**IN THE GENERAL DIVISION OF**
**THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2022] SGHC 120**

Tribunal Appeal No 15 of 2021

Between

(1) Sompo Insurance Singapore Pte. Ltd.
(2) SM Laundry & Linen Pte Ltd

… *Applicants*

And

(1) Tay Jia Yi
(2) Chew Pek Har
(3) Tay Jia Chen

… *Respondents*

Tribunal Appeal No 17 of 2021

Between

(1) Tay Jia Yi
(2) Tay Jia Chen

… *Applicants*

And

(1) Sompo Insurance Singapore Pte. Ltd.
(2) SM Laundry & Linen Pte Ltd

… *Respondents*

# JUDGMENT

[Employment Law — Work Injury Compensation Act]

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# v
# Tay Jia Yi and others and another appeal

**[2022] SGHC 120**

General Division of the High Court — Tribunal Appeal Nos 15 and 17 of 2021
Ang Cheng Hock J
23 February 2022

23 May 2022 Judgment reserved.

1 The present applications are appeals against the decision of the Assistant Commissioner (Work Injury Compensation) ("AC"), who decided that SM Laundry & Linen Pte Ltd ("SM Laundry") and its work injury compensation insurer, Sompo Insurance Singapore Pte Ltd ("Sompo Insurance") (collectively, the "Applicants"), were liable to compensate the Respondents, who are the next of kin of the late Tay Tuan Yong, the deceased ("Mr Tay"), for his death from cardiac arrest on 20 October 2018 (the "Date of Incident"). The AC ordered the Applicants to pay the Respondents $204,000 in compensation and $5,000 in costs.[1] The Applicants have appealed against the order for compensation on the question of liability, while the Respondents have cross-appealed on the amount of the costs awarded in their favour.

[1] AC's Grounds of Decision ("GD") at paras 64–65.

**The undisputed facts**

2 Mr Tay was employed on 5 June 2017 by SM Laundry as a driver.[2] On 1 April 2018, he was promoted to the position of operations supervisor, and was directly answerable to the CEO of SM Laundry, Lim Chuan Aik ("Mr Lim").[3] In his own words, Mr Lim described Mr Tay as a "very good friend".[4] Mr Lim's evidence was that he had agreed to hire Mr Tay in the first place because the latter had been dismissed by his previous employer and was looking for a job.[5]

3 Mr Tay had underlying risk factors that predisposed him to heart attacks. He had a medical history of hyperlipidaemia and hypothyroidism,[6] and smoked about 20 cigarettes a day.[7] Over the course of the three to four days prior to the Date of Incident, Mr Tay suffered intermittent episodes of chest pains, breathlessness and decrease in effort tolerance.[8] On the Date of Incident, at around 7.00am, he experienced an onset of chest pains.[9] Nonetheless, Mr Tay still decided to go to work. He arrived at his workplace at around 9.00am, whereupon he told Mr Lim that he was experiencing chest pains.[10] Mr Lim told him to seek medical attention immediately. However, Mr Tay declined to do so.[11] The chest pains intensified and Mr Tay eventually left his workplace at

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[2] Joint Record of Proceedings ("ROP") at pages 66, 76.

[3] ROP at page 76.

[4] ROP at page 69.

[5] ROP at page 66.

[6] ROP at page 255.

[7] ROP at pages 57–58.

[8] ROP at page 255.

[9] ROP at page 326.

[10] ROP at page 70.

[11] ROP at page 70.

around 10.00am[12] to see a doctor at the Central 24-Hr Clinic at Pasir Ris (the "Pasir Ris Clinic"), arriving at 10.54am.[13] An ECG was taken at 11.11am, and Mr Tay was referred to Changi General Hospital ("CGH") for medical attention.[14] There, he suffered a cardiac arrest at 12.47pm. He was resuscitated at 12.52pm, but unfortunately passed away at 1.56pm after suffering a second cardiac arrest.[15] The cause of death was acute myocardial infarction ("AMI"),[16] *ie*, a heart attack resulting from acute obstruction of blood flow to the heart muscle.

## The statutory framework

4 The claim by the Respondents is made in respect of an injury that occurred on 20 October 2018 and falls under the purview of the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("the Act"). It may be of interest to note that the Act has since been repealed and re-enacted in the form of the Work Injury Compensation Act 2019 (2020 Rev Ed) (the "WICA 2019") that took effect on 1 September 2020. The WICA 2019 sought to improve the pre-existing regime in four main ways: to enhance insurance coverage and benefits for injured employees, to better incentivise employers to prevent injuries from happening in the first place, to speed up and improve claims processing, and to give greater assurance to employers that the regime provides balanced safeguards that protect both employers and employees (*Singapore Parliamentary Debates, Official Report* (3 September 2019) vol 94 (Mr Zaqy Mohamad, Minister of State for Manpower)).

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[12] ROP at page 70.

[13] ROP at pages 53 and 55.

[14] ROP at pages 55–56.

[15] ROP at pages 139; 181–182.

[16] ROP at page 248.

5 In this case, it is the predecessor legislation that governs the claim made and it is the provisions of the Act that will be considered. Section 3(1) of the Act provides that "[i]f 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 [the Act]". I make the observation that s 7(1) of the WICA 2019 adopts similar wording as follows: "[w]here personal injury is caused to an employee by an accident arising out of and in the course of the employee's employment with an employer, that employer is liable to pay compensation under this Act". The case law on and principles applicable to the old provision are therefore likely to continue providing helpful guidance for cases where the new provision applies.

6 In terms of the process for making work injury compensation claims under the Act, a claimant must first notify the Ministry of Manpower ("MOM") of its claim. MOM may then issue a Notice of Assessment ("NOA") for a sum to be paid by the employer as compensation, if any. If the employer or the employer's insurer wishes to dispute the claim, it may lodge a Notice of Objection ("NOO"). The dispute will be heard before the Commissioner for Labour or an Assistant Commissioner (Work Injury Compensation). In the present case, MOM had issued an NOA for compensation of $204,000 to be paid to the Respondents.[17] The Applicants then lodged an NOO disputing the claim.[18] The dispute was referred to and decided by the AC.

