

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 02

Tribunal Appeal No 28 of 2016

In the matter of Section 29 of the Work Injury Compensation Act
(Cap 354, 2009 Rev Ed)

And

In the matter of Order 55 Rule 1 of the Rules of Court
(Cap 322, R 5, 2014 Rev Ed)

Between

- (1) **CHINA TAIPING INSURANCE (SINGAPORE) PTE LTD**
- (2) **CLUB SONATA PTE LTD**

... Applicants

And

- (1) **LOW YI LIAN CINDY**
- (2) **LOW DE YOU**
- (3) **LOW YI LING ANN**
- (4) **TAN MUI TANG**

... Respondents

JUDGMENT

[Employment Law] — [Work Injury Compensation Act]

[Statutory Interpretation] — [Construction of statute]

[Statutory Interpretation] — [Definitions]

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This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher’s duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

China Taiping Insurance (Singapore) Pte Ltd and another
v
Low Yi Lian Cindy and others

[2018] SGHC 02

High Court — Tribunal Appeal No 28 of 2016
George Wei J
12 October 2017

4 January 2018

Judgment reserved.

George Wei J:

Introduction

1 This is an appeal under s 29 of the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) (“WICA”) and O 55 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) against the whole of the decision of the learned Assistant Commissioner on 3 November 2016.¹ The issues before this court concern the legal capacity of the respondents to make any claim under the WICA in relation to a workplace accident which resulted in the death of the employee, in the absence of a grant of representation by grant of probate or letters of administration.

2 After hearing arguments and submissions, I reserved judgment which I now deliver.

¹ Record of proceedings (“ROP”), p 3.

Background facts

3 The brief facts as set out below are largely adopted from the decision of the learned Assistant Commissioner dated 3 November 2016 (“the Decision”) and are generally not in dispute.

4 Mr Low Ngak Boon (“the deceased”) was working at his workplace, Innotel Hotel, on 14 August 2014 when he started having breathing difficulties. After alerting a colleague, the deceased was taken by ambulance to the hospital where he was subsequently pronounced dead from a heart attack.²

5 On 22 June 2015, a Fatal Accident Statement (“FAS”) was made by the next of kin of the deceased, namely Low Yi Lian Cindy, Low De You, Low Yi Ling Ann and Tan Mui Tiang, the respondents. I note that the FAS was signed only by the 4th respondent, Tan Mui Tiang, who was the deceased’s widow.³ I return to this at the end of the judgment (see [94] below).

6 On 16 July 2015, a Notice of Assessment was issued by the Ministry of Manpower (“MOM”) stating that the compensation payable was \$146,823.75. A claim under the WICA was lodged by the respondents.⁴ The applicants (the deceased’s employer and the latter’s insurer) lodged their Notice of Objection and the matter was fixed for hearing at the MOM on 11 March 2016. During the pre-trial conferences, no issue on the capacity of the respondents was raised.⁵

² The Decision (at ROP, p 28), para 2; Applicants’ submissions at para 1; Applicants’ Bundle of documents (“ABD”), pp 32–35 (autopsy report).

³ ABD, p 44.

⁴ The Decision, para 3.

⁵ Respondents’ submissions at para 9.

7 On 11 March 2016, after the hearing of some witness testimony, the trial was adjourned for a second tranche where additional witnesses including the deceased’s supervisor were to be examined. On 11 July 2016, learned counsel for the applicants made an oral interlocutory application for the determination of the issue of whether the respondents were entitled to continue the proceedings given that they had not been appointed as the executors or administrators of the estate of the deceased.⁶ Indeed, I note that up to date of the hearing of the appeal, neither letters of administration nor grant of probate had been granted in respect of the deceased’s estate.

8 On 18 July 2016, the Assistant Commissioner directed the applicants to file written submissions. The respondents were given leave to file reply submissions. On 3 November 2016, the Assistant Commissioner dismissed the applicants’ interlocutory application to terminate the proceedings. His reasons are set out in the Decision.

9 On 21 November 2016, the applicants filed an appeal under s 29 of the WICA to set aside the Assistant Commissioner’s decision of 3 November 2016 and the Notice of Assessment dated 16 July 2015.

The decision below

10 The Assistant Commissioner summarised the issue before him at [4] of the Decision as “whether the [next of kin] needed to obtain Grant of Probate ... or Letter of Authority ... before lodging a claim under WICA”.

11 In reaching his decision, the Assistant Commissioner took into account the decision of the Court of Appeal in *SGB Starkstrom Pte Ltd v Commissioner*

⁶ Respondents’ submissions at paras 9–10.

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of Labour [2016] 3 SLR 598 (“*Starkstrom*”) as well as *Teo Gim Tiong v Krishnasamy Pushpavathi (legal representative of the estate of Maran s/o Kannakasabai, deceased)* [2014] 4 SLR 15 (“*Maran*”). The Assistant Commissioner commented at [6] of the Decision that “[b]oth cases deal with threshold issues and emphasize the need for those acting for claimants who are incapacitated in one way or the other ... [to] be duly authorized in law to do so” [emphasis and internal quotation marks omitted]. The Assistant Commissioner found that both cases were distinguishable for the reasons which he set out in the Decision, and proceeded to dismiss the application.

The issue in this appeal

12 The applicants submit that the main issue in the appeal is whether the next of kin of a deceased worker who passed away intestate can make a valid claim for compensation under the WICA, without first having obtained letters of administration to represent the estate of the deceased worker.⁷

13 The applicants also submit that closely connected or arising from the main issue is the question of whether the common law principle that only a person who has obtained letters of administration has the *locus standi* to act on behalf of the estate of the deceased worker has been abrogated by ss 6, 9 and 27 of the WICA.⁸

14 Whilst it is proper and convenient to have regard to the applicants’ framing of the issues to be decided, I observe that the issues arise in the context of an application by the *dependants* of the deceased for work injury compensation payable in the case of an accident resulting in death. This is made

⁷ Applicants’ submissions at para 26.

