IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 118

Tribunal Appeal No 1 of 2017

In the matter of Section 29(1) of the Work Injury Compensation Act (Cap 354)

And

In the matter of Order 55, Rule 1 of the Rules of Court (Cap 322, Rule 5)

And

In the matter of the decision of the Learned Assistant Commissioner for Labour, Mr Benjamin Yim Geok Choon, made on 28 December 2016 under Section 3(1) of the Work Injury Compensation Act (Cap 354)

Between

HAUQUE ENAMUL

… *Applicant*

And

(1) CHINA TAIPING INSURANCE (SINGAPORE) PTE LTD

(2) KIM TECHNOLOGY & SYSTEMS ENGINEERING PTE LTD

… *Respondents*

JUDGMENT

[Employment Law] — [Work Injury Compensation Act]

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v
China Taiping Insurance (Singapore) Pte Ltd and another

[2018] SGHC 118

High Court — Tribunal Appeal No 1 of 2017
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15 May 2018 Judgment reserved.

George Wei J:

1 This is an appeal by Hauque Enamul ("the Applicant") against the decision of the Assistant Commissioner for Labour ("the Commissioner") dismissing the Applicant's claim for work injury compensation under the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("the WICA").

2 I reserved judgment at the end of the hearing of this appeal before me on 15 January 2018.

Facts

The parties

3 The Applicant in these proceedings is a Bangladeshi national in his 30s. He was a construction worker. Sometime in May 2014, he commenced employment as such with the second respondent, Kim Technology & Systems

Engineering Pte Ltd. The first respondent, China Taiping Insurance (Singapore) Pte Ltd, is the second respondent's insurer (collectively, "the Respondents").

Background to the dispute

4 Sometime in May 2015, the second respondent instructed the Applicant to commence work at a construction worksite located at Tuas South Avenue 10.

5 On 8 August 2015, at or about 8am, the Applicant set about working at the worksite as usual. Together with his co-workers, the Applicant carried pipes of various sizes and weights to a storage area. According to the Applicant, each pipe weighed about 50 to 60 kilograms. The Applicant and his co-workers would have to carry the pipes for about 15 to 20 metres to the storage area. This was described as regular and routine housekeeping work.

6 As it turned out, 8 August 2015 was anything but a routine day. The Applicant's version of events was that as he lifted one of these pipes with a co-worker known only as Sakthivel Kalimuthu, he felt some pain in his lower back. He thought nothing of it initially. It was still bearable. But as he was putting the pipe down, the pain became intense. It was unbearable now. He quickly sat down on the ground and told Kalimuthu that he was in pain and requested for the supervisor. The project superintendent, one Gazi Sohag, and the safety coordinator, one Velu Senthil, came over to attend to the Applicant. Sohag asked the Applicant to try to move, but the Applicant could not stand up.

7 The Applicant was then brought to the site office with the help of two other workers at the worksite. He informed Sohag that he needed to see a doctor for treatment.

8 A few hours later, the Applicant was brought to Khoo Teck Puat

Hospital ("KTPH"). Senthil, the safety coordinator, was accompanying him. Senthil registered the Applicant at the Accident and Emergency Department of KTPH. Senthil explained to the doctor who examined the Applicant how the accident happened. An X-ray was performed. After a while, the Applicant returned to his dormitory.

9 The medical report of the examination, dated 8 August 2015 ("the KTPH Report"), states *inter alia*:[1]

(a) "patient was carrying heavy loads *yesterday*, when he noted he accidentally twisted his back when carrying the load decided to come to A&E as he felt the back pain was getting worse" [emphasis added];

(b) "previous hx of having L3 lumbar spine fracture in 2013, s/p conservative mx";

(c) "works as a manual laborer, came with his supervisor to A&E";

(d) "xrays done: … No compression fractures …"; and

(e) "patient referred to: PHC/Polyclinic – TCU OPS if need to stock pain meds (> 5 Days)".

10 The Applicant was treated with codeine and an injection of diclofenac. The medication prescribed was codeine phosphate (30mg), diclofenac (50mg), famotidine (20mg) and ketoprofen gel. The pain score recorded in the KTPH Report was "5".[2]

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1 Applicant's Record of Proceedings (volume 1), pp 220—221.

2 Applicant's Record of Proceedings (volume 1), p 222.

11 Subsequently the Applicant attended Tan Tock Seng Hospital ("TTSH") five times for follow up checks. The TTSH Medical Certificates in evidence were dated 13, 19, 20, 25 August 2015 and 2 September 2015.[3] The Applicant was granted various periods of sick leave and, when he was seen on 13 August 2015, was initially considered to be "fit for light duty" from 18 to 27 August 2015. That said, I note that on 2 September 2015 he was given 14 days of hospitalisation leave by TTSH.

12 I pause to note that there is a medical report by TTSH ("the TTSH Report") dated 2 September 2015,[4] which states that the Applicant "[c]arried heavy load on 7/8/15" and has had lower back pain since that date. The TTSH Report notes that he was seen at KTPH. The TTSH Report also is stamped "PLEASE TRACE AND REVIEW ALL FINAL XRAY AND LABORATORY REPORTS". Just like the KTPH Report, the TTSH Report also notes "Hx: L3 lumbar spine fracture in 2013, s/p conservative mx".

13 Eventually, the Applicant decided to seek compensation for the back injury he allegedly sustained on 8 August 2015. He went to the Ministry of Manpower ("MOM"). An MOM officer helped him fill in the i-Report form. This report was lodged on 8 September 2015 (one month after the accident).[5]

14 On 6 October 2015, the Applicant made a claim for work injury compensation under the WICA against the second respondent.

15 An MRI scan was performed at TTSH on 28 July 2016 to assist the

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3 Applicant's Record of Proceedings (volume 1), pp 223—227.

4 Applicant's Record of Proceedings (volume 1), p 262.

5 Applicant's Record of Proceedings (volume 1), p 229.

MOM assessment. The radiologist report's comment was that there was "mild lumbar spondylosis" and "degenerative disk disease". There was also a statement that a small central disc protrusion was seen at L5-S1.[6] Dr Anand Pillai, the expert witness for the Applicant, gave evidence that a small central disc protrusion at the L5-S1 level was consistent with an injury arising from lifting a heavy load or a fall.[7]

16 On 26 September 2016, the MOM found in favour of the Applicant and awarded him a sum of $11,850.08, which was equivalent to 10% of the sum that could be awarded for permanent incapacity.[8] As the Respondents disputed the award, the matter was heard by the Labour Court.

