IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 212

Tribunal Appeal No 2 of 2018

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

And

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

And

In the matter of the Amended Certificate of Order made under the Work Injury Compensation Act by the Learned Assistant Commissioner, Mr Manoj s/o P N Rajagopal on 18 December 2017

Between

1. Temasek Polytechnic
2. NTUC Income Insurance Co-operative Ltd

… *Applicants*

And

1. Poh Peng Ghee
2. Carissa Poh Hui Min
3. Jonathan Poh Jun Hui

… *Respondents*

And

Attorney-General

… *Intervening Party*

JUDGMENT

[Employment Law] — [Work Injury Compensation Act]

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v
Poh Peng Ghee and others (Attorney-General, intervener)

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28 September 2018 Judgment reserved.

Woo Bih Li J:

Introduction

1 Chew Bee Ling ("the deceased") was an administrative manager employed by the first applicant, Temasek Polytechnic ("TP"). The second applicant, NTUC Income Insurance Co-operative Ltd ("NTUC Income") is the insurer of TP. On 16 January 2017, the deceased was found slumped over her chair at TP's premises. She was subsequently pronounced dead.

2 The three respondents are the husband, daughter and son respectively of the deceased who made a claim for compensation under the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("WICA").

3 The present application is an appeal by TP and NTUC Income ("the Applicants") against the decision of an Assistant Commissioner for Labour,

Mr Manoj s/o P N Rajagopal ("ACOL Manoj"). ACOL Manoj had decided that a Notice of Objection ("NOO") made by NTUC Income in its own name using Form A as prescribed in Reg 6 of the Work Injury Compensation Regulations (Cap 354, Rg 1, 2010 Rev Ed) ("the WIC Regulations") was not a valid objection to a Notice of Assessment of Compensation ("NAC") issued by an Assistant Commissioner for Labour, Mr Damien Lim ("ACOL Lim").

4 The application appears to raise a narrow point of law, *ie*, whether an objection by an employer's insurer in its own name using a prescribed form is valid for the purpose of WICA. However, it brings into question various provisions in WICA, the WIC Regulations and the scheme of work injury compensation as administered by the Ministry of Manpower ("MOM") and the Commissioner for Labour ("the COL"). The wider importance of the appeal is obvious. Hence, the Attorney-General ("the AG") applied for and was granted leave on 3 July 2018 to be added as an intervening party. For the purpose of this judgment, the word "insurer" refers to an employer's insurer.

Background

5 As mentioned, on 16 January 2017, the deceased was found slumped over her chair at her workplace at TP's premises and was subsequently pronounced dead.

6 Her next-of-kin, being the husband, daughter and son ("the Claimants"), then made a claim for compensation under WICA.

7 On or about 17 April 2017, ACOL Lim issued an NAC stating that the claim was found valid and the compensation payable was $204,000. It was served on TP, NTUC Income and the Claimants on or about 17 April 2017. The

NAC date of service was post-dated to 19 April 2017. The NAC was accompanied by the prescribed NOO form, *ie*, Form A which was to be used to object to the NAC.

8 Under WICA, any objection to the NAC must be given within 14 days after the date of service of the NAC.

9 On 2 May 2017, an officer of NTUC Income submitted an NOO to the COL. She ticked the box for which the ground of objection was that the death of the deceased was not caused or aggravated by an accident that arose out of and in the course of employment. The NOO also elaborated that:

> Death certificate [for the deceased] indicated the condition leading to death as Coronary Atherosclerosis which is a hardening of artery walls due to calcium deposits over the years. This is a medical condition and not due to the nature of the work of the deceased. Her job scope involved handling daily administrative paperwork concerning the employer's operations & admissions. Please advise why MOM would deem this to be work-related.

10 On 4 May 2017, a notice was issued by the COL to NTUC Income, TP and the Claimants stating that the COL has received objection(s) to the NAC, and that the addressees would be informed of the follow-up action shortly.

11 Thereafter, various pre-hearing conferences ("PHCs") were held. At the fourth PHC held on 16 October 2017, the Claimants' solicitors argued that the NOO submitted by NTUC Income was not valid as it was not submitted by TP, as the employer of the deceased, as required by WICA. Given that TP had not submitted an NOO, the NAC should be taken to have crystallised into an order against TP to make payment of the compensation sum of $204,000. The matter

was adjourned to 20 November 2017 for the solicitors of TP and NTUC Income to address the arguments raised by the Claimants' solicitors.

12 At the next PHC on 20 November 2017, ACOL Manoj heard submissions and decided that the NOO submitted by NTUC Income was not a valid objection for the purpose of WICA. Hence, the NAC had crystallised into an order against TP on the 15th day after the NAC had been served on TP, pursuant to WICA.

13 Subsequently, a covering letter dated 28 November 2017 was issued for and on behalf of the COL to TP enclosing a Certificate of Order dated 28 November 2017 ("the Certificate of Order") pursuant to WICA.

14 However, the Certificate of Order named TP and Just Law LLC (the solicitors for TP and NTUC Income) as the first and second respondents, respectively, therein. The Certificate of Order was signed by ACOL Manoj.