⁸ Applicants’ submissions at para 27.

clear by the FAS in which the identities of the four dependants (the respondents) are set out in Part 5 of the Statement.⁹ I shall return to the FAS below.

The WICA framework: Rationale, key definitions and procedures

Rationale

15 This can be dealt with briefly as the general points are well-known and summarised in *Kee Yau Chong v S H Interdeco Pte Ltd* [2014] 1 SLR 189. A few points will suffice. 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. It has been amended numerous times and dates back to the Workmen’s Compensation Act (Act 25 of 1975) and beyond.

16 At the second reading of the Work Injury Compensation (Amendment) Bill 2011 (Bill 18 of 2011) (see *Singapore Parliamentary Debates, Official Report* (21 November 2011) vol 88), acting Minister of Manpower Tan Chuan-Jin explained the Government’s thinking behind the 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.

⁹ ABD, pp 42-45.

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.

17 I pause to stress that whilst the WICA speaks of “compensation to employees” and advances the goal of “[b]alancing the interests of the injured worker and the employer or insurer”, the WICA regime also speaks to the interests of dependants of a deceased worker who as a result of the accident and death of the worker find that they have lost their source of income and financial support.

18 As will be discussed in more detail below, dependency claims are separate and distinct from claims on behalf of the estate of the deceased worker. The point I make at the outset is that the statement by the acting Minister of Manpower that one objective of the 2011 amendments was “to ensure that the WICA framework remains expeditious and workers are able to receive compensation promptly” applies equally to dependency claims. Indeed, the Explanatory Statement to the Workmen’s Compensation Bill 1975 (Bill 5 of 1975) stated that one objective behind the repeal and re-enactment of the Workmen’s Compensation Act was to “provide for more effective enforcement and administration and for swifter remedies”. The Explanatory Statement also noted that the changes made by the 1975 Bill included an amendment to the definition of “dependant” “so that a person who falls within one of the specified categories of relatives will not have to prove actual dependency in order to obtain compensation where a workman has been involved in a fatal accident.”

19 The WICA does not replace or remove any common law right of action. Instead, the goal of the WICA is to set up a statutory scheme linked with insurance to provide quick means for compensation. In broad terms, two main goals (leaving aside for the moment any interplay between the goals) are to provide quick basic no-fault compensation for:

- (a) employees injured by accidents during or arising in employment, where the compensation is for the employee (and his estate if relevant); and
- (b) dependants for loss of dependency.

Key definitions

20 Section 2 of the WICA defines “dependant”, in respect of a deceased employee, as meaning:

the wife, husband, parent, grandparent, step-father, step-mother, child, grandchild, step-child, brother, sister, half-brother, half-sister, step-brother and step-sister irrespective of whether that person is actually dependent on the employee’s earnings or not and for the purpose of this definition —

(a) the child of a deceased employee shall be deemed to include the illegitimate child of that employee and any child whose adoption by him has been registered under the Adoption of Children Act (Cap. 4); and

(b) the parent of a deceased employee shall be deemed to include the father and the mother of an illegitimate child and the person who has registered the adoption of any child under the Adoption of Children Act ...

21 Section 2(3) provides that “[a]ny reference to an employee who has been injured shall, unless the context otherwise requires, where the employee is dead, include a reference to his legal personal representative or to his dependants or any of them.”

22 It is noted that there is no requirement for a dependant to prove “actual dependency”. Further, it bears underscoring that the definition of “dependant” is not the same as the definition of “next of kin” in terms of the persons entitled to claim against the estate of a deceased person on intestacy. For example, an illegitimate child is not entitled to a claim against the estate on intestacy (see Intestate Succession Act (Cap 146, 2013 Rev Ed), ss 6 and 7; *AAG v Estate of AAH, deceased* [2010] 1 SLR 769 at [39]).

Liability for compensation

23 Part II of the WICA deals with compensation for injury. Section 3(1) states:

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.

24 Section 3(1) is framed in terms of the duty (liability) of the employer to pay compensation under the WICA. It does not deal with the questions of who is entitled to start proceedings under the WICA, how the compensation is assessed, and who is entitled to claim payment against the compensation fund as determined under the WICA.

Procedure

Notices and claims

25 In a broad sense, the procedure for starting proceedings under the WICA is set out in s 11 which provides, *inter alia*, as follows:

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 employee as soon as practicable after the happening thereof;

(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; and

(c) the claim has been made in such form and manner as the Commissioner may determine.

(2) No notice to the employer shall be necessary where a fatal accident has occurred.

26 WICA proceedings are not maintainable by the injured employee if the required notice of the accident has not been given to the employer. The duty is on the employee to give notice as soon as practicable. The notice may be given either in writing or orally (s 11(5)). Notice to the employer is not however required where a fatal accident has occurred. In the present case, it follows that there was no necessity for notice to be provided to the deceased's employer either by the representatives of the deceased employee or by the dependants.

27 Section 11(1)(b) of the WICA goes on to provide that the claim for compensation must be made within one year of the accident or the death of the employee. It is noted that the one-year period is very much shorter than the limitation period for bringing common law claims in tort for personal injuries. The claim must be made in the form and manner as determined by the Commissioner, *ie*, the Commissioner for Labour.

Reports

28 Regulation 4 of the Work Injury Compensation Regulations (Cap 354, Rg 1, 2010 Rev Ed) ("the WICR") deals with the making of a "report" by the employee or the dependant who intends to make a claim for compensation. It provides:

Making of report by employee or dependant

4.—(1) Where —

(a) an employee has been injured in an accident in the course of his employment; or

(b) an employee has died as a result of an accident in the course of his employment,

the employee or a dependant of a deceased employee who intends to make a claim or has made a claim for compensation under the Act, and who has not received compensation from the employer of the employee, may make a report to the Commissioner.

(2) Any report made under paragraph (1) shall be in writing and made in such form and manner as the Commissioner may determine.

