

Cosmic Insurance Corp Ltd v United Oil Co Pte Ltd
[2006] SGHC 85

Case Number : DA 34/2005

Decision Date : 25 May 2006

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : K Anparasan and Nadia Almenoar (KhattarWong) for the appellant; Michael Eu Hai Meng (ComLaw LLC) for the respondent

Parties : Cosmic Insurance Corp Ltd — United Oil Co Pte Ltd

Employment Law – Payment by employer's insurer of hospital expenses incurred in relation to injuries sustained by workman in the course of work – Whether insurer entitled to indemnity for hospital expenses under s 18(b) of Act – Whether hospital expenses amounting to "compensation" within Act – Section 18(b) Workmen's Compensation Act (Cap 354, 1998 Rev Ed)

25 May 2006

Woo Bih Li J:

Background

1 I will use the background facts relied upon by the district judge below as a guide for setting out the background to the appeal before me.

2 The plaintiff, Cosmic Insurance Corporation Limited ("Cosmic"), was at all material times an insurance company carrying on the business of general insurance in Singapore. The defendant, United Oil Company Pte Ltd ("United Oil"), was a company carrying on the business of storing and blending oils, additives and lubricants and had a factory located at 14 Tuas Drive 2, Singapore ("the factory").

3 Protec Guards Management Services ("Protec") was in the business of providing security guards, escort services and other general security services on commercial, industrial and private premises. Since August 1999, Protec had been providing United Oil with a security guard at the factory. Amongst other duties, this security guard, who was under the employment of Protec, maintained general security at the factory.

4 As an employer, Protec took out workmen's compensation insurance policies with Cosmic for its employees, as required under s 23(1) of the Workmen's Compensation Act (Cap 354, 1998 Rev Ed) ("the WCA"). The relevant insurance policy was Workmen's Compensation Policy No PWC000-00001962 ("the policy"), which Cosmic issued on 27 July 2000. The policy was valid for the period between 19 July 2000 and 18 July 2001 and insured Protec against any liability that Protec might incur under the WCA. Both Cosmic and United Oil accepted that this policy was an "approved policy" for the purpose of s 23 of the WCA.

5 According to Protec's general manager, one Mr Naushad Ali s/o Jabarulla Khan ("Naushad"), sometime on 2 November 2000, Protec's regular security guard at the factory was not available for security duties. As a consequence, Protec despatched another of their employees, one Samuel Palraj ("Samuel"), to cover such security duties at the factory. Samuel had commenced employment with Protec only on 28 October 2000. It was not disputed that this was the first time that Samuel had been deployed to the factory and was unfamiliar with the premises.

6 Unfortunately, on the very same afternoon, Samuel met with an accident at the factory ("the accident"). According to a Ministry of Manpower investigation report filed after the accident, one Tan Ah Tee, a forklift driver employed by United Oil, had collided into Samuel as he was driving a forklift around the factory loading and unloading goods in the loading and unloading bay area of the factory. As a result of the accident, Samuel's left arm was broken, and his right leg was amputated. He is now wheelchair bound, and continues to suffer the adverse effects of the accident.

7 Shortly after Samuel was injured on 2 November 2000, he was brought to the National University Hospital ("NUH") for immediate treatment. At the request of NUH, Protec provided an indemnity to NUH for payment of Samuel's hospital expenses. Naushad clarified that he informally consulted Protec's insurance brokers, Bess General Insurance Agency ("Bess General Insurance"), of NUH's request and was informed that the providence of such an indemnity was acceptable, given that Protec was covered by insurance. Protec went on to provide the indemnity and thereafter paid Samuel's hospital bills as and when NUH sent such bills to Protec.