15 The Certificate of Order was later amended to replace the name of Just Law LLC with the name of NTUC Income. TP was still named as the first of the two respondents. The amended certificate of order was issued on 18 December 2017 ("the Amended Certificate of Order").

16 The terms of both certificates were identical in substance. Basically they stated that TP had failed to serve on the COL any objection within the period of 14 days after the service of the NAC and it was declared that pursuant to s 24(3) WICA, the NAC has the effect of an order on the 15th day after the NAC was served, *ie*, on 4 May 2017. Accordingly, the first respondent (meaning TP) was to pay the Claimants the compensation sum of $204,000.

17 On 12 January 2018, TP and NTUC Income filed the present application to appeal against the whole of the Amended Certificate of Order and the decision of ACOL Manoj that no valid NOO had been lodged by the deadline prescribed under WICA.

18 Although the main arguments revolved around the question as to whether the NOO submitted by NTUC Income was a valid NOO for the purpose of WICA, I will address some preliminary points first.

Whether the appeal is precluded under WICA

Section 24(3B) WICA

19 Under s 24(3B) WICA, no appeal shall lie against any order under s 24(3). In order to better understand s 24(3B) in context, I outline briefly the scheme under s 24 read with s 25D WICA.

20 Under s 24(1) WICA, the COL has the power to assess and make an order on the amount of compensation payable to a claimant.

21 Under s 24(2)(*a*) WICA, the COL is to serve on the employer and the person claiming compensation for any injury resulting from an accident an NAC stating the amount of compensation payable in accordance with the COL's assessment.

22 Under s 24(3)(*a*) WICA, an NAC referred to in s 24(2)(*a*) that has been served under s 24(2) shall be deemed to have been agreed by the employer and the person claiming compensation and shall have the effect of an order under s 25D on the 15th day after the NAC is served where no objection is received by the COL within a period of 14 days after the service of the NAC.

23 Under s 25D WICA, the COL may conduct a hearing after a claim for compensation has been made and hand down a decision and make any order for the payment of compensation as he thinks just at or after the hearing.

24 I will come back to some of the above provisions and set them out in detail later.

25 Section 24(3B) should be compared with s 29(1) and s 29(2A) WICA which state that:

> **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.
>
> …
>
> (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.
>
> …

26 It was not in dispute that the appeal in the present application involved a substantial question of law and that the amount in dispute was not less than $1,000. Thus, the requirements in s 29(2A) were met. The question was whether the appeal was precluded under s 24(3B) instead.

27 The Claimants submitted that the appeal was precluded under s 24(3B). The AG submitted that it was not. The Applicants also submitted that it was not. The Applicants submitted that s 24(3B) applies only where there is undoubtedly no objection received by the COL and is meant to preclude arguments that the COL should allow late objections to be served.

28 I was informed by all counsel that s 24(3B) is *sui generis*. They could not find any equivalent provision in similar legislation of other countries.

29 I note that s 24(3)(*a*) is based on the premise that in fact no NOO is received by the COL within the 14-day period after the service of an NAC. The provision then deems the NAC as having the effect of an order under s 25D.

30 But what if in fact an NOO was received by the COL but the COL erred in concluding that none was received or in concluding that it was not a valid objection? It seems to me too harsh on the objector to say that no appeal is to lie against such a decision even though it is wrong. There is also some merit in the argument that s 24(3B) is not meant to apply to such a situation but only to the situation where it is undisputed that no objection was served in time but an objector then seeks to raise an objection after the deadline. On the other hand, the counter-argument is that if that is the case, then s 24(3B) would be unnecessary as, where an objector seeks to raise an objection after the deadline by appealing an order made pursuant to s 24(3), the appeal would still fail under s 29(2A) WICA because no question of law is involved.

31 Be that as it may, I am of the view that s 24(3B) does assume that the premise in s 24(3)(*a*) is undisputed, *ie*, that in fact no NOO was received by the COL. Hence, s 24(3B) provides for the serious consequence where no appeal is allowed. However, where it is disputed whether an NOO was received by the COL and this gives rise to a question of law, then s 29(2A) applies, instead of s 24(3B). As I have stated, it is not disputed that the requirements in s 29(2A) have been met in the present circumstances.

32 Hence I conclude that s 24(3B) does not preclude the present appeal. If I were wrong on this point, then the only possible recourse available to TP and NTUC Income would be to apply for leave to commence judicial review proceedings.

33 I would add that they did apply for leave to commence judicial review proceedings in Originating Summons No 164 of 2018. However, I dismissed this application on 25 June 2018 on the basis that it was premature for them to apply for such leave. They had to exhaust the avenue of appeal first.

Section 29(1) WICA

34 I have set out s 29(1) WICA at [25] above. The Claimants submitted that since NTUC Income was not the person directed to make any payment under the Amended Certificate of Order of ACOL Manoj, NTUC Income was not a "person aggrieved" by his order. Hence it had no *locus standi* under s 29(1) WICA to make the appeal through the present application.

35 Bearing in mind that in reality, NTUC Income is the one who has to meet the liability to pay the $204,000, I have some doubts whether s 29(1) should be narrowly construed to exclude an insurer like NTUC Income from mounting an appeal. Furthermore, NTUC Income was the one who submitted an NOO which was rejected by ACOL Manoj as an invalid objection.