(3) Where a report made under paragraph (1) is in writing by the Commissioner, the report shall be signed by the employee or the dependant, as the case may be, to the effect that the facts recorded by the Commissioner are accurate to the best of the employee's or dependant's knowledge and belief.

29 The report under the WICA may be made by (i) the employee or (ii) the dependant of the deceased employee. There is no express requirement that the dependant must be a legally appointed representative of the deceased's estate. Indeed, it is stressed that the reference to dependant in Reg 4 is framed in terms of "a dependant of a deceased employee who intends to make a claim for compensation".

Notice to the Commissioner and the insurer

30 Section 12 of the WICA imposes on the employer the duty of giving notice to the Commissioner and his insurer of every "prescribed event" within the prescribed time frame. Regulation 3(1) of the WICR defines the prescribed events and provides, *inter alia*, that where the accident results in death, notice must be given within 10 days of the accident. It is noted that the WICA

envisages parallel notice requirements: duties imposed on the employer and those imposed on the employee or the dependant of the deceased employee.

Change of address

31 Detailed provisions on change of address can be found in s 12A of the WICA. For example, s 12A(1) states:

Where any claim for compensation has been made under this Act by an employee or by a person acting on behalf of an employee who is dead or lacks capacity within the meaning of the Mental Capacity Act (Cap. 177A), and the Commissioner has reason to believe that there is a change during the currency of the claim in the address used by the employee or the person for the purposes of the claim, the Commissioner may serve a notice on the employee or the person, as the case may be, requesting for particulars of any change in address.

32 The short point is that this provision is concerned with ensuring that the Commissioner has updated records of the address of the employee, or where the employee is dead or lacks capacity under the Mental Capacity Act (Cap 177A, 2010 Rev Ed) (“the MCA”), the address of the person who is acting on behalf of the employee. The provision does not apply in respect of claims for compensation by a dependant of the deceased employee.

Appointment of representatives

33 Special provisions on the appointment of a representative for any party to the WICA proceedings are set out in Regs 14 and 15 of the WICR:

When representative must be appointed

14. Where any party to a proceeding is a minor or is unable to make an appearance because he is mentally incapacitated or is dead, the Commissioner shall appoint a suitable person, who consents to the appointment, to represent the party for the purposes of the proceedings.

When new representative to be appointed

15. If the Commissioner considers that the interests of any party for whom a representative has been appointed under regulation 14 are not being adequately protected by that representative, or if a person appointed to act as representative dies, or becomes incapable of acting, or otherwise ceases to act as such, the Commissioner shall appoint in the representative's place another person who consents to the appointment.

34 It follows that if a dependant is a party to the proceedings and is mentally incapacitated, the Commissioner has the power to appoint a "suitable person" to represent that party.

Inquiries, assessments of compensation and objections

35 Regulation 5 of the WICR provides that after the report is made by the employee or dependant, the Commissioner may make inquiries on the matter in issue from the employer or the principal (essentially the person who subcontracts with the employer for the latter to carry out works).

36 The Commissioner is empowered under s 24(1) of the WICA to assess the compensation "payable to any person on any application made by or on behalf of that person." Once the compensation is assessed, s 24(2) requires the Commissioner to serve on the employer and the person claiming compensation a notice of the assessment setting out the amount payable. If the employer or person making the compensation claim objects to the notice of compensation, a notice of objection must be given to the Commissioner within the prescribed time-limit (ss 24(3) and 24(3A); Reg 6 of the WICR).

37 Detailed provisions on the computation of compensation are found in Part II, Division 2 of the WICA and Part IV of the WICR. Where death has resulted from the injury, the compensation sum is derived from the deceased employee's "true monthly earnings" and the appropriate multiplier (see s 8(1) of the WICA; Reg 16 of the WICR).

Hearing of the objection

38 The Commissioner is empowered under ss 25A and 25B of the WICA to make orders and give directions for the determination of a claim, including the holding of pre-hearing conferences.

39 Thereafter, the Commissioner is empowered to conduct a hearing of the case, to hand down the decision and to make any order for payment of compensation as he thinks just, at or after the hearing (s 25D).

40 Special provisions on the appearance of parties are set out in s 27(1). For convenience, I set out the provision in full:

Appearance of parties

27.—(1) Any appearance, application or act required to be made or done by any person before or to a Commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of that person —

(a) by an advocate or solicitor;

(b) with the leave of the Commissioner, by any other person authorised in writing by that person;

(ba) where the person lacks capacity within the meaning of the Mental Capacity Act (Cap. 177A) — with the leave of the Commissioner, by —

(i) any dependant of the person;

(ii) any donee of a lasting power of attorney which is granted by the person under the Mental Capacity Act, and under which the person confers on the donee authority to manage the person's property; or

(iii) any deputy who is appointed or deemed to be appointed for the person by the court under the Mental Capacity Act, and who is conferred power to manage the person's property;

(bb) where the person is dead — with the leave of the Commissioner, by any of his dependants or his estate,

whether or not the estate has obtained a grant of representation;

(c) when that person is an employer, by a person in his permanent and exclusive employment; or

(d) by his insurer.

41 It should be noted that s 27(1) is not limited to the appearance of the party at the hearing of an objection. Section 27(1) applies whenever an application or act is required to be done by any person before or to a Commissioner, other than giving evidence as a witness. Where the person in question is dead, the Commissioner is empowered under s 27(1)(bb) to permit the application or act to be done by (i) the dependants; or (ii) the estate, irrespective of whether the estate has obtained grant of representation. I shall return to this provision later.

Entitlement to and payment of compensation

42 Section 6 of the WICA states the following:

Persons entitled to compensation

6.—(1) Compensation under this Act shall be payable to or for the benefit of the employee or, where death results from the injury, to the deceased employee's estate or to or for the benefit of his dependants as provided by this Act.

(2) Where a dependant dies before a claim under this Act is determined by the Commissioner, the legal personal representative of the dependant shall have no right to payment of compensation, and the amount of compensation shall be calculated and apportioned as if that dependant had died before the employee.

