Kee Yau Chong *v* S H Interdeco Pte Ltd
[2013] SGHC 218

Case Number : Originating Summons No 778 of 2012

Decision Date : 23 October 2013

Tribunal/Court : High Court

Coram : George Wei JC

Counsel Name(s) : Tan Hee Joek (Tan See Swan & Co) for the plaintiff; Suppiah Thangaveloo (Thanga & Co) for the defendant; Rajashree Rajan (JustLaw LLC) watching brief for China Taiping Insurance.

Parties : Kee Yau Chong — S H Interdeco Pte Ltd

Statutory Interpretation – Construction of Statute

Statutory Interpretation – Definitions

23 October 2013

George Wei JC:

1 This is an appeal under s 29 of the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("WICA") in respect of a claim for work injury compensation and the dismissal of that claim by the learned Assistant Commissioner on 19 February 2013. The issues before this court concern the interpretation of certain phrases in the WICA.

2 After considering the parties' arguments, I was of the view that the learned Assistant Commissioner had wrongly dismissed the claim and, accordingly, allowed the appeal. I now set out the grounds for my decision.

Background facts

3 The brief facts as set out below are largely adopted from the decision of the learned Assistant Commissioner dated 19February 2013 ("the Decision") and are generally not in dispute.

4 On or about 26 May 2011, Kee Yau Chong ("the Claimant"), a 24-year old male, commenced work as an apprentice carpenter for S H Interdeco Pte Ltd ("the Defendant"). The place of his work was located at No 19 Senang Crescent, Singapore 416592. On 11 June 2011, at around 10.30am, the Claimant and/or an acrylic strip he was holding brushed against another employee, one Kuu Siau Lam ("Kuu") at the place of work. Kuu reacted by scolding the Claimant with a Hokkien expletive cursing the Claimant's mother. The Claimant responded by uttering the same expletive with the intention of seeking a clarification from Kuu as to what he meant. Kuu did not answer the Claimant but instead demanded an apology from the Claimant in a vehement manner. The Claimant did not respond and another worker stepped in to pacify the parties.

5 Shortly thereafter, Kuu was seen (on closed-circuit television) going to the back of the workshop where there was a back pantry. Kuu returned some five or ten minutes later with a metal mug in hand. Confronting the Claimant, Kuu again demanded an apology in Hokkien. When the Claimant did not respond to Kuu's demand, Kuu threw the contents of the metal mug, which turned

out to be thinner, at the upper shoulder area of the Claimant and set the Claimant on fire with a lighter.

6 As a result, the Claimant was severely burnt. According to a medical report dated 27 December 2011 submitted to the Ministry of Manpower by Dr Terence Goh Lin Hon from the Department of Plastic, Reconstructive and Aesthetic Surgery (Singapore General Hospital), the Claimant suffered burns on 28% of the total surface area of his neck, chest, both upper limbs and face.

7 Pursuant to a police report and subsequent criminal charge, Kuu was subsequently sentenced to four years' imprisonment on 31 October 2011 in the District Court of the Subordinate Courts of Singapore.

8 The Claimant then sought compensation from the Defendant's insurers, M/s Poly Insurance Agency, through the Labour Court.

The decision below

9 After considering the facts as mentioned above, the learned Assistant Commissioner summarised the issues before him as follows (at [6] of the Decision):

(a) Whether the injuries suffered by the Claimant on 11 June 2011 arose from an "accident" pursuant to s 3(1) of the WICA ("Issue 1"); and

(b) If the injuries were an "accident", whether it can be deemed in the absence of evidence to the contrary "to have arisen out of that employment" pursuant to s 3(6) of the WICA ("Issue 2").

10 In reaching his decision, the learned Assistant Commissioner underscored that it was for the Claimant to show that an accident had occurred. At the end of the hearing (which spanned four days and involved nine witnesses), the learned Assistant Commissioner dismissed the claim on the basis that "no accident" had taken place within the meaning of the WICA (see [8] of the Decision).

