to reach a different conclusion as to whether Putiyan had been told to employ the three workers and whether the Claimant was in fact a workman of WTTS.

36. Furthermore, even if WTTS was able to establish that the shackles were on top of the crate in question, it might mean that the accident might not have occurred as described by Putiyan.

37. However, if the accident did not occur in the manner described by Putiyan, how did it occur?

38. At this point, I should mention that WTTS had applied to adduce evidence from an accident construction expert to show that the Claimant's alleged fall was inconsistent with his injury and the accident could not have occurred as described. However the application was refused by the Commissioner because the fact of the accident was not disputed and the manner of occurrence of the accident was not a defence which WTTS had raised.

39. Before me, Mr Boon suggested that the injury to the Claimant's chest and abdomen might have been caused by a blow or be self inflicted.

40. I was of the view that this suggestion demonstrated how desperate WTTS was to avoid liability. There was no suggestion by Mr Boon that the additional evidence would actually state what or who inflicted the alleged blow. Furthermore, there was no evidence to support the suggestion that the Claimant would inflict any injury on his chest and abdomen. Thirdly, there was no suggestion that the injury to his head was self-inflicted and the injury to his head was the most important.

41. More importantly, at the beginning of the hearing before the Commissioner, the injuries suffered by the Claimant as a result of the accident were stated to be not in dispute.

42. I was of the view that the application to adduce further evidence was correctly refused.

43. The fact of the matter was that the injury arose in the course of the Claimant's employment. In the absence of any evidence to the contrary, the natural presumption would be that the injury also arose out of that employment. Indeed this presumption has statutory force under s 3(6) of the Act which states:

> '(6) For the purposes of this Act, an accident arising in the course of a workman's employment shall be deemed, in the absence of evidence to the contrary, to have arisen out of that employment.'

44. In any event, I was of the view that in the light of the evidence, including evidence by way of photos, the accident probably occurred as described by Putiyan.

45. Accordingly, the Claimant was a workman of WTTS and his injury did arise out of and in the course of his employment.

Sgd:

WOO BIH LI
JUDICIAL COMMISSIONER