(3) Where a deceased employee has no dependant, the compensation shall be paid into a fund to be known as the Workers' Fund which shall be established, maintained and applied in accordance with regulations made under this Act and the person managing the Fund shall be entitled to claim the compensation.

43 Section 9 provides that where the injury has resulted in death or permanent incapacity, the compensation shall first be paid to the Commissioner. Any payment made directly to the employee or his dependant is deemed not to be payment of compensation for the purposes of the WICA.

44 Section 22(1) makes express provision for the payment of compensation by the Commissioner to the dependants of a deceased employee or his estate without production of a grant of representation. A similar provision in s 22(2) applies in the case of an injured employee who lacks capacity. For convenience, I set out s 22(1) here in full.

Commissioner may receive and pay to dependants, etc., money due from employer to employee who is dead or lacks mental capacity

22.—(1) Notwithstanding anything in any written law relating to the administration or distribution of estates of deceased persons for the time being in force in Singapore, where it appears to the Commissioner that compensation or interest is payable to an employee under this Act and the employee has died before such payment is made, it shall be lawful for the Commissioner to receive and pay the compensation or interest, without production of a grant of representation, to any one or more of the dependants of the deceased employee or to the estate of the deceased employee.

45 In the event that the Commissioner is satisfied after the inquiry that no dependant of a deceased employee exists or can be traced and the circumstances are such that there is no reasonable likelihood that any dependant can be traced, the Commissioner is required to pay the balance of monies to the Workers' Fund (s 9(6)).

Variation of the order

46 Section 9(7) of the WICA contains an important power for the Commissioner (on his own motion or on application) to vary an order as he

thinks just, because of a change in circumstances of any dependant or for any other sufficient cause. Before exercising this power, any person prejudicially affected must be given an opportunity to show cause as to why the order should not be made. No order shall require a dependant to repay any sum already paid except where the payment was obtained by fraud or other improper means (s 9(8)).

Death and causes of action: Estate claims and dependency claims

The backdrop

47 Where an accident results in death of the victim, a number of complementary and indeed occasionally competing interests may arise for consideration. These include:

- (a) whether the cause of action vested in the victim survives his death for the benefit of his estate;
- (b) whether the victim's dependants have an independent claim for damages in respect of their loss of support (the financial value of the dependency);
- (c) whether any dependant has a right to claim damages for bereavement; and
- (d) whether any other third party has a right to claim against the tortfeasor, for example, for psychiatric injury resulting from being a witness to the accident or because the victim was a valuable employee of a third party and time and expense is incurred in finding a replacement.

48 The interplay between an estate claim and a dependency claim was discussed in *AOD (a minor suing by his litigation representative) v AOE* [2016] 1 SLR 217 (“*AOD*”). *AOD* concerned a young road traffic accident victim who suffered severe injuries resulting in a shortened life expectancy. One issue was whether damages could be given for the loss of earnings across all the years of life which the victim would have had if he had not met with the accident. It was in this context that observations were made on a lost-years claim by a living plaintiff, a deceased plaintiff’s estate, and a dependency claim (see [194], [201], [248], [260] and [261]).

49 The High Court in *AOD* noted at [181] and [185] that the common law rule that no action could be brought for loss suffered through the killing of another was changed by Parliament through s 10 of the Civil Law Act (Cap 43, 1999 Rev Ed) (“*CLA*”). After the victim dies, the cause of action survives for the benefit of the deceased’s estate.

50 Lord Scarman in *Pickett (Administratrix of the Estate of Ralph Henry Pickett Deceased) v British Rail Engineering Ltd* [1978] 3 WLR 955 at 981E recognised that the question as to who are the parties that have suffered loss and ought to be compensated is not an easy one to answer. The deceased victim (as represented by his estate) has of course suffered loss. At the same time, the dependants of the deceased victim have also suffered loss: the financial support of the deceased.

51 In *AOD*, the court observed at [179]–[182] that three distinct types of claims have developed in English and Singapore law:

- (a) a *living plaintiff’s claim* for loss of income during the lost years;

- (b) an *estate claim* under s 10 of the CLA for a deceased plaintiff's loss of income during the lost years; and
- (c) a *claim by the dependants* for the loss of the value of their dependency under s 20 of the CLA.

AOD was in fact concerned with the first type of claim.

52 Turning to a claim for loss of dependency following death, the High Court in *AOD* at [184] noted Woo Bih Li J's observation in *Lassiter Ann Masters (suing as the widow and dependant of Lassiter Henry Adolphus, deceased) v To Keng Lam (alias Toh Jeanette)* [2005] 2 SLR(R) 8 at [12]–[29] that Singapore's law on fatal accidents and claims for loss of income was originally based on the common law principle that a personal action dies with the person. Because of the injustice that dependants were thought to suffer from losing their sole breadwinner in an accident caused by a defendant's negligence, the United Kingdom ("the UK") passed the Fatal Accidents Act 1846 (c 93) (UK) which enabled prescribed classes of dependants to bring an action for loss of dependency against a tortfeasor who caused the death of their relatives (now see s 1 of the Fatal Accidents Act 1976 (c 30) (UK)). The equivalent provision in Singapore is s 20 of the CLA.

53 The question naturally arose as to the relationship between the estate claim (s 10 of the CLA) and the dependency claim (s 20 of the CLA). As discussed in *AOD* at [189], the courts were soon concerned with the potential unfairness to a defendant arising from the possibility of double recovery by the estate and by the dependants under statute, *ie*, the possibility that an estate claim and a dependant's claim could both succeed simultaneously, resulting in the defendant having to pay damages twice for the same loss caused.

54 The UK Parliament eventually intervened by passing the Administration of Justice Act 1982 (c 53) (UK). The Act amended the Law Reform (Miscellaneous Provisions) Act 1934 (c 41) (UK) (“the 1934 LRA”) by adding that an estate *does not* inherit actions for “damages for loss of income in respect of any period after that person’s death”. This essentially precluded an estate from bringing a lost-years claim after the plaintiff’s death. Singapore followed suit in 1987; the same amendment (*in pari materia*) can be found at s 10(3)(a)(ii) of the CLA.

