Pang Chen Suan v Commissioner for Labour
[2008] SGCA 22

Case Number : CA 91/2007

Decision Date : 28 May 2008

Tribunal/Court : Court of Appeal

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Michael Hwang SC and Katie Chung (Michael Hwang) and Ramasamy Chettiar (ACIES Law Corporation) for the appellant; David Chong, Janice Wong and Kevin Lim (Attorney-General's Chambers) for the respondent

Parties : Pang Chen Suan — Commissioner for Labour

Administrative Law – Judicial review – Ambit – Whether concept of reasonable cause in making compensation claim after limitation period a question of fact or law – Section 11(4) Workmen's Compensation Act (Cap 354, 1998 Rev Ed)

Employment Law – Workman withdrawing timely compensation claim to commence common law action but subsequently reverting to claim – Whether limitation period applicable to bar claim – Whether reasonable cause was shown to excuse late claim – Whether common law action or compensation claim can be suspended so that the other may proceed – Sections 11, 33 Workmen's Compensation Act (Cap 354, 1998 Rev Ed)

28 May 2008

Chan Sek Keong CJ (delivering the grounds of decision of the court):

Introduction

1 The appellant was a workman who was injured in an explosion at his employer's premises. He made a claim for workmen's compensation under the Workmen's Compensation Act (Cap 354, 1998 Rev Ed) ("the Act"), but withdrew the claim to commence a common law action. Subsequently, he discontinued the common law action and made a claim for workmen's compensation again. The new claim for workmen's compensation was made outside the statutory time limit of one year ("the limitation period") applicable to claims under the Act. The Commissioner for Labour ("the Commissioner") rejected the new claim on the ground that the workman had failed to show reasonable cause for not making his claim within the limitation period.

2 The workman applied to the High Court for leave for judicial review of the Commissioner's decision, but the judge below ("the Judge") refused to grant leave (see *Pang Chen Suan v Commissioner for Labour* [2007] 4 SLR 557). The workman appealed to this court. At the conclusion of the hearing, we allowed the appeal. We now give our full reasons for allowing the appeal.

Background

3 On 13 January 2004, an explosion occurred at a factory at Toa Payoh Industrial Park. The factory belonged to D-Sign Advertising, a sole proprietorship carrying on the business of making signboards. At that time, one of the employees was carrying out hot works with an oxygen gas cylinder. The appellant, Pang Chen Suan ("Pang"), was employed as a supervisor with D-Sign Advertising. This explosion caused the deaths of Pang's employer, the employer's wife and two other persons. Several others, including Pang, sustained serious injuries. Pang suffered fractures of his leg, lacerations and burns on his left forearm. He underwent surgery five times and was found to have 18% permanent disability.

4 Pang made a claim for workmen's compensation under the Act ("the Compensation Claim") on 5 March 2004. On 17 August 2004 (seven months after the accident) Pang withdrew the Compensation Claim in order to commence a common law action against his deceased employer. He filed a writ in the High Court on 27 December 2004 ("the Writ") within a year after the accident, but the Writ could not be served on the estate of the deceased employer as letters of administration had not been extracted by the personal representatives. As a result, the validity of the Writ had to be extended for service up to 20 December 2005.

5 At a coroner's inquiry held on 15 September 2005 into the accident, the State Coroner recorded a verdict of misadventure. In the course of the inquiry, he made observations which suggested that the manufacturers of oxygen gas cylinders could be at fault in not complying with blow-down procedures, when installing oxygen into the tanks, to rectify any contamination in the tanks. Pang's lawyers took the view that the Coroner's observations would make it difficult for Pang to prove negligence against his employer.

6 Another prior unrelated event also gave Pang's solicitors reason not to proceed under the common law. In a letter dated 8 October 2004, the employer's insurers, NTUC Income, denied liability on the ground that the policy did not cover the carrying out of hot works at D-Sign Advertising's factory. In these circumstances, and coupled with the fact that the deceased employer had left behind two young children, Pang decided not to proceed with his action which, if he had succeeded, would only result in the estate of his employer being personally liable in damages for his injuries. For all these reasons, Pang allowed the Writ to lapse on 20 December 2005.

7 On 12 January 2006, Pang wrote to the Chief Inspector of Factories ("the Chief Inspector") at the Ministry of Manpower ("MOM") for a copy of the investigation report. The Chief Inspector replied on 21 February 2006 and, based on legal advice, rejected Pang's request for the investigation report. This was in spite of the fact that the Chief Inspector had, in a letter dated 9 December 2004, stated that the investigation report could only be released to Pang when all "outstanding legal actions had been concluded". On 3 April 2006, Pang applied to the Commissioner to proceed with the Compensation Claim, some two years and three months after the explosion. On 3 May 2006, the Commissioner, in a letter signed by the head of the claims management section, replied as follows:

> We refer to the letter dated 03/04/2006 from your former solicitors, Acies Law Corporation, stating your wish to claim workmen's compensation.
>
> 2 Section 11(1) of the Workmen's Compensation Act states that a claim for workmen's compensation has to be made within one year from the date of the accident. We regret to inform you that, as you had made an expressed withdrawal of your workmen's compensation claim on 27/08/2004 through your former solicitors, Ms Jeanny Ng, the one-year time bar applies. You are precluded from reinstating the workmen's compensation claim unless you are able to provide reasons for this late submission.
>
> 3 We also wish to inform you that the institution and subsequent discontinuation of your common law action cannot be accepted as a reasonable cause for late submission of claim.

8 On 10 July 2006, Pang's solicitors replied to the Commissioner and gave the following reasons for the late submission:

(a) Pang's serious injuries required medical treatment for more than a year;

(b) the common law action was commenced within one year from the date of accident to

preserve Pang's right to workmen's compensation, as required by s 33(3) of the Act;

(c) the employer's liability was unclear until the coroner's inquiry, which took place more than 20 months after the explosion;

(d) the verdict of misadventure at the inquiry and MOM's refusal to release the investigation report made it difficult for Pang to prove liability at common law;

(e) whilst the Act precluded double recovery, the Act provided compensation as an alternative remedy if the common law action was dismissed, so long as the common law suit was brought within a year of the incident causing the injury; and

(f) the Commissioner had allowed the claim of Pang's colleague, Ms Tan Ai Lam ("Tan"), to proceed in similar circumstances. The sequence of events in Tan's claim for workmen's compensation was as follows:

(i) the claim was made on 13 January 2004;

(ii) the claim was withdrawn on 21 December 2004;

(iii) a writ was filed on 27 December 2004, its validity was extended to 27 June 2005 and it expired on 27 January 2006 without having been served;

(iv) Tan wrote to the Commissioner to proceed with her claim for workmen's compensation on 27 February 2006;

(v) the Commissioner directed NTUC Income to effect payment of her claim.