Procedural history

17 The Applicant's case was heard by the Commissioner on 16 May, 23 November, 14 December, and 28 December 2016. The Commissioner dismissed the Applicant's claim on 28 December 2016.[9] The Commissioner's Grounds of Decision ("the GD") was issued on 28 April 2017.

18 The Applicant lodged an appeal on 19 January 2017. I eventually heard the appeal on 15 January 2018.

The parties' cases

19 At the hearing below, the Applicant sought to show that he had suffered

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6 Applicant's Record of Proceedings (volume 1), p 101.

7 Applicant's Record of Proceedings (volume 1), p 69.

8 Applicant's Record of Proceedings (volume 1), p 274.

9 Applicant's Record of Proceedings (volume 1), p 2.

an injury, which injury was caused by an accident arising out of and in the course of his employment.

20 The Applicant's case was that he had suffered his injury while carrying a heavy pipe at work on 8 August 2015. Parties did not dispute that 8 August 2015 was a working day. If the Applicant's case was accepted, then his injury would have been caused by an accident that arose out of and in the course of his employment. The Respondents would then be liable to compensate him under the WICA.

21 The Respondents, however, denied liability. The core of the Respondents' case was that the alleged accident did not take place on 8 August 2015. Instead, whatever happened took place on 7 August 2015 which was the SG50 public holiday. There is no dispute that no work was done on 7 August 2015. The Respondents relied on several documents from both KTPH and TTSH documenting the accident as having occurred on 7 August 2015.

Decision below

22 The oral evidence before the Commissioner comprised the testimony of the Applicant, Dr Pillai from TTSH and Sohag, the project superintendent (*supra* [6]). Kalimuthu, the co-worker who was helping to carry the pipe on 8 August 2015, did not give evidence.

23 The Commissioner, relying on the dates given in the KTPH and TTSH Reports (*supra* [9(a)] and [12]), dismissed the Applicant's claim. In so doing, the Commissioner found (at [46] of the GD) that:

(a) The Applicant had an injury – a L5-S1 disk protrusion;

(b) The Applicant's injury was caused by trauma sustained by his lower back; and

(c) The trauma was caused by an accident that the Applicant suffered sometime before 8 August 2015.

24 The Commissioner's conclusion at [49] was that "[f]or reasons best known to the [Applicant], it appeared to me that he had made a 'Freudian slip' when he had informed Khoo Teck Puat Hospital and later Tan Tock Seng Hospital that his accident was on [7 August 2015]; even while he was trying to set himself up for a claim for work injury compensation based on a workplace accident that he had staged on [8 August 2015]".

Issues to be determined

25 Section 3(1) of the WICA provides the starting point for analysing whether an employer is liable for compensation under the Act:

> **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.

26 In *Kee Yau Chong v S H Interdeco Pte Ltd* [2014] 1 SLR 189 ("*Kee Yau Chong*") at [12], it was stated that in order for an employer to be liable for compensation under section 3(1) of the WICA, the workman has to prove that:

(a) he has suffered a personal injury;

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

(c) that the accident arose out of and in the course of employment.

27 The Commissioner found (at [22] of the GD) that the Applicant had suffered a personal injury. This was not disputed on appeal. The main issue on appeal was whether the Applicant's injury was caused by an accident, which accident arose out of and in the course of employment (*ie*, elements (b) and (c)). The Commissioner found (at [14] of the GD) that the Applicant had failed to establish these elements on a balance of probabilities. I note that this may appear inconsistent with the Commissioner's findings at [46] of the GD (*supra* [23]) where he found that "the trauma was caused by an accident" that was suffered by the Applicant sometime before 8 August 2015. However, in my judgment, the Commissioner at [46] of the GD was using the term "accident" loosely and was merely stating that the injury was due to some other *incident* than the alleged lifting of the pipes on 8 August 2015.

28 Preliminarily, I also had to consider whether this was an appeal that was properly brought within the framework for dispute resolution under the WICA. I will deal, first, with this preliminary issue before proceeding with my analysis on whether elements (b) and (c) are established in this case.

Analysis

The preliminary issue

29 Both parties did not dispute that section 29(2A) of the WICA applies. Section 29(2A) applies to appeals from decisions of the Commissioner and provides that no appeal shall lie against any order of the Commissioner "unless a substantial question of law is involved in the appeal and the amount in dispute is not less than $1,000". It is undisputed that the amount in dispute here is $11,850.08 (*supra* [16]).

30 The Respondents, however, assert that the Applicant has not shown what is the "substantial question of law" involved for this appeal to be properly brought. For ease of reference, section 29 of the WICA is reproduced here:

> **Appeal from decision of Commissioner**
>
> **29.**—(1) Subject to section 24(3B), any person aggrieved by any order of the Commissioner made under this Act may appeal to the High Court whose decision shall be final.
>
> (2) The procedure governing any such appeal to the High Court shall be as provided for in the Rules of Court
>
> (2A) No appeal shall lie against any order *unless a substantial question of law is involved in the appeal* and the amount in dispute is not less than $1,000.
>
> (3) Notwithstanding any appeal under this section, the employer shall deposit with the Commissioner the amount of compensation ordered by the Commissioner under section 25A, 25B, 25C or 25D within 21 days from the date of the Commissioner's decision, and the deposit shall be held by the Commissioner pending the outcome of the appeal.
>
> [emphasis added]

31 The requirement of a substantial question of law has been canvassed before the Singapore courts on a number of occasions. In *Karuppiah Ravichandran v GDS Engineering Pte Ltd* [2009] 3 SLR 1028 ("*Karuppiah*"),

Kan Ting Chiu J, at [13] and [14], accepted the full range of errors of law found in *Halsbury's Laws of England* vol 1(1) (Butterworths, 4th Ed Reissue, 1989) para 70:

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

32 Additionally, in *Pang Chew Kim (next of kin of Poon Wai Tong, deceased) v Wartsila Singapore Pte Ltd and another* [2012] 1 SLR 15 ("*Pang Chew Kim*"), Tay Yong Kwang J (as he then was) observed (at [20]) that Singapore courts have accepted Lord Radcliffe's statement in *Edwards (Inspector of Taxes) v Bairstow* [1956] AC 14 at 36 that a factual finding which was such that "no person acting judicially and properly instructed as to the relevant law could have come to the determination upon appeal" amounted to a misconception or error in point of law.

33 The Respondents, relying on *Kee Yau Chong* (*supra* [26], at [15]), argue that it is not enough for there to be a *mere* question of law, or that the Court takes the view that a *different interpretation of the facts could have been drawn*.[10] Only a *substantial* question of law will suffice. This argument is not wrong. Indeed, it is consistent with the policy that the Commissioner's decisions are not to be examined as though they are decisions of a court of law (*Pang Chew Kim*, *supra* [32], at [18]). This is because Parliament's intention is for the

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10 1st and 2nd Respondents' Skeletal Submissions (5 January 2018) at [16]—[20].