[17] ROP at page 249.

[18] ROP at pages 253–254.

**The proceedings before the AC**

7 The proceedings before the AC took place in two tranches – on 27 and 29 January 2021, and on 6 April 2021.[19] There were three factual witnesses: Mr Tay's son ("TJY"), Mr Lim, and Dr Lye Tong Fong ("Dr Lye"), a family physician running the Pasir Ris Clinic, which Mr Tay visited on the Date of Incident (see [3] above). Two cardiologists were called as expert witnesses: Dr Baldev Singh ("Dr Singh") and Dr Wong Cheok Keng ("Dr Wong").

***TJY's evidence***

8 TJY, as earlier mentioned, is Mr Tay's son. He was called by the Respondents as a factual witness. He testified that his father worked from Mondays to Saturdays, leaving the house at about 6.00am and returning at about 10.00pm.[20] Mr Tay clocked more than 100 hours of overtime ("OT") each month from October 2017 to October 2018.[21] TJY also said that his father had been taking driving lessons to obtain a Class 4 licence for purposes of his work from 17 September 2018 to 21 September 2018, and those lessons commenced at 8.15am. According to TJY, his father had mentioned that he was tired because of his long working hours.[22]

***Mr Lim's evidence***

9 As mentioned, Mr Lim is the CEO of SM Laundry and was Mr Tay's direct supervisor.[23] He said that Mr Tay was, at the material time, employed as

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[19] GD at page 1.

[20] ROP at page 36.

[21] ROP at page 36; ROP at pages 257–258.

[22] ROP at page 40.

[23] ROP at page 66.

an operations supervisor who was tasked to assign work to the factory workers and to supervise them, as well as to handle customer complaints.[24] According to Mr Lim, Mr Tay did not have to do any physical work.[25] In fact, Mr Lim went so far as to say that, in his view, there was also no mental work involved in the role of a supervisor.[26] Nonetheless, he subsequently conceded that there was quite a lot of supervisory work to be done given that SM Laundry had two rather sizeable factories.[27] He also acknowledged that Mr Tay was a "good supervisor" whom he trusted.[28] However, Mr Lim testified that the OT hours for the period of October 2017 to October 2018 did not reflect Mr Tay's actual working hours.[29] This was because Mr Tay could go home at 5.00pm each day, but chose to stay late to wait for one Gui Min, who was a female employee who also worked at SM Laundry.[30] Mr Lim explained that he did not question the OT claims because he trusted Mr Tay and did not mind paying him more money since the company was making a profit.[31]

10 As to the events on the Date of Incident, Mr Lim testified that Mr Tay had arrived at the workplace at about 9.00am.[32] Upon arrival, Mr Tay informed Mr Lim that he was experiencing chest pains.[33] Mr Lim urged him to see a

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[24] ROP at pages 73–74.

[25] ROP at page 67.

[26] ROP at 73–74.

[27] ROP at page 78.

[28] ROP at page 76.

[29] ROP at page 68.

[30] ROP at page 68.

[31] ROP at page 69.

[32] ROP at page 70.

[33] ROP at page 70.

doctor immediately, but Mr Tay refused.[34] It was only at around 10.00am that Mr Tay informed Mr Lim that he would be leaving to see a doctor.[35] Mr Lim's evidence was that, in the hour or so during which Mr Tay was at the workplace, he was not doing any work; rather, he was talking to other employees about his chest pains.[36] When cross-examined by counsel for the Respondents, Mr Lim did concede that he did not pay close attention to what Mr Tay was doing at the material time. However, he did form the view that Mr Tay was not doing work based on what he had heard from inside his office.[37] Sometime later, Mr Lim received a call from Mr Tay, who was then at the Pasir Ris Clinic (the "Phone Call"). Mr Tay informed him of a mistake in a work-related delivery matter that Mr Lim would have to take care of. Mr Tay also asked Mr Lim to retrieve the company van that the former had driven to the Pasir Ris Clinic.[38]

11 I should add that Mr Lim was called by the Applicants to give evidence. Under cross-examination by counsel for the Respondents, it is of some significance that it was never put to Mr Lim that Mr Tay's duties at work were demanding, or that the workplace was a stressful environment for Mr Tay. Neither was it put to Mr Lim that Mr Tay was carrying out any specific work in the hour that he was at the workplace on the Date of the Incident, or that the two of them had a tense or taxing conversation during the Phone Call.

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[34] ROP at page 70.

[35] ROP at page 70.

[36] ROP at page 82.

[37] ROP at pages 85–87.

[38] ROP at pages 77–78; 87.

***Dr Lye's evidence***

12 Dr Lye, as earlier mentioned, is a family physician running the Pasir Ris Clinic that Mr Tay visited on the Date of Incident. He was not the doctor who had attended to Mr Tay on the Date of Incident, but he wrote all the medical reports for the clinic, including that for Mr Tay.[39] Dr Lye testified that Mr Tay had only been to the clinic once, and that was on the Date of Incident.[40] He expressed the view that he would have diagnosed Mr Tay with a heart attack at the time that Mr Tay was attended to at the Pasir Ris Clinic, which was around 10.54am.[41] He formed this view based on the clinical notes of the doctor who had attended to Mr Tay and the ECG conducted at around 11.11am.[42] Dr Lye added that the clinical notes showed that Mr Tay had risk factors that would predispose him to a heart attack. These factors included thyroid conditions, high lipid conditions and smoking.[43]

***Dr Singh's evidence***

13 Dr Singh is a cardiologist who was called by the Respondents as an expert witness. He prepared two reports, one dated 11 December 2020 ("Dr Singh's First Report")[44] and another subsequent reply report dated 9 March 2021 ("Dr Singh's Reply Report").[45] Dr Singh opined in his Reply Report that it was not possible to definitively exclude Mr Tay's work as a trigger factor

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[39] ROP at pages 61–62.