9 On 18 August 2006, Pang's solicitors had to send a reminder in order to elicit a reply from the Commissioner who, after apologising for the delay in replying, said in a letter dated 7 September 2006:

> After careful consideration, we regret the reasons you have provided cannot be accepted as a reasonable cause for late submission of workmen's compensation claim.

This reply left Pang with no choice but to commence judicial review proceedings against the Commissioner.

Proceedings in the High Court

10 On 22 November 2006, Pang applied to the High Court for leave for judicial review of the Commissioner's decision as follows:

(a) for a quashing order to quash the decision of the Commissioner barring Pang from claiming compensation and refusing to assess the Compensation Claim; and

(b) for a mandatory order directing the Commissioner to reinstate Pang's case and to assess the Compensation Claim.

11 In the High Court, the Judge dismissed Pang's application for the following reasons:

(a) Firstly, as Pang did not assert any illegality or impropriety on the part of the Commissioner, the only possible ground to impugn the Commissioner's decision was that of

irrationality. In that regard, the Commissioner's decision could not be said to be irrational such that no reasonable person would come to that decision.

(b) Secondly, the Commissioner's decision was consistent with a long line of authorities that Pang's actions did not constitute reasonable cause under s 11(4) of the Act, *viz*, *Prophet v Roberts* (1918) 11 BWCC 301, *Lingley v Thomas Firth and Sons, Limited* [1921] 1 KB 655 ("*Lingley*") and L A Sheridan, "Late National Insurance Claims: Cause for Delay" (1956) 19 MLR 341.

(c) Lastly, the Commissioner's decision to accept Tan's claim for compensation was not discriminatory against Pang as her claim had been made final under s 24(3) of the Act even before she withdrew her claim on 21 December 2004.

Proceedings on appeal

12 On appeal before us, Pang contended that the Judge's refusal to grant leave was wrong on the following grounds:

(a) the Commissioner's decision was an error of law as Pang's actions constituted reasonable cause for failure to make a claim within the requisite one-year period under s 11(4) of the Act;

(b) Pang had a legitimate expectation that his claim would be allowed by reason of Tan's case (see [8] above) since in the case of *G Elangovan v Applied Movers & Trading Pte Ltd* District Court Suit No 2065 of 2004, the Commissioner had admitted to the court that a workman was entitled to withdraw his claim for workmen's compensation at any time until he had received the compensation sum awarded and signed the letter acknowledging receipt of the compensation.

(c) the Commissioner was irrational in that he failed to give any reason for refusing to accept the Compensation Claim.

Before we consider these grounds, it is desirable that we first discuss the legislative object of the Act to facilitate a better understanding of our reasons why we held that the Commissioner's decision was wrong both in law and in his understanding of the policy of the Act.

Object of the Act

13 Under the common law, a workman who has suffered injuries by an accident arising out of and in the course of his employment may be able to recover damages for his injury from his employer only if he is able to prove that his employer has breached its duty to him. Even where the workman succeeds in his action against the employer, there is no certainty that the employer has the financial means to pay the damages unless the employer is adequately insured. At the beginning of the 19th century in England, with the growth of industrialisation, there was a felt need for legislation to protect workmen and their families from such hazards. In 1897, the English parliament enacted the first workmen's compensation legislation to fill this need by introducing no-fault claims against employers. The statutory scheme provided that every worker injured or killed in an accident arising out of and in the course of his employment was entitled to compensation irrespective of fault. Workmen's compensation was first introduced in the Straits Settlements in 1929. During the first reading of the Workmen's Compensation Bill (Bill 502 of 1929) on 25 March 1929, the Attorney-General Michael Henry Whitley said (see Straits Settlements, Colony of Singapore, *Proceedings of the Legislative Council* (25 March 1929) at pp B30 and B33):

> [T]he common law imposes a duty on an employer to see that his workmen shall not suffer injury in consequence of his personal negligence or through his failure properly to superintend the undertaking upon which they are engaged. A breach of this duty causing personal injury to a workman gives the workman a right to compensation against the employer. If death ensues in consequence of such an injury, compensation may be recovered from the employer under the Civil Law Ordinance by the wife, husband, parent or child of the deceased workman. But, except to that limited extent, compensation for personal injury cannot be recovered by a workman in this Colony from his employer.
>
> It is the object of this Bill to remedy that defect and to enable a workman to recover in respect of any personal injury caused by any accident arising out of, and in the course of, his employment, subject to certain exceptions. …
>
> …
>
> The amount of compensation conferred by this Bill is additional to and not in substitution for the common law rights and the rights given by the Civil Law Ordinance to which I have referred. But of course the workman must not be permitted to obtain one award from the Court and another from the Commissioner in respect of the same injury. Also he should not be encouraged to bring speculative actions.

The Bill was ultimately passed in 1932 as the Workmen's Compensation Ordinance (Ord 9 of 1932).

14 Since then, the Act remained substantially the same until 1975 when it was amended to improve the protection given to workers by, *inter alia*, increasing the amount of compensation payable under the Act and shortening the timelines within which employers had to pay out workmen's compensation. The amendments reflected the concern of the Government for the general welfare of workers. In answering questions on how the Act could be enhanced, Mr Sia Kah Hui, then Minister of State for Labour said (see *Singapore Parliamentary Debates, Official Report* (7 March 1972) vol 31 at col 465):

> According to the Act, the injured worker is entitled to compensation, regardless of whether or not he is responsible for the accident. Members will no doubt agree that this is a practical and realistic approach to the question of compensation. However, the worker has the option of proceeding to claim damages in the Civil Courts if he feels that the liability for the accident can be attributed to the employer or a third party.

15 Further, Parliament recognised that an injured workman would have foremost in his mind the quantum of compensation or damages he was entitled to recover in deciding whether to take up a common law action or to make a claim under the Act (see *Report of the Select Committee on the Workmen's Compensation Bill* (Parl 2 of 1975, 15 July 1975) (Chairman: Dr Yeoh Ghim Seng) at Appendix III, p B9, col 18. Accordingly, the Act gave him the choice to elect which remedy he wished to have. It was not intended to penalise the workman for choosing to commence a common law action in preference to workmen's compensation which was invariably lower than damages.