8 Consequently, sometime in 2000 or 2001, Protec made various claims against Cosmic under the policy for some of the hospital expenses paid by them on behalf of Samuel. Those claims came up to around \$48,000.00. After assessing them, Cosmic reimbursed Protec, through Bess General Insurance, an amount of \$44,215.45. Naushad explained that Protec did not claim reimbursement for all of Samuel's hospital expenses because he was informed that Cosmic was going through some financial difficulties at that particular time, and hence it would be difficult to get full reimbursement from it. Hence, Protec only claimed the substantial amounts. The \$44,215.45 eventually paid out by Cosmic comprised:

(a) the sum of \$25,473.32 paid by Cosmic to Protec on 25 April 2001, being medical expenses incurred by Samuel on 2 November 2000; and

(b) the sum of \$18,742.13 paid by Cosmic to Protec on 25 July 2001, being medical expenses incurred by Samuel on 2 November 2000.

9 On 18 March 2004, Cosmic commenced action against United Oil claiming the above two sums amounting to \$44,215.45, as well as an amount of \$3,578.00 being adjuster's fees under s 18(b) of the WCA.

10 The district judge below dismissed Cosmic's claim. Cosmic then appealed but, in its appeal, it dropped the claim for the adjuster's fees. Cosmic's appeal for an indemnity for the hospital expenses raised the issue as to whether the hospital expenses constituted compensation under the WCA and hence claimable under s 18(b). Sections 18(a) and 18(b) of the WCA state:

Where any injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof –

(a) the workman may take proceedings against that person to recover damages and may claim against any person liable to pay compensation under this Act, but he shall not be entitled to recover both damages and compensation; and

(b) if the workman has recovered compensation under the Act, the person by whom the compensation was paid, and any person who has been called upon to pay an indemnity under section 17 (3), shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

11 It was undisputed that Samuel had not recovered any compensation under the WCA and instead had claimed damages against United Oil. As for s 17(3) of the WCA, it was not relevant.

The court's reasons and conclusion

12 Section 18(a) allows a workman to initiate proceedings to claim damages under the common law and to claim compensation under the WCA, but not to recover both damages and compensation. In *Singapore Bus Service Ltd v Lim Swee Pheng & Sons (Pte) Ltd* [1978–1979] SLR 225 ("*Lim Swee Pheng*"), Buang bin Abdullah ("Buang") was a lorry driver who was trying to repair his lorry after it had broken down. He was underneath the lorry when the defendant's bus collided into the lorry, causing the lorry to lurch forward and run over him. Buang died from his injuries leaving behind two sons who had not been dependent on him. The insurers paid compensation under the WCA and claimed an indemnity from the defendant under s 18(b). The defendant's main contention was that the indemnity was limited to the amount which the workman or his dependants could have recovered in a claim for damages. The Court of Appeal disagreed that it was so limited. In reaching this conclusion, Wee Chong Jin CJ also said that the object of s 18(a) was to prevent the enforcement of the double remedy and recovery of both damages and compensation.

13 Apparently, Samuel had not claimed the hospital expenses in his common law action against United Oil. Accordingly, if Cosmic was indemnified for what it had paid out for such expenses, there would be no double recovery or double payment in that United Oil would not have paid twice for the same head of claim. However, since a workman is not entitled under s 18(a) to recover both damages and compensation, I was of the view that this means that when, for example, he has recovered damages under his common law claim, he cannot recover compensation under another head of claim which was omitted from his common law claim. In other words, all the heads of claim must be included in his common law claim and not some under the common law claim and some under a claim for compensation. *A fortiori*, an insurer like Cosmic cannot recover under s 18(b) when the workman did not recover compensation under the WCA. This is reinforced by the first limb of s 18(b) which states "if the workman has recovered compensation under this Act".

14 Cosmic sought to rely on what Wee CJ said in *Lim Swee Pheng* to the effect that s 18(b) provides that the wrongdoer should not escape the consequences of his wrongful act. However the reference to what Wee CJ said was taken out of context. What Wee CJ said at 229, [7] in respect of s 18(b) was:

Where the workman or his dependants *elect to claim and recover compensation* under the Act when his injury was caused by the wrongful act, of a 'stranger', s 18(b) provides that the wrongdoer should not escape the consequences of his wrongful act by giving the workman's employer an entitlement to be indemnified by the wrongdoer in respect of the compensation which he has paid. [emphasis added]

It seemed to me that *Lim Swee Pheng* was therefore an authority against, and not in favour of, Cosmic's position on the general scheme of the WCA.