WICA to provide "a simpler and quicker way to settle compensation claims by avoiding protracted legal proceedings" (*Allianz Insurance Co (Singapore) Pte Ltd and others v Ma Shoudong and another* [2011] 3 SLR 1167 ("*Allianz Insurance*") at [20]).

34 But promptness in the settlement of claims ought not to come at the expense of appropriate judicial scrutiny. This is especially so in relation to the decisions of statutory tribunals, such as the Commissioner in this case. In *Ng Swee Lang and another v Sassoon Samuel Bernard and others* [2008] 1 SLR(R) 522 ("*Ng Swee Lang*"), Andrew Ang J (at [24] and [25]) agreed with the submission that statutory tribunals performed important functions of the Government, which would generally affect the wider public interest. Courts have consequently taken the view that there must be a greater degree of judicial supervision over the decisions of statutory tribunals (*Pang Chew Kim*, *supra* [32], at [19]; *Karuppiah*, *supra* [31], at [14]).

35 What then is the proper ambit of the "substantial question of law" requirement under section 29(2A) of the WICA? Tay J in *Pang Chew Kim* (*supra* [32]) at [21] stated as follows:

> While the court will not generally disturb findings of facts unless they are such that "no person acting judicially and properly instructed as to the relevant law could have come to the determination upon appeal" (*Karuppiah* at [13]), there is no similar rule precluding courts from assessing the robustness of ***inferences*** drawn from the facts as found by the Commissioner.
>
> [emphasis added in bold italics]

36 Indeed, this is supported by *Director-General of Inland Revenue v Rakyat Berjaya Sdn Bhd* [1984] 1 MLJ 248, a Malaysian Federal Court of Civil Appeal decision cited by counsel in *Ng Swee Lang* (*supra* [34], at [21]). There,

Lee Hun Hoe CJ stated at 252, that the term "question of law" (in the context of appeals from the decisions of special commissioners in tax cases) includes the correctness of the inferring of a conclusion from the primary facts.

37 Having considered the Applicant's submissions, I find that a substantial question of law, within the meaning of section 29(2A) of the WICA, is involved in this appeal. The essence of the Applicant's complaint is that in arriving at his decision, the Commissioner took certain considerations into account when they were irrelevant, and failed to take into account other considerations when they were relevant. In other words, the Applicant is asking this Court to assess the robustness of the inferences drawn by the Commissioner from the facts before him. That, as I have explained, raises a substantial question of law. Of course, my finding on this preliminary issue says nothing about the merits of the Applicant's complaint. That is a matter for subsequent assessment, to which I now turn.

Whether the Applicant's injury was caused by an accident that arose out of and in the course of his employment

38 It is not disputed that the Applicant bears the burden of proving that the elements under section 3(1) of the WICA (*supra* [26]) are established. The Commissioner found that the first element was established. The Applicant's L5-S1 disc protrusion was a personal injury.

39 The Commissioner, however, found that the Applicant could not prove on a balance of probabilities that the L5-S1 disc protrusion was caused by an accident that arose *out of* and *in the course of* the Applicant's employment ([14] and [46] of the GD).

What is an "accident" under the WICA?

40 The question what amounts to an "accident" under the WICA has been considered in a number of cases. As noted in *Kee Yau Chong* (supra [26], at [25]), there is no statutory definition in WICA. In *NTUC Income Insurance Co-operative Ltd and another v Next of kin of Narayasamy s/o Ramasamy, deceased* [2006] 4 SLR(R) 507 ("*Narayasamy*"), Sundaresh Menon JC (as he then was), in a case where there was some evidence of a prior heart condition, concluded at [30] that in deciding the meaning of accident:

> … it is material to consider this from the point of view of the injured workman and not from the point of view of one with actual knowledge of the circumstances including any pre-existing medical conditions.

Later at [45], it was also said that if there was a unifying principle in the authorities it was this:

> an injury by accident within the meaning of the [WICA] 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.

41 On that basis, the deceased coach driver, who had died of a heart attack while engaging in heavy work, had suffered an accident in respect of which a claim for compensation could be brought under the WICA. This was in spite of the evidence that the deceased was not in good health, had narrowed coronary arteries, and had suffered from a previous heart attack.

42 *Narayasamy* was followed by Tay J in *Pang Chew Kim* (*supra* [32]), who held at [27] that "[b]eing a piece of social legislation, the WICA should be interpreted purposively in favour of employees who have suffered injury during

their employment" and that "[t]he *Narayasamy* interpretation is therefore entirely in line with the purpose of the WICA".

43 In *Pang Chew Kim*, the deceased had been sent by his employers on an overseas working trip. He was found dead in his hotel room in mid-morning shortly before he was due to leave for a business meeting. There was evidence that he had called another employee about breathing problems. The High Court found at [25] that the cause of death on a balance of probabilities was a heart attack and that this constituted an accident under the WICA. An accident for the purposes of section 3(1) of the WICA would thus include an internal medical condition that caused an unexpected injury while the employee was carrying out work.

44 It is clear on the evidence before the Commissioner that the Applicant was at work on 8 August 2015 and that he was tasked to carry pipes to the storage area. Whilst there is some dispute or inconsistency as to whether the severe pain was felt on lifting a pipe or on setting it down, it is not seriously disputed that during the process of lifting, carrying and setting down the pipe, the Applicant complained of severe pain and as a result of which he was eventually taken to KTPH.

45 Here, I note that the Respondents in their submissions state that the Applicant filed the i-Report himself and never indicated problems with expressing himself in English. They argue that there is therefore no reason why there would be a discrepancy in the Applicant's testimony in court and what was stated in the i-Report as to whether the severe pain was felt on lifting the pipe or on setting it down. But the discrepancy is a minor one. The significance of the i-Report was in the fact that the date of the accident is given as 8 August 2015 in that report. This is a point I will come back to subsequently (*infra* [96]).

46 It is evident that there was no fall as such or some other visually perceptible accident that caused the injury, such as the collapse of a supporting structure. There is also no evidence to suggest that the Applicant arrived at work on 8 August 2015 in physical distress or that he was unable to assist in carrying pipes. In short, the evidence is consistent with his arriving at work on 8 August 2015 where he was assigned the task of moving the pipes and that whilst he was carrying out the task, the severe pain arose in the lower back which led to his visit to KTPH.