The issues in this appeal

11 Section 3(1) of the WICA provides the starting point for analysis of when employers will be 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

12 Sundaresh Menon JC (as he then was), in *NTUC Income Insurance Co-operative Ltd v Next of kin of Narayasamy s/o Ramasamy (deceased)* [2006] 4 SLR(R) 507 ("*NTUC Income*") at [20], explained that in order for an employer to be liable under s 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.

13 It was not disputed either at first instance or during the appeal that the Claimant suffered a personal injury. The issues before me, therefore, were the same as the two issues before the learned Assistant Commissioner (*ie*, Issue 1 and Issue 2) (see above at [10]). However, I also had to consider a preliminary issue regarding whether this was an appeal which was properly brought under the framework for dispute resolution under the WICA. I will deal, first, with this preliminary issue before I proceed with my analysis on Issue 1 and Issue 2.

Analysis

The preliminary issue

14 The preliminary issue was raised at the start of the appeal hearing, where the Defendant argued that the requirements for an appeal against the order made by the learned Assistant Commissioner pursuant to s 29(2A) of the WICA were not satisfied. Section 29 of the WICA provides 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.
>
> (2) Subject to the Rules of Court, the procedure in an appeal to the High Court shall be the procedure in a civil appeal from a District Court with such modifications as the circumstances may require.
>
> (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 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.
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> [emphasis added in italics and bold italics]

15 As can be seen, it is necessary (but insufficient) for there to be a "substantial question of law" before an appeal against an order made by the learned Assistant Commissioner will avail itself to "any person aggrieved" by such order. In deciding whether the requirements for an appeal against an order made by the learned Assistant Commissioner have been met, 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. Only a *substantial* question of law will suffice.

16 Counsel for the Defendant, Mr Suppiah Thangaveloo ("Mr Thangaveloo"), took the position that there was no substantial question of law on the basis that the learned Assistant Commissioner had made a proper assessment on the requirements of the WICA in respect of: (a) whether a personal injury had been suffered; (b) whether the personal injury was caused by an accident; and (c) whether the accident arose out of and in the course of employment. Counsel for the Claimant, Mr Tan Hee Joek ("Mr Tan"), on the other hand, submitted that the appeal did raise substantial issues of law.

17 This requirement of a substantial issue of law has been canvassed before the Singapore courts

in a number of occasions. In *Karuppiah Ravichandran v GDS Engineering Pte Ltd and Another* [2009] 3 SLR 1028, Kan Ting Chiu J observed (at [9]) that the requirement of a substantial issue of law reflects the policy that decisions of the Assistant Commissioner are "not to be examined as though they are decisions of a court of law". The policy of WICA, as revealed in Parliamentary debates and recognised in *Allianz Insurance Co (Singapore) Pte Ltd and others v Ma Shoudong and another* [2011] 3 SLR 1167 (at [20]) ("*Ma Shoudong*"), is to "provide a simpler and quicker way to settle compensation claims by avoiding protracted legal proceedings". In *Pang Chew Kim (next of kin of Poon Wai Tong deceased) v Wartsila Singapore Pte Ltd* [2012] 1 SLR 15 ("*Pang Chew Kim*"), Tay Yong Kwang J (at [19]) observed that the range of errors of law recognised as being relevant for an appeal under s 29(2A) would 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.

18 In addition, Tay J at [20] of *Pang Chew Kim* rightly referred to Lord Radcliffe's statement in *Edwards (Inspector of Taxes) v Baristow* [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 of law.

19 After hearing counsel's submissions on the meaning of "accident" and "arising out of and in the course of employment" pursuant to ss 3(1) and 3(6) of the WICA respectively, and considering these issues in conjunction with the facts as found by the learned Assistant Commissioner, I was of the view that this appeal concerned a substantial issue of law. Accordingly, I found that the requirements for an appeal against the order made by the learned Assistant Commissioner to the High Court pursuant to s 29 of the WICA were satisfied.

