

Next of kin of Ramu Vanniyar Ravichandran v Fongsoon Enterprises (Pte) Ltd
[2008] SGHC 45

Case Number : OS 579/2007
Decision Date : 27 March 2008
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Kamala Dewi d/o Poologanathan (YPMP Law Corporation) for the appellant; Jispal Singh s/o Harban Singh (Unilegal LLC) for the respondent
Parties : Next of kin of Ramu Vanniyar Ravichandran — Fongsoon Enterprises (Pte) Ltd

Agency – Apparent authority of agent – Whether there was authority represented by words or conduct of principal and relied upon by third party – Principal estopped from denying employer-employee relationship where apparent authority was established

Agency – Implied authority of agent – Whether there was authority implied by circumstances

Agency – Principal – Third party and principal's relations – Liability of principal to third party for compensation under s 3(1) Workmen's Compensation Act (Cap 354, 1998 Rev Ed) – Whether deceased was in employment of company – Whether foreman of company having authority to engage services of deceased on company's behalf – Whether accident happening out of and in the course of that employment – Whether s 17(1) Workmen's Compensation Act (Cap 354, 1998 Rev Ed) was applicable

Courts and Jurisdiction – Appeals – Right – Right of appeal against decision of Commissioner for Labour – Whether appeal raising a substantial question of law – Section 29 Workmen's Compensation Act (Cap 354, 1998 Rev Ed)

Employment Law – Commissioner for labour – Right of appeal – Right of appeal against decision of Commissioner for Labour – Whether appeal raising a substantial question of law – Section 29 Workmen's Compensation Act (Cap 354, 1998 Rev Ed)

Employment Law – Liabilities – Principals – Liability of principal to third party for compensation under s 3(1) Workmen's Compensation Act (Cap 354, 1998 Rev Ed) – Whether deceased was in employment of company – Whether foreman of company having authority to engage services of deceased on company's behalf – Whether accident happening out of and in the course of that employment – Whether s 17(1) Workmen's Compensation Act (Cap 354, 1998 Rev Ed) was applicable

Employment Law – Liability for compensation under s 3(1) – Whether deceased was in employment of company – Whether foreman of company having authority to engage services of deceased on company's behalf – Whether accident happening out of and in the course of that employment – Whether s 17(1) Workmen's Compensation Act (Cap 354, 1998 Rev Ed) was applicable

27 March 2008

Judgment reserved

Choo Han Teck J:

1 This appeal arises out of a fatal accident involving Ramu Vanniyar Ravichandran ("the deceased"). On 26 May 2005, about 2 pm, the deceased was found drowned in the sea near the PSA Pasir Panjang Terminal ("the Terminal") with the respondent's forklift which he was operating prior to the mishap. Subsequently, the Commissioner of Labour ("the Commissioner") issued a Notice of Assessment of Compensation ("the Notice") dated 18 July 2006, determining that the respondent was liable to pay compensation of \$78,624.00 to the next-of-kin of the deceased, ie, the appellant. The respondent challenged this assessment, and the matter was set for a hearing before the Commissioner where the key issue was "whether the [deceased] was in the employment of the

[respondent] and whether the accident happened out of and in the course of that employment” (Grounds of Decision of the Commissioner (“GD”) at [12]).

2 After the inquiry, the Commissioner reached the following conclusion (GD at [11]; see also GD at [27]):

After hearing the evidence adduced at the hearing, I found that the accident suffered by the [deceased] did not arise out of and in the course of his employment with the Respondent.

The Commissioner therefore held that the respondent was not liable to pay compensation to the appellant.

3 In the result, the appellant filed the present appeal against the Commissioner’s decision pursuant to s 29 of the Workmen’s Compensation Act (Cap 354, 1998 Rev Ed) (“WCA”). The salient sub-sections of s 29 are as follows:

(1) Subject to section 24 (3), any person aggrieved by any order of the Commissioner made under this Act may appeal to the High Court whose decision shall be final.

(2) Subject to the Rules of Court, the procedure in an appeal to the High Court shall be the procedure in a civil appeal from a District Court with such modifications as the circumstances may require.

(2A) No appeal shall lie against any order unless a substantial question of law is involved in the appeal and the amount in dispute is not less than \$1,000.

4 At all material times, the deceased was holding a work permit to work for M/s Goldin Enterprises Pte Ltd (“Goldin”). Goldin was engaged in lashing works at the Terminal in December 2005. The deceased was employed to do the lashing work with Goldin and had a valid PSA pass from 20 December 2005 to 30 December 2005.