55 The key point is that there is now no potential overlap anymore between the estate claim and dependency claim in respect of the deceased’s lost earnings post-death. Even though the dependency claim under s 20 of the CLA is usually mounted by the executor or administrator of the estate of the deceased, the dependency claim is on behalf of and for the benefit of the dependants. Whilst s 10(5) of the CLA states that the rights conferred for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by s 20, an estate claim cannot be brought for loss of income after death.

56 This is the backdrop against which the WICA and claims by dependants must be viewed. Indeed, it bears repeating that the beneficiaries of an estate claim (next of kin) are not necessarily the same persons as the dependants who are entitled in respect of a dependency claim. For example, while an illegitimate child is not entitled to claim on intestacy, he is treated as a dependant under the WICA even though he is not a beneficiary of the estate of the deceased (see [22] above).

Dependency claims

57 Section 20 of the CLA deals with the right of action for wrongful acts causing death. Section 20(1) provides:

Right of action for wrongful act causing death

20.—(1) If death is caused by any wrongful act, neglect or default which is such as would (if death has not ensued) have entitled the person injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured.

58 Such actions are for the benefit of the dependants of the deceased person (s 20(2)). The claim must be brought by and in the name of the executor or administrator of the deceased (s 20(3)). It is only if there is no executor or administrator of the deceased, or if no action is brought within six months after the death by and in the name of an executor or administrator of the deceased, that “the action may be brought by and in the name of all or any of the persons for whose benefit an executor or administrator could have brought it” (s 20(4)).

59 The term “dependant” for the purposes of s 20 of the CLA is defined in s 20(8) as meaning:

- (a) the wife or husband or former wife of the deceased;
- (b) any parent, grandparent or great-grandparent of the deceased;
- (c) any child, grandchild or great-grandchild of the deceased;
- (d) any person (not being a child of the deceased) who, in the case of any marriage to which the deceased was at any time a party, was treated by the deceased as a child of the family in relation to that marriage;
- (e) any person who is, or is the issue of, a brother, sister, uncle or aunt of the deceased.

60 Section 20(9) states that in deducing any relationship for the purposes of s 20(8):

(a) an adopted person shall be treated as the child of the person or persons by whom he was adopted and not as the child of any other person; and

(b) subject to paragraph (a), any relationship by affinity shall be treated as a relationship by consanguinity, any relationship of the half-blood as a relationship of the whole blood, and the stepchild of any person as his child and an illegitimate person shall be treated as the legitimate child of his mother and reputed father.

61 Assessment of damages in respect of an action under s 20 of the CLA is dealt with by s 22. Section 22(1) provides that:

... [T]he court may award such damages as are proportioned to the losses resulting from the death to the dependants respectively except that in assessing the damages there shall not be taken into account —

(a) any sum paid or payable on the death of the deceased under any contract of assurance or insurance;

(b) any sum payable as a result of the death under the Central Provident Fund Act (Cap. 36); or

(c) any pension or gratuity which has been or will or may be paid as a result of the death.

62 Section 22(1A) states that in assessing the damages under s 22(1):

the court shall take into account any moneys or other benefits which the deceased would be likely to have given to the dependants by way of maintenance, gift, bequest or devise or which the dependants would likely to have received by way of succession from the deceased had the deceased lived beyond the date of the wrongful death.

Decision

The applicants' case in general

63 The applicants' position is that the respondents lacked *locus standi* to institute proceedings or to make a claim for compensation under the WICA since letters of administration had not been obtained. The respondents' lack of capacity rendered the Notice of Assessment null and void. The applicants take the position that where a claimant has passed away intestate, a claim for compensation can only be made on behalf of the deceased's estate if letters of administration have been obtained.¹⁰

64 In support of this position, the applicants rely on s 37(1) of the Probate and Administration Act (Cap 251, 2000 Rev Ed) which states that where a person dies intestate, his real and personal estate (including any cause of action which accrued whilst the deceased was alive and which survives his death) vests in the Public Trustee.¹¹ The vesting in the Public Trustee ceases only on the grant of administration (s 37(4)).

65 The applicants point to a long line of case authorities underscoring the basic position that the person named in the grant of probate is only cloaked in authority to deal with the estate when grant is extracted (see *Chay Chong Hwa and others v Seah Mary* [1983-1984] SLR(R) 505 and *Maran*).¹²

Applicability of the Maran case

66 In *Maran's* case, the victim had been seriously injured in a traffic accident and was in a vegetative state. A Committee of Persons ("COP") was

¹⁰ Applicants' submissions at para 3.

¹¹ Applicants' submissions at paras 29–30.

¹² Applicants' submissions at para 32.

appointed to represent the victim and to manage his affairs. A suit for negligence was commenced in the Subordinate Courts (now the State Courts). A consent interlocutory judgment on liability was entered. During the assessment of damages hearing, an open offer of settlement at \$500,000 was made. A counter-offer was made by the victim through the COP to settle at \$850,000. The victim subsequently passed away before damages was assessed. The deceased's mother obtained an order of court so as to be made a party to the proceedings as the legal representative of the deceased. Thereafter, the offer to settle at \$500,000 was purportedly accepted. A dispute then arose as to whether the respondent was entitled to accept the offer to settle at \$500,000, *inter alia*, because letters of administration had not been obtained at the time the offer was accepted.

67 Chao Hick Tin JA, delivering the grounds of decision of the Court of Appeal, started with the observation at [14] that following the death of the victim, the action was being pursued as the estate's claim for damages under a cause of action that survived death under s 10 of the CLA. The court was not concerned with a dependency claim under s 20 of the CLA.