[40] ROP at page 55.

[41] ROP at page 55–56.

[42] ROP pages 55–56.

[43] ROP at page 57.

[44] ROP at page 184.

[45] ROP at page 341.

which caused his heart attack,[46] and that arriving at work in the morning, or the anticipation of having to carry out work, could have caused Mr Tay to experience a surge in adrenalin and other stress hormones, which in turn could have increased his heart rate and blood pressure, thereby triggering vascular events.[47] Dr Singh's Reply Report also explained that angina attacks usually resolve spontaneously if a patient sits down and relaxes.[48] Dr Singh took the view that the hour spent at the workplace, *ie*, from around 9.00am to 10.00am on the Date of Incident, had aggravated Mr Tay's underlying medical conditions, leading to his heart attack.[49] Dr Singh also opined that the worry that Mr Tay must have experienced when making the Phone Call (see [10] above) "sealed his fate"; if he had not been worried about work at that juncture, it was possible, in Dr Singh's view, that Mr Tay could have recovered after visiting the Pasir Ris Clinic.[50]

***Dr Wong's evidence***

14 Dr Wong is a cardiologist who was called by the Applicants as an expert witness. Dr Wong prepared a report dated 24 February 2021.[51] He opined that Mr Tay's heart attack had likely occurred spontaneously and that his "injury" was not the result of an "accident arising out of and in the course of his employment". This is because there "did not appear to [be] any specific trigger related to [Mr Tay's] work".[52] According to Dr Wong, Mr Tay's heart attack

[46] ROP at page 349, para k.

[47] ROP at page 348, para h.

[48] ROP at page 347, para c(i).

[49] ROP at page 118.

[50] ROP at page 348, para f.

[51] ROP at page 331.

[52] ROP at page 339, paras 2–3.

started at 7.00am on the Date of Incident, was diagnosed at 11.11am based on the ECG conducted at the Pasir Ris Clinic, and was later confirmed at CGH with another ECG and blood test.[53] In his view, at the point of the ECG taken at the Pasir Ris Clinic, Mr Tay was "already suffering from a [heart attack]".[54] While he did not disagree that the Phone Call or other forms of emotional stress could "worsen [an] ongoing heart attack",[55] Dr Wong was of the view that, bearing in mind Mr Tay's existing condition with "significant blockage" and various risk factors, Mr Tay was "already a ticking time bomb" headed towards a heart attack as of 7.00am on the Date of Incident.[56]

**The decision of the AC**

15 The AC set out the conjunctive requirements for a claim under s 3(1) of the Act as follows:[57]

(a) The employee suffered a personal injury;

(b) The injury was caused by an accident; and

(c) The accident arose out of and in the course of employment.

16 The AC found that requirement (a) was undoubtedly satisfied: Mr Tay had suffered a personal injury since he died of a heart attack.[58]

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[53] ROP at page 139.

[54] ROP at page 143.

[55] ROP at page 143.

[56] ROP at page 144.

[57] GD at para 8.

[58] GD at para 19.

17 Of particular note is the AC's decision on requirement (b). He found requirement (b), that the injury was caused by an accident, was satisfied because Mr Tay "had an internal medical condition (i.e. the high cholesterol) that caused him to suffer an unexpected injury (AMI or heart attack) while [he] was in the course of his work".[59] The AC, relying mainly on the case of *NTUC Income Insurance Co-operative Ltd and another v Next of kin of Narayasamy s/o Ramasamy, deceased* [2006] 4 SLR(R) 507 ("*Narayasamy*"), focused on the point that an "accident" would include an internal medical condition that caused an unexpected injury while the employee was carrying out his work; and that it would include an injury sustained even if it was brought about by a pre-existing medical condition. It appears that, on the AC's analysis, the unexpected onset of the heart attack constituted the "accident" within the meaning of s 3(1) of the Act.

18 For requirement (c), the AC relied on *Allianz Insurance Co (Singapore) Pte Ltd v Ma Shoudong* [2011] 3 SLR 1167 ("*Ma Shoudong*") for the meaning of "in the course of employment". In *Ma Shoudong*, it was held that the phrase includes any accident that "bears a temporal relationship with the employment".[60] On this approach, the AC found that the heart attack had indeed occurred when Mr Tay was in the course of employment. He took the view that it was unnecessary to pin down exactly when Mr Tay suffered the heart attack because, in his assessment, the evidence showed that from 9.00am till the time of death, Mr Tay was either at the workplace or worrying about work (as evidenced by the Phone Call).[61] Consequently, work must necessarily have

[59] GD at para 53.

[60] GD at para 56.

[61] GD at para 55.

been an aggravating factor that pushed Mr Tay into a heart attack.[62] In this regard, the AC accepted Dr Singh's evidence that "just [being] at the workplace was sufficient to trigger a heart attack".[63] He also cited Dr Wong's concession that any forms of stress, whether physical or emotional, could have aggravated Mr Tay's condition.[64] Dealing with the evidence showing that Mr Tay had started experiencing chest pains from 7.00am on the Date of Incident, the AC found that there was "no clear medical evidence to show that the heart attack had started at 7.00am".[65] The AC accepted Dr Singh's evidence that those pains could be classified as angina, which could have been aborted by rest or medication.[66]

19 Having found that the accident occurred *in the course* of employment, the AC relied on the presumption in s 3(6) of the Act, which reads:

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

The AC thus found that the accident also *arose out of* Mr Tay's employment. With this finding, the AC required the Applicants, as the party now bearing the burden of proof, to furnish evidence that Mr Tay's underlying condition was the *sole cause* of his death, as is required in order to rebut the presumption under s 3(6) of the Act.[67]

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[62] GD at para 55.

[63] GD at para 63.

[64] GD at para 61.