47 It is also clear that the pain and difficulty that he experienced is due to the protrusion of the L5-S1 disc. The medical report of Dr Pillai was that the L5-S1 disc protrusion was an injury that could have been caused by carrying a heavy pipe or a fall (*supra* [15]). The protrusion was not a degenerative finding.[11] This meant that the protrusion was not a result of wear-and-tear. Unfortunately, Dr Pillai was unable to determine whether the protrusion was caused by (i) carrying the pipes on 8 August 2015; or (ii) a recent fall or one that occurred sometime before 8 August 2015. I note also that Dr Pillai was unable to say how long the disc protrusion had been present. Dr Pillai did accept that it was possible that the disc protrusion was due to a fall in 2013,[12] which the Applicant had in fact sustained.[13]

48 There is no doubt that the Applicant had a work-place accident in 2013 when he fell at work whilst working for a different employer. The Applicant

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11 Applicant's Record of Proceedings (volume 1), p 69.

12 Applicant's Record of Proceedings (volume 1), p 71.

13 Grounds of Decision for Case No W-20150900438 (LCH2) (28 April 2017) at [21].

was treated at TTSH. In the TTSH Report, it was stated that the Applicant had a L3 lumbar spine fracture in 2013 (*supra* [12]).[14] Thereafter a memo from TTSH dated 31 May 2016 stated that the Applicant was diagnosed with dengue fever and low back pain for which he sought treatment for on 15 June 2013.[15] This was followed by yet another memo dated 5 July 2016, which again stated the Applicant presented with lower back pain after a fall and a fever for 3 days. The Applicant was diagnosed with dengue fever and the X-rays showed an irregularity over the lower spine that could be due to a fracture.[16]

49 I pause to note that the KTPH Report dated 8 August 2015 also referred to the Applicant's previous history of a L3 spine fracture in 2013 which was treated conservatively (*supra* [9(b)]). Given the confusion whether the Applicant had a pre-existing lumbar fracture in 2013, the Applicant sought clarification from Dr Kolhe Lokesh Krishnaji of KTPH. In her reply dated 10 June 2016, Dr Krishnaji stated that there was "no obvious evidence of lumbar vertebra fracture in 2013".[17] Dr Krishnaji did not, however, give evidence and was not questioned on her report.

50 The end result is that whilst it is undisputed that the Applicant had a fall in 2013 and he was treated conservatively, it is unclear whether the fall caused a lumbar fracture in 2013 or a L5-S1 disc protrusion.

51 That said, it is clear that whatever was the injury sustained in 2013, the Applicant was able to return to manual work. There is nothing to suggest that

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14 See Claimant's Bundle of Documents at CB 1.

15 Applicant's Record of Proceedings (volume 1), p 270.

16 Applicant's Record of Proceedings (volume 1), p 99.

17 Applicant's Record of Proceedings (volume 1), p 271.

the Applicant was in fact suffering from lower back pain (level 5 or otherwise) such as to impede his carrying out of heavy manual work. Indeed, it is clear this was the sort of work he was employed to do with the second respondent. There is also no doubt that he had been tasked to assist in moving the heavy pipes on 8 August 2015 and that the subsequent medical reports and certificates support his case that he was in severe pain after carrying out or attempting to carry out the assigned work. Moreover, the pain he suffered must have persisted since he presented himself at TTSH on five subsequent occasions, and was even given a two-week period of hospitalisation leave by TTSH when his condition did not improve (*supra* [11]).

52 In the present case, it is readily apparent that there was an "accident" on 8 August 2015 that arose whilst the Applicant was lifting and re-locating some long heavy pipes at his work place. Severe pain in his lower back occurred during the re-location, resulting in his visit to KTPH that same day. It appears that the cause of the pain was an injury to the L5-S1 disc. The injury to the L5-S1 disc was diagnosed only some time later when the Applicant underwent an MRI at TTSH.

53 Much of the focus below was on whether the injury was caused by the lifting and relocation work the Applicant was carrying out on 8 August 2015, or by a fall in 2013, or an incident on 7 August 2015 instead. The Commissioner's conclusion was that the Applicant did not establish that an accident occurred on 8 August 2015. The Commissioner found that the accident on 8 August 2015 was staged and that it did not take place.

54 From that finding, it followed that the accident and injury must have occurred sometime before 8 August 2015. Given that the KTPH Report and the TTSH Report both stated that the injury arose from an accident sustained on 7

August 2015 (*supra* [9(a)] and [12] respectively), which was a public holiday when the Applicant was not at work, the Commissioner found that the accident and injury did not arise *in the course of employment* and the claim was dismissed. Of course, the other possibility is that the disc protrusion was connected with the earlier fall in 2013. The Commissioner did not, however, deal with this possibility in detail.

55 The point I presently underscore is that "accident" under the WICA is not limited to visually perceptible events such as where the worker falls down a lift shaft or where a crane drops its load or where a spillage of corrosive liquids occurs. In other words, the WICA contemplates that an "accident" is not limited to a case where the incident and the physical aftermath can be readily perceived by the naked eye such as a fractured leg or skin burn. Indeed, many accidents and injuries are much "subtler".

56 In his written submissions, the Applicant argues that the Commissioner had erred at [25] in comparing the Applicant's internal injury with injuries that manifest themselves visually for others to see.

57 Indeed, at the start of his analysis on whether there was an accident on 8 August 2015, the Commissioner makes the comment that "[i]t is common knowledge that it is easy to feign and correspondingly difficult to disprove the sustaining of a back injury".[18] The Commissioner goes on to state (at [26]) that:

> In the present case, there was no spectacular event like a fall … Instead, it was a split-second incident – one moment the Claimant was putting down a heavy pipe; the next moment, he was sitting on the ground and claiming to be in pain. No one around him could immediately verify whether he had really sustained a back injury. They had to take him at his word when

[18] Grounds of Decision for Case No W-20150900438 (LCH2) (28 April 2017) at [25].

> he claimed that he was in pain; that he was unable to stand but had to sit on the ground …

58 The fact that there were inconsistencies in the Applicant's description of when the sharp pain first arose was regarded by the Commissioner (at [27]) as a "'tell-tale' sign" of the Applicant's "inability to 'maintain a lie'".

59 With due respect and deference to the Commissioner, who heard the witness testimony, I have difficulties with the approach and conclusion that the Applicant was lying about his sharp pain and discomfort. It is perhaps not helpful to start the analysis on the footing that back injuries are easy to feign and hard to disprove. The converse can also be true: lower back pain, joint pain and the intensity of the pain may not be that easy to prove or assess. Whilst the Commissioner's assessment was that the people around him had to take his word that he was in pain and needed help, there is no doubt that he was indeed tasked to carry heavy pipes, that he did indeed visit KTPH where he was examined, and that a subsequent MRI revealed the L5-S1 disc protrusion. The medical evidence is that this protrusion is consistent with the carrying of a heavy load or a fall of some kind (*supra* [15]).