15 Nevertheless, Cosmic pursued its appeal by relying on the decision of S Rajendran J in *Commercial Union Assurance Pte Ltd v Chua Kim Bak* [1999] 1 SLR 553 ("*Chua Kim Bak*"). In that case the defendant, who was driving a motor vehicle, had collided into the back of a lorry which was carrying 14 workers. Commercial Union Assurance ("CUA") was the insurer under a policy which covered the driver of the lorry and the 14 workers. CUA paid compensation for permanent incapacity, lost wages and medical expenses. It then sought to recover the same under s 18(b) from the defendant. The defendant accepted liability for sums paid in respect of permanent incapacity but not

for those paid for wages and medical expenses. The issue was whether those two categories were compensation payable under the WCA. If not, the defendant was not liable to indemnify CUA for the same under s 18(b). Rajendran J held that both those categories constituted compensation payable under the Workmen's Compensation Act (Cap 354, 1985 Rev Ed) ("the WCA 1985"). For present purposes, the material provisions of the WCA 1985 are *in pari materia* with those in the WCA. I should also mention that Rajendran J's judgment suggests that the medical expenses there included hospital expenses.

16 It is important to bear in mind the relevant provisions. The liability of an employer to pay compensation to his injured workman is set out in s 3(1) of the WCA which reads:

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.

17 The word "compensation" is not defined in the WCA. However, s 7 of the WCA states:

Subject to the provisions of this Act, the amount of compensation payable shall be in accordance with the provisions of the Third Schedule.

18 Paragraph 1 of the Third Schedule provides a table for compensation where death results from injury.

19 Paragraph 2 of the Third Schedule provides a table for compensation where permanent total incapacity results from injury.

20 Paragraph 3 of the Third Schedule provides formulae for calculating compensation where permanent partial incapacity results from injury.

21 Paragraph 4 (1) of the Third Schedule states:

Where temporary incapacity whether total or partial results from the injury, the workman shall be entitled to full earnings for a period of 60 days if he is hospitalised and 14 days if he is not hospitalised and thereafter to a payment every month of an amount equal to two-thirds of his monthly earnings during the incapacity or during a period of one year, whichever period is shorter.

22 The payments for wages in *Chua Kim Bak* came under para 4 of the Third Schedule of the WCA 1985 and the same paragraph still applies in the Third Schedule of the WCA. Nevertheless, the defendant there contended that it did not constitute payment of compensation because the word "compensation" was not present in para 4. Unsurprisingly, Rajendran J disagreed with this submission. He said at [10]:

The payments under paras 1, 2 and 3 of the Third Schedule clearly constitute payments of compensation for the injuries. I do not accept the defendant's submission that payments under para 4 of the Third Schedule do not constitute payment of compensation. To hold that these are not payments of compensation because the word 'compensation' is not present in para 4 is, to my mind, too narrow and artificial a view to take. Although para 4 does not use the words 'compensation payable' I do not think that the absence of these words derogates from the fact that these payments are in fact payments of compensation under the Act arising from the injuries sustained by the workman. And the heading of the Third Schedule 'Amount of Compensation' reflects this view.

23 I had no difficulty with that conclusion. I come now to the next part of Rajendran J's judgment in respect of the medical expenses where he said at [11]:

Similar considerations apply to payments of medical expenses under s 14(2). Although the word 'compensation' is not used in that section, payment thereunder is, in my view, nevertheless a payment of compensation. Payments of medical expenses, unlike payments under the Third Schedule, are, however, required to be made direct to the hospital. I would venture to say that perhaps it is because payment is to be made to the hospital that s 14(2) is worded in the way it is. Section 14(2) in effect provides that in addition to payments of compensation required to be made direct to the workmen, the employer has, in addition, to pay the workmen's hospitalisation and medical expenses direct to the hospital. The fact that these payments are to be made direct to the hospital does not, in my view, detract from the fact that these payments constitute compensation that the workman can recover from the employer under the Act. The employer is therefore entitled by s 18(b) to be indemnified in respect of these sums by the person liable to pay damages to the workmen for having caused the injuries.