Issue 1: Was the deliberate splashing of thinner on the Claimant and the setting of the Claimant on fire "an accident" under s 3(1) of the WICA?

20 Before going into the analysis of this issue proper, some preliminary observations on the legislative policy of WICA are apposite.

The legislative policy that informs the WICA

21 The long title of the statute states that the WICA is "[a]n Act relating to the payment of compensation to employees for injury suffered in the course of their employment." The WICA has a long history dating back to the Workmen's Compensation Act (Act No 25 of 1975) (and even earlier), and was amended numerous times: in 1980, 1990, 2003, 2004, 2008, 2010 and 2011. Of especial significance are the amendments made in 2011 by the Work Injury Compensation (Amendment) Act 2011 ("the 2011 Amendments").

22 The 2011 Amendments were introduced partly in response to the problem of work-related fights or assaults at work, and those claims under the WICA for personal injuries suffered resulting from such altercations. Speaking at the second reading of the Work Injury Compensation (Amendment) Bill 2011 (See *Singapore Parliamentary Debates, Official Report* (21 November 2011) vol 88), BG (NS) Tan Chuan-Jin, acting Minister of Manpower, explained the Government's thinking behind WICA and the

2011 Amendments thus:

> … [T]he Work Injury Compensation Act … is a piece of social legislation that aims to provide low-cost and expeditious resolution of work-related injury claims… In 2010, a total of $76.5 million in compensation was awarded for permanent incapacity and death. On top of that, an estimated $20 million was paid out by employers and insurers for medical leave wages and medical expenses for both minor and serious injuries...
>
> The changes proposed in the Bill are based on two key principles. The first is to strike a fair balance between compensation for the injured worker and obligations placed on the employer or insurer. The second is to ensure that the WICA framework remains expeditious and workers are able to receive compensation promptly. Balancing the interests of the injured worker and the employer or insurer is critical because WICA is a no-fault regime, similar to other WICA regimes overseas. This means that injured workers will receive compensation as long as the accident occurred out of and in the course of work, regardless of which party was at fault. Therefore the obligations placed on the employers and insurers in areas such as compensation and liability must necessarily be limited. Injured workers who feel they deserve higher compensation, do have the option to file a civil claim, if they can prove negligence of the party they are claiming against.
>
> Second, clause 2 of the Bill amends section 3(5) of the Act to restrict compensation cases involving work-related fights or attempted assaults. MOM currently receives about 20 claims arising from fights a year of which three-quarters are found to be work-related and hence eligible for compensation. With this amendment, employers will not be liable under WICA to compensate workers who are injured in a fight or attempted physical assault, except in certain scenarios, which I will elaborate later on.
>
> Whilst the numbers are not large, the rationale for this amendment is that whilst work-related disputes between co-workers may arise from time to time, they should not resort to fights to resolve them, and employers should not have to bear the cost of injury. Singapore is not unique in doing so; there are overseas jurisdictions which restrict compensation for work-related fights.
>
> However, MOM also recognizes that workplace fights sometimes occur and there are several scenarios where an employer should remain liable for compensating a worker injured in a work-related fight. For instance, when an injured worker was a victim and did not participate in the fight, or when the worker was injured whilst exercising his right of private-defence as defined in the Penal Code or to defend against bodily harm or damage to property. In addition a security officer who is sanctioned by his employer or principal to break up the fight or prevent the assault will remain eligible for compensation.
>
> The amendment to section 3(5) specifies that workers involved in work-related fights who are injured in these scenarios will continue to receive compensation, whilst those who are primarily responsible for the aggression will not.

23 Subsequently, in response to questions and points raised by Members of Parliament, BG (NS) Tan reiterated that the Government's intention was to provide a fair balance within the no-fault compensation scheme that is the WICA. BG Tan stated that "MOM's proposals clarifies that only employees who deliberately participate in fights at the workplace, whether due to a dispute over work-related matter or not, and sustain injuries in the process are not eligible for work injury compensation." This was said to be consistent with the statutory provision which excluded liability under the WICA to compensate employees who are injured as a result of wilful or self-destructive behaviour.