16 The Act was again amended in 1981, 1990 and 2008 without affecting the main objective and basic principles of the Act. Indeed, one amendment enhanced the right of the workman to pursue his common law claim. In introducing amendments to s 11(1) of the Act, the then Acting Minister for Labour Mr Sia Kah Hui said (at *Singapore Parliamentary Debates, Official Report* (28 November 1980) vol 39 at col 1561–1562):

> Finally, section 33(2) of the Workmen's Compensation Act allows a workman to claim compensation, having failed in his claim at common law, provided he filed his common law claim within the time specified in section 11, that is, six months from the happening of the accident. A number of claimants have indicated that this period gives them very little time to decide whether to claim at common law or under the Act. Clause 3 of the Bill, therefore, seeks to extend this period from six months to one year.

In other words, the Legislature extended the limitation period under s 11(1) of the Act in the interests of workers in order that they would be given more time to decide whether to sue for damages under the common law.

17 In 2008, the Act was amended again to extend its application to other categories of workmen, update compensation norms and improve the efficiency and effectiveness of the compensation process. In his speech in Parliament at the second reading of the Workmen's Compensation (Amendment) Bill (Bill 50 of 2007) (see *Singapore Parliamentary Debates, Official Report* (22 January 2008) vol 84), Mr Gan Kim Yong, then Minister of State (Education and Manpower), reiterated the objective of the Act in the following words:

> The Workmen's Compensation Act … provides a simpler and quicker way to settle compensation claims by avoiding protracted legal proceedings. An employee claiming under the Act is not required to prove that his employer is at fault. He only needs to show that his injury was sustained in the course of work. There is also a fixed formula in the Act on the amount of compensation to be awarded, and capped so that the financial liability on the employer is limited. The no-fault claims and prescribed amounts of compensation serve to facilitate and expedite claims under the [Act]. However, employees can still choose not to claim under the [Act], but instead to pursue damages through the civil courts under the common law.

The statutory scheme

18 Having stated the legislative objective of the Act, it is now necessary to examine the provisions of the Act to see how they implement that objective. For present purposes, the relevant provisions are ss 3, 7, 11, 12, 13, 23, 24 and 33 of the Act, the substance of which we now summarise.

19 Section 3(1) of the Act provides that if in any employment, personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall be liable to pay compensation in accordance with the provisions of the Act. A workman is entitled to compensation even if he himself caused the accident or the employer was not responsible for the accident. The only condition that has to be satisfied is that the accident must arise out of and in the course of the employment. Section 7 of the Act provides that the amount of compensation payable shall be in accordance with the provisions of Third Schedule to the Act, which, because it is based on no-fault liability, is pitched lower than common law damages. To cover the employer's liability, s 23 of the Act requires every employer to insure and maintain insurance with a licensed insurer against any liability which he may incur under the Act to any workman employed by him.

20 Section 11 of the Act governs the procedural requirements for giving notice and making a claim. The relevant portions of s 11 merits reproduction in full:

> **Notice and claim**
>
> **11**.—(1) Except as provided in this section, proceedings for the recovery of compensation for an

injury under this Act shall not be maintainable unless —

(*a*) notice of the accident has been given to the employer by or on behalf of the workman as soon as practicable after the happening thereof; and

(*b*) a claim for compensation with respect to that accident has been made within one year from the happening of the accident causing the injury, or, in the case of death, within one year from the date of the death.

…

(4) The failure to make a claim within the period specified in subsection (1) shall not be a bar to the maintenance of proceedings if it is found that the failure was occasioned by mistake, absence from Singapore or other reasonable cause.

Section 11(1) is self-explanatory except for the words "as soon as practicable" which are not relevant in the present case. Section 11(4) provides that if a workman fails to make a claim within the one year from the happening of the accident ("the limitation period"), he may not make such a claim unless the failure was occasioned by mistake, absence from Singapore or other reasonable cause. The situations in which s 11(4) apply and the conditions in which it applies ("failure", "mistake" or other "reasonable cause") have not been the subject of judicial comment or decision. The appeal before us is concerned with whether Pang has shown "reasonable cause" in making a fresh claim outside the limitation period. As we shall see, s 11(4) is not free from interpretational difficulties.

21 Section 12 of the Act provides that every employer shall give notice to the Commissioner and to his insurer in writing of the occurrence of any accident within the periods specified therein. Section 13 of the Act requires the employer to have the injured worker medically examined at the employer's expense. Section 24 of the Act empowers the Commissioner to assess and make an order on the amount of compensation payable to any person.

22 It can be readily seen from these provisions that the relevant parties whose interests are involved in the operation of the statutory scheme are: (a) the injured workmen; (b) the employers; (c) the insurers; and (d) the Commissioner. The Act regulates the respective rights and liabilities of the first three parties in different ways. The workman has an absolute right to workmen's compensation, whether or not he was at fault. The employer is liable once it is proved that the injury to the workman arose out of and in the course of employment under him. The insurer is similarly liable once the employer is liable. To ensure that the interests of the employer and the insurer are protected, the accident has to be notified to them within certain prescribed times so that they can investigate the accident to determine whether they are at financial risk, thereby enabling them to manage such risks properly. This is reinforced by the obligation of the workman to make a claim for compensation within a year unless he has reasonable cause for not doing so. The role of the Commissioner is to facilitate the payment of workmen's compensation to injured workmen (that being the objective of the Act) but, at the same time, taking into account the interests of the employers.

23 The objective of the Act is to provide no-fault compensation to injured workmen as an alternative remedy to common law damages which are invariably higher than workmen's compensation. However, the Act does not replace or substitute compensation for damages if the workman prefers to sue for damages. But, the Act also limits the rights of workmen to compensation if they have obtained damages for the same injuries in a court of law so as to prevent the workman from obtaining double compensation for his injuries. Section 33 of the Act makes provision for this objective by providing as follows:

Limitation of workman's right of action

33.—(1) Nothing in this Act shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted an action for damages in respect of that injury in any court against his employer or if he has recovered damages in respect of that injury in any court from his employer.

(2) No action for damages shall be maintainable in any court by a workman against his employer in respect of any injury —

(*a*) if he has applied to the Commissioner for compensation under the provisions of this Act; or

(*b*) if he has recovered damages in respect of the injury in any court from any other person.

