Selvam Raju *v* Camelron General Contractors and another [2010] SGHC 68

Case Number	: Originating Summons No 333 of 2008
Decision Date	: 03 March 2010
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Perumal Athitham and P Kamala Dewi (Yeo Perumal Mohideen Law Corporation) for the appellant; Ramesh Appoo (Just Law LLC) for the respondents.
Parties	: Selvam Raju — Camelron General Contractors and another

Administrative Law

3 March 2010 Judgment reserved.

Choo Han Teck J:

1 This was an appeal against the decision of the Commissioner under the Workmen's Compensation Act (Cap 354, 1998 Rev Ed) ("the Act") refusing the Appellant's claim for compensation for his injury. The Commissioner had ruled that the injury was not caused by an accident arising out of and in the course of his employment with the 1st Respondent. The 2nd Respondent is the 1st Respondent's insurer. The Appellant appealed to the High Court under s 29 of the Act.

2 The Appellant's claim before the Commissioner was made on the basis that he suffered an injury to his back when he was dismantling a lift motor. His report of the accident to the Ministry of Manpower stated that he had been carrying the motor with the assistance of three other workers when he heard a cracking sound in his lower back. At the hearing before the Commissioner, however, he claimed that he had injured himself when he had stretched out in order to prevent the motor from falling into the lift shaft. After hearing the Appellant's testimony, the Commissioner produced the Appellant's statement to the Ministry of Manpower and highlighted the inconsistencies. That statement had only been in the possession of the Commissioner and had not hitherto been available to either the Appellant or the Respondents. The Appellant maintained that the version of events he gave in oral testimony was true. The Respondents applied to impeach the Appellant's credibility. The Commissioner found that the Appellant's credibility was impeached on account of the material discrepancies between the reported account of the accident, the statement given to the Ministry of Manpower and the Appellant's evidence before him. The Commissioner stated in his grounds of decision that the Appellant's account of the accident was not corroborated by his own witness and the medical reports. It was also not put to any of the Respondents' witnesses that they had lied when testifying that there had been no accident on the day the injury was allegedly sustained. As a result, the Commissioner found that the Appellant had failed to establish that his injury had been caused by an accident arising out of and in the course of his employment and denied his claim for compensation under the Act.

3 In the appeal before me, the Appellant applied for the Commissioner's decision to be set aside as erroneous in law for three reasons: first, the Commissioner failed to apply the presumption found in s 3(6) of the Act; second, the Commissioner should not have used the Appellant's recorded statement from the Ministry of Manpower to impeach the latter's credit; and third, the Commissioner's provision

and use of the statement gave rise to a reasonable doubt of bias against the Appellant and amounted to conduct of the proceedings in an unfair and prejudicial manner. I shall address the third limb of the Appellant's case first.

4 The Respondents' counsel argued that allegations of bias on the part of the Commissioner must be made by way of judicial review and not appeal. This was to enable the Attorney-General to be heard at the proceedings and respond on the Commissioner's behalf. Counsel pointed out that in all the authorities cited by the Appellant, bias was alleged in the context of judicial review: see *R v Sussex Justices, ex parte McCarthy* [1924] 1 KB 256; *Metropolitan Properties Co. (F.G.C.) Ltd v Lannon & Ors* and *R v London Rent Assessment Panel Committee, ex parte Metropolitan Properties Co. (F.G.C.) Ltd* [1969] 1 QB 577; *De Souza Lionel Jerome v A-G* [1993] 3 SLR(R) 552; and *Re Singh Kalpanath* [1992] 1 SLR(R) 595. Thus, any allegation of a breach of the rules of natural justice must be raised exclusively within the judicial review process. Counsel for the Appellant disagreed. It was feared that the court would not grant judicial review remedies in cases where Parliament had already provided a specific process for appeal. Counsel for the Appellant referred to *R v Epping and Harlow General Commissioners, ex parte Goldstraw* [1983] 3 All ER 257, *R v Secretary of State for the Home Department, ex parte Swati* [1986] 1 WLR 477, and *Ex parte Waldron* [1986] QB 824 to support his proposition.