5 While working at the Terminal, the deceased befriended the foreman of the respondent, Muhamed Yusuff Muhamed Meera (“Meera”). Meera testified that the deceased had approached him to find a part-time job to supplement his income. Consequently, Meera engaged the services of the deceased on four occasions to tighten the bolts and nuts to crane rails, including 26 December 2005, the fateful day of the fatal accident. On each of the first three occasions, the deceased was paid \$100 out of Meera’s own money (on two occasions) or from petty cash given by the respondent to Meera (on one occasion).

6 Given the facts, the Commissioner was of the view that whether there was an employer-employee relationship between the respondent and the deceased would turn on whether Meera had the authority to engage the services of the deceased on the respondent’s behalf (GD at [13]):

The elements of remuneration and control are usually the key factors to consider if there is an employment relationship ... It would be clear that [Meera] had in fact supervised the [deceased] in the work he did for the Respondent and paid him for it. *The question is therefore whether [Meera] had the authority, implied or otherwise, to engage the services of the [deceased] on behalf of the Respondent.* [emphasis added]

7 He subsequently concluded that no such authority existed, and thus the deceased was never in the employment of the respondent (GD at [14]-[16]):

The evidence of [Meera] is therefore critical. Firstly, he testified that he obtained extra help from the [deceased] and Thagaraj to carry out the tightening of bolts and nuts to the crane rails. *His evidence was that he was not authorized to hire persons.* He paid them out of the petty cash and which purposes did not include the hire of extra hands. He thought that the bosses of the Respondent would agree to pay for the hire of the workers. He thought he would be able to claim the \$300 paid for the hire of the [deceased].

He testified that on 17 and 18 December 2005, he had in fact used his own money to pay the [deceased] and Thagaraj. It was only on 20 and 26 December 2005 when he intended to use the money from the petty cash. Nonetheless, he did not inform the management of the Respondent nor confirm with them if the hire arrangement was approved.

On the whole, having heard the oral evidence of [Meera] and the evidence adduced during the hearing, *I find that there was no employer-employee relationship between the [deceased] and the Respondent.*

Whatever impression [Meera] was labouring under with regard to using the petty cash to hire extra help, it was clear that *he had no authority, implied or otherwise to employ any extra workers on behalf of the Respondent.*

[emphasis added]

8 The Commissioner also held that even if the deceased had been in the employment of the respondent, he was not authorised to handle the forklift. The Commissioner further held that the deceased went on a frolic of his own in using the forklift, given that the work the deceased was asked to do by Meera on the day of the accident did not involve the use of a forklift. The Commissioner thus concluded that even if an employer-employee relationship between the respondent and the deceased was established, the deceased's death was not by an accident arising out of and in the course of that employment (GD at [20]-[26]).

9 On appeal, the appellant raised a host of arguments, some of which overlap with one another. These arguments can be summarised into several main points which are as follows:

- (a) the Commissioner erred in law in his application of agency principles and in concluding that there was no employer-employee relationship between the respondent and the deceased;
- (b) the Commissioner failed to apply the presumptions under ss 3(4) and 3(6) of the WCA;
- (c) the Commissioner failed to apply s 17(1) of the WCA; and
- (d) the Commissioner erred in law in holding that the deceased's death was not caused by an accident arising out of and in the course of the deceased's employment with the respondent.

10 The respondent argued that these arguments were, in the main, against the *finding of fact* by the Commissioner that the deceased was not an employee of the respondent. The respondent thus submitted that the requirement in s 29(2A) of the WCA that "a substantial question of law" must be involved in the appeal (see [3] above) was not satisfied. As shown above (see [7] above), the Commissioner had reached the conclusion that the deceased was not an employee of the respondent after considering the relevant agency principles. The thrust of the appellant's arguments was that the Commissioner had arrived at this (wrong) conclusion by his erroneous application of the agency principles and his failure to consider and apply the presumptions provided by the relevant provisions of

the WCA. In my opinion, these arguments certainly raise questions of law. Further, given that the application of the principles of agency law and the presumptions in WCA are likely to feature in most workmen's compensation cases, these questions of law are, in my view, substantial. Accordingly, I find that the requirements in s 29(2A) of the WCA for an appeal against the Commissioner's decision to be brought have been satisfied.