24 Importantly, the WICA is a piece of social legislation and the system for payment of compensation under the WICA is not based on the fault of the employer. The question, therefore, is not whether the employer might be vicariously liable at common law for the tort of an employee. Instead, what is important is whether an accident has taken place within the context of a no fault system such that a possible claim for compensation may be made. What constitutes an "accident" for the purposes of the WICA, is therefore of particular importance, and it is to this issue which my attention now turns.

The meaning of "accident" under the s 3(1) of the WICA

25 There is no statutory definition of "accident" in the WICA. Resort to the ordinary meaning and dictionary definitions of accident provide little guidance other than to confirm that the word has several meanings and that the relevant meaning will depend very much on the context in which the word is used. For example, the *New Oxford Dictionary of English* (Judy Pearsall eds) (Clarendon Press, 1998) defines accident variously, as "an unfortunate incident that happens unexpectedly and unintentionally, typically resulting in damage or injury" and as "an event that happens by chance or that is without apparent or deliberate cause." On the other hand, the *BBC English Dictionary* (HarperCollins Publishers, 1992) defines accident as "an event which happens completely by chance." The *Merriam Webster Online Dictionary* defines accident as "an unforeseen, unplanned event or circumstance", and also as "an unfortunate event resulting especially from carelessness or ignorance."

26 The facts of this case were such that an accident could only be said to have occurred if "accident" in the context of the WICA is given a wider meaning such that it encompasses an event which is unexpected or unforeseen even though the event was deliberately caused by another individual, rather than only events which happen without deliberate cause. To be clear, if Kuu while reaching for a tin of thinner to dilute some paint, had unintentionally spilled the contents of the container such that the Claimant was set on fire, this would no doubt constitute an accident even under the narrower meaning of the word. This, however, was evidently not the case here. Instead, Kuu had deliberately thrown the thinner at the Claimant and set him on fire, which was something clearly unexpected and undesired from the point of view of the Claimant. Therefore, the Claimant would only succeed if a wider meaning of accident was adopted for the purposes of s 3(1) of the WICA.

27 This was not the first time such a question had arisen. For example, in *Board of Management of TRIM Joint District School v Kelly* [1914] AC 667 ("*TRIM Joint District School v Kelly*"), the House of Lords had to decide on the meaning of accident under the Workmen's Compensation Act 1906 ("the UK Act"). In that case, an assistant school master had been assaulted and killed by two pupils in a pre-concerted attack. A claim for compensation under the UK Act was brought by the dependents of the deceased school master and the issue arose as to whether deliberate killing could be an accident. A four to three majority decision was made in favour of the dependents. This was clearly a case where strong arguments were raised on both sides. Lord Dunedin (in the minority) (at 684) took the view that the expression "injury by accident" must be interpreted according to the meaning of the words in "ordinary popular language". The difficulty as Lord Dunedin recognised was that "there is no authoritative test of what is the meaning of popular language" and that "on such a matter, we are bound to take our own personal experience as persons well acquainted with popular language." On that basis, Lord Dunedin stated his view (at 686) that "accident" in popular language was the "antithesis of design" and that popular language would never say that the headmaster met his death by accident, but "would say that he was murdered". Addressing the argument that the word had to be interpreted in the context of the social purposes of the legislation, Lord Dunedin (at 689) remarked thus:

> It is said to aid the argument in favour of the enlarged meaning of accident to consider that the statute introduced a system of compulsory insurance of the workman by his employer. Again, with great deference, I cannot see by this statement that the argument is forwarded one whit – insurance let it be, but insurance against what?