36 In any event, even if NTUC Income was not a "person aggrieved" by the Amended Certificate of Order, the Claimants did not dispute that TP was such a person and TP is one of the two applicants in the present application. Hence it is not necessary for me to conclude whether NTUC Income has *locus standi* to make the present appeal.

Whether the appeal is precluded under O 55 r 3(2) of the Rules of Court

37 Another point has come to my attention. Under O 55 r 3(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), any appeal has to be brought by originating summons which must be served within 28 days after the date of "the judgment, order, determination or other decision" being appealed against. Does the 28-day period begin to run from the date of the decision of ACOL Manoj on 20 November 2017 or the date of his Amended Certificate of Order of 18 December 2017? Parties assumed it was the latter and hence no issue was raised as to whether the present application filed on 12 January 2018 was filed in time. Nevertheless, this is one of the matters that should be clarified if and when the scheme under WICA is reviewed.

The main dispute – ss 24 and 25 WICA, Reg 6 of the WIC Regulations and Form A

38 Sections 24(2)(*a*) and 24(3)(*a*) WICA state:

> **Commissioner to assess compensation payable**
>
> **24.**—
>
> …
>
> (2) The Commissioner shall cause to be served on the employer and the person claiming compensation for any injury resulting from an accident —
>
> > (*a*) a notice of assessment of compensation stating the amount of the compensation payable in accordance with the assessment made by the Commissioner under subsection (1); or
> >
> > …
>
> (3) A notice of assessment of compensation referred to in subsection (2)(*a*) that is served under subsection (2) on an employer and the person claiming compensation shall be deemed to have been agreed upon by the employer and the

> person claiming compensation, and shall have the effect of an order under section 25D on —
>
> > (*a*) the 15th day after the notice is served where no objection is received by the Commissioner within a period of 14 days after the service of the notice; or
> >
> > …

39 Section 25(1) WICA states:

> **Objection to notice of assessment**
>
> **25.**—(1) If any employer or person claiming compensation objects to any notice of assessment of compensation issued by the Commissioner under section 24(2), he shall, within a period of 14 days after the service of the notice of assessment (or such longer period as the Commissioner may, in his discretion, allow in any particular case), give notice of his objection in the prescribed form and manner to the Commissioner stating precisely the grounds of his objection.

40 I will refer to the three provisions above, *ie*, ss 24(2)(*a*), 24(3)(*a*) and 25(1) WICA as "the Main Provisions" for convenience.

41 Although the employer is referred to as "the" employer, "an" employer or "any" employer in the Main Provisions, this difference is inconsequential for present purposes. Likewise, the absence of the article "the" in referring to the person claiming compensation in s 25(1) WICA is inconsequential. The differences appear to arise from poor drafting and not a deliberate intent to distinguish between different employers or different claimants.

42 The point is that the same substantive phrase is used throughout the Main Provisions, *ie*, "employer and the person claiming compensation" or "employer or person claiming compensation". I will refer to the phrase as "the Phrase".

43 The NAC which the COL issues is not a form prescribed by statute. The form which was issued in the present case has been in use for some time. I assume it was a form suggested or prepared by MOM. The NAC names the insurer as the payer even though the insurer is not mentioned in the Phrase or in any of the Main Provisions. There is also a statement in the NAC addressed to "all parties" that the party who wishes to dispute the assessment must give notice of his objection using the attached prescribed form, meaning the form prescribed under Reg 6 of the WIC Regulations ("Reg 6") which I shall come to. Furthermore, the NAC was served on TP, NTUC Income and the Claimants in accordance with existing practice.

44 The NAC was served together with an NOO form. Section 25(1) WICA refers to the giving of an NOO "in the prescribed form".

45 Reg 6 states:

> **Objection to notice of assessment**
>
> **6.** Any employer or person claiming compensation who objects to the notice of assessment of compensation issued by the Commissioner under section 24(2) of the Act shall give notice of that objection to the Commissioner in accordance with Form A in the Schedule.

46 Hence the form of the NOO is prescribed by subsidiary legislation and this is Form A which was used in the present case. I will refer to the form as "NOO" or "Form A" interchangeably.

47 NTUC Income completed the NOO and served it in time. It is undisputed that it did not amend the NOO to say explicitly that it was submitting it on behalf of TP. Neither did it send the NOO with a covering letter to say that the NOO was served on behalf of TP.

The reasons of ACOL Manoj

48 The reasons for the decision of ACOL Manoj are set out in his Grounds of Decision dated 26 March 2018. In summary, he relied primarily on the decision of Chua Lee Ming JC in *Goh Yee Lan Coreena and others v P & P Security Services Pte Ltd* [2016] 4 SLR 1065 ("*Coreena*"). Chua JC decided that s 25(1) WICA expressly requires an employer to file his objection. Chua JC also decided that an objection filed using Form A by an insurer in its own name was not an objection by the employer under s 25(1) WICA (see [38] of *Coreena*). There were only two ways in which an employer could rely on an objection filed by an insurer (see [36]–[37] of *Coreena*):

(a) if the insurer filed the NOO in the name of the employer (as the insurance policy in *Coreena* had allowed the insurer to do); or

(b) if the insurer filed the NOO on behalf of the employer as the latter's agent.