11 Under the WCA, the liability of the respondent to pay compensation is premised on there being an employer-employee relationship between the respondent and the deceased (s 3(1) of the WCA). As rightly pointed out by the Commissioner (on the given facts), whether there is a relationship of employment would, in turn, depend on whether Meera had any authority to engage the deceased's services on the respondent's behalf.

12 On the adduced evidence, it is clear that Meera had no *express* authority to hire other workers. The appellant, however, argued on appeal that Meera had *implied* or *apparent/ostensible* authority to do so.

13 Generally, implied authority, as the term suggests, is authority not expressly stated, but, implied by the circumstances (Tan Cheng Han (gen ed), *Walter Woon on Company Law* (Sweet & Maxwell Asia, 3rd Ed, 2005) ("*Walter*") at p 83). Such authority is usually expressed as the authority to do things incidental to the fulfilment of the tasks that one is expressly authorised to do (F M B Reynolds, *Bowstead and Reynolds on Agency* (Sweet & Maxwell, 18th Ed, 2006) ("*Bowstead*") at para 3-018; *Walter* at p 83; *Pole v Leask* (1860) 28 Beav 562, (1863) 33 LJ Ch 155) or "usual authority", *ie*, authority to do things that one in a certain position usually does (*Bowstead* at para 3-027; *Walter* at p 83; *Hely-Hutchinson v Brayhead Ltd* [1968] 1 QB 549). However, an agent's implied authority may be restricted by express authority (*Walter* at p 83).

14 In light of the circumstances of the present case, I am of the same view as the Commissioner that Meera had no implied authority to hire other workers on the respondent's behalf. Meera's own evidence is that he clearly had no authority to engage workers for the respondent. Thus, even if a foreman in Meera's position had implied authority to hire workers on the basis of his position, such implied authority was restricted by his express authority to begin with. Even if there was no express authority which prevented Meera from hiring workers, the circumstances still did not justify a finding that Meera had implied authority to hire workers on the respondent's behalf. Although Meera was the respondent's foreman and was given petty cash (up to \$500) by the respondent, this petty cash was only meant to purchase food and supplies and was never meant to pay the wages of workers. Further, Meera never informed the respondent that he had hired the deceased or other workers, and there is no evidence to suggest that the respondent had knowledge of such illegal hiring of workers and had acquiesced to such a practice (it was held in *SPP Ltd v Chew Beng Gim* [1993] 3 SLR 393 that a corporate agent may be given implied authority by the acquiescence of his superiors).

15 However, it would appear that the appellant had made out a case of apparent authority. It should be noted that express and implied authority are commonly referred to collectively as actual authority (see *Bowstead* ([13] *supra*) at paras 3-001 and 3-003). But in addition to actual authority, it is possible to confer an agent with apparent authority. The latter authority has been described as follows (*Bowstead* ([13] *supra*) at para 8-013):

Where a person, by words or conduct, represents or permits it to be represented that another person has authority to act on his behalf, he is bound by the acts of that other person with respect to anyone dealing with him as an agent on the faith of such representation, to the same extent as if such other person had the authority that he was represented to have, even though he had no such actual authority.

16 Although Meera had *no actual authority* to engage workers on the respondent's behalf, the respondent would be estopped from raising this fact as a defence to liability if the doctrine of apparent authority is successfully invoked (*Walter* ([13] *supra*) at p 88):

A company may be precluded from raising its agent's lack of authority by the doctrine of estoppel. This might occur if the agent acted within the scope of his ostensible or apparent authority (the two terms are synonymous and are used interchangeably), albeit outside his actual authority. [emphasis added]

17 Indeed, under the doctrine of apparent authority, a principal may be bound by the acts of an agent which he has not authorised *and has even forbidden* (*Bowstead* ([13] *supra*) at para 8-014). What is crucial is that there must have been a representation by words or conduct from the principal and that representation must have been relied on by the third party (*Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 ("*Freeman*"); *Walter* ([13] *supra*) at p 89).

18 In the present case, the evidence adduced showed that Meera was the foreman in charge of the respondent's operations at the Terminal and, at most times, had free-rein in the running of these operations:

Cross-examination of Meera

Court: So you are the only foreman or supervisor on the site?

A: Yes.

Court : You were to be in charge of the work to be carried out by [the respondent]?

A: If Peter Seah not around, I am in charge.

Cross-examination of Peter Seah [site supervisor for the respondent]:

Q: How often do you go down on site for inspection?

A: For this last phase of work, only twice a week.

Q: You were not supervising the last phase of the work?