28 Viscount Haldane (in the majority) took a very different approach. Viscount Haldane stressed a contextual approach to interpreting the provision and remarked (at 675) that the principle of the UK Act was more akin to insurance at the expense of the employer of the workman against accidents arising out of and in the course of his employment. "[A]ccident" under the UK Act was to be interpreted in that context, *viz* that the general object of the legislation was to compensate workmen who had suffered misfortune. In a similar vein, Earl Loreburn (in the majority) (at 681) remarked that the common meaning of the word "accident" was ruled neither by logic or etymology but by custom, and that no formula could precisely express its usage for all purposes. On that basis, Earl Loreburn concluded (at 681) that:

> [T]o treat the word accident as though the Act meant to contrast it with design, would exclude from what I am sure was an intended benefit numbers (*sic*) of cases which are to my mind obviously within the mischief.

29 In *NTUC Income*, Menon JC had to decide whether the deceased coach driver who had died of a heart attack whilst engaged in heavy work loading and unloading luggage, had suffered an accident in respect of which a claim for compensation could be brought under the WICA. There was some evidence that the deceased was not in good health, had narrowed coronary arteries, and had suffered from a previous heart attack. After reviewing the authorities (in particular *Clover Clayton & Co Ltd v Hughes* [1910] AC 242), Menon JC held (at [30]) that in deciding the meaning of accident:

> … [I]t 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:

> … [A]n injury by accident within the meaning of the Act contemplates: (a) an injury that was unexpected by the workman; (b) which was caused or contributed to by something done by or to the workman in the course of his employment.

30 I was of the view that the concept of an "accident" within the scheme set up by the WICA was broad enough to include injuries arising from deliberate acts of battery (especially where the battery was unexpected from the point of view of the victim. I found considerable support for this view in the remarks made by BG (NS) Tan during the Parliamentary Debates. It will be recalled that one of the goals of the 2011 Amendments was to achieve a better balance between the interests of the workman and the employer/insurer in respect to injuries sustained in work place fights. Parliament was clearly cognisant of the fact of work-related fights and that claims for resulting injuries had been made under the WICA. Indeed, Parliament was told that about 15 fights a year were found to be work-related and to have resulted in compensation under the WICA.

31 The 2011 Amendments were not designed to prevent all claims for compensation for injuries arising from work-related fights. Instead the goal was to ensure that employers did not have to compensate those who are "primarily responsible for the aggression". Under the 2011 Amendments, in particular the new s 3(5)(*c*) of the WICA, an employee who did not assault or attempt to assault any other person in the fight is not excluded from the right to claim compensation. The position is the

same for an employee who at the time when the injury was received was trying to break up the fight or to prevent the assault *etc*.

32 The 2011 Amendments came into force in Singapore on 1 June 2012, just after the events in question had occurred in the case under appeal. Even though the new provisions are inapplicable to the present case, the important point is that the new provisions were only thought to be necessary because successful claims for fight related injuries had been made under the WICA. Even so, Parliament in 2011 did not cut back on the meaning of the word "accident". Instead what it did was to try and limit fight related claims to those workmen who were the victims of the assault and to exclude the aggressor from making claims under the WICA.

33 It follows that even if the 2011 amendments were already in force at the time when Kuu set the Claimant on fire, Kuu was clearly the aggressor who set upon the Claimant in circumstances and in a manner that was wholly unexpected from the point of view of the Claimant. To argue that the Claimant was the aggressor or was responsible in some manner for provoking the throwing of a mug of thinner and his being set alight is an interpretation of the events which does not accord with the facts.

34 Accordingly, I could not agree with the learned Assistant Commissioner on Issue 1, and found that the personal injury suffered by the Claimant was caused by an accident under the WICA.

Issue 2: Did the accident arise "out of and in the course of the employment"?

35 In finding against the Claimant on this issue, the learned Assistant Commissioner appears to have conflated the need for an "accident" with the requirement that it arose "out of and in the course of the employment".

36 The learned Assistant Commissioner at [10] of the Decision starts with the statement that the injury was not caused by an accident and neither did it arise out of and in the course of employment. This was so even if he "considered the facts from the point of view of the workman." The learned Assistant Commissioner added that "it could hardly make any logical sense that expecting an apology from the Claimant for an accidental brushing on Kuu's body at the working area was work-related." He then further held (at [11]) that "it is instructive that the authorities cited by learned Counsel for the Claimant relate only to deliberate incidents where the employee is at work, *ie* it is necessary to be clear that an accident arising out of the employment requires a causal connection between (a) the employment (and its incidents) and (b) the accident." Does this mean that a "deliberate incident" can be an accident if it relates to the employee's work?