49 This meant that Chua JC was of the view that an insurer is not permitted to object under s 25(1) WICA and the use of Form A by an insurer in its own name is not good enough to assist the employer to meet its obligation under s 25(1) WICA.

50 ACOL Manoj was mindful of the fact that the NAC was served on NTUC Income and that Form A contains a section for the insurer to object to the NAC. However, he was of the view that this did not mean that Form A conferred on an insurer the right to object when such a right is not expressly conferred by s 25 WICA. He adopted the view of Chua JC in *Coreena* that the

section under Form A for an insurer to object may have been intended for cases where the claim is brought against the insurer under s 32 WICA.

51 ACOL Manoj added that the section for insurers to object may also have been intended for cases where the insurer makes the objection as an agent on behalf of the employer. NTUC Income could have made it clear in a covering letter accompanying Form A that the objection was being made on behalf of TP. Hence, ACOL Manoj was of the view that an insurer who is not acting on behalf of the employer should not be using Form A as that would be inconsistent with s 25(1) WICA.

52 ACOL Manoj also referred to my decision in *MST Ruma Khatun v T & Zee Engineering Pte Ltd and another* [2017] 4 SLR 1045 ("*Ruma Khatun*") where I said, at [51], that I accepted that the literal interpretation of s 25(1) WICA would mean that only an employer and the person claiming compensation may object to an NAC. However, I also said that the practice has been different and added at [55] that if all parties have proceeded on the premise that an insurer may object to an NAC in its own name, then the deeming provision under s 24(3) WICA does not apply if the insurer has objected though the employer has not. On the facts before him, ACOL Manoj decided that the Claimants had not acquiesced to NTUC Income's participation in the process of objecting to the NAC.

The parties' arguments

The Applicants' submissions

53 The Applicants' first argument was that an insurer may submit an NOO notwithstanding the Phrase in the Main Provisions ("first argument"). The

Applicants also submitted, alternatively, that the NOO which was served by NTUC Income should be deemed as an NOO submitted for or on behalf of TP ("second argument").

54 The Applicants also made a third argument as another alternative argument This was on the premise that an objection by an insurer in its own name using Form A is an invalid objection for the purpose of the Main Provisions. They argued that, in that outcome, the NAC and the NOO were issued (by the COL) in error to the parties as these forms suggest that an insurer may issue a valid objection under the Main Provisions. Hence the suggestion was that the COL would have to re-issue the NAC. I do not have to address this third argument as it has become academic for reasons elaborated below.

55 Furthermore, although the Applicants raised the question of acquiescence by the Claimants, that question has also become academic for reasons elaborated below.

56 Many of the points which the Applicants raised to support its first and second arguments overlapped. They relied on the following:[1]

(a) The NAC names the insurer as the payer, and there is a statement in the NAC that any party who wishes to dispute the assessment must give notice of his objection using the attached prescribed form, and the attached form is Form A which NTUC Income did use.

(b) The NAC with Form A attached was served on various parties including NTUC Income.

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[1] Paras 20–28, 30, 113, 117–118 of Applicants' submissions dated 23 July 2018.

(c) Form A allows the insurer to complete and serve the NOO in its own name on the COL. Indeed, there is nothing in Form A to suggest otherwise.

57 The Applicants stressed that it was the practice at MOM to designate the insurer as the payer in an NAC and alleged that where an insurer had confirmed that its policy was engaged, it was invited by MOM to file an objection to the NAC on behalf of the employer.[2] Furthermore, since September 2017, it has been the practice of MOM when it receives an objection from the insurer to follow up with the employer and insurer to confirm that the insurer is objecting on behalf of the employer. This new practice suggests that insurers have been able to object in their own names in the past.[3]

58 The Applicants also relied on s 25E(1) WICA to support its first argument. Section 25E(1) states:

> **No objection on ground of double insurance**
>
> **25E.**—(1) In any proceedings under section 24, 25, 25A, 25B, 25C or 25D, an employer's insurer shall not be entitled to raise any objection or defence on the ground that there is in force a policy of insurance issued by another party covering the same liability to pay compensation or interest under this Act in respect of any accident as the policy of insurance issued by the employer's insurer.

59 The Applicants submitted that the reference in s 25E(1) to an employer's insurer raising any objection under various provisions WICA, including ss 24 and 25, implies that an insurer may submit the objection envisaged under the Main Provisions.[4]

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2 Para 165 of Applicants' submissions dated 23 July 2018.

3 Paras 149–150 of Applicants' submissions dated 23 July 2018.

4 Para 128 of Applicants' submissions dated 23 July 2018.

60 For its second argument, the Applicants relied on s 27(1)(*d*) WICA which states that any act to be made or done by any person to the COL may be made or done on behalf of that person by his insurer.