60 There is nothing in the medical reports to suggest that the doctors were of the view that the Applicant was merely pretending to be in pain. Furthermore, the MOM assessment was that there was a 10% disability.[19] The Applicant clearly could not be feigning the fact of a L5-S1 disc protrusion. Whilst the Respondents may suggest that the Applicant has greatly exaggerated the amount of pain, the objective evidence is consistent with the Applicant's case that he felt sharp pain in the lower back whilst performing his assigned work. His pain assessment was recorded as level 5 at KTPH (*supra* [10]). And although there

[19] Applicant's Record of Proceedings (volume 1), p 274.

was some dispute over the actual weight of the pipes the Applicant was tasked to carry, those pipes were in any event heavy.

61 To put the matter in a different way, if the "consistent" evidence was that during the course of work on 8 August 2015, the Applicant felt sharp pain in his lower back whilst tasked to move the pipes, and that further investigation revealed that the pain was likely caused by a L5-S1 disc protrusion, I am of the view that there would be no doubt at all that an accident (within the broad terms of the WICA) took place on 8 August 2015.

62 What would remain is the question whether the "accident" arose "in the course of employment" and if it did, whether the accident also arose "out of that employment".

63 I pause here to make the general observation that the fact that the questions posed by the WICA can be confusing and not easy to apply notwithstanding the objectives of the WICA is understandable. First, there must be an "accident". Second, the accident must arise "in the course of" employment. Third, the accident must also arise "out of" that employment. In addressing the second and third requirements, it is necessary to bear in mind the social objectives behind the WICA and current work expectations and practices. The problem can be exacerbated where the disability or injury develops organically over a long period of time. In short, there may be cases where a disability/injury (small or large) is the result of a final incident: the proverbial "straw that breaks the back". An individual may have an inherent weakness or propensity to heart disease. In some cases, he may have a prior history of heart issues (whether due to nature or nurture), which leaves him more susceptible to a severe heart attack at work. In another case, an individual may have had a previous accident from which she has recovered but which has left her with a

weakness or an increased susceptibility to a disability or further injury. This is the reality of the exigencies of life. Serendipitous exigencies may open one door. Others may exacerbate weaknesses and expose vulnerabilities. The point made is that we are all, at any point of time, products of the life had and the life led.

64 Wear and tear comes with life's experiences, fortunes and choices. Unfortunately, so do accidents, big and small. An individual may have a first accident that leaves him with an increased chance or susceptibility of disability or impediment (big or small) if he has a second accident. If a second accident does take place whilst he is performing his work, the fact that he had the increased susceptibility because of the first accident does not mean that the second accident did not occur in the course of employment.

65 Put differently, a worker who "chooses" an unhealthy life style and who then suffers from a heart attack at work has nonetheless endured an accident in the course of employment. Does the fact that he might not have had the heart attack and consequential disability if he led a healthier life make a difference? It must be borne in mind that the WICA system is not a "fault-based" compensation system. Under the WICA, "accident" essentially means an untoward event that was not designed. That was why the High Court in *Narayasamy* (*supra* [40]) found that an "accident" under the WICA had occurred when an employee's internal medical condition caused him to suffer an unexpected injury while he was at work.

The presumption that an accident "in the course of employment" arises "out of that employment"

66 At this juncture, I pause to note that section 3(6) of the WICA establishes

a rebuttable presumption to the effect that, unless the contrary is shown, an accident arising *in the course* of an employee's employment shall be deemed to have arisen *out of* that employment.

67 In *Kee Yau Chong* (*supra* [26], at [40]), I noted that this presumption not only created a rebuttable presumption for the employee's benefit, but also clarified that "arising in the course of" and "arising out of" were to be treated as separate and distinct concepts.

68 In *Allianz Insurance* (*supra* [33]), Lai Siu Chiu J held (at [16]) that an accident arises *in the course of* 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.

69 In contrast, an accident arises *out of* the employment if there is a causal connection between (a) the employment (and its incidents); and (b) the accident (*Allianz Insurance*, *supra* [33], at [15]). In other words, the accident must have arisen because of some intrinsic risk in the nature of the employment.

70 The difference between these two concepts is evident from the following statement of 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.

Thus, if an employee gets involved in an accident that occurred during working hours, using the test laid out by Lai J (*supra* [32]), the employee would have

been involved in an accident that arose *in the course* of employment. But notwithstanding the fact that the accident occurred while the employee was at work, that accident may well have occurred while the employee was undertaking some task that was not connected with the incidents of his employment. In such a case, it may then be that the accident, while arising *in the course* of employment, did not, however, arise *out of* the employment.

71 I pause to note that it is not always the case that in order for an accident to have arisen "in the course of employment", the employee must show that the accident occurred during working hours (including overtime) whilst the employee was actually carrying out work that he had been assigned. An employee at work who is taking his morning "tea break" in the work-place canteen is clearly taking the tea break "in the course of his employment". It may be a different matter if the workman chooses to go out to take his meal or if he leaves his place of work for his own purposes. In such cases, the service to his employer is interrupted. As was said by Lord Dunedin in *Charles R Davidson and Company v M'Robb or Officer* [1918] AC 304 at 321 and referred to in *Pang Chew Kim* (*supra* [32]) at [33], something done in the course of employment need not be actual work, but must be work or the natural incidents connected with the type of work. The taking of meals by a workman during his work hours at the place of work is an incident of his service.

72 Accordingly, in *Allianz Insurance* (*supra* [33]), Lai J found that the deceased was within the course of employment despite being on a break after his shift had ended and despite there being no evidence that he was actually doing work at the time of his death. Much will depend on a common-sense appraisal of the facts bearing in mind the objectives of the WICA.

73 Likewise, in *Pang Chew Kim* (*supra* [32]), Tay J opined (at [35]) that

where an employee is sent on an overseas work trip, the question as to whether he is in the course of his employment for the whole of the time when he is out of Singapore or only when he was actually doing work is a fact-sensitive inquiry. The further comment of Tay J (at [37]) bears underscoring: the WICA must continue to be relevant to the realities of contemporary working environments and conditions. One example was the case of "white-collar employees" where "work" is often no longer confined to specific places and times. Furthermore, leisure activities are frequently included or offered nowadays as part of the incidents of employment. On the facts of *Pang Chew Kim*, the High Court reversed the Commissioner's decision and found that the deceased suffered an accident (cardiac arrest) in the course of employment, even though he was still in his hotel room, as it was likely that he spent the morning preparing for his work meetings.