68 The Court of Appeal noted at [16] that if the victim had already died and the action had been commenced by a person without letters of administration, the action would clearly have been a nullity. The position would have been different if the victim had left a will with a named executor, since executorship takes effect from death. There would have been no need for probate before the executor could apply to be substituted in place of the deceased in the action (at [21]). After reviewing prior case law, the Court of Appeal remarked at [31] that:

... In cases of intestacy, the court jealously guards the assets – including causes of action – of the deceased's estate through

the procedure by which letters of administration are granted. If this is the position where the writ has not yet been filed, there seems no good reason why this protection should be lifted where the writ has already been commenced but the plaintiff dies intestate before it has been finally determined. The underlying public interest – the preservation of the assets of the estate – is the same and the estate’s worth may be frittered away as much through the process of litigation as by the commencement of an action.

69 The Court of Appeal found at [19] that the respondent was not properly authorised to act for the estate since it was clear that she had not been granted letters of administration. It followed that all subsequent acts taken on behalf of deceased’s estate were nullities, including, in particular, her purported acceptance of the offer to settle.

70 The short response to the applicants’ reliance on *Maran*’s case, however, is that the Court of Appeal was not concerned with a claim by dependants under the WICA. *Maran*’s case involved a claim brought by the injured victim for and on his own behalf. At the time when the negligence suit was brought, he was alive albeit in a vegetative state. Nevertheless, the negligence suit had properly been instituted by the COP appointed to act on his behalf. The problem was that on his death, the negligence action for damages was pursued as the estate’s claim under a cause of action that survived death (see s 10(1) of the CLA). It was not a dependency claim mounted under s 20 of the CLA by a dependant of a deceased person.

Applicability of the Starkstrom case

71 The second case relied on by the applicants is the decision of the Court of Appeal in *Starkstrom*. In this case, Tan Yun Yeow (“TYY”) was employed by the appellant. Following a workplace accident, he suffered serious injuries and became mentally incapacitated as a result. His brother, Rodney Tan

(“Rodney”), was eventually appointed as his deputy under the MCA. Prior to his appointment as a deputy, Rodney purported to make a claim on behalf of his brother TYY under the WICA. On appeal, the primary question raised was whether Rodney had the capacity, prior to being appointed as a deputy under the MCA, to make an election on behalf of the Injured Employee to seek relief under the WICA (at [3]).

72 Sundaresh Menon CJ, delivering the grounds of decision of the Court of Appeal, started with the useful observation at [1] that “[t]he WICA establishes a statutory compensation scheme that is available to employees who suffer injuries in the course of employment” and that the scheme “generally offers a lower cost alternative to pursuing a common law claim for damages arising from workplace negligence.” The heads of damages that may be recovered were however “constrained by the terms of the WICA”, and “[a]n employee who elects to pursue his claim under the WICA will also forgo his rights at common law.” It followed that the filing of the disputed claim had important potential consequences for the injured employee TYY.

73 In *Starkstrom*, the Commissioner had initially accepted the disputed claim, and issued a Notice of Assessment to both the appellant and Rodney. Having received the Notice of Assessment, Rodney changed his mind and maintained that he wished and was entitled to pursue TYY’s claims at common law. The Commissioner did not agree with this initially, but changed her position upon receiving advice from the Attorney-General’s Chambers. She informed the appellant that the disputed claim was invalid on the basis that Rodney did not have the authority at the material time to make a valid election on behalf of TYY to pursue his remedies under the WICA instead of under the common law (at [2]).

74 Thereafter, the appellant commenced judicial review proceedings. In the meantime, common law proceedings were commenced by Rodney as deputy of the TYY against the appellant and other parties. The appellant applied to strike out the writ and the statement of claim on the basis of s 33(2)(a) of the WICA, which states that an action for damages is not maintainable if the employee “has a claim for compensation for that injury under the provisions of this Act and does not withdraw his claim within a period of 28 days after the service of the notice of assessment of compensation in respect of that claim” (at [14]–[15]).

75 Before the High Court, the only issue canvassed was whether a mentally incapacitated employee's next of kin who had not been appointed a deputy under the MCA could nonetheless elect on behalf of that employee to pursue his remedies under the WICA. This would determine whether the disputed claim was valid and that in turn could affect TYY’s common law claim for damages given the effect of s 33(2)(a) of the WICA (at [16]).

76 The Court of Appeal started at [22] with the well-established principle that one has no power to make decisions or to act on behalf of a mentally incapacitated person unless properly authorised to do so. In general, being the next of kin or a close relation of a mentally incapacitated person does not, without more, confer legal capacity to act on behalf of the latter; such authorisation must be conferred by law.

77 The decision to claim compensation under the WICA entailed an election between seeking compensation under the WICA as opposed to relief under the common law. The Court of Appeal at [24] underscored the point that the decision was important given the differences between the two avenues for seeking relief in terms of what must be proved by the claimant as well as what may be claimed. The Court of Appeal pointed to the fact that whilst the WICA

may offer a more certain, faster and cheaper route to recovery, it will also usually result in compensation that is less than what would follow upon a successful claim at common law.

78 The Court of Appeal at [27] rejected the appellant's submission that the WICA establishes its own framework which enables a third party to bring a claim on behalf of an injured employee, even where he has not been appointed as a deputy under the MCA. The appellant had argued that the WICA had permissive rules in this regard, and specifically, that the only requirements were that the representative (a) was acting to claim compensation for the benefit of the injured employee; and (b) had no interest adverse to the injured employee (at [26]).

79 Whilst the Court of Appeal agreed at [27] that the WICA contemplated that a third party may make a claim under its provisions on behalf of a mentally incapacitated employee (see, for example, ss 12A and 24), the key question was *who* may make that claim on behalf of an incapacitated employee. The Court of Appeal found that the WICA itself was silent as to which third parties may act on behalf of a mentally incapacitated employee and that this was fatal to the appellant's case. In particular, the Court of Appeal stressed that "if the WICA was intended to establish a regime aside from the MCA enabling a third party other than a deputy to make an election under the WICA on behalf of a mentally incapacitated person, we would expect to find *explicit language* to that effect" [emphasis in original]. It made no difference if the process for appointing a deputy under the MCA was costly and time-consuming (at [31]). The Court of Appeal held at [31] that the objective of enabling an expeditious and low-cost resolution of work injury claims had "nothing to do with the wholly separate question of who may act on behalf of a mentally incapacitated employee."