37 Indeed, s 3(1) must be satisfied as a whole in order for a claim to be successful. Nevertheless, it is not appropriate to conflate the elements. Even if the personal injury was caused by an event which the Court is prepared to regard as an accident, the claimant must go on to show that the accident was one which arose out of and in the course of employment. On this the learned Assistant Commissioner, applying the case of *Ma Shoudong* correctly stated (at [11]) that a causal connection is required between: (a) the employment (and its incidents); and (b) the accident. The learned Assistant Commissioner was, however, "unable to find the causal connection in this case" and further observed that the Claimant did not manage to show the causal connection between the accidental brushing, the apology sought and the resultant fetching and splashing of thinner, as being work-related. Reasons given in support of this conclusion (at [12] and [13] of the Decision) included:

(a) the concession by the Claimant in the submissions that the incident had no direct relation to the duty performed;

(b) the fact that the Claimant and Kuu had no prior history of altercations;

(c) the concession that the attack by Kuu was "sudden and wholly unanticipated" thereby "putting an end to all spurious arguments that the incident was work-related";

(d) that the Claimant and Kuu were not from the same work team, nor were they working together when the brushing incident occurred; and

(e) that "the apology that Kuu sought from the Claimant that was not forthcoming could not by any stretch of imagination to be work-related or within the job scope of any employee in the shared work area".

38 Of especial importance to this particular issue, was s 3(6) of the WICA, which provides that:

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

39 In *Ma Shoudong*, Lai Siu Chiu J explained that the presumption set out in s 3(6) of the WICA was not always present in predecessor legislation (*viz*, the Workmen's Compensation Ordinance 1932). The presumption was added by s 4(5) of the Workmen's Compensation Ordinance 1954. Lai J held that the provision not only created a rebuttable presumption for the employee's benefit, but also made clear that "arising out of" and "arising in the course of" were to be treated as separate and distinct concepts.

40 It is clear that the WICA accepts that just because an accident has arisen in the course of employment, it does not mean that in all cases the accident must also have arisen out of the employment. What s 3(6) does is to create a rebuttable presumption.

41 It follows that the question as to what amounts to an accident arising in the course of employment is of significant importance: it is the basic fact upon which the presumption is made operative. The test adopted by Lai J at [16] of *Ma Shoudong* was this: "whether the accident as a matter of common sense occurred whilst the employee is at work?" There is much to be said for this commonsensical and simple approach. To adopt an approach which demands that there is a causal link between the accident and the incidents of the employment would render otiose the distinction that the WICA draws between "arising in the course of" and "arising out of" employment. The presumption created by s 3(6) and its predecessor is clearly for the benefit of the employee. That being so, the commonsensical and simple approach adopted by Lai J must have been intended – did the accident occur while the workman was at work?

42 In the present case, there is no doubt that the accident occurred during ordinary working hours. The accident occurred at the work place and, as the learned Assistant Commissioner noted, the incident arose in a shared work space where different workmen employed by the Defendant were carrying out their assigned work tasks. On that basis, the learned Assistant Commissioner should have found that s 3(6) applied such that in the "absence of evidence to the contrary" the accident is to be regarded as having arisen out of the employment.