(3) If an action is brought within the time specified in section 11 in any court to recover damages independently of this Act for injury caused by any accident and it is determined in the action or on appeal that the injury is one for which the employer is not liable but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court shall, if the workman so chooses, proceed to assess the compensation and may deduct therefrom all or any part of the costs which, in its judgment, have been caused by the workman instituting the action instead of proceeding under this Act.

Scope of section 33

24 Before we discuss the scope of s 33 of the Act, it is necessary to emphasise that the Act leaves it entirely to the workman to choose whether he should claim for compensation under the Act or sue for common law damages. A workman may apply for workmen's compensation without suing at common law or *vice versa*. The basic principle is that the Act is not intended to allow a workman to recover compensation under the Act or common law damages for the same injury. The object of the Act is not to give to workmen the right of double recovery of compensation and damages for the same injury but to give them compensation even if the employers have not failed in their common law or statutory duties to provide them with a safe working environment, or if they themselves are negligent in the performance of their work.

The case of Chua Ah Beng v Commissioner for Labour

25 However, whilst the Act is clear in prohibiting double recovery of compensation and damages for the same injury, it is not so clear as to the extent and the manner in which it prohibits concurrent proceedings. In *Chua Ah Beng v Commissioner for Labour* [2002] 4 SLR 854 ("*Chua Ah Beng*"), Tay Yong Kwang JC held that s 33(1) prohibited a workman who had started a common law action from making a compensation claim under the Act, and that the workman must discontinue the action if he wished to apply for compensation under the Act. At [37] of *Chua Ah Beng*, he said:

> I would qualify the 'no double proceedings, no double compensation' principle advanced in submissions to read as 'no concurrent proceedings, no double proceedings when workman succeeds, no double compensation'.

26 The problem with s 33 is not that it does not prohibit concurrent proceedings but that it is not clear what a concurrent proceeding is for that purpose. The question is whether a compensation

claim held in abeyance by the Commissioner pending a subsequent common law claim is a concurrent proceeding or whether a stayed action pending a compensation claim is a concurrent proceeding. In *Chua Ah Beng*, Tay JC held that a compensation claim held in abeyance (and in that case, the evidence showed that the Commissioner had agreed to hold the workman's claim in abeyance to allow him to pursue his common law claim) was a concurrent claim and therefore he had to treat one or the other as having been withdrawn. In that case, as the common law claim proceeded all the way to the Court of Appeal, Tay JC held that the compensation claim had been deemed to have been withdrawn; otherwise it would have meant that the court proceedings were a nullity. At [38] and [39] of *Chua Ah Beng*, Tay JC reasoned:

> The plaintiff [Chua] is asking the court to order the Commissioner for Labour to reinstate and to assess his claim. The defendant very candidly informs me that the practice adopted thus far is to allow applications under the [Act] (such as the plaintiff's in this case) *to lie dormant while the workman pursues his remedy in court. This practice obviously cannot stand in the light of what I have said about s 33(2)(a) of the [Act]. As long as an application exists before the Commissioner for Labour, whether it is active or dormant, the plaintiff cannot maintain his action in court*. In … *Ying Tai Plastic* [*& Metal Manfuacturing (S) Pte Ltd v Zahrin bin Rabu* [1982-1983] SLR 117]…, the Court of Appeal said the 'right to compensation under the Act *lies dormant while he pursues his common law action*'. It is the 'right to compensation' and not 'the claim filed' that lies dormant. The Court of Appeal also made it clear that the right to maintain a court action revives only when the application under the [Act] is withdrawn.
>
> 39 … However, s 33(2)(a) of the [Act] is a mandatory statutory bar to court proceedings. The only logical solution in these circumstances is to hold that the plaintiff is *deemed to have withdrawn* his claim under the [Act] when he informed the Commissioner for Labour that he was going to commence an action in court. There is therefore no application before the Commissioner for Labour to restore for assessment and no order of certiorari or of mandamus will therefore be made.
>
> [emphasis added]

27 It is, of course, arguable that Tay JC's solution was not the *only* logical conclusion on the facts of that case. There were two other possible solutions available to him. The first was to hold that the court proceedings were a nullity, as Kan Ting Chiu J did in *Saldur Rahman v Mayban General Assurance Bhd* [2005] 3 SLR 277 ("*Saldur Rahman*"). The second was to hold that a claim held in abeyance did not fall within s 33(1) or s 33(2)(*a*) of the Act on the ground that those two provisions were applicable only to current claims and that a suspended claim was not a current claim.

The case of Rahenah bte L Mande v Baxter Healthcare Pte Ltd

28 Tay JC's decision in *Chua Ah Beng* follows the earlier decision of Judith Prakash J in *Rahenah bte L Mande v Baxter Healthcare Pte Ltd* [2002] SGHC 320 ("*Rahenah*"). In that case, R, the injured worker, made a claim for workmen's compensation. However, because of the delay in processing her claim, she commenced a common law action against her employer, after giving notice to the Commissioner of her intention to do so, but without withdrawing her compensation claim. The employer applied to strike out R's action on the ground it was a nullity by virtue of s 33(2)(*a*) of the Workmen's Compensation Act (Cap 354, 1985 Rev Ed). Prakash J ordered the action to be struck out on the ground that she was bound by the decision of the Court of Appeal in *Ying Tai Plastic & Metal Manufacturing (S) Pte Ltd v Zahrin bin Rabu* [1982-1983] SLR 117 ("*Ying Tai Plastic*") to hold that R's action was a nullity. Of course, if Prakash J was bound by *Ying Tai Plastic*, so was Tay JC in *Chua Ah Beng*.

The case of Saldur Rahman

29 In *Saldur Rahman*, Kan J followed the decision of Prakash J in *Rahenah*, and held that the common law action in that case (which the workman had commenced *after* he had made a claim for compensation under the Act but without withdrawing it expressly) was a nullity. The reason why he held that the action was a nullity was because he found, as a fact, that the workman had not withdrawn his compensation (unlike the workman in *Chua Ah Beng*, which Kan J distinguished on that very ground). *Saldur Rahman* was therefore decided on the basis that a suspended claim is a current proceeding in the context of the prohibition against concurrent proceedings, a point that was not decided by this court in *Ying Tai Plastic*, which we will now discuss.