[65] GD at para 55.

[66] GD at para 63.

[67] GD at para 58.

20 The AC ultimately found that the Applicants had failed to rebut the presumption under s 3(6) of the Act. As all three requirements under s 3(1) of the Act were satisfied, the AC concluded that the claim was made out and ordered the Applicants to pay to the Respondents $204,000 in compensation and $5,000 as costs.

**The applications before the court**

21 Both the Applicants and Respondents have appealed against the AC's decision. The Applicants have applied to this court in Tribunal Appeal No 15 of 2021 ("TA 15/2021") seeking an order that the AC's decision be set aside. The Applicants take the position that the AC had erred in allowing the Respondents' claim. The Respondents have also made an application to this court in Tribunal Appeal No 17 of 2021 ("TA 17/2021") for the AC's decision on costs to be varied. The Respondents are dissatisfied with the order that only $5,000 is to be paid to them as costs. Instead, they seek the full sum of $7,746.30 in legal costs that they had incurred in proceedings before the AC.[68]

22 Under s 29 of the Act, orders made by the Commissioner for Labour or an Assistant Commissioner (Work Injury Compensation) are subject to appeals where a "substantial question of law" is involved in the appeal and the amount in dispute is not less than $1,000. In my view, statutory provisions which restrict appeals from tribunals and other statutory bodies to "questions of law" or "points of law" are a reference to where the adjudicative body has made an error or errors of law.

[68] Respondents' Written Submissions ("RWS") at paras 79–84.

23 In *Ng Eng Ghee and others v Mamata Kapilev Dave and others (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 3 SLR(R) 109 ("*Ng Eng Ghee*"), the Court of Appeal considered that an appeal against a decision of a Strata Titles Board formed under the Building Maintenance and Strata Management Act 2004, which only permits appeals on a "point of law", as being synonymous with permitting appeals only where the Board has made an error of law. At [90] of *Ng Eng Ghee*, the Court of Appeal then cited with approval the definition of errors of law set out in *Halsbury's Law of England* vol 1(1) (Butterworths, 4th Ed Reissue, 1989) at para 70:

> Errors of law include *misinterpretation of a statute* or any other legal document *or a rule of common law; asking oneself and answering the wrong question*, taking irrelevant considerations into account or failing to take relevant considerations into account when purporting to apply the law to the facts; admitting inadmissible evidence or *rejecting admissible and relevant evidence*; exercising a discretion on the basis of incorrect legal principles; *giving reasons which disclose faulty legal reasoning* or which are inadequate to fulfil an express duty to give reasons, and *misdirecting oneself as to the burden of proof*.
>
> [emphasis in the original]

These were described as *ex facie* errors of law that would raise points of law, which may be appealed: *Ng Eng Ghee* at [91].

24 In addition to such *ex facie* errors, otherwise known as errors which appear on the face of the record, the Court of Appeal went on to endorse the view that an appeal on a "point of law" would also be allowed if the facts found were such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal: *Ng Eng Ghee* at [95], agreeing with the view expressed by the House of Lords in *Edwards v Bairstow* [1956] AC 14 ("*Edwards*").

25 For completeness, I should also add that the Court of Appeal explained in *Ng Eng Ghee* (at [99]) that the definition of a "question of law" may be wider or narrower depending on the context and the relevant underlying policy considerations. In the context of decisions by inferior tribunals, the Court of Appeal expressed approval of a broader approach, which affords the court greater oversight over such tribunals; *ex facie* errors, and errors of the type as described in *Edwards*, would entitle a party to appeal (see *Ng Eng Ghee* at [100]–[101]).

26 Under the Act, there is a further limitation in that the "question of law" being raised on appeal must be a "substantial" one. This must refer to a question of law that has some practical consequence to the rights and liabilities of the parties, or to the public, and not some misapplication of the law that has no real impact. In other words, the Applicants and Respondents must show that the AC has erred in law in his decision, and this had affected the finding of liability, or the amount of compensation or costs awarded, in order to succeed in their respective appeals.

27 It would be fairly clear that I need only consider the Respondents' appeal if I am of the view that the Applicants' appeal should be dismissed. As such, I will first consider TA 15/2021, followed by TA 17/2021, if it becomes necessary to do so.

## TA 15/2021

### *The parties' cases*

28 The Applicants emphasise that the burden falls on the Respondents, as the claimants seeking compensation, to show that s 3(1) of the Act is satisfied. The Applicants argue that s 3(1) of the Act is not established because the

Respondents are unable to show that Mr Tay had indeed suffered an injury by an *accident* that had arisen out of and in the course of his employment. On the facts, the Applicants contend that there is nothing constituting such "accident" within the meaning of the Act that caused or contributed to the heart attack or death. In this regard, the Applicants rely on the "incontrovertible evidence" that Mr Tay's heart attack started at 7.00am on the Date of Incident.[69] Further, according to the Applicants, there is no proof of any "specific acts of exertion or stress" related to Mr Tay's employment.[70] Rather, the evidence shows that the onset of the heart attack was not employment related. It is also undisputed that Mr Tay had various risk factors that predisposed him to a heart attack (see [3] above); this suggests that the heart attack was the "normal climax of a progressive malady" and was not connected with Mr Tay's employment.[71] In the absence of "a specific event that was proven as the accident that caused the injury",[72] the Applicants say the claim for compensation must fail.

29 The Respondents take the position that s 3(1) of the Act is satisfied. In their analysis, it is important to distinguish between the progressively fatal stages suffered by a heart attack patient as follows: angina, heart attack and cardiac arrest. The Respondents dispute the Applicants' contention that the onset of the heart attack was at 7.00am of the Date of Incident. Relying on Dr Singh's evidence, the Respondents argue that Mr Tay had experienced angina, rather than a heart attack, at 7.00am. This could have resolved without progressing to a heart attack, but for the stressors experienced by Mr Tay in the course of employment later that morning. The Respondents contend that, on a

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[69] Applicants' Written Submissions ("AWS") at para 132.