24 I did not agree with the learned judge's reasons or conclusion in respect of the medical expenses. Let me explain. The medical expenses were not like wages because the latter is found in para 4 of the Third Schedule of the WCA under "earnings" whereas the former is not found anywhere in the Third Schedule. It was not just a case of the word "compensation" being omitted. The category of medical expenses, including hospital expenses, is entirely omitted from the Third Schedule. Accordingly, since s 7 provides for the amount of compensation payable to be in accordance with the Third Schedule, it would follow that medical expenses, including hospital expenses, do not come within such compensation.

25 How then does an employer come to be liable to pay for hospital expenses incurred by his workman? This liability is found in s 14(3) of the WCA which is *in pari materia* with the material part of s 14(2) of the WCA 1985 which Rajendran J was considering. Section 14(3) of the WCA states:

Where an injured workman is admitted to an approved hospital, the employer shall, in addition to the payment of compensation under this Act, be liable to pay directly to the hospital all fees and charges in respect of that workman and the costs of such medicines and artificial limbs and surgical appliances as are certified by the medical practitioner in charge of the approved hospital to be necessary and which are in fact supplied to that workman.

26 Rajendran J was of the view that the fact that an employer is required to pay a workman's hospital expenses direct to the hospital does not detract from "the fact" that such payments constituted compensation. However this rationale had assumed in the first place that such expenses were in the same category as wages but, as I have mentioned, they were not because they were not found in the Third Schedule of the WCA 1985. Likewise, they are not found in the Third Schedule of the WCA.

27 I would add another argument. Section 14(3) states that the liability of the employer to pay the hospital directly is "in addition" to the payment of compensation under the WCA. The provision does not say that such a payment is part of compensation payable under the WCA. The words "in addition" were drawn to the attention of Rajendran J in the defendant's submission but he was of the view that they pointed to payment being made direct to the hospital and not that such a payment was additional to the compensation payable under the WCA. In my view, those words reinforced the point that hospital expenses are not part of compensation payable under the WCA but are additional to such compensation.

28 I would also highlight that in *Chua Kim Bak*, the insurer had paid pursuant to a claim for compensation under the WCA 1985 and hence sought an indemnity under s 18(b) thereof. In the case before me, Samuel had not recovered compensation under the WCA. From what I have said, I also did not consider the payment of hospital expenses by Cosmic to be a recovery of compensation under the WCA even if it could be said to be an indirect recovery "by Samuel" of payment for such expenses.

29 Cosmic also drew my attention to the case of *Lian Teck Construction Pte Ltd v Royal & Sun Alliance Insurance (Singapore) Ltd* in Originating Summons No 601712 of 2001 ("*Lian Teck*") which was not brought to the attention of the district judge. That was an application for leave to appeal from a decision of a magistrate on facts similar to those before me. From what I could gather from the supporting affidavit for the leave application, a workman, or rather a worklady, by the name of Ker Lay Choo ("Ker") who was employed by Auric Pacific Food Industries Pte Ltd ("Auric") was injured by one Lee who was employed by Lian Teck Construction Pte Ltd ("LTC"). Ker claimed damages and declined to accept an assessment of compensation. However, Auric had paid for Ker's wages and medical expenses and its insurer, Royal & Sun Alliance Insurance (Singapore) Ltd ("Royal Sun"), had reimbursed Auric for the same. It was not clear to me whether those medical expenses were solely hospital expenses or not, but, in any event, it appears that Ker did not claim the wages and medical expenses in her claim for damages. Royal Sun then sued LTC and Lee in MC Suit No 2845 of 2000 for an indemnity under s 18(b). The magistrate ruled in favour of Royal Sun whose counsel apparently relied heavily on *Chua Kim Bak*. LTC then applied for leave to appeal to the High Court pursuant to s 21 of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) as the sum in dispute was under \$50,000. Lee Seiu Kin JC (as he then was) dismissed the leave application. However, as there were no written grounds of decision by the magistrate or Lee JC I did not derive much assistance from that case, although it did reinforce the point that the circumstances which gave rise to the dispute before me were not unusual.