The Claimants' submissions

61 In view of the Phrase in the Main Provisions and in Reg 6, the Claimants submitted that only an employer or person claiming compensation may serve an NOO in response to an NAC. Hence, an insurer that serves an NOO in its own name is excluded from doing so and such an NOO would be an invalid objection for the purpose of the Main Provisions.[5]

62 The Claimants submitted that the NAC referred to in s 24(2) WICA is a notice to an employer to pay compensation assessed by the COL. It is not a notice to an insurer to pay compensation.[6]

63 They also submitted that although the NAC in question in fact names the insurer as the payer, there is nothing wrong or illegal in this or in serving the NAC on NTUC Income. The purpose of these steps was to give NTUC Income the opportunity to disclaim liability on its policy. An insurer may also object on the ground that the wrong payer is indicated in the NAC which is one of the grounds of objection in Section B of Form A.[7] There is nothing in the NAC which would give the reader the impression that an insurer can raise an objection under the Main Provisions in its own name.[8] Therefore, permitting or inviting

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5 Para 34 of Claimants' submissions dated 24 July 2018.

6 Para 29 of Claimants' submissions dated 24 July 2018.

7 Para 75 of Claimants' submissions dated 24 July 2018.

8 Para 78 of Claimants' submissions dated 24 July 2018.

NTUC Income to raise an objection using Form A does not mean that TP need not raise an objection if it is disputing the compensation assessed.[9]

64 As for the practice of MOM, the Claimants say that MOM will accept an objection from an insurer to an NAC only if the insurer is acting on behalf of the employer or takes over conduct of the matter on behalf of the employer.[10]

65 The Claimants referred to s 19(1) WICA which transfers the rights of an employer against an insurer to the employee concerned if the employer becomes bankrupt or is wound up. They submitted that this is the only situation where the NAC is to be served directly on the insurer instead of the employer.[11]

66 As for the Applicants' reliance on s 27(1)(*d*) WICA to support their second argument, the Claimants submitted that this provision still did not allow an insurer to serve an NOO in its own name. The insurer still has to take over the matter in the employer's name or serve the NOO on behalf of the employer.[12]

67 Unsurprisingly, the Claimants relied on the decision in *Coreena*. They also relied on my decision in *Ruma Khatun* where I had mentioned that the literal interpretation of s 25(1) WICA would mean that only an employer and the person claiming compensation may object to an NAC.[13]

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9 Para 76 of Claimants' submissions dated 24 July 2018.

10 Para 86 of Claimants' submissions dated 24 July 2018.

11 Paras 52–53 of Claimants' submissions dated 24 July 2018.

12 Paras 55–56 of Claimants' submissions dated 24 July 2018.

13 Paras 36–37 of Claimants' submissions dated 24 July 2018.

The AG's submissions

68 The AG agreed with the Claimants' submission that only the employer or a person claiming compensation, *ie*, a claimant could serve an NOO on the COL. The AG submitted that the terms of the Main Provisions and Reg 6 are clear and therefore an insurer cannot submit an NOO and only the employer or the claimant may do so. The AG also relied on the decision in *Coreena* and on my decision in *Ruma Khatun*.[14]

69 As regards s 25E WICA, the AG submitted that this is a prohibitive provision which does not allow insurers to make certain specific objections. It is not an enabling provision that grants an insurer the right to object under the Main Provisions. At best, s 25E is silent on the point.[15]

70 As for the use of Form A, the AG submitted that there is a presumption of law that subsidiary legislation is passed *intra vires* and not *ultra vires*. Form A does not change the position under primary legislation. Otherwise it would be *ultra vires*. The AG also submitted that in practice, Form A has been used by insurers in one of two ways:[16]

> (a) Scenario 1: Insurer uses Form A to give notice of an objection to the Commissioner's assessment on the amount of compensation payable, whether on behalf of the employer, or for itself;
>
> (b) Scenario 2: Insurer uses Form A to give notice of its repudiation of liability under the insurance policy. *Coreena* is an example.

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14 Paras 27–31 of AG's submissions dated 23 July 2018.

15 Para 35 of AG's submissions dated 23 July 2018.

16 Paras 40, 89 of AG's submissions dated 23 July 2018.

71 Yet the AG also submitted that the portion of Section A of Form A for an insurer to object goes no further than to allow an insurer to object to an NAC on behalf of an employer.[17]

72 The AG was concerned that unless an insurer explicitly states in Form A that it is objecting on behalf of an employer, there is nothing to prevent the insurer from later repudiating liability under the policy of insurance. This was the case in *Coreena*.[18] The AG submitted that where an insurer repudiates liability under the insurance policy using Form A, this is not in fact an objection for the purpose of the Main Provisions. One should keep separate (a) an objection to an NAC and (b) an objection where the insurer repudiates liability under the policy.[19]

73 The AG also disputed that the practice in MOM has been to accept any objection by an insurer using Form A even though the insurer uses its own name only in the form. The AG submitted that convening a PHC after receipt of such an objection does not mean that MOM has accepted the validity of the objection from the insurer. The matter is merely fixed for further deliberation. The COL still has to decide whether the insurer's objection should be considered or disregarded. Furthermore, it may not be clear who the insurer is objecting for, whether for itself or for the employer.[20]

74 The AG left it to the court to engage in a fact finding exercise to decide whether the NOO served by NTUC Income was in fact served on behalf of TP.[21]

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17 Paras 59, 63, 65, 67 of AG's submissions dated 23 July 2018.