43 The fact that s 3(6) is found to be applicable does not of course mean that the Claimant must succeed; after all, it is possible that the Defendant employer may still be able to demonstrate that even though the accident occurred whilst the Claimant was at work, the accident did not arise out of his employment. Lai J in *Ma Shoudong* held that this turned on the question as to whether there was

a causal connection between (a) the employment (and its incidents); and (b) the accident. Even though the learned judge remarked that the causative standard required is higher than the "but for" test, Lai J went on to stress that "a direct or physical causation is not necessary". Whilst it is true that the learned judge went on to state that the accident must have arisen because of some "intrinsic risk in the nature of the employment", this must be read in the context of the earlier remark that direct physical causation is not necessary. Work place quarrels are by no means rare occurrences. Quarrels may arise between workers on the same team or as between workers assigned to work on different tasks but in a shared work space. In the present case, the chain of events began when the Claimant was carrying an acrylic strip to his place of work when he and/or the strip brushed the back of Kuu who was carrying out his own assigned work. There was no dispute that the acrylic strip carried by the Claimant was related to his work. Further to that, it was not in evidence that either the Claimant or Kuu were on frolics of their own at the material time of the quarrel which eventually led to Kuu throwing thinner at the Claimant and setting the Claimant on fire. There was no doubt that Kuu was the aggressor in the unanticipated attack which occurred in the context of an argument between co-workers in a shared workspace as a result of an incident (*ie*, the accidental bodily contact) that took place when both were carrying out their work assignments.

44 Indeed, even if the 2011 Amendments were in force at the time, the Claimant would not be excluded. Applying s 3(5)(*c*), the Claimant was not the one who assaulted or attempted to assault any other person; he was the victim of an attack by Kuu. The fact that the Claimant and Kuu were not on the same team or working on the same piece of cabinet is irrelevant. Much has been made of the point that the apology that Kuu sought was not connected with the work responsibility of either workman and that the apology sought was not within the "job scope of any employee in the shared work area." This is to take far too narrow a view of the events giving rise to the incident (*ie*, the accident causing personal injury). While it is true that an employee is not employed to quarrel, to fight and to ask for apologies, interaction between fellow employees/workers is surely an ordinary incident of employment – even if the workers are not engaged on the same task, and especially when they are working on assigned tasks in a shared workspace. I also add that it could not be said that the injury suffered was a result of some deliberate act of self-injury.

45 The learned Assistant Commissioner at [12] of the Decision referred to the concession of Mr Tan in [3], [5] and [39] of his submissions at first instance, that the incident bore no direct relation to the duty performed. Even so, *Ma Shoudong* stands as authority for the proposition that direct or physical causation is not required and in *Pang Chew Kim*, Tay J commented – albeit in a different context (*viz*, whether the accident happened in the course of employment) – that the WICA was a piece of social legislation which should be interpreted purposively in favour of employees who have suffered injury during their employment. Even though the latter case presents different facts and issues, the reminder of Tay J was helpful and timely.

46 Reference can also be made to the decision of Kulasekaram J in *Nani v Public Utilities Board* [1979-1980] SLR(R) 737. In that case, two workers on the same work team quarrelled over how best to carry out an assigned task. An argument ensued during which one worker slapped the other which resulted in the other worker pushing him back which caused him to fall and die from a fractured skull. The Commissioner of Workmen's Compensation held that the worker did not die in an accident and that the accident did not occur in the course of employment. Kulasekaram J in allowing the appeal observed that disputes between fellow workers on the same team were not unexpected and were incidental to their employment in working as a team. The learned Judge was also of the view that "the learned Commissioner of Workmen's Compensation appears to have taken too narrow a view of the evidence when he isolated the slapping from the totality of the evidence." No doubt this was a case where the quarrelling workers were on the same work team (and working together on same task). Nevertheless, there is no reason why work place quarrels between workers assigned different tasks on

the work floor cannot be regarded as an ordinary incident of employment (especially where these arise out of accidental bodily contact occurring whilst carrying out assigned work tasks).

47 I therefore found that the Claimant had shown that the accident arose out of and in the course of his employment by the Defendant.

Conclusion

48 For the reasons given above, I found that the requirements under s 3(1) of the WICA were made out such that the Defendant employer's liability was established, and, accordingly, allowed the appeal.

49 Since the counsel for the Claimant was acting on a *pro bono* basis, no order as to costs was made, save that the Defendant was to pay reasonable disbursements.