A: Yes, but not daily.

Q: What do you normally do as part of your inspection routine?

A: I will make sure that they observe what is being carried out and discussed during the toolbox meeting. I will check on the progress of the work.

Q: Your duty to supervise Meera?

A: Most of the scope of the work he knows well. But he still needs to be supervised. For the times I am not around, to make sure that he carries out the work where safety is concerned.

Q: Was he a reliable and trusted employee?

A: Yes.

Q: Because of this, was he given a lot of responsibility and authority?

A: He is still subject to supervision. He is just only a foreman.

Q : *When you do not go down to the site daily, you are essentially leaving him to run the place on your own?*

A: Yes.

[emphasis added]

19 It appears that Meera was well-trusted and was given such a great deal of autonomy that he was able to negotiate directly with PSA for an extension of time for the respondent's works at the Terminal:

Cross-examination of Meera

Q: You said that work had to completed by end Dec as final phase?

A: Yes. PSA gave that kind of pressure.

Q: Who did PSA pressure? Your bosses?

A: The hot work permit expired on 22 December. *I asked for extension and they allowed till 30 December.*

Q: Was Peter Seah or Edmund See [the project director] aware of this extension?

A: They do not know.

Q : *Your evidence is that you deal directly with PSA without your bosses knowledge?*

A : *I went to obtain the extension from Maintenance department and they granted me till 30 December.*

Court: You did not inform your bosses?

A: No, I did not inform them.

Court: Your bosses gave you authority to handle welding matters on your own?

A: Since I already have the experience and when they suddenly stopped work, I took the initiative to get permission.

...

Q: When Peter Seah came after the extension, was he aware that you were late for the completion?

A: He didn't ask about it and I also did not tell him. The work was stopped and I helped

to start again.

Q: *Why did you not report the extension to Peter Seah?*

A: *The works were going on and they didn't bother.*

[emphasis added]

20 The fact that PSA was willing to deal with Meera directly and granted the respondent an extension after Meera had asked for one is evidence that Meera was regarded by others as the respondent's representative who had overall control of the day to day running of the respondent's works at the Terminal. The respondent by entrusting Meera with the daily operations and with such great autonomy can be said to have made a representation to others that Meera had the authority to make decisions in regard to the running of the respondent's works at the Terminal (including the hire of extra-hands to complete the works), "by permitting the agent to act in some way in the conduct of the principal's business with other persons" (*Freeman (supra [17])* at p 503).

21 This is probably the reason why the deceased had, in the first place, approached Meera to ask if he could help find him some part-time work as the deceased had perceived Meera to be someone who had the authority to hire workers on the respondent's behalf. Meera had, indeed, found him work on four occasions, including the fateful day of the accident. There is also no evidence that the deceased knew or suspected that Meera was paying him using his own money or the petty cash given by his bosses that was for the purchase of food and supplies. In fact, Meera himself, although admitting that he had no (actual) authority to hire workers on the respondent's behalf, thought he was able to claim back from the respondent the \$300 he paid the deceased:

Re-examination of Meera

Court: If the accident didn't happen, did you think that you would have been able to claim the \$300 paid?

A: Yes.

Court: Did you feel that you had the authority by the company to engage extra help?

A : No.

Court: Then why did you think that you can pay from the petty cash?

A: Sometimes I can adjust this kind of expenses.

Court: The fact that you can adjust this kind of expenses suggest to me that you can use the petty cash to get extra help?

A: I had no authority.

22 In these circumstances, I am of the view that the respondent had by conduct represented that Meera had the authority to engage part-time workers for the respondent, and the deceased had relied on such representation and approached Meera for work and was, in fact, engaged to help out on the respondent's works at the Terminal on no less than four occasions. The respondent is therefore estopped from denying that an employer-employee relationship existed between the respondent and the deceased on the ground that Meera had no actual authority to hire workers on

the respondent's behalf. I am thus of the view that the deceased was, in fact, an employee of the respondent.

23 It follows then that the presumptions in ss 3(4) and 3(6) of the WCA will apply. The two provisions state as follows:

(4) An accident happening to a workman shall be deemed to arise out of and in the course of his employment notwithstanding that he was at the time of the accident *acting in contravention of any written law or other regulations applicable to his employment, or of any orders given by or on behalf of his employer, or that he was acting without instructions from his employer*, if —

(a) the accident would have been deemed so to have arisen had such act not been done in contravention as aforesaid or without instructions from his employer, as the case may be; and

(b) such act was done for the purposes of and in connection with the employer's trade or business.