74 The position would be rather different if the employee was injured in an accident on his day-off whilst engaged in activities of his own choosing and purposes. In the present case, if the Applicant had decided to go fishing on his day off, only to slip on wet rocks and injure his spine, this accident and injury would not have arisen in the course of his employment. Tay J in *Pang Chew Kim* (at [35]) gave the example of an employee who, whilst on an overseas work trip, has a lull of a few hours between meetings and decides to go bungee jumping and injures himself. In such a case, Tay J opined that the accident "would probably not be sufficiently *incidental* to the course of work" [emphasis in original] and would instead constitute "an 'interruption' to the course of employment". But Tay J also noted that the position might be different if the employee had used that time to go bungee jumping with a prospective client in the hopes of securing work for the employer.

75 In the present case, the Applicant's position is that any reference in the medical reports to the accident occurring on 7 August 2015 was either made or recorded in error. If this explanation is accepted, it must follow that the pain resulting from injury to the L5-S1 disc occurred either on 8 August 2015 because of the lifting and carriage of the heavy pipes or as a result of a fall (or some such incident) on an earlier date.

76 On the evidence that was before me, the most likely earlier date/incident would be the fall in 2013. To be clear, there is no doubt that a fall occurred in 2013. As noted already, what was not clear was whether that fall in 2013 caused the disc protrusion (*supra* [50]). What is clear is that whatever injury was suffered in 2013, the Applicant had obviously recovered sufficiently to return to work (*supra* [51]). Even if it left him with an increased susceptibility to further injuries (on which there is no evidence), it did not stop him from engaging in manual work. Indeed, the Applicant started work with the second respondent in May 2014,[20] and there is nothing to suggest that he had complained of severe back pain prior to 8 August 2015, or that the earlier accident in 2013 prevented him from returning to work.

77 The rebuttable presumption in section 3(6) of the WICA is thus to be understood against this backdrop. As stated (*supra* [66]), section 3(6) provides that an accident arising *in the course of* an employee's employment shall be deemed to have *arisen out of* that employment, unless the contrary is shown.

78 It follows that a claimant only bears the burden of proving on a balance of probabilities that his injury was caused by an accident that arose *in the course of* his employment. The claimant can fulfil this burden by showing that the

[20] Affidavit of Hauque Enamul (18 January 2017) at [3].

accident occurred while he was at work. Once that is shown, section 3(6) operates to shift the burden of proof onto the party denying the claim. That party will then have to prove, on a balance of probabilities, that the accident arose out of something the claimant did, which was not connected with the incidents of the claimant's employment. As can be appreciated, notwithstanding the creation of a rebuttable presumption in the claimant's favour, section 3(6) does not change the *initial* burden that a claimant bears of proving that his injury was caused by an accident arising *in the course of* his employment.

79 The Commissioner's decision was premised significantly on the Applicant's inability to satisfy this initial burden. This can be seen at [48] of the GD:

> I made the finding that the Claimant did not suffer the accident on 08/8/15 in the manner he had described because:
>
> a. he had given a bare account of the accident;
>
> b. he did not corroborate his account in court by producing the relevant witness(es) to back him up;
>
> c. *I accepted the medical documentation of Khoo Teck Puat Hospital and Tan Tock Seng Hospital that the Claimant's accident had happened on 07/8/15*; and
>
> d. I rejected the Claimant's account of the accident as it was contrary to the medical documentation of both hospitals in one material aspect – *the date of the occurrence of the accident.*
>
> [emphasis added]

Again, at [46] of the GD, the Commissioner stated:

> In the final analysis, I reached the following conclusion:
>
> a. the Claimant had an injury – a L5-S1 disk protrusion;
>
> b. his injury was caused by trauma sustained by his lower back; and
>
> c. the trauma was *caused by an accident that he suffered*

> *sometime before 08/8/15.*
>
> [emphasis added]

80 It will be recalled that the Applicant claims to have sustained his injury through an accident that occurred while he was at work on 8 August 2015. But the hospitals that the Applicant visited, KTPH and TTSH, recorded that the accident occurred on 7 August 2015. Parties did not dispute that 7 August 2015 was a non-working day (the SG50 public holiday). Based on the hospital records then, the accident did not occur while the Applicant was at work. The Commissioner accordingly found that the Applicant had not satisfied the burden of proving in the first place that the accident arose in the course of his employment.

Analysis of the Commissioner's decision

81 Did the Applicant suffer an injury through an accident that occurred, as he claims, on 8 August 2015 while he was at work? Or did the accident occur on 7 August 2015, as recorded in the KTPH and TTSH Reports on an undisputed non-working day? That is the question that lies at the heart of this appeal.

82 Before proceeding to answer that question on the evidence, it is apt to bear in mind the effect of Order 55 Rule 2(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) in the context of appeals from tribunals such as the present. That rule provides that such appeals shall be by way of rehearing. In *Valentino Globe BV v Pacific Rim Industries Inc* [2009] 4 SLR(R) 577, Chan Seng Onn J stated (at [11]):

> "By way of rehearing" in my view means that the Court is not constrained to determine only whether the tribunal's decision was proper and/or contained manifest errors of fact and law. If it wishes to, the Court in its discretion may consider the entire ream of evidence before it and venture beyond determining the propriety of the tribunal's decision or inquiring into whether

> there had been manifest errors of fact or law. However, I do not think that it places an ***irrevocable burden*** upon the Courts to hear the matter anew so that the substantive merits fall to be determined afresh. As para 57/3/1 of *Singapore Civil Procedure* observes with regard to the phrase "by way of rehearing", albeit in relation to appeals to the Court of Appeal:
>
> > These words do not mean that the witnesses are heard afresh. They indicate the appeal is not limited to a consideration whether the misdirection, misreception of evidence or other alleged defect in the trial has taken place, so that a new trial should be ordered. They indicate that the court considers (so far as may be relevant) the whole of the evidence given in the court below and the whole course of the trial.
>
> [emphasis added in bold italics]

Thus, I am not confined only to determining the propriety of the Commissioner's decision. In answering the question in this appeal, I have to consider, so far as may be relevant, the whole of the evidence given at the trial below.