[70] AWS at para 132.

[71] AWS at para 120(f).

[72] AWS at para 127.

balance of probabilities, Mr Tay's heart attack likely started while he was at work between 9.00am to 10.00am on the Date of Incident.[73] On this basis, the Respondents conclude that Mr Tay suffered injury by an accident arising in the course of employment. The Respondents then rely on the presumption in s 3(6) of the Act and argue that the Applicants have failed to rebut the presumption because Dr Wong accepted that any physical or mental stressors encountered at work could have aggravated the heart attack. As such, Mr Tay's underlying conditions cannot be shown to be the sole cause of his death.

***The issues***

30 It is clear that Mr Tay had suffered an injury. The heart attack clearly constitutes such an injury. While a workplace injury by accident is typically associated with something external, such as falling from a height for instance, "an internal medical condition that caused an unexpected injury" while an employee is carrying out his or her work can also fall within s 3(1) of the Act (see *Narayasamy* at [24]).

31 The central question in contention in TA 15/2021 is whether, given the circumstances of this case, the heart attack suffered by Mr Tay falls within the scope of s 3(1) of the Act, such that the Applicants are liable to compensate the Respondents. The key issue to be determined, from the wording of the statutory provision, is whether there was an "injury by accident arising out of and in the course of the employment". To be more precise, it must be determined whether, on the facts, there was an "injury by accident". This is to be decided based on a proper interpretation of the statutory provision, and its application to the facts of this case. I am satisfied that this is a substantial question of law since the

[73] RWS at para 29.

answer to it will determine whether the Applicants are liable to compensate the Respondents.

32 Another interconnected issue that arises is whether the AC had erred in determining that there had been an accident that *arose in the course of Mr Tay's employment*, such that the presumption in s 3(6) of the Act was triggered and the onus was then on the Applicants to show that Mr Tay's heart attack was caused only by his underlying medical conditions and not by his employment. The resolution of this issue depends on whether the AC had disregarded relevant medical evidence and taken into account irrelevant considerations in the evidence before him. This is another substantial question of law since it will have an impact on the liability of the Applicants.

***Analysis***

33 To recapitulate, s 3(1) of the Act provides as follows:

> 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 this Act.

34 The conjunctive requirements, as recognised by the AC, have been set out above (see [15]). That these are the requirements is borne out by the clear language in s 3(1) and also by the authorities: see *eg*, *Narayasamy* at [20]. The crux of the Applicants' challenge to the Respondents' claim is that there was no "accident" that caused the injury within the meaning of s 3(1) of the Act. If the Applicants are correct, the claim would necessarily fail.

35 As earlier mentioned (at [30] above), an "injury by accident" under s 3(1) of the Act can include an "internal medical condition that caused an unexpected injury" while an employee was carrying out his or her work

(*Narayasamy* at [24]). It is therefore possible that an employee who has suffered a heart attack while carrying out his or her work could be considered to have suffered an injury by accident within the meaning of s 3(1) of the Act. However, case law has established the importance of distinguishing between an injury by accident and an injury caused by ordinary wear and tear brought about by the employee's work-related efforts; the latter does not fall within the meaning of s 3(1) of the Act. In this regard, the following passage from *Narayasamy* (at [38]) is a helpful summary of the position in relation to the need to show an "accident":

> In my judgment, the passages in *Ormond* and *Hawkins* which I have just cited go to establish the important principle that to come within the Act, it must be shown that there was some *occurrence which caused the injury in question*. Thus, mere wear and tear would not constitute an accident. Further, *an occurrence which could constitute an accident but which has not been shown on a balance of probabilities to have caused the injury would also not bring the workman within the protection of the Act*. However, the occurrence need not be the sole or even the dominant cause. It will be sufficient to show that the accident was an operating or contributory cause of the injury. It must further be shown that the injury was in some way connected with the employment.
>
> [emphasis in original omitted; emphasis added in italics]

36 As can be noted, two key principles have been set out in the above passage. First, the claimant seeking compensation must show that there was an *occurrence* in the course of employment that caused the injury in question. Secondly, it is insufficient to show that such occurrence might have or could possibly have caused the injury; while there is no requirement for the claimant to show with absolute certainty that the occurrence did in fact cause the injury, the existence of a causal link must be shown on a balance of probabilities.

37 As an illustration, I will briefly outline the facts of *Narayasamy*. In that case, the deceased was employed as a coach driver whose responsibilities

included loading of luggage onto and out of his coach. He passed away after suffering a heart attack, the effects of which were superimposed on one he had suffered previously. It was acknowledged that the deceased was not in good health to begin with. The claim by his next of kin nonetheless succeeded because there was evidence that the deceased was engaged in strenuous work just prior to and at the time that he suffered the fatal heart attack. A finding was made that the deceased's heart attack was triggered by his work-related exertions shortly before the heart attack. This finding was supported by witness evidence that the deceased had been carrying ten to 15 bags, each weighing between 15 and 25 kilograms, shortly before the heart attack. There was also medical evidence that, at the time of the accident, the deceased's heart condition had deteriorated to such a stage that his work had become too strenuous for him. The occurrence, therefore, was the strenuous work that the accused had been doing shortly prior to the heart attack.

38 I turn to examine two authorities that were cited with approval in *Narayasamy*. In *Ormond v CD Holmes & Co, Ltd* [1937] 2 All ER 795 ("*Ormond*"), the English Court of Appeal dismissed a claim for compensation under s 1(1) of the Workmen's Compensation Act 1925, which provision used a similar expression as that used in s 3(1) of the Act. In *Ormond*, a blacksmith's striker suffered a stroke at work. He had previously suffered a stroke at home. On the medical evidence, the work that had been done after the first stroke accelerated the second stroke. However, the court concluded that the injury suffered, *ie*, the second stroke, was outside the scope of the English statute. This was because although the second stroke had been accelerated by the general "wear and tear" of the work done, it was "impossible to point to any specific event that was responsible" for the second stroke (*Ormond* at 804).