18 Para 70 of AG's submissions dated 23 July 2018.

19 Paras 93–94 of AG's submissions dated 23 July 2018.

20 Paras 90–91 of AG's submissions dated 23 July 2018.

The court's reasons and decision

75 If I were to accept the Applicants' first argument that an insurer may use Form A to submit an objection in its own name to an NAC, then the fact finding exercise envisaged by the AG does not come into play.

76 However, even if the Applicants' first argument fails, I am of the view that the fact finding exercise envisaged by the AG is also not necessary. The primary facts, as set out above at [5]–[7], [9], [43]–[44] and [46]–[47], were not in dispute. The terms of the NOO submitted by NTUC Income were also not in dispute. The question is one of law, *ie*, whether the NOO served by NTUC Income in its own name was a valid objection for the purpose of the Main Provisions.

77 In view of the Phrase in the Main Provisions and in Reg 6, the answer to the question appears straightforward. The Phrase allows only an employer or a person claiming compensation, *ie*, a claimant to object to an NAC.

78 Would such a construction be contrary to a purposive interpretation? The Applicants did not submit that a purposive interpretation would mean that an insurer is allowed to serve the NOO in its own name. Indeed, even if the employer and a claimant were the only persons entitled to object to an NAC, this does not mean that an insurer is totally excluded. As stated in *Coreena*, an insurer may still serve the NOO either in the name of the employer or on behalf of the employer.

79 As for the Applicants' reliance on s 25E(1) WICA, its terms are set out above at [58]. I agree with the Applicants' submission to the extent that since

[21] Para 4 of AG's submissions dated 23 July 2018.

s 25E(1) states that an insurer is not entitled to raise any objection under ss 24 and 25 on the ground of double insurance, it implies that an insurer may otherwise object under the Main Provisions. However, s 25E(1) is silent as to whether the insurer is to make the objection under the Main Provisions in the name of the insured (*ie*, the employer) or on behalf of the insured or in its own name or if all three alternatives are permissible. The focus of s 25E(1) is to clarify that an insurer may not object to an NAC on the ground of double insurance. This is obvious from its terms. It is also obvious from the speech of Brigadier-General (NS) Tan Chuan-Jin, Minister of State for National Development and Manpower, at the second reading of the Work Injury Compensation (Amendment) Bill 2011 (No 18 of 2011).[22] At the time when s 25E(1) was enacted, there was no question about the validity of an objection served by an insurer in its own name. That issue arose only recently.

80 I also agree with the AG's submission that s 25E(1) is a prohibitive provision and not an enabling one. The Applicants still have to make out their first argument from the terms in the Main Provisions and Reg 6.

81 As for the Claimants' reliance on s 19(1) WICA, this provision does not show that it is only upon the bankruptcy or liquidation of an employer that an insurer may object under the Main Provisions and I need not say more on it.

82 In view of the clear words in the Phrase, the scheme under the Main Provisions and Reg 6 appears to be that only an employer and a claimant may serve an objection in response to an NAC.

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22 Para 88 of Claimants' submissions dated 23 July 2018; Tab 18 of AG's Bundle of Authorities, Vol 2, dated 23 July 2018.

83 However, the NAC and the NOO suggest otherwise. Whether or not it is the practice of MOM to treat an NOO served by an insurer as a valid objection under the Main Provisions, these two forms have confused matters because they do suggest that an insurer may serve an NOO in its own name.

84 I have already mentioned at [43] that the NAC names the insurer as payer and I have referred to the statement therein addressed to "all parties" (which would include the insurer since it is named as payer) that the party who wishes to dispute the assessment must object using Form A. The NAC itself and the practice of serving it with Form A on the insurer suggest that an insurer may serve an NOO in its own name. The contents of Form A make the same suggestion. I will elaborate on the contents of Form A later.

85 It appears that the intention behind these two forms was to allow the insurer to object so that the views and objections of all interested parties to a particular assessment of compensation could be considered and addressed at the same time to expedite matters. However, it also appears that these forms were devised without adequate regard to the existence of the Phrase in the Main Provisions and in Reg 6. Hence the present confusion and unsatisfactory state of affairs.

86 In *Ruma Khatun*, I noted, at [51], that the literal interpretation of s 25(1) WICA would mean that only an employer and a claimant may object to an NAC. It was this observation which both the Claimants and the AG referred to. They seemed to think that I had agreed with the decision of Chua JC in *Coreena* that the use of Form A by an insurer in its own name is not good enough.

87 It is important to note that in *Ruma Khatun*, I had said, without deciding, that the literal interpretation of s 25(1) WICA would mean that only an

employer and a claimant could serve an objection under s 25(1) WICA. I also did not decide whether an NOO served by an insurer in its own name was a valid objection for the purpose of the Main Provisions, including s 25(1), since it was not necessary for me to do so then.

88 Both these issues are now before me. Looking at the clear words in the Phrase and notwithstanding the NAC and the NOO, I agree with Chua JC in *Coreena* to the extent that only an employer and a claimant may serve an NOO in response to an NAC. However this does not mean that the NOO served by NTUC Income is invalid as I elaborate later.