The case of Ying Tai Plastic

30 In *Ying Tai Plastic* ([28] *supra*), Z (the worker) had affixed his thumbprint to a document to apply for workmen's compensation for personal injuries. Subsequently, he sued for damages at common law. Z's employer raised a preliminary issue that the common law action was barred by s 33(1)(*a*) of the Workmen's Compensation Act (Act 25 of 1975) ("the 1975 Act") (now s 33(2)(*a*) of the Act). The High Court held that Z was not precluded from maintaining the action if he withdrew his claim for compensation (see *Zahrin bin Rabu v Ying Tai Plastic & Metal Manufacturing (S) Pte Ltd* [1982-1983] SLR 301). On appeal, the employer argued that the mere application for compensation under the 1975 Act abrogated the workman's right to an action for damages at common law and that an application for compensation could not be withdrawn. The Court of Appeal, after stating that the employer's liability to pay compensation under the 1975 Act was absolute, said (at 121, [25]):

> Under s 33(1)(a) [now s 33(2)(*a*) of the Act] the worker is debarred from bringing a common law action for damages so long as there is an application by the workman before the Commissioner for compensation. But this debarment in no way affects the cause of action already vested in him. The [1975] Act does not prohibit the withdrawal of the application for compensation. As soon as the application for compensation is withdrawn, the right to maintain an action *revives* and the workman can then proceed with his action for damages in the court. The workman's right to compensation under the [1975] Act lies *dormant* while he pursues his common law action but should he lose the action he may choose to ask the court, under s 33(2) [now s 33(3) of the Act] to assess the compensation under the [1975] Act. [emphasis added]

31 In our view, the decision in *Ying Tai Plastic* is eminently sensible. A contrary decision would have seriously diminished the common law right of injured workmen to sue for damages. They might have applied to the Commissioner for compensation without legal advice or in ignorance of the fact that they may obtain higher damages at common law or that the limitation period for negligence claims is six years. However, it should be noted that the question before the court in *Ying Tai Plastic* was whether a workman who had applied for compensation under the 1975 Act could withdraw the claim and commence a common law action, and the Court of Appeal answered it in the affirmative. (Indeed, it was not even necessary for the court to have made a finding because it held, on the facts, that the workman had not made an application at all as he was not aware of the purpose of the application to which he had put his thumbprint.) It held that so long as there was an application before the Commissioner, the workman could not claim at common law. The court did not construe the words "has applied" in the subsection literally to the act of applying but purposively to an existing application. What was not in issue and which the court was not asked to determine was whether a claim held in abeyance (or suspended) came within s 33(1) or s 33(2)(*a*) of the Act. We would now like to address this question.

May a claim for compensation be suspended?

32 Nevertheless, Tay JC in *Chua Ah Beng* held that a suspended claim was a current proceeding under s 33(2)(*a*) of the Act on the ground that this court had so decided in *Ying Tai Plastic* (see [25] of *Chua Ah Beng* where he pointed out that this court had referred to *the right to compensation* lying dormant and not *the filed claim*). Tay JC's approach is consistent with that of Prakash J in *Rahenah* in relation to the question of whether the word "maintainable" can refer to an action that is not current, *eg*, when it has been stayed. At [30] of *Rahenah*, she said:

> The District Judge appeared to consider that the word 'maintainable' as used in s 33(2)(*a*) meant actively prosecuting an action. This was not the interpretation given to that word by [F A] Chua J in [*Ying Tai Plastic*]. The Court of Appeal equated 'maintainable' with 'bringing a common law action for damages'. Chua J accepted that the word 'maintainable' referred to the right to bring an action and not to the right to actively prosecute it. This accords with the definition of the term 'right of action' given by *Black's Law Dictionary* (6th Ed) which states that that term includes 'the legal right to maintain an action'.

Notwithstanding these two rulings, *ie*: (a) in *Rahenah*, if the workman has a claim before the Commissioner, he has no right to commence a common law action; and (b) in *Chua Ah Beng*, a suspended claim is a current proceeding and thereby prevents the right to commence a common law action, it is arguable that a dormant right to compensation includes a dormant claim, *ie*, a suspended claim. Such a claim is not current. Similarly, a stayed action is not current.

33 In principle, there is no reason why one or the other (and it does not matter which is made first in time) may not be suspended or stayed so that the other may be proceeded with. As a matter of policy, there is no reason why a claim for compensation should not be held in abeyance and, if so held, why it should be treated as a "concurrent" proceeding under s 33(1) or s 33(2)(*a*) since it would not result in double recovery of compensation and damages. It would also not prejudice the interests of the employer and the insurer as both would have had sufficient notice to investigate the claim or the action and to defend either accordingly, if the facts so warranted it. Such an approach avoids the interpretational problem in relation to the words "failure to make a claim" in s 11(4) of the Act (dealt with at [53]–[54] below) and also gives better effect to the object of the Act in providing fault-free compensation to workmen injured or killed by accidents arising out of and in the course of their employment. Indeed, the Commissioner had previously adopted the practice of suspending claims under the Act to allow workmen to claim under the common law until the practice was held to have been wrong by Tay JC. In this connection, reference may also be made to s 33(3) which requires the court, if the workman so chooses, to assess the compensation payable to him if his action is dismissed in circumstances where the employer would have been liable to pay compensation under the Act. The effect of s 33(3) is consistent with the rationale that there is nothing objectionable with concurrent proceedings provided they are disposed of sequentially to avoid double recovery of compensation and damages or *vice versa*.

34 However, the appeal before us was not concerned with this issue, and therefore it is not necessary for us to deal with it. Nevertheless, it is necessary to point out that this court did not decide this issue in *Ying Tai Plastic*, contrary to the understanding of Prakash J in *Rahenah* and that of Tay JC in *Chua Ah Beng*. In the present case, Pang had made a claim under the Act and then withdrew it in order to sue his employer at common law. When he was later advised by his solicitors that his action might fail and that the employer's insurer had disclaimed liability, he decided to discontinue his action in order not to incur more legal costs and waste court time. He then applied to the Commissioner to assess his compensation claim. The Commissioner rejected it on the ground that it was made outside the limitation period under s 11(4) and he had not shown that he had reasonable cause for failing to claim within that period. He applied to the High Court for judicial review, but his application was dismissed by the Judge on the ground that he could not show that the Commissioner's

decision was irrational (or unreasonable according to the test laid down in *Associated Provincial Picture Houses*, *Limited v Wednesday Corporation* [1948] 1 KB 223).