83 The Applicant claims that he suffered an injury while lifting a pipe with a co-worker at work on 8 August 2015. There was some dispute about the actual weight of the pipe, but that is not material. In the Commissioner's assessment, the biggest obstacle in the Applicant's case is the fact that the hospital records of both KTPH and TTSH document the Applicant as saying that he suffered his injury on 7 August 2015, a non-working day. KTPH's records show that the Applicant visited KTPH on 8 August 2015. The consultation there started at 3:57pm. It ended at 5:25pm. The KTPH Report stated that "patient was carrying heavy loads yesterday, when he noted he accidentally twisted his back when carrying the load … decided to come to A&E as he felt the back pain was getting worse".

84 The Commissioner, at [34] of the GD, considered the possibility of how

the timing of the Applicant's consultation at KTPH could have affected the Applicant's ability to accurately recount the date of the accident to the staff at KTPH. For instance, had the consultation taken place shortly before midnight on 8 August 2015, the Applicant might perhaps have thought that it was then already 9 August 2015 and, accordingly, might have described his accident as happening "yesterday". But the consultation in fact started shortly before 4pm on 8 August 2015. It ended about one and a half hours later. In these circumstances, "yesterday" could not have meant any other day apart from 7 August 2015.

85 Yet, it is plainly possible that there might have been some miscommunication between the Applicant and the medical staff at KTPH. I note that the Applicant gave his evidence in Bengali and that he had the assistance of a MOM officer in filling out the i-Report (*supra* [13]). It is also not disputed that Senthil, the safety coordinator who accompanied the Applicant to KTPH on 8 August 2015, did most of the talking when, presumably, he described the accident to the KTPH medical staff.

86 The Commissioner dealt with this point at [33] of his GD. He noted that the Applicant tried to explain away the discrepancy in dates shown on the hospital records by claiming that Senthil did most of the talking for him at KTPH. The Commissioner further observed that in so doing, the Applicant was alleging that Senthil had tried to sabotage him by deliberately giving the wrong date.

87 Whilst I do not have the benefit, as the Commissioner had, of observing the Applicant's demeanour on the stand, I am unable to draw the conclusion that the Applicant was alleging that Senthil had tried to "sabotage" him by giving the wrong dates. What I can conclude from the transcript is that there is a very

real possibility of miscommunication given that it was Senthil, and not the Applicant himself, who did most of the talking in recounting the accident to the medical staff at KTPH.

88 That said, it is not disputed that the Applicant was on his own when he visited TTSH on several occasions subsequently (*supra* [11]). Those visits were documented in TTSH's memo dated 12 October 2015,[21] which the Applicant adduced in his bundle of documents for the trial below. That memo states that the Applicant has visited TTSH multiple times "due to his back pain sustained at work on [7 August 2015]". The Applicant was alone on those visits to TTSH. The Commissioner's view was that the information TTSH recorded must accordingly have been communicated to the TTSH medical staff by the Applicant himself.

89 In his closing submissions before the Commissioner on 28 December 2016, counsel for the Applicant sought to argue that the error in the date was shared between both KTPH and TTSH.[22] Specifically, due to some form of medical record sharing system, KTPH's initial error in documenting the date of the accident was then "carried forward", affecting TTSH's reports in turn. The difficulty is that there is no evidence taken on this point and there was no application or request to adduce further evidence on the medical record sharing system between the hospitals.

90 The fact that KTPH and TTSH operated under the same healthcare cluster does not on its own mean that medical records are shared by both hospitals. That said, it is well-known and a matter of public record that

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21 Applicant's Record of Proceedings (volume 1), p 236.

22 Applicant's Record of Proceedings (volume 1), p 73.

Singapore began implementing an electronic medical record exchange system in 2004 to facilitate the sharing of electronic hospital inpatient discharge summaries across public healthcare clusters. The goal of this initiative was to improve patient care outcomes by sharing digitised records on-line across IT-enabled healthcare institutions. As highlighted by statements from the Ministry of Health at the time, this would enable hospitals to provide better co-ordinated care, especially when a patient moves across different hospitals and levels of healthcare delivery. Information shared includes the hospital's inpatient discharge summaries, laboratory test results, radiology reports, outpatient discharge summaries, and polyclinic discharge summaries.[23] Indeed, the sharing of records between hospitals would explain why the language used in the KTPH Report and the TTSH Report to describe the Applicant's 2013 fall is very similar (*supra* [12]).

91 Under section 58 of the Evidence Act (Cap 97, 1997 Rev Ed), no fact of which the court will take judicial notice need be proved. Section 59(1) goes on to provide a list of facts that the court shall take judicial notice of. But section 59(1) was not meant to be an exhaustive list of facts that the court can take judicial notice of (*Zheng Yu Shan v Lian Beng Construction (1988) Pte Ltd* [2009] 2 SLR(R) 587 ("*Zheng Yu Shan*") at [23]). In *Zheng Yu Shan*, V K Rajah JA held that the court could take judicial notice of two categories of facts (at

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23 https://www.moh.gov.sg/content/dam/moh_web/Publications/Educational%20Resources/2007/English%20Brochure%20002-1(1).pdf.

See also - https://www.moh.gov.sg/content/moh_web/home/pressRoom/pressRoomItemRelease/2004/electronic_medical_record_exchange%20(EMRX)%20-%20sharing_of_hospital_inpatient_discharge_summaries_across_public_healthcare_clusters.html

[27]) and that this would not be inconsistent with the position under the Evidence Act (at [24]). Those two categories of facts were:

(a) facts which are so notorious or so clearly established that they are beyond the subject of reasonable dispute; and

(b) specific facts which are capable of being immediately and accurately shown to exist by authoritative sources.

92 That said, I also bear in mind Rajah JA's exhortation (at [29] of *Zheng Yu Shan*, cited with approval by the Court of Appeal in *Smile Inc Dental Surgeons Pte Ltd v Lui Andrew Stewart* [2012] 4 SLR 308 at [26]) that the doctrine of judicial notice is very wide and that the discretion to take judicial notice of a particular fact should always be exercised with judicious caution. Nonetheless, facts that fall into either one of the two categories enumerated above can still be judicially noticeable. Thus, our courts have taken judicial notice of the fact, for example, that Singapore was getting out of a recession in 1987 and that prices of landed properties had gone up by 1989 as a result of the economic recovery (*Tay Joo Sing v Ku Yu Sang* [1994] 1 SLR(R) 765 at [27]), that Singapore had thrived as a free port and busy trading centre for all kinds of goods within the region for over a century (*Caterpillar Far East Ltd v CEL Tractors Pte Ltd* [1994] 2 SLR(R) 889 at [14]), that the Thai Baht has appreciated by about 20% between 2002 and 2007 (*Asia Hotel Investments Ltd v Starwood Asia Pacific Management Pte Ltd and another* [2007] SGHC 50 at [42]), and that there were a few other oil companies operating service stations and offering some measure of competition to the plaintiff in *Shell Eastern Petroleum (Pte) Ltd v Chuan Hong Auto (Pte) Ltd* [1995] 1 SLR(R) 902 (at [21]).