89 I come now to the Applicants' second argument.

90 I am of the view that s 27(1)(*d*) WICA does not assist the Applicants. The Claimants do not dispute that an insurer may serve an NOO on behalf of its insured, *ie*, the employer. Their point is that NTUC Income did not purport to do so as there was nothing explicit in the NOO submitted that indicated this. Neither was there a cover letter from NTUC Income, or even TP, stating that the NOO was submitted on behalf of TP at the time the NOO was served. Hence, there is the need for the Applicants' second argument that the NOO submitted by NTUC Income is to be deemed (or construed) as an objection submitted on behalf of TP.

91 The Claimants disputed that Form A supports the Applicants' second argument.

92 Section A of Form A is for the particulars of the objecting party to be stated. There are three boxes which may be ticked. One of the three boxes may

be ticked to indicate if it is the claimant or the employer or the insurer respectively who is raising the objection.

93 If it is the insurer raising the objection, the name of the insurer is to be stated. The first clause thereafter in Form A has blank spaces to be completed, one of which is for the name of the insurer's representative signing the form to be stated. The first clause also states that the representative is acting "on behalf of the abovenamed insurance company/firm" and not on behalf of the employer in question.

94 Clause 2 also states, *inter alia*, "We are aware that we are required to submit all ground(s) of objection within 14 days after the service of the Notice of Assessment …"

95 Below cl 2 are spaces for the name and designation of the insurer's representative, signature and date of signature to be inserted.

96 Section B of Form A contains various grounds of objection. It is for the relevant party (who has identified himself in Section A) to tick the appropriate box in Section B to signify the ground of objection that is raised and elaborate where necessary.

97 The Claimants submitted that an insurer is entitled to tick only one of the boxes in Section B for which the objection is that the wrong payer is indicated in the NAC. The insurer is not entitled to tick the other boxes for which other grounds of objection are stated.

98 However, there is nothing in Form A itself that suggests that the insurer is restricted to objecting on one ground only and cannot use the form to raise

any other ground of objection. Any such restriction would arise from the Phrase in the Main Provisions and Reg 6 and not from Section B of Form A itself. On the contrary, the entirety of Form A suggests that the insurer may use it to object to an NAC and also on any ground for the purpose of the Main Provisions.

99 I come back to *Coreena*. Chua JC did note that Form A included a section or portion for insurers to object. He postulated, at [35], that that portion may have been intended for cases where the claim has been brought against the insurer pursuant to s 32 WICA, although he said he did not have to decide whether this was so. In any event, as mentioned, the learned judge decided that an objection served by an insurer in its own name was not valid for the purpose of the Main Provisions.

100 Section 32 WICA states:

> **Proceedings against insurers**
>
> **32.**—(1) Where an employer has incurred any liability to pay compensation or interest under this Act in respect of any accident occurring while there was in force an approved policy of insurance covering that liability, proceedings to enforce a claim in respect of that liability under sections 24, 28, 28A and 29 may be brought against the insurer as if he were the employer.
>
> (2) In any proceedings brought against an insurer by virtue of subsection (1), the employer shall render all reasonable assistance to the insurer to enable the insurer to conduct any such proceedings and to defend any claim which the insurer decides to defend; and if the employer fails to do so he shall be liable to pay to the insurer any amount which has been paid or may become payable by the insurer as a result of those proceedings.

101 While it is true that the inclusion of the insurer as a possible objector in Form A may have been influenced by the fact that an insurer may be the ultimate payer of any compensation ordered to be paid, I reiterate that Form A is

prescribed under Reg 6 which in turn refers expressly to an objection in response to an NAC issued under s 24(2) WICA only. Reg 6 does not refer to s 32 WICA. Hence, I do not think that s 32 WICA may be used to explain the inclusion of the insurer in Form A.

102 It seems to me that one way of construing the use of Form A by an insurer in its own name in a manner consistent with the Phrase is to construe such an objection as, *prima facie*, having been made on behalf of the employer. This would be valid, without more, if the grounds of objection under Section B include a ground that addresses the issue of liability or quantum as between the employer and the claimant. In other words, it is not necessary for an insurer to amend Form A to state explicitly that it is submitting the form on behalf of the employer.

103 Otherwise, Form A would be misleading and would be a pitfall for many an unsuspecting employer and an unsuspecting insurer. As mentioned above, the NAC indicates an insurer as the payer. The employer and the insurer, as well as the claimant, are served with the NAC. They are all informed that any objection must be served using an attached form and the NAC is accompanied by Form A/the NOO. Form A includes a portion for the insurer to object. There is no indication in the NAC or Form A that the insurer must amend Form A to state explicitly that it is making an objection in the name of the employer or on its behalf. An employer and an insurer cannot be faulted for assuming that if the insurer completes and serves Form A to object, that is a valid objection for the purpose of the Main Provisions.

104 It seems contrary to logic to conclude that by doing what is required under Form A, and no more, an insurer will have at the same time prejudiced

both its interest and that of the employer on the ground that that objection will, in any event, be considered invalid. It is no answer to say that every employer and every insurer should have been aware of the decision in *Coreena* so as to avoid the situation which has arisen.

105 The presumption that an objection served by an insurer, using Form A and raising a valid ground of objection, is served on behalf of the employer may be rebutted by the employer. This should be done as soon as possible after the employer is aware that the insurer has served the objection on the COL. It is also open to a claimant to ask the employer if the objection is served on behalf of the employer if the claimant doubts this. One opportunity for the claimant to do so, if he wishes, is at the first of the PHCs. On the present facts, TP has not disavowed the NOO served by NTUC Income.