Issue before this court

35 The issue argued before us was therefore a narrow one, given that the parties had agreed that s 11(4) was applicable to Pang's case. The issue was whether Pang's failure to make a compensation claim within the limitation period was occasioned by a reasonable cause under s 11(4) of the Act. As we have stated earlier, we decided this issue in favour of Pang and set aside the decision of the Judge. We will now explain why we held that Pang's reasons for his failure to make a claim within the limitation period amounted to reasonable cause.

Meaning of "reasonable cause" in section 11(4) of the Act

36 Section 11(4) of the Act requires a worker who makes a claim under the Act outside the limitation period to show reasonable cause why he was late in making his claim. However, the Act does not define what a reasonable cause is. The first issue that has to be determined with respect to this point is whether a reasonable cause is a question of law or a question of fact. The Commissioner's position is that it is a question of fact. Pang's position is that it is a question of law. We shall consider this question later, but for the moment, we will only observe that whether it is one or the other, the Commissioner has given us the benefit of his views on what "reasonable cause" is *not* rather than what it *is*. He decided that Pang's actions did not constitute reasonable cause, which is not helpful to this court in determining what would constitute reasonable cause.

37 In the High Court, the Judge accepted the Commissioner's argument that Pang's failure to make his claim within the limitation period was not occasioned by reasonable cause, relying on the line of authorities beginning with *Lingley* ([11] *supra*) and a passage from Prof Sheridan's article ([11] *supra*) at 343 reproduced below:

> *Deliberate election not to claim*
>
> On principle, when a person knows he could claim and decides not to, there is not good cause for delay in claiming if he changes his mind. This has been laid down in cases of sickness benefit, and was the doctrine with regard to reasonable cause of the workmen's compensation cases.

Before us, counsel for the Commissioner ("State Counsel") relied on the same argument and authorities and, in addition, referred to a series of post-*Lingley* cases which, he argued, supported the Judge's decision: *Atherton v Chorley Colliery Co, Ltd* (1926) 19 BWCC 314 ("*Atherton*"), *Patrick Devons v Alexander Anderson & Sons* 1911 SC 181 ("*Devons*"), *Abel v Estler Brothers* (1919) 12 BWCC 184 ("*Abel*") and *Drewett v Britannia Assurance Co, Ltd* (1927) 20 BWCC 434 ("*Drewett*").

38 In our view, State Counsel and the Judge have misunderstood the *Lingley*-line of cases. As Prof Sheridan's article made clear, he was discussing cases in which the workers had *deliberately elected* not to claim workmen's compensation, and not cases like the present where the worker had indeed made a compensation claim but ultimately opted for a better alternative which the Act allowed him to do. In the *Lingley*-line of cases, the workers had initially elected *not* to claim workmen's compensation for various reasons and had only decided to do so after the expiry of the limitation period and after they had failed to get what they had wanted from their respective employers. In those circumstances, the English courts held that the workmen had never wanted to claim workmen's compensation, and for that reason they were not entitled to make claims outside the limitation period as their conduct might have prejudiced the interests of the employers who were not put on notice

that there could be claims for workmen's compensation.

39 In *Lingley*, the applicant, a munitions worker, was injured on 21 August 1917 but she did not make a claim until February 1920. Under the relevant workmen's compensation legislation, she was required to make a claim within six months from the date of the accident. Thus, in *Lingley*, the applicant was two years out of time. Her only reason for not making a claim was that she regarded her injury as not serious and she wanted to continue working. The Court of Appeal held that no reasonable cause had been shown. Scrutton LJ dealt with the policy considerations of the limitation period for making a claim and said (at 672) that the court must not overlook "the interests of the employer, which require that the employer should have the chance of investigating the accident, and considering the point with the evidence upon it".

40 In *Devons* ([37] *supra*) and *Abel* ([37] *supra*), the workmen in both cases were offered workmen's compensation by their employers but they rejected it. Their claims for compensation were also made outside the limitation period. The saddest case was that of the workman in *Drewett* ([37] *supra*). He was injured in the course of employment but continued to work until he was summarily dismissed for misconduct. In the hope of getting reinstatement he threatened to sue his employers but made no claim for workmen's compensation until two days after the expiry of the limitation period. The Court of Appeal, following *Lingley*, upheld the County Court's finding that the workman had never intended to make a claim during the limitation period and therefore had not shown reasonable cause for the delay. It would therefore appear that up to the 1920s the English courts were focused on the question of whether the workman had deliberately elected not to make a timely claim for workmen's compensation.

41 In our view, the *Lingley*-line of cases are clearly inapplicable to Pang's case in three respects. First, in the present case, Pang had not elected not to claim compensation under the Act. In fact, he made such a claim well within the limitation period, but had to withdraw it in order to sue his employer at common law. Second, both the employer and the insurer had been informed of the accident soon after it occurred, and therefore they had not been prejudiced by being deprived of the opportunity to investigate the accident to determine whether they were at risk under the Act. In fact, they were not prejudiced, as it has not been disputed that Pang's injuries were caused to him arising out of and in the course of his employment. It may be recalled that his employer, who was also working with Pang, died from the accident. Third, the question of prejudice to the insurer would not arise in the context of Singapore law since the Chief Inspector of Factories had a statutory duty to investigate all accidents in factories and he had done so in the present case. Therefore, the concerns that were material to the courts in the *Lingley*-line of cases were absent in the present case.

42 In *James Gillespie v Convoys, Limited* 1939 SC 568 ("*Gillespie*") at 574, the Second Division of the Scottish Court of Session explained the rationale for the requirement that a claim under s 14 of the Workmen's Compensation Act 1925 (c 84) (UK) must be made within the limitation period as follows:

> Wherever a workman who has met with a serious injury is detained in hospital during the whole statutory period of claim and has failed to claim timeously, the Court will always be anxious to examine carefully and sympathetically all the circumstances that will support a plea of mistake or reasonable case, and such questions when they arise will never be measured in too nice scales. The Legislature by its enactment of the proviso to section 14 clearly intended that workmen were not to be deprived of the benefits of compensation through their claims being out of time where the failure could be reasonably excused. On the other hand, the statutory requirement is not a mere formality. As was pointed out by Lord Atkinson in *Thompson* v. *Goold & Co* [[1910] 1 AC 409 at 413], "the main if not the only object of requiring the claim for compensation to be made

within six months from the accident is to protect the employer from stale demands." The employer is entitled to know whether he is to be met with a claim or not. The Court, therefore, must always be careful not to admit as an excuse anything that is not a real excuse, for were it to do so it would destroy the value of the statutory provision.