80 I pause to comment that the issue of legal capacity is fundamental to the common law system and the bringing of legal proceedings. *Starkstrom* concerned an individual who suffered serious injuries in a workplace accident which rendered him mentally incapacitated. A mentally incapacitated individual enjoys rights under and according to law. Numerous decisions will have to be made in respect of his rights as determined under or granted by law. Hard choices may have to be made, some of which may have an impact on family, friends and third parties. For example, leaving aside the question of law on the existence and scope of a right for an individual to refuse medical treatment, decisions will have to be made as to whether a comatose victim wants aggressive medical intervention or experimental treatment. Who has the right to make the decision on behalf of the comatose individual?

81 *Starkstrom* concerned the right of the mentally incapacitated victim to bring proceedings for damages against the tortfeasor who caused his injuries. The right to bring such proceedings as allowed under the law “belonged” to the victim and no one else. There was no question of bringing a claim on behalf of the estate: the injured victim was still alive. There was no question of a dependency claim. If the decision was properly made to commence a negligence suit in the courts and the plaintiff-victim subsequently passed away, the cause of action would survive and continue for the benefit of the estate under s 10 of the CLA. *Maran*’s case is authority for the proposition that in such circumstances, the legal representation of the estate must be resolved before the action continues. If there is a will, the named executor is able to apply to be substituted as the plaintiff for and on behalf of the estate. If there is no will, letters of administration will have to be obtained before the application for substitution is made.

82 In *Starkstrom*, the decision whether to claim compensation under the WICA or bring proceedings for damages for negligence was one which could only have been made by someone with legal authority to make the decision. Rodney, whilst the brother of the mentally incapacitated employee, had not been appointed as a deputy under the MCA. I note that s 23(1) of the MCA empowers the deputy to, *inter alia*, have the conduct of legal proceedings in his name or on his behalf. *Starkstrom* makes clear at [31] that just because the WICA is social legislation does not mean that the express provisions and requirements of the MCA on representation of a mentally incapacitated person are overridden or qualified.

83 The present case, however, is different from *Starkstrom*. The deceased died shortly after the workplace accident. This is not a case of representation of a mentally incapacitated employee. Under s 10 of the CLA, all causes of action vested in him survive for the benefit of his estate. Any damages recovered under the cause of action are for the benefit of the estate.

84 Given that there is no will or letters of administration, s 37(1) of the Probate and Administration Act vests the deceased's real and personal estate (including any cause of action which accrued whilst the deceased was alive and which survives his death) in the Public Trustee. It follows that any decision on whether to bring legal proceedings (*eg*, in negligence) for and on behalf of the estate under s 10 of the CLA can only be made by the Public Trustee unless and until administrators are appointed.

85 The position of a dependency claim under s 20 of the CLA is more complicated. The dependency claim is distinct from the estate claim and is brought on behalf of the dependants. As noted, the claim under s 20 is ordinarily mounted by the representative of the estate. In the present case, no

administrators have been appointed. Under s 20(4) of the CLA, if there is no executor or administrator of the deceased, or if no action is brought within six months after the death by and in the name of an executor or administrator of the deceased, “the action may be brought by and in the name of all or any of the persons for whose benefit an executor or administrator could have brought it” (see [58] above). The deceased passed away on 14 August 2014. The FAS by the respondents (dependants) under the WICA was only made on 22 June 2015, well after the six-month period referred to in s 20(4) had expired. The decision by the dependants in respect of the WICA was made at a time when they could have decided to bring proceedings at common law for damages pursuant to s 20.

86 For these reasons, I am of the view that *Starkstrom* does not assist the applicants. Whilst it is true the Court of Appeal highlighted the material differences between the right to claim compensation under common law and the WICA, and the importance of ensuring that the person making an election had been properly cloaked with the authority to do so, this was in the context of an election by a living but mentally incapacitated employee.

Applicability of the Hilton case

87 I note that in *Hilton v Sutton Steam Laundry* [1946] KB 65 (“*Hilton*”) (referred to in *Maran* at [26]), the plaintiff’s husband died in an accident. She issued a writ against the defendant as administratrix of her husband’s estate, claiming damages for negligence and breach of statutory duty under the Fatal Accidents Act 1846 (c 93) (UK) and the Fatal Accidents Act 1864 (c 95) (UK) (“the Fatal Accidents Acts”) and the 1934 LRA. The statement of claim stated that she was bringing the action “as administratrix of the deceased’s estate for the benefit of such estate” under the 1934 LRA and “for the benefit of herself the sole dependant of the deceased” under the Fatal Accidents Acts (at 66). At

the time, letters of administration had not been taken out by the plaintiff. A grant of administration was only obtained after the statement of claim was issued. The English Court of Appeal held at 70–73 that the writ was a nullity and not validated by the subsequent grant of the letters of administration.

88 The present case is also different from *Hilton*. Under the Fatal Accidents Acts, the dependency claim could only be brought by the executors or administrators of the estate. That being so, the proceedings commenced by the plaintiff were fundamentally flawed from the start. In the case at hand, the claim by the dependants is not under s 20 of the CLA but under the WICA. Furthermore, the dependants in fact could have chosen to bring an action under s 20 of the CLA in their own names since no executor/administrator had been appointed.

Other arguments made by the applicants

89 The Assistant Commissioner, in coming to his decision that the respondents had the *locus standi* to make the WICA claim, referred at [14]–[21] to ss 6 and 9 of the WICA as supporting the conclusion he had reached.

(a) Section 6(1) provides that compensation under the WICA “shall be payable to or for the benefit of the employee or, where death results from the injury, to the deceased employee’s estate or to or for the benefit of his dependants as provided by this Act.”

(b) Section 9 deals with distribution of compensation (see [43], [45] and [46] above).