106 Furthermore, NTUC Income was not objecting to the NAC on the basis that it was repudiating liability under its policy of insurance. Rather, it was objecting on a ground that TP, as the employer, could take in respect of TP's liability to the Claimants.

107 I agree with the AG that an objection by an insurer to repudiate liability under its policy is different from an objection to an NAC under the Main Provisions. In substance, the former is not an objection under the Main Provisions even if Form A is used.

108 That is why I mentioned the qualification at [102] above, that the grounds of objection served by an insurer using Form A is to include a ground that addresses the issue of liability or quantum as between the employer and the claimant ("valid ground of objection"). Thus the *prima facie* presumption that

an objection served by an insurer using Form A is made on behalf of the employer applies if one such valid ground of objection is raised. If the only ground raised is that the insurer is repudiating liability under the policy and that ground does not also apply to any issue as between the employer and the claimant, then it is not a valid objection under the Main Provisions.

109 The AG was concerned that unless an insurer explicitly states in the NOO that it is objecting on behalf of the employer, it may later repudiate liability under the policy. I am of the view that this concern arises from an incorrect premise. The AG had assumed that an insurer who is repudiating liability under the policy cannot also object to the NAC on a different ground on behalf of the employer. However, an insurer may do both. For example, an insurer may repudiate liability under the policy and, without prejudice to this stand, also raise a different objection, *eg*, that the injury did not arise out of and in the course of the employment of the injured employee. Conversely, if an insurer states a valid ground of objection under the NOO, this does not necessarily preclude it from repudiating liability later under the policy if it discovers a valid reason to do so, although the employer may argue that the insurer has waived its right to repudiate after serving the NOO. Whether there is such a waiver as between the insurer and the employer depends on the facts. The point is that the service of a valid ground of objection under the NOO by an insurer does not necessarily preclude it from later repudiating the policy.

110 In summary, there is nothing objectionable in principle *per se* in construing an NOO served by an insurer as a valid objection under the Main Provisions, if it contains a valid ground of objection, *ie*, one which addresses the issue of liability or quantum as between the employer and the claimant, even though the insurer has repudiated or may later repudiate the policy. The

objection of the insurer is *prima facie* made on behalf of the employer and it is up to the employer to disavow it.

111 I am aware that other questions may arise if an objection by an insurer using Form A is to be construed *prima facie* as an objection on behalf of the employer where it includes a valid ground of objection.

112 For example, what if both the employer and the insurer serve a Form A and the grounds of objection pertaining to liability or quantum as between the employer and the claimant differ? If the grounds of objection are not inconsistent, both the grounds of the employer and of the insurer could still apply. But what if there is an inconsistency? Perhaps they could then be considered as alternative grounds of objection.

113 In any event, I do not think that such questions raise insurmountable obstacles such that they suggest that the approach which I have mentioned is incorrect. Rather they reinforce the point that WICA, the WIC Regulations and the practice of MOM and the COL should be reviewed holistically to ensure consistency and to avoid pitfalls for unwary parties, as well as to address various gaps or uncertainties to achieve the laudable aim of providing an expeditious avenue to resolve a claim for compensation on a no-fault basis. In *Ruma Khatun*, I already raised concerns about the mismatch between legislation and practice. I understand from counsel for the AG that a review is being undertaken.

114 In the meantime, unless the NAC and Form A are amended to avoid confusion, each insurer should ensure that its insured completes, signs and serves Form A in the insured's own name in time with the requisite grounds of objection to avoid further arguments. If the insurer is still concerned that the

insured may omit to serve Form A at all or in time, then it is for the insurer to decide whether to also complete and serve Form A in its own name in time with the valid grounds of objection as a matter of caution. If necessary, this can be done with the insurer reserving the right to repudiate liability under the policy if, for example, the insurer has not completed its own investigations.

115 To avoid inconsistency and other confusion, the insurer should ensure that the grounds of objection raised by the insured and itself using Form A are the same to the extent possible.

116 In the light of the use of the NAC and Form A, as presently drafted, MOM should decide whether it wishes to take the lead to draw to the attention of all insurers about the dispute that has arisen if only the insurer serves the Form A objection and about the suggestions made above. I add that the suggestions do not mean that the court is pro-employer or pro-insurer. They are made to avoid a technical objection arising from a situation through the use of forms imposed on parties.

Conclusion

117 In the circumstances, I conclude in favour of the Applicants' second argument. Since the ground of objection stated in the NOO served by NTUC Income is one that addresses the issue of liability as between TP and the Claimants, the objection is to be *prima facie* construed as an objection submitted on behalf of TP under the Main Provisions. As TP has not disavowed the objection, it is a valid objection. The Amended Certificate of Order of ACOL Manoj is set aside.

118 I will hear the parties on costs and on any other consequential order that may be required.

Woo Bih Li
Judge

Ramesh Appoo and Vinodhan Gunasekaran (Just Law LLC) for the applicants;
K Mathialahan (Guna & Associates) for the respondents;
Yeo Xue Ying, Gordon Lim and Amanda Sum (Attorney-General's Chambers) for the intervening party.