More specifically, Scrutton LJ held in *Atherton* ([37] *supra*) at 322 that the provision in the Workmen's Compensation Act 1925 was intended to allow the employer to:

> … take steps to protect himself, one of the most obvious steps being seeing that evidence is obtained as to the nature of the accident or illness, and having the state of the man at that time ascertained by satisfactory medical evidence, and if notice of a claim in that sense is not given, the employer may obviously be prejudiced in his defence …

43 In the present case, all the safeguards contemplated by the Act for the protection of the interests of the employers and the insurers were satisfied and their liability to Pang for compensation under the Act had crystallised long before Pang decided to institute his common law action against his employer. As the court in *Gillespie* (at 574) said, the UK legislature, by its enactment of the proviso to s 14 of the Workmen's Compensation Act 1925, clearly intended that workmen were not to be deprived of the benefits of compensation through their claims being out of time where the failure could be reasonably excused.

"Reasonable cause" is a question of law

44 What then is a reasonable cause? As we have stated earlier, the Commissioner has never explained what a reasonable cause is under s 11(4) of the Act or why the reasons given by Pang were not sufficient to qualify as reasonable cause. State Counsel, in both his written and oral submissions, avoided this issue by arguing that it was a question of fact and not of law, and that the court should not disturb the Commissioner's finding of fact. He referred to a passage from the judgment of MacKinnon LJ in *Harris v James Howden & Co (Land), Ltd* [1939] 3 All ER 34 ("*Harris*") which reads as follows (at 38):

> It seems to me that a question as to whether or not there has been a mistake or other reasonable cause is primarily a question of fact, and, in the normal case when it comes on appeal from a county court judge who has found, or who has not found, that there was a mistake or other reasonable cause, the function of the Court of Appeal is only to say whether or not there was evidence on which he could make that finding.

45 We did not accept this submission. In our view, the court must first determine the legislative meaning of the words "other reasonable cause" before it can determine whether the facts come within that meaning. The determination of that meaning is a question of law. In *Shotts Iron Company, Limited v Fordyce* [1930] AC 503 ("*Shotts*"), the House of Lords held that what circumstances amounted to a reasonable cause was a question of law and not a question of fact under the corresponding English legislation (see also *Halsbury's Laws of England* vol 34 (Butterworth & Co (Publisher), Ltd, 2nd Ed, 1940) at para 1208; W Addington Willis & R Marven Everett, *Willis's Workmen's Compensation Acts* (Butterworth & Co (Publishers), Ltd, 36th Ed, 1944) at p 436). In *Shotts*, the question arose as to whether there was reasonable cause for the workman to make a late application for workmen's compensation. Lord Sankey LC said (at 507–508):

> [I]t was first argued on behalf of the employers that an appeal was not competent because the question was one of fact, and there was evidence which justified the finding of the Sheriff-Substitute.

> With this contention I am unable to agree. As Lord Parmoor said in *King* v. *Port of London Authority* [[1920] AC 1 at 31]: "No doubt the relevant facts should be found by the learned judge, and then it becomes a question of law whether these facts are such as to constitute a reasonable cause within the provision of the statute." That decision was followed by the English Court of Appeal in *Hillman v. London, Brighton and South Coast Ry. Co.* [[1920] 1 KB 284 at 288], where Warrington L.J. said: "The facts are sufficiently found by the judgment of the county court judge, and are not in dispute. It is now open to us, if we think that the county court judge has from those facts drawn the wrong conclusion of law, to reverse his decision." *In my view, the question whether the facts as found amount to reasonable cause is one of law.*
>
> [emphasis added]

Lord Macmillan was equally direct (at 514):

> The question in the present case was not whether the facts found entitled the arbitrator to draw from them the conclusion which he formed, in the sense that there was evidence from which he could so conclude in fact, but whether on the facts found the arbitrator was right in law in his conclusion.

46 Given the difference of opinion between the English judges, we prefer the opinion of the House of Lords in *Shotts.* If MacKinnon LJ's view in *Harris* represents the law, we would be faced with a situation in which if the Commissioner decides that facts A, B and C do not constitute reasonable cause, then *cadit quaestio* (there is no room for further argument), since the court would be unable to disagree because that would go into the merits of the Commissioner's decision. This would mean that whatever the Commissioner decides, goes. In our view, this is particularly ironic and unfair, since in the present case the Commissioner himself is unable to articulate what a reasonable cause is. His legal position reflects an *ipse dixit* approach in the exercise of discretionary power by an administrative agency, an approach which no court that is prepared to uphold the rule of law will accept.

Were Pang's actions a reasonable cause under section 11(4) of the Act?

47 In our view, the words "reasonable cause" should be given an expansive meaning and one that gives effect to the objective of the Act in providing compensation to injured workers as a first or last resort. Although this expression is juxtaposed with two other reasonable causes, *viz*, mistake and being out of Singapore, thereby suggesting that a reasonable cause refers to a physical or mental ability to make a claim for compensation in a timely manner, it is our view that the concept of reasonable cause in s 11(4) of the Act should be construed to cover a situation where the workman has exercised a lawful right given to him by the Act, *ie*, to pursue his common law remedy without having to forego his claim for compensation, provided his untimely claim does not prejudice the interests of the other parties, *viz*, the employer or the insurer. What amounts to a reasonable cause has to be determined on the facts of each case, on the principle of balancing the interests of the workman and those of the employer or the insurer. In *Harris*, the English Court of Appeal interpreted the identical words in the corresponding English Act to apply to a case where the workman could be said to be more blameworthy than Pang in the present case. In *Harris*, the widow of the deceased workman had commenced a common law action outside the corresponding limitation period for making a workmen's compensation claim, yet she sought to avail herself to workmen's compensation under the equivalent of our s 33(3) of the Act.

48 Before us, counsel for Pang argued, citing *Gillespie* ([42] *supra*), that reasonable cause is established where there are extraneous circumstances beyond the workman's control that prevent

the workman from making a workmen's compensation claim. We agree with counsel's submission in that what he had posited would be a reasonable cause. However, we could not agree that it was applicable to Pang as there were no extraneous circumstances beyond Pang's control that had prevented him from making a claim for workmen's compensation. Indeed, he did make a claim but withdrew it to pursue a common law action. These decisions were within his control. So was his decision to discontinue the action and not to proceed with it such that he could request the court to assess the workmen's compensation payable to him should his action be dismissed. He could have incurred more legal costs and wasted some court time, but his decision not to do so was within his control. Therefore, *Gillespie* does not assist Pang's appeal. If the element of control was the principle informing the words "reasonable cause" then Pang's actions would not be a reasonable cause.