39 In *Hawkins v Powells Tillery Steam Coal Company, Limited* [1911] 1 KB 988, an elderly man working in a colliery had been helping to push some empty trucks up an incline. He was then asked to cut some timber when he complained of pain. He died of angina pectoris that evening. The medical evidence showed that the man's heart was in poor condition; any slight exertion could have brought on a fatal heart attack. The English Court of Appeal overturned the lower court's decision to allow the claim for compensation under s 1 of the Workmen's Compensation Act 1906, which also requires that an "accident" arising out of the employment be shown. The judge sitting in the lower court concluded that, on the whole of the evidence, the deceased had over-exerted himself at work, and that had brought on the heart attack. On appeal, the appellate court found that the lower court's decision was not supported by direct evidence nor legitimate inference; it was not clear from the medical evidence whether the injury had been caused by something the deceased had been doing at work, and that defeated the claim.

40 A more recent decision is *Secretary of State for Work and Pensions v James Scullion* [2010] EWCA Civ 310 ("*Scullion*"). There, the claimant accountant had to take on additional work as a planning manager and stores manager due to the illness of a colleague and promotion of another. His increased workload placed great strains on him. He was found collapsed at work, having suffered a cardiac arrest. The English Court of Appeal refused to make a declaration that the claimant had suffered an industrial accident under s 29(2) of the Social Security Act 1998. The provision which had to be satisfied was s 94(1) of the Social Security Contributions and Benefits Act 1992, which used the expression "personal injury caused … by accident". This was because "there was no evidence that any external event … such as lifting a very heavy pile of papers, opening a file drawer which had stuck, or even lifting an arm to

get heavy papers from a shelf, caused the cardiac arrest" (*Scullion* at [54]). Aikens LJ emphasised the "necessary distinction between 'accident' and 'injury'" (*Scullion* at [44]) and explained that it is erroneous to consider a cardiac arrest to be an injury caused by accident simply because the cardiac arrest was an improbable, sudden and an unlooked-for mishap or untoward event (*Scullion* at [53]).

41 Finally, I also considered the decision in *Chua Jian Construction and another v Zhao Xiaojuan (deputy for Qian Guo Liang)* [2018] SGHC 98 ("*Chua Jian*"). In *Chua Jian*, a construction site worker was found lying motionless on the ground at his work site. He was taken to the hospital where he was diagnosed with intracerebral haemorrhage ("ICH"), which had caused him to fall into a coma (from which he unfortunately did not awake, even at the time of the decision in *Chua Jian*). The High Court dismissed the claim for compensation, which was made pursuant to s 3(1) of the Act. In *Chua Jian*, there was no available evidence as to what happened shortly prior to the worker's collapse. On the other hand, the medical evidence was that the ICH was caused by hypertension, which the worker had been suffering for many years and left untreated. In arriving at his decision, Choo Han Teck J considered *Narayasamy* and found that it was distinguishable. In explaining why, Choo J stated (at [16]):

> In the present case there was *no evidence that "something in fact transpired in the course of his work which made the injury occur when it did".* That a heart attack could have occurred to the employee while at his workplace is the same as an employee suffering a stroke at home, *unless the employee who suffered the heart attack or stroke suffered it at his workplace after something had transpired that made the injury occur when it did.* In *Narayasamy* the answer was yes, he was exerting himself when he collapsed, and that exertion had brought about the heart attack. In the present case, there is only the evidence of the stroke. There was no evidence that it was brought about by

> an exertion, and no evidence, in fact, of what [the worker] was doing before he collapsed.
>
> [emphasis added]

42 In my judgment, when the four abovementioned cases are read together with *Narayasamy*, it is clear that an internal medical condition may amount to an "injury by accident" within the meaning of s 3(1) of the Act only where it is shown that there was an occurrence in the course of employment that precipitated the injury being suffered by the worker. It must be shown that the worker was doing something, relating to his work, which was a cause of his injury. It is insufficient to say that there was an "accident" simply because it was unexpected that the injury had occurred. In other words, the fact that the injury was sustained cannot also be the occurrence. Otherwise, one would be conflating the "injury" with the "accident".

43 I turn to examine whether there was such an "injury by accident" within the meaning of s 3(1) of the Act on the facts of the present case. Counsel for the Respondents proffered, in oral submissions, two possible ways to analyse the transpired events in accordance with the statutory framework. On the first analysis, the "injury" suffered is the heart attack, and the "accident" is the unexpected occurrence of the heart attack. I am unable to accept this analysis. As I have already explained, it would not be in line with the approach as set out in *Narayasamy* to say that the heart attack constitutes *both* the injury and accident because, on such an analysis, there is no occurrence that caused the injury.

44 I therefore find that the AC erred in his reasoning because he adopted this analysis put forward by the Respondents. To recapitulate, the AC decided that there was an injury by accident because Mr Tay "had an internal medical condition (*ie*, the high cholesterol) that caused him to suffer an unexpected

injury (AMI or heart attack) while [Mr Tay] was in the course of his work".[74] He relied on *Narayasamy* in arriving at this conclusion. He cited *Narayasamy* at [38] (which has been reproduced in full at [35] above) for the proposition that an "accident" would, in the AC's words, "exclude mere wear and tear but would include *an unexpected injury sustained while the employee was carrying out his work even if it was brought about by a pre-existing medical condition*" [emphasis added].[75] It appears to me that the AC may have focused on the reference in *Narayasamy* to a pre-existing medical condition without recognising the requirement for there to also have been an occurrence that caused the injury. Indeed, the facts of *Narayasamy* illustrated that an employee is not precluded from compensation for his injury simply because his pre-existing medical condition had caused the unexpected injury. However, the important qualification is this – he or she must show that there was an *occurrence* in the course of employment that, on a balance of probabilities, in fact caused the injury suffered. To put things simply, something external must have happened in the course of employment that triggered the heart attack suffered by Mr Tay, even if one accepts that he had pre-existing medical conditions that predisposed him to having a heart attack. The AC erred in his reasoning by treating the accident and injury as if they are one and the same, when the correct approach would have been to recognise the "necessary distinction" between them as earlier explained (see [40] above).