93 Here, I am satisfied that the court is entitled to take judicial notice of the fact that, since 2004, Singapore's public hospitals have begun implementing an electronic medical record exchange system to facilitate the sharing of electronic hospital inpatient discharge summaries across public healthcare clusters. The existence of such a system is a matter of public record, and is "capable of being immediately and accurately shown to exist by authoritative sources". Indeed, this very fact is evident on the Ministry of Health's own webpage. The result is that the initial error in the date recorded by the KTPH Report (*supra* [9(a)]) was likely carried forward to subsequent medical reports and memos, including those issued by TTSH.

94 In coming to my decision, I have noted that the Applicant did not call as witnesses any of the medical staff at KTPH who examined him. All the Applicant did was to write to KTPH seeking a clarification regarding the date documented. But in KTPH's reply dated 10 June 2016, Dr Krishnaji of KTPH's Acute and Emergency Care Centre declined to change the date of the accident from 7 August 2015 to 8 August 2015.[24]

95 Looking at the evidence as a whole, I have reached the conclusion that the Commissioner placed excessive weight on the error in the date as stated in the KTPH and TTSH Reports. There was no evidence that the Applicant reported to work on the morning of 8 August 2015 with any pain or difficulty in movement. The Applicant started doing work and had to stop work when he sustained the injury. He was then sent to KTPH with Senthil, the safety coordinator, accompanying him. Subsequently the Applicant visited TTSH on numerous occasions in August 2015. He was granted various types of leave, a

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[24] Applicant's Record of Proceedings (volume 1), p 271.

period of light duty and was eventually given two weeks of hospitalisation leave.

96 I also note that the Applicant subsequently lodged an i-Report with MOM on 8 September 2015. This report describes the accident as having occurred on 8 August 2015. It therefore conflicts with the hospital records. Whilst the hospital records were nearer the date of the accident and hence are more contemporaneous, this does not assist if an initial error was made and then carried forward in subsequent medical reports. The Respondents accept that the i-Report was made by the Applicant on his own (with the help of an MOM officer) unlike the information provided to KTPH on 8 August 2015, *which was related to the medical staff through Senthil*.

97 Counsel for the Applicant sought to argue that the alleged mistake in the hospital records can be overlooked since there was contemporaneous evidence that the Applicant was in fact carrying pipes at work on 8 August 2015 and could not continue working due to his injury. In this regard, counsel referred me to the testimony of the Respondents' witness, Sohag, the project superintendent. Sohag never actually witnessed the accident himself or accompanied the Applicant to KTPH.

98 Sohag, however, gave instructions to the Applicant and three other workers to move the pipes that morning. Thereafter, he went back to his office to do paperwork and was later informed of the accident by one Murugam. When Sohag went out to look for the Applicant, the Applicant had already stopped work and was squatting on the floor.

99 Even though Sohag did not witness the accident (the lifting and carrying procedure and the moment when the Applicant was unable to continue) there

can be no doubt at all that the Applicant was tasked to carry out the work. There is no evidence at all to suggest that he did not carry out the work or that he did not sit down in pain during the course of carrying a pipe. Sohag did witness the "immediate aftermath" so to speak. Further, the medical reports and MRI scan provide support for the inference that the Applicant did feel the sharp pain and was unable to continue.

100 For these reasons, and with due deference to the Commissioner, I find that the Applicant has established on a balance of probabilities that an accident took place on 8 August 2015 whilst the Applicant was carrying out his work. It follows then, that the accident arose *in the course of employment*.

Whether the accident arose out of the employment

101 As stated (*supra* [66]), section 3(6) of the WICA establishes a rebuttable presumption that an accident arising *in the course of an employee's employment* shall be deemed to arise *out of that employment*. Based on the facts and evidence I find that the Respondents have not rebutted the presumption. Indeed, I add that even if there was no statutory presumption, I would have found that the accident arose *out of* the employment. The "incident" that occurred on 8 August 2015 is an accident under the WICA for the reasons that were discussed earlier.

102 I would also add that the fact that the Applicant may have had a pre-existing condition or weakness arising out of the fall in 2013 does not alter the conclusion that an accident took place on 8 August 2015.

103 The possibility that was not explored in the medical evidence was that the fall in 2013 weakened his lower back such that the Applicant became more susceptible to lower back injuries. The act of lifting and carrying the heavy pipes

on the 8 August 2015 "unmasked" the weakness and/or resulted in the protrusion and consequential pain and disability. The other possibility is that the unmasking and/or cause of the disc protrusion was because the Applicant had another fall or accident on the 7 August 2015 whilst he was engaged in some activity which had nothing at all to do with his employer's work.

104 There is no doubt that the position would be different if the Applicant had a fall on 7 August 2015 whilst he was enjoying his own leisure activities, which fall caused the disc protrusion and severe pain that prevented him from working on 8 August 2015. If that was what had happened the Applicant could not claim compensation because he had "clocked off" work at the time when the accident arose and was pursuing his own activities out of his own choice.

105 The Commissioner found that the Applicant did not have an accident on 8 August 2015 in the manner as described by the Applicant because (i) he had given a bare account of the accident; (ii) he did not corroborate his account in court by producing relevant witnesses to back him up; and (iii) because the Commissioner accepted the statement in the KTPH and TTSH Reports that the accident took place on 7 August 2015.

106 With respect, I am unable to agree with the Commissioner. The fact that the account was "bare" is neither here nor there. If what the Commissioner meant was there were inconsistencies in the Applicant's description as to when he felt the sharp pain (when lifting up, carrying or putting down *etc*), I am of the view that far too much was read into this. Lifting, carrying and putting down a heavy pipe is a process and it may not always be easy to pinpoint the precise moment when the pain became severe. The point that the Applicant did not call his co-worker to testify has been dealt with already. Finally, I am of the view that the Commissioner did not give sufficient consideration to the real

possibility that the date had been mis-recorded and simply copied through into the subsequent TTSH reports.

Conclusion

107 For the reasons set out above, I find that the requirements under section 3(1) of the WICA were made out and the employer's liability was established. The application for the Commissioner's decision to be reversed is, therefore, granted. Costs are awarded to the Applicant to be taxed or agreed between the parties.

George Wei
Judge

Jogesh s/o Kantilal Doshi (Hoh Law Corporation) for the applicant;
Ramesh Appoo (Just Law LLC) for the respondents.