49 However, counsel for Pang also relied on *Harris* in support of his argument. In that case, the husband of the plaintiff had been killed in an accident due to the condition of the floor in a power station. As the case for a common law claim was strong, the plaintiff did not make a claim for workmen's compensation, but wanted to sue certain parties for damages. However, before she could commence the action, great difficulty was encountered as to which party was responsible for the condition of the floor. Ultimately at the trial, the court held that the plaintiff had sued the wrong party. She then requested the court to assess her workmen's compensation claim under s 29(2) of the Workmen's Compensation Act 1925 (corresponding to our s 33(3) of the Act), but her request was denied by the trial judge because she had not instituted the action within the prescribed time. On appeal, the English Court of Appeal held that the decision of the widow, on the advice of her solicitor, "that she had a much more profitable claim at common law against the employers or the persons otherwise responsible for the floor through which, owing to its defective condition, the man fell and was killed" (see *Harris* at 36), although that advice turned out to be mistaken, was a reasonable cause for not making a claim for workmen's compensation within the applicable limitation period.

50 In our view, the decision of *Harris* is helpful to Pang's case. As we have stated earlier (at [47] above), the applicant in that case was more blameworthy than Pang in so far as she had failed to comply with the applicable limitation period in instituting her common law action. For this reason, Pang's case was *a fortiori.* In our view, the decision of Pang to seek a higher recovery of compensation for his injuries at common law is by itself a reasonable cause under s 11(4) of the Act, especially when the Act itself specifically allows him to do so, *and* when his employer and the insurer had suffered no prejudice, and their liability under the Act had crystallised. Furthermore, Pang's decision to abandon his action for the reasons given by him was a factor in his favour and should not be construed as an election to abandon his claim for compensation under the Act. In our view, it was impossible to view the Commissioner's rejection of Pang's claim for compensation as anything but a grievous misapprehension of the object of the Act. His decision was not only inconsistent with the object of the Act, but it also had the effect of relieving the employer and the insurer from a liability which had already crystallised. In this respect, we recognise that State Counsel, in defending the Commissioner's position, was in an unenviable position of having to defend an indefensible case which was not of his making.

51 Leaving aside these authorities, we were also of the view that there was another relevant factor in Pang's favour that the Commissioner should have taken into account in determining whether Pang had shown reasonable cause under s 11(4) of the Act. That factor was his desire to save legal costs and judicial time in not having to pursue a futile claim to the end. In our view, Pang's actions were socially responsible and, at the same time, caused no prejudice to the insurer as its liability to Pang had crystallised long before the new claim was made. In our view, the Commissioner erred in law in rejecting Pang's new claim for compensation.

Scope of section 11(4) of the Act – meaning of "failure to make a claim"

52 Section 11(4) provides that the failure to make a claim within the limitation period is not a bar to making such a claim if the failure is occasioned by, *inter alia*, a reasonable cause. In the court below, it was assumed that Pang had failed to do so. In the course of hearing this appeal, we raised the question whether s 11(4) was applicable to Pang's case as he had made a claim which he withdrew in order to sue at common law. It could be argued that Pang did not fail to make the Compensation Claim within the limitation period since he did make it within that period. The withdrawal of the Compensation Claim cannot affect the reality that he had made a claim although it was subsequently withdrawn. In our view, there is room for construing s 11(4) purposively by determining its objective. The *Lingley*-line of cases show clearly that s 11(4) is intended to apply to a case where the workman had no intention to make a claim under the Act and did not do so until after the expiry of the limitation period. In such cases, an employer might have acted on the basis that the workman did not wish to make such a claim and might have thereby acted in a way prejudicial to its interests. The case of *Harris* shows that even if a workman does not make a claim within the limitation period but has not demonstrated any intention not to make a claim (in that case, the workman sued at common law outside the limitation period for making a compensation claim), he may still make a claim under the English provision corresponding to s 11(4) of the Act. *Harris* is also authority for the proposition that the workman's decision to pursue what he regards as a "more profitable" claim at common law is a reasonable cause for not making a compensation claim under the Act.

53 Having regard to the objective of the Act in securing for injured workmen compensation without fault, and the rationale of s 11(4) that the interests of an employer should not be prejudiced by the delayed action of a workman in making a claim under the Act, a workman who has made a timely claim but who has withdrawn it should not be held to have failed to make a claim under s 11(4). In our view, this is a more rational way to construe s 11(4) than to apply it to an untimely claim made after a timely claim has been withdrawn in order to pursue a common law action. The ultimate conclusion is the same. Either s 11(4) of the Act does not apply, or the workman has shown reasonable cause. Section 11(4) should therefore be interpreted to apply only to the *Lingley*-line of cases where the workman had no intention to make a compensation claim until after the expiry of the limitation period for making such a claim. Whether s 11(4) of the Act applies to a particular situation would depend on the intention of the workman and whether his omission has caused or is likely to cause prejudice to his employer.

Second and third grounds of appeal not addressed

54 As the determination of the first ground of appeal also determined the fate of the appeal, it was not necessary for us to determine the remaining two grounds of appeal, *viz*: (a) whether Pang had a legitimate expectation that his claim would be allowed by reason of Tan's case; and (b) whether the Commissioner's failure to give any positive reasons for his decision made his decision irrational and constituted a breach of the rules of natural justice and fairness.

Conclusion

55 For the above reasons, we allowed the appeal with costs and granted leave to the appellant to proceed with his application for judicial review.

Observations on *ex parte* applications for judicial review

56 We should like to add by way of guidance to judges who hear *ex parte* applications for leave for judicial review that the purpose of requiring leave is to enable the court to sieve out frivolous

applications. A case such as the present which clearly raises issues which require more than a cursory examination of the merits should have been heard as a substantive application. There is no reason why an *ex parte* application such as Pang's could not have been heard *inter partes* and disposed of on the merits as a substantive application. As for this appeal, given our conclusions on the substantive issues in this case, we indicated to State Counsel that he should advise the Commissioner that Pang's claim for workmen's compensation should be processed immediately without the necessity of another court hearing, at which the Commissioner was bound to fail.