5 This apparent conflict of authorities reflects a tension between the procedural exclusivity of judicial review and statutory avenues specifically provided by Parliament. In the context of this case, it seemed to me that resolution between the two turned on a reading of the statutory provisions of the Act. Section 29(1) provides that any person aggrieved by any order of the Commissioner may appeal to the High Court; s 29(2A) states that no appeal shall lie against any order unless it involves a substantial question of law. The crucial question, therefore, is whether the question of alleged bias on the part of the Commissioner amounts to a substantial question of law. If it does, then I may hear the Appellant's allegations via the statutory appeal route provided in s 29 of the Act; if it does not, then the Appellant's appeal in respect of the allegation of bias must be dismissed and judicial review proceedings brought instead.

6 Does the question whether there has been bias on the part of the Commissioner amount to a substantial question of law? In my view, it does not. In *Next of Kin of Ramu Vanniyar Ravichandran v Fongsoon Enterprises (Pte) Ltd* [2008] 3 SLR(R) 105, I held that the appellant's arguments amounted to questions of law because they related to the application of principles of agency law and presumptions of law in the statute. I found that they were substantial questions as they "[were] likely to feature in most workmen's compensation cases..." My approach was similar to that taken in *Northern Elevator Manufacturing Sdn Bhd v United Engineers (Singapore) Pte Ltd (No 2)* [2004] 2 SLR(R) 494 ("Northern Elevator"), where the phrase "question of law" was defined narrowly in the context of (what was then) s 28 of the Arbitration Act (Cap 10, 1985 Rev Ed). The Court of Appeal distinguished between an error of law where the court had no jurisdiction to conduct judicial review and a question of law where it had, and stated that:

> 18 An opportunity arose for comment in *Ahong Construction (S) Pte Ltd v United Boulevard Pte Ltd* [1993] 2 SLR(R) 208. In that case, G P Selvam JC (as he then was) stated at [7]:
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> > A question of law means a *point of law in controversy* which has to be resolved after opposing views and arguments have been considered. It is a matter of substance the determination of which will decide the rights between the parties. If the point of law is settled and not something novel and it is contended that the arbitrator made an error in the application of the law there lies no appeal against that error for there is no question of law which calls for the opinion of the court… [emphasis added]

> 19 To our mind, a "question of law" must necessarily be a finding of law which the parties dispute, that requires the guidance of the court to resolve…

7 Some courts applied the *Northern Elevator* principle more liberally. In the workmen's compensation case of *Karuppiah Ravichandran v GDS Engineering Pte Ltd* [2009] 3 SLR(R) 1028 ("Karuppiah"), Kan Ting Chiu J accepted a wider definition of what constituted a "question of law" under the Act – though he held that not every finding of fact (even if it were manifestly wrong) necessarily amounted to a substantial question or error of law (at [15] – [16]). The basis of his reasoning was the decision of Andrew Ang J in *Ng Swee Lang v Sasson Samuel Bernard* [2008] 1 SLR(R) 522 ("Ng Swee Lang"). There, a distinction was drawn between appeals on a "question of law" from an arbitrator's award and appeals from the decisions of statutory boards. In the latter a "question of law" would include a range of issues which, under the *Northern Elevator* approach, would have been considered mere errors of law. Kan J accepted (as Ang J had before him) the full range of errors of law found in *Halsbury's Laws of England* vol 1(1) (Butterworths, 4th Ed Reissue, 1989) ("Halsbury's"), para 70:

> … 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.

He also accepted Lord Radcliffe's statement (in *Edwards 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 – though he held that not every wrong finding of fact would amount to a substantial question of law. The rationale for this broader definition of "question of law" was explained by Ang J in *Ng Swee Lang*, at [24] and [25]:

> 24 … there was a clear and vital distinction between statutory tribunals and private arbitrations. Statutory tribunals such as the Board performed important functions of the Government, which would generally affect the wider public interest, as compared to private arbitrations. There had to be a greater degree of supervision over such tribunals by the courts… there was a fundamental difference between private arbitrations, whose existence was underpinned by the principle of party autonomy, and a hearing before the [Strata Titles] Board…
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> 25 I am inclined to agree with Mr Hwang that *Northern Elevator's* definition of "question of law" was given in the context of an application for leave to appeal from an arbitral award where different policy considerations applied…

Kan J accepted this distinction and the principles and definitions set out above in the context of an appeal from a decision of the Commissioner for Labour under the Act.