90 The applicants submit that these provisions are of no assistance as they do not touch on the question as to who has the legal capacity to make a claim

under the WICA. The provisions address the question of receipt and distribution of compensation and the right of the Commissioner.

91 Whilst the right to make a claim and the right of the Commissioner to receive and distribute compensation are distinct, I note that s 22(1) states:

Commissioner may receive and pay to dependants, etc., money due from employer to employee who is dead or lacks mental capacity

22.—(1) Notwithstanding anything in any written law relating to the administration or distribution of estates of deceased persons for the time being in force in Singapore, where it appears to the Commissioner that compensation or interest is payable to an employee under this Act and the employee has died before such payment is made, it shall be lawful for the Commissioner to receive and pay the compensation or interest, without production of a grant of representation, to any one or more of the dependants of the deceased employee or to the estate of the deceased employee.

92 One view is that because s 22(1) expressly envisages a scenario whereby the Commissioner receives and pays compensation in circumstances where neither the dependants nor anyone else has obtained a grant of representation over the estate of the deceased, it must follow that Parliament intended for the dependants to have the right to make a claim under the WICA even if no representation to the estate has been obtained. The alternative view is that all s 22(1) is stating is that the Commissioner can make payment to a dependant even if he does not produce the actual grant of representation. Whilst I accept that s 22(1) on its own may not be sufficient to address the question of legal capacity to make claims under the WICA, this does not affect the overall decision that I have come to.

93 The respondents also rely on s 27(1)(bb) of the WICA which states that where a person is dead, the Commissioner can grant leave to the dependants or the estate of the deceased whether or not the estate has obtained a grant of

representation, to appear, make applications and perform acts required under the WICA. The applicants, on the other hand, submit that s 27 is only concerned with proceedings under Part III of the WICA which deals matters arising *after* a valid claim for compensation has been made under s 11. Whilst I recognise the force behind the submission, I am of the view that this also does not affect the overall decision that I have come to.

94 Finally, the applicants also make the point that the FAS was only signed by the 4th respondent (the wife of the deceased).¹³ The other three respondents (the deceased's children), whilst named as dependants together with the 4th respondent, did not sign the FAS. Regulation 4(2) of the WICR provides that the report to the Commissioner shall be made in writing in such form and manner as the Commissioner may determine. It appears that the FAS was in the form provided by MOM. The 4th respondent was clearly making the Statement as the wife of the deceased. Part 5 of the FAS required the particulars of the dependants.¹⁴ The FAS was accepted by the MOM. Whilst the applicants submit that it is not known how the 4th respondent derived authority to sign the FAS for the other respondents and indeed whether she was signing on their behalf, I note this does not appear to be a point that was taken during the first tranche or before the Assistant Commissioner when the issue of *locus standi* was raised. In any case, even if one or more of the other respondents did not or do not consent to the 4th respondent's making of the FAS, this is a matter for them to raise.

¹³ Applicants' submissions at para 1(n).

¹⁴ ABD, pp 42–45.

The overall position on the WICA and the standing of dependants

95 It is clear that the dependants of a deceased victim possess an independent right to bring an action at common law pursuant to s 20 of the CLA for damages. The action must be brought within three years of the death and is separate from the right of the estate to bring or continue proceedings commenced before the death of the victim. The estate claim, as noted at [55] above, does not extend to claims for lost earnings (post-death). If a dependency claim is brought under s 20, the damages awarded are proportioned according to the losses of the dependants resulting from the deceased's death (s 22).

96 On the other hand, a dependency claim under the WICA must be brought within one year of the death of the employee (s 11(1)(b)). A dependant is someone falling within the definition under s 2(1) (for example, wife and children) irrespective of whether that person is actually dependent on the employee's earnings or not. Once the compensation amount is determined in accordance in the manner set out in the Third Schedule (s 7), the Commissioner has broad powers of distribution under s 9. This includes authorising payment to one or more dependants of the deceased employee and in such proportion as the Commissioner thinks fit.

97 It follows that there are material differences between a dependency claim under s 20 of the CLA and under the WICA. In particular, the amount of payment is likely to be significantly different. A considered decision has to be made by the dependants as to which avenue they choose to proceed under.

98 In the present case, it is evident that the dependants have decided to proceed under the WICA. This is their entitlement. They could have elected to pursue a claim under s 20 of the CLA and start proceedings in court. Whilst

dependency claims under s 20 are usually brought on behalf of the dependants by the representatives of the estate, the dependants are able to bring the action in their own name if there is no executor or administrator of the deceased or if no action is brought within six months after the death by and in the name of an executor or administrator of the deceased. This is precisely the case at hand.

99 The *Starkstrom* and *Maran* decisions can be distinguished for the reasons discussed above. I would add that there is no risk of the dependency claim under the WICA shutting out a claim by the estate for damages under s 10. Section 33(2) of the WICA on the limitation of an employee's right of action to claim damages in court against his employer for injury by accident only applies if he (the employee) has a claim for compensation for that injury under the WICA which he has not withdrawn within the prescribed period. There is no provision that the right of the estate to bring proceedings for damages under s 10 is taken away simply because a dependant has made a dependency claim under the WICA.

100 I note also the decision whether to make a dependency claim under the WICA must be made within a year of the death of the employee (s 11(1)(b)). Further, in the event that an individual receives payment for a dependency claim from the Commissioner as a result of a false claim, the Commissioner is empowered to order repayment under s 9(8). For all of these reasons, and notwithstanding the points raised by the applicants on the distinction between *locus standi* and making claims as opposed to provisions on appearance in proceedings and distribution and payment, the applicants have failed in this application to overturn the decision of the Assistant Commissioner below.

Conclusion

101 The appeal is dismissed with costs to be agreed or taxed.

102 I thank counsel for their learned and helpful submissions. I note also the clarity in the detailed Decision of the learned Assistant Commissioner below.

George Wei
Judge

Appoo Ramesh and Rajashree Rajan (Just Law LLC) for the
applicants;
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