45 In *Narayasamy*, it was found that "there was no doubt that the [claimant] had showed that there had been an occurrence", which, as already explained (see [37] above), was the many pieces of luggage he was moving shortly prior to his heart attack. On the other hand, the Respondents have not shown that

[74] GD at para 53.

[75] GD at para 9(c).

there was any such occurrence in the present case. The evidence before the AC was that Mr Tay was at the workplace for about an hour from 9.00am to 10.00am on the Date of Incident, and that he did not do any work in that time (see [10] above). I recognise that this account of the events is based solely on Mr Lim's testimony, and he did concede that he did not pay close attention to Mr Tay at the material time (see [10] above). However, Mr Lim's testimony was the only evidence as to what happened during that hour or so that Mr Tay spent at the workplace. No co-workers or other witnesses were called by the Respondents to give evidence as to what Mr Tay was doing during the hour that he was at the workplace. There is thus no credible challenge to Mr Lim's evidence as to what transpired that morning. Since the Respondents are unable to show that Mr Tay was doing anything in relation to his work while he was at the workplace on the Date of Incident, let alone anything significant that might have triggered his heart attack, they are accordingly unable to show that there was an occurrence in the course of employment that resulted in the "injury by accident" within the meaning of s 3(1) of the Act.

46 The Respondents' alternative analysis of the transpired events is that the "injury" suffered was the cardiac arrest at 12.47pm (see [3] above), and the "accident" is the heart attack. In this analysis, the Respondents rely on the Phone Call (see [10] above) as the occurrence which triggered the heart attack. They argue that Mr Tay must have been so concerned about work that he called Mr Lim to tell him about things that had to be done. That allegedly triggered Mr Tay's cardiac arrest. With respect, I find this analysis to be rather confused because it attempts to separate the injury suffered by Mr Tay, which is his heart attack, into different constituents in order to show that the injury he suffered happened during the course of work, *ie*, after 9.00 am. The question as to

whether Mr Tay suffered his injury before he even arrived at work is a point I will come to later (see [53]–[56] below).

47 As to this different analysis of what is the "injury by accident", I find the Respondents' submissions before me rather inconsistent with the expert medical evidence that they led in proceedings before the AC. Dr Singh's evidence was that the hour or so spent at the workplace led to the heart attack (see [13] above). He testified that the chest pains experienced by Mr Tay before arriving at work "could have been an angina attack which could have been aborted by resting" but he "chose to go to work and stayed there for another hour and that was the last straw that aggravated the angina that [led] to a heart attack".[76] Thus, according to Dr Singh, it was the work that Mr Tay was doing at the workplace that morning or the Phone Call which led to his injury, which is the heart attack suffered by Mr Tay. I thus did not accept the Respondents' alternative analysis that attempts to draw a distinction between the heart attack and the cardiac arrest. It is entirely artificial, in my view, to treat the cardiac arrest, which is the final stage of the heart attack, as separate from the heart attack. In my view, the injury is the heart attack that Mr Tay suffered, which eventually led to his death by cardiac arrest. What the Respondents have not been able to establish is the occurrence that took place on the morning of the Date of the Incident which was causally linked to Mr Tay having a heart attack.

48 At this juncture, I pause to note the many deficiencies in Dr Singh's evidence, which were pointed out by counsel for the Applicants. In my judgment, many of the criticisms by the Applicants are justifiable. Dr Singh's evidence was in many ways speculative and unsupported by the available factual evidence. For instance, Dr Singh's Reply Report noted that "[Mr Tay]

[76] ROP at page 119.

was a hard worker and was not averse to physically helping his workers in carrying bales of clothing for laundry".[77] In Dr Singh's First Report, he explained that "any minor physical exertion (such as pulling trolleys, loading laundry baskets or climbing ladders) … could easily have served as the 'last straw that broke the camel's back'. It is likely that something happened as part of [Mr Tay's] work … to trigger the fatal heart attack."[78] The factual assumptions relied upon by Dr Singh for his opinion are inconsistent with the evidence by Mr Lim that Mr Tay's job scope did not include any physical work and that, in fact, he did not do any work at all in the hour that he was at the workplace on the Date of Incident. There was simply no basis for Dr Singh's assumptions, at least on the available evidence, given that Mr Lim was the only person from the workplace that gave evidence.

49 Dr Singh's analysis was also conjecture insofar as he commented that "[i]t is likely that something happened" to trigger the heart attack. It also bears noting that he relied on "[t]wenty colour photographs of [SM Laundry's] interior" as the basis for concluding that "the facility appears to be a very busy place requiring a considerable amount of physical labour"[79] even though these photographs were simply taken off SM Laundry's social media page. The photographs show the interior of SM Laundry's factory and in some of them, employees can be seen operating various machines. TJY, Mr Tay's son, confirmed that his father was not shown in any of the photographs.[80] Dr Singh's reliance on Mr Tay's "significant amount of overtime work"[81] ignores Mr Lim's

[77] ROP at page 344, para d.

[78] ROP at page 191.

[79] ROP at page 187.

[80] ROP at page 38.

[81] ROP at page 188.

evidence that Mr Tay was not in fact required to work overtime. The nature of the overtime work is unclear, and it is Mr Lim's evidence that Mr Tay clocked overtime hours because he was waiting for Gui Min to finish work.[82] Let me reiterate that Mr Lim's evidence cannot be seriously challenged because he was the only person from the workplace that gave evidence. TJY also admitted that his father never told him about what he did at the workplace.[83] As I had already flagged earlier (see [11] above), counsel for the Respondents did not even put it to Mr Lim that Mr Tay's work scope or the environment at SM Laundry was stressful.