8 *Karuppiah* and *Ng Swee Lang* suggest that there may be good reason to distinguish between appeals from an arbitral award and appeals from the decisions of a statutory board. In particular, the adoption of a wider definition of "question of law" in the context of appeals from the decisions of the Commissioner for Labour may be acceptable. A "substantial question of law" in such situations may include administrative law concepts of error of law. However, it is not clear how this would assist the Appellant in his case. The list of "errors of law" enumerated in para 70 of *Halsbury's* and at [6] above

does not include breaches of the laws of natural justice; even the more recent edition of *Halsbury's Laws of England* vol 1(1) (Butterworths, 4th Ed Reissue, 2001) at para 77 also fails to include either allegations of bias or breach of the right to a fair hearing within its definition of "error of law". As such, the Appellant in this case may not found his appeal to this court on the basis of alleged bias on the part of the Commissioner giving rise to an error of law. His appeal on this point must therefore be dismissed. If he wishes to pursue this allegation of bias, he must apply for leave to bring an action for judicial review.

9 I come to the conclusion in the above paragraph with some reluctance. Ideally, an appeal to the courts from the decision of the Commissioner for Labour should be the one final stop where a claimant under the Act may have all issues relating to his claim for compensation determined. The purpose of Workmen's Compensation legislation was to provide for expeditious payment of compensation. This object was cited by the then Minister for Labour, Mr Ong Pang Boon, at the second reading of the Workmen's Compensation Bill (Bill 25 of 1975) (see *Singapore Parliamentary Debates, Official Report* (26 March 1975) vol 34 at cols 1037 and 1042). It was reiterated again by Mr Gan Kim Yong, then Minister of State (Education and Manpower) at the second reading of the Workmen's Compensation (Amendment) Bill (Bill 50 of 2007) (*Singapore Parliamentary Debates, Official Report* (22 January 2008) vol 84 at col 259):

> The Workmen's Compensation Act… provides a simpler and quicker way to settle compensation claims by avoiding protracted legal proceedings.

The goals of simplicity and expedition are not generally served by requiring an appellant to take out two separate actions (appeal and judicial review) in order to challenge the decision of the Commissioner for Labour. It would also be more costly for an appellant to maintain two separate actions in the High Court. Under s 2(1) of the 1998 Revised Edition of the Act (the applicable Act in this case), a worker is only entitled to make a claim if he is a manual labourer or a non-manual one earning less than $1,600 a month. That coverage has since been extended to nearly all employees by the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("the 2009 Act"); however, the majority of claims under the Act are still very likely to be made by manual labourers. They are also more likely to suffer injuries resulting in fatalities and permanent disability. Even with the extended coverage of the 2009 Act, the high incidence of claims in these generally lower-income industries is unlikely to change. To require such workers to maintain two actions in order to challenge a Commissioner's decision would place too great a strain on their already meagre earnings (made even more so by the fact of their injuries). The policy interests behind the Act would be better served, therefore, if questions of natural justice and errors of law could be addressed in a single appeal to the High Court.