30 I accept that the situation requires redress because a workman who does not pay hospital expenses from his own pocket is less likely to remember to claim such expenses in his common law claim thus leaving his employer or its insurer out in the cold in respect of such expenses. Also, it is doubtful if the workman can be compelled to include such expenses in his common law claim. Even where he includes such expenses, a defendant may argue that the workman is not entitled to recover the same as he suffered no loss or damage because he did not pay for the same. If such an argument should prevail, it would be unjust to the employer or its insurer who may not have a direct cause of action against the wrongdoer. These issues should be addressed by way of legislative amendment to avoid injustice, otherwise the wrongdoer will indeed escape some of the consequences of his wrongful conduct.

31 I would also raise another significant issue, that is, where a workman recovers compensation under the WCA, to what extent is someone like Cosmic entitled to be indemnified? Is the indemnity limited to compensation payable under the WCA, *ie*, the items stated in the Third Schedule or would it extend as well to hospital expenses paid pursuant to s 14(3)? Cosmic's case appeared to assume that the hospital expenses would be claimable because in *Lim Swee Pheng* ([12] *supra* at 229, [9]), Wee CJ had said that the employer is entitled to be indemnified for "the whole amount" of the compensation. However, if hospital expenses do not come within the meaning of "compensation" *Lim Swee Pheng* will not be of any assistance. Furthermore, that case apparently did not involve a claim for an indemnity for hospital expenses paid pursuant to s 14(3). I can see the justice in allowing the indemnity to extend to such expenses but the point is not free from argument in view of the terms of s 14(3). I would urge an amendment to the WCA to clarify the position and to avoid injustice.

32 As can be seen, hospital expenses do not at present fit within the scheme of compensation payable under the WCA. I was informed by counsel that Singapore had borrowed the English

workmen's compensation legislation which did not provide for payment of such expenses. The payment of such expenses was introduced in the Workmen's Compensation Ordinance (Cap 157, 1955 Rev Ed) but the introduction was done without making it clear that such expenses would be part of compensation payable. On the contrary, further amendments to the Singapore legislation made it clear that "the amount of compensation payable shall be in accordance with the provisions of the Third Schedule": see [17] above.

33 There is another point I should add. The district judge also noted that the amount of compensation payable to a workman under the WCA is to be assessed by the Commissioner of Labour. Sections 24(1) and 24(2) WCA state:

(1) Subject to the provisions of this Act, the Commissioner shall have power to assess and make an order on the amount of compensation payable to any person on any application made by or on behalf of that person.

(2) The Commissioner shall cause to be served on the employer and the person claiming compensation personally or by registered post a notice stating the amount of the compensation payable in accordance with the assessment made by the Commissioner under subsection (1).

34 The district judge was of the view that the Commissioner's assessment was an integral part of the scheme under the WCA and where the Commissioner did not assess the amount payable, that amount cannot be considered as compensation. I agreed with that view.

35 However, Cosmic said that it had learnt that in *Chua Kim Bak*, there was also no assessment by the Commissioner of the medical expenses. Yet, Rajendran J had allowed such expenses to be claimed. I did not think that that argument carried much weight because Rajendran J had proceeded on the basis that all the various sums being claimed there had been assessed accordingly (see [15] *supra* at [2]). Apparently, that was an error and that error should not be perpetuated.

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