50 Given the state of the evidence, I find that the AC erred in relying on Dr Singh's assessment that the trigger for the heart attack was likely to be the work that Mr Tay was doing at the workplace on the Date of Incident, or because of the Phone Call that he had made to Mr Lim from the Pasir Ris Clinic. Simply put, the Respondents have not been able to prove that there was anything that happened in the course of Mr Tay's employment on that morning of the Date of the Incident that was causally linked to him suffering a heart attack.

51 In sum, the evidence suggests that the cardiac events that ultimately proved fatal were set into motion at 7.00am on the Date of Incident, or possibly even earlier than that given the evidence of the chest pains experienced by Mr Tay three to four days prior to the Date of Incident (see [3] above). The Respondents' arguments are to the effect that, if Mr Tay had not gone to work or had not made the Phone Call, the cardiac events that had been set in motion could have panned out differently and he might have survived. However, it is insufficient to show that the mere fact of being at the workplace or worry over

[82] ROP at pages 88–92.

[83] ROP at page 40.

the Phone Call could have aggravated Mr Tay's cardiac events. An "injury by accident" within the meaning of s 3(1) of the Act requires the Respondents to point to an occurrence in the course of employment that, on a balance of probabilities, caused the injury. The Respondents have failed to discharge their burden of showing this.

52 On this ground alone, the Applicants' appeal should be allowed and the order for compensation made by the AC set aside. However, as the parties also made submissions on the related point of whether the AC erred in finding that Mr Tay's heart attack had happened "in the course" of his employment, let me just deal very briefly with that issue as well.

53 This second issue arises because the evidence in the proceedings before the AC actually suggests that Mr Tay had already been suffering from a heart attack *before* he arrived at the workplace on the Date of Incident. In fact, I have already pointed out that the evidence was that Mr Tay had been suffering from chest pains since 7.00am on the Date of the Incident, which was two hours before he arrived at the workplace. The clinical notes from the Pasir Ris Clinic, as explained in Dr Lye's testimony, record that Mr Tay experienced chest pains that started at 7.00am till he visited the Pasir Ris Clinic around 10.54am on the Date of Incident.[84] The exact words recorded in the clinical notes are "chest pain x started 7am till present".[85] The Applicants' expert, the cardiologist Dr Wong, took the view that the heart attack started at 7.00am on the Date of

[84] ROP at page 55.

[85] ROP at page 326.

Incident.[86] He explained that "chest pains continuing for more than 15 minutes must be [a] heart attack".[87]

54 The Respondents contend that Mr Tay had actually experienced only angina at 7.00am, and not a heart attack (see [29] above). However, Dr Wong's evidence suggests that this explanation is improbable. He explained that "*if you have a chest pain when you … are not doing anything strenuous*, it is a heart attack as far as I am concerned until proven otherwise" [emphasis added].[88] This is actually consistent with Dr Singh's explanation of what angina is. Dr Singh's First Report states that "[if the patient's arterial lumen has significant blockage], he or she may have symptoms such as chest pain *on exertion*, such as going up a flight of stairs. This chest pain is called Angina" [emphasis added].[89] Since there is no evidence that Mr Tay was doing anything strenuous, or exerting himself in any way, while at the same time suffering from chest pains, from 7.00am to 9.00am, the inference must be that Mr Tay was already suffering from a heart attack at that time. In other words, the heart attack started *before* Mr Tay arrived at the workplace. I should add that there is also no evidence that Mr Tay was carrying out any work-related activities in the two hours from 7.00am to 9.00am while he was not at his workplace.

55 In my judgment, the AC seems to have disregarded all this evidence, both medical and factual, which clearly showed that Mr Tay's heart attack commenced before he even came to work on 9.00am. At the same time, the AC also appears to have placed undue weight on the entirely speculative views

[86] ROP at page 139.

[87] ROP at page 155.

[88] ROP at page 154.

[89] ROP at page 189, para 5.

expressed by Dr Singh in his evidence that Mr Tay carried out physical work at SM Laundry, that the Phone Call must have been the "last straw", and that the stress from work caused the heart attack. I have already dealt with the problems with Dr Singh's evidence earlier (see [48]–[49] above) and do not need to repeat them here. He was called as an expert witness, but he ventured far beyond his realm of expertise. Suffice to say, I find that the AC had allowed Dr Singh's evidence to obscure the critical factual issues that had to be decided.

56 In view of the foregoing, I find that the Respondents have not shown on a balance of probabilities that the heart attack only started after Mr Tay had arrived at the workplace. Put another way, the Respondents are not able to establish on the evidence that there was any accident "in the course" of Mr Tay's employment, even if one is to adopt the Respondents' case that the heart attack itself was the "accident". That being so, it follows that the presumption in s 3(6) of the Act was not triggered. It also leads to the conclusion that the Respondents have not been able to prove that Mr Tay's injury was caused by an accident that arose out of his employment, since there is no other relevant evidence to show that Mr Tay's work was a cause of him suffering a heart attack.

**TA 17/2021**

57 Given my views in relation to TA 15/2021, and that the AC's order for compensation should be set aside, it follows as a matter of course that the order of costs made by the AC in favour of the Respondents should also be set aside. Since the Respondents are not entitled to the compensation claimed, and not entitled to any costs for the proceedings before the AC, there is no basis for TA 17/2021, and it must be dismissed.

**Conclusion**

58 For the reasons set out above, the Applicants' appeal in TA 15/2021 is allowed, and the AC's determination is set aside in its entirety. The Respondents are not entitled to compensation under s 3(1) of the Act. Consequently, the Respondents' appeal in TA 17/2021 is dismissed.

59 I will deal separately with the question of costs.

Ang Cheng Hock
Judge of the High Court

Mahendra Prasad Rai (Cooma & Rai) for the applicants in TA 15/2021;
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