10 Despite the strong policy reasons set out above, however, I find that I am limited by the authorities and the legislative approach taken by Parliament when it passed the Act. Unless an equivalent provision to s 48(1)(a)(vii) of the Arbitration Act (Cap 10, 2002 Rev Ed) – which allows an award to be set aside by the Court where "a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced" – is introduced into workmen's compensation legislation, it is my view that any worker who alleges that his claim for compensation was rejected because of bias or breach of his right to a fair hearing will have to take out judicial review proceedings separately in order to address his allegations. It may be that the policy imperatives outlined above may be addressed somewhat if counsel were to take out both the Originating Summons for appeal and application for leave to proceed with judicial review at the same time. In this way, both matters could be heard simultaneously by the same judge and dealt with expediently, with minimal costs. This solution is not perfect, however, and it is clear that Parliament may wish to turn its attention to the question if the policy considerations above are to be addressed fully. In any event, however, the Appellant in this case no longer has the option of taking out his

application for appeal and for leave to proceed with judicial review at the same time. The practical solution is no longer available to him and he must (if he so chooses) incur the additional expense of bringing separate judicial proceedings. The appellant may be best advised consider the option carefully, however, because the Commissioner was rightly entitled to the workman's statement and was thus entitled to use it as he thinks fit, although many of the allegations of bias in this case could have been avoided had the Commissioner made the Respondent witnesses' statements available at the Appellant's request at the outset.

11 Having dismissed the third limb of the Appellant's case, I now address the second limb: whether the Commissioner was correct to impeach the Appellant's credit using his previous statement. The Appellant argued that the discrepancies between his statement and testimony in court were not sufficiently material as to affect his credit. He pointed out that the discrepancies were no greater than those found between the testimonies and statements of the Respondent's own witnesses and that if his credibility was impeached, theirs should have been too.

12 The Commissioner's assessment of the Appellant's and the Respondents' witnesses' credibility is a finding of fact and should not be overturned unless it was clearly wrong on the face of the evidence. The Appellant sought to challenge the Commissioner's approach in applying the law on impeachment. He relied on the following paragraph from the criminal case of *Muthusamy v Public Prosecutor* [1948] MLJ 57 in support of his submissions:

> If the statement gives an outline of substantially the same story there being no apparently irreconcilable conflict between the two on any point material to the issue, the magistrate should say at once "The difference is not such as to affect his credit" and hand the statement back.

However, to say that the differing accounts in his statement and his testimony amount to "substantially the same story" would be to accept the two as consistent because they both allege that the injury was sustained while he was working. That would effectively negate the requirement for the Appellant to prove that his injury was suffered in the course of his employment. I am of the view that the differences were material and the Commissioner was entitled to consider the Appellant's credit as impeached by operation of s 157(c) of the Evidence Act (Cap 97, 1997 Rev Ed). It is also important to note that the Commissioner did not rely solely on the inconsistencies between the Appellant's statement and testimony in order to determine the weight to accord his account of the accident. The Commissioner also considered other factors, including how the Appellant's account of the accident lacked corroboration from his own witness and the medical reports and the failure to directly challenge the Respondents' witnesses' accounts on cross-examination. As a result, it cannot be said that the Commissioner erred in law when he found the Appellant's credibility to have been impeached.

13 The final limb to be addressed is the Appellant's contention that the Commissioner failed to correctly apply the presumption contained in s 3(6) of the Act, which provides that:

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

The Commissioner should, the Appellant argued, have reversed the burden of proof to require the Respondent to rebut the presumption that the accident, which arose in the course of the Appellant's employment, arose *out of* that employment. This point may be addressed shortly. It is clear from the Commissioner's decision that the reason he denied the Appellant's claim was that he did not find the injury to have been sustained in the course of the Appellant's employment at all. Indeed, in his written grounds he made particular reference to the medical report of Dr Ramdass – which stated that

the Appellant had been complaining of a pain in his back for some time before the alleged accident took place. As no finding is here made as to the Commissioner acting in breach of natural justice and since I have not found the impeachment of the Appellant's credibility to be wrong, the presumption in s 3(6) simply does not arise. As Kan J pointed out in *Karuppiah* at [24]:

> The presumption in s 3(6) does not arise whenever a worker is injured in an accident. It applies to accidents arising *in the course of* his employment. When the Commissioner found that the accident did not arise in the course of the applicant's employment, the presumption in s 3(6) did not apply.

Thus, the Commissioner did not err in law in failing to apply the presumption. As the Appellant's case failed on all its three grounds, this appeal must be dismissed. I will hear parties on the question of costs at a later date.