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

[emphasis added]

24 Section 3(6) was not considered by the Commissioner below, though he did consider s 3(4) (GD at [23]):

Given that I do not find that there was any employment relationship, this provision [*ie*, s 3(4)] will not apply to assist the claimant's [the appellant in the present appeal] case.

25 If it is accepted that Meera had apparent authority to hire workers on the respondent's behalf, the respondent cannot deny then that the deceased was in fact its employee, and it would seem that the presumptions in ss 3(4) and 3(6) would apply. The burden would then be on the respondent to show that the deceased had used the forklift for his own purpose, and thus the accident was one that did not arise out of and in the course of the deceased's employment with the respondent.

26 As mentioned, the Commissioner below was of the view that even if there was an employment relationship between the respondent and the deceased, there was no evidence that the deceased had used the forklift for the purposes of or in connection with the respondent's business (GD at [24]):

In any case, even if I do find that there was an employment relationship between the [deceased] and Respondent, there is no evidence that the claimant in fact used the forklift for doing an act which was done for the purposes and in connection with the employer's business. That is a requirement for section 3(4) to deem the accident as arising out of and in the course of the workman's employment. The evidence from [Meera] was that the [deceased] was asked to only help in the tightening of the bolts and nuts, and he had never asked the [deceased] to use the forklift, nor did he authorise the claimant [the appellant in the present appeal] to do so. [Peter Seah] confirms that the forklift was not required at all for the day's work on 26 December 2005 neither was the forklift required for to lift the rails for tightening of bolts and nuts, which was what the [deceased] was doing.

27 There was, however, some evidence that the forklift was in fact required for the day's work on 26 December 2005, *ie*, the day of the accident. Meera himself had testified that the deceased had approached him during the course of the fateful day to inform him that there was a need to shift a generator:

Examination-in-chief of Meera

Q: On 26 December, how did the accident happen?

A: On that day, about 11.30 am [the deceased] and his friend Thagaraj came to the worksite. They asked me for job. I told them I am doing welding work and you can help tighten the bolts and nuts. They started to work. *About half an hour later, [the deceased] came back and told me they have to shift the generator.* I told him I doing hot work and I can't leave half way. Then he and his friend continued to do work.

About 1 pm, he told me he was hungry and he asked me if they wanted to take lunch ... I went to buy lunch ...

When I came back, I saw Thagaraj shouting and stopping my vehicle. *He told me forklift fell into the sea with [the deceased]. Thagaraj told me that [the deceased] drove the forklift and tried to lift something with the forklift and then forklift fell into the sea.*

[emphasis added]

Cross-examination of Meera

Q: What was the forklift there for?

A: To shift heavy materials, like *generators* and rail parts.

...

Q: What was [the deceased] trying to lift when the accident happened?

A: I do not know. I was not at the site.

Q: Did you find out from Thangaraj?

A: I was confused. He was trying to escape. I was trying to call 995. No, I didn't ask.

Q: You did not find out as today what [the deceased] was doing in the forklift?

A: *[The deceased] was trying to lift something with the forklift. Thangaraj was helping in guiding the reversing of the forklift.*

[emphasis added]

28 Peter Seah's evidence, which was relied on by the Commissioner (see [26] above), was also not unequivocal; although he had testified that the forklift was not needed on 26 December 2005, he had also contradicted himself:

Cross-examination of Peter Seah

Q: What did the railing works entail?

A: We need to reinstall the rails. *By doing that, we had to use the forklift as one rail is 12 metres and 1.8 tons.* To expedite on the installation work, we use the forklift to lay the rails on the rail trenches. The length of the rails is about 200 metres. So it's about 9 to 10 rails per side, one on the left and one on the right. After this, the rail joints need to be welded.

Q: *When are the nuts and bolts tightened?*

A: *Only after rails welded.*

Q: *Is the forklift required to lift the rail?*

A: *Yes. After welding.*

...

Q: You said that you had to go back on 25 Dec, was there any remaining work to be done?

A: *Yes. Preparation for the next day job.* Need to insert copper plates below the rails to *raise the rails* above the pre-determined level. After the welding, we have to hoist up the rails, to remove the plates, to let the rails go down. The purpose is to compensate for deflection.

Q: To insert the copper plates, you have to lift the rails?

A: Yes.

[emphasis added]

Thus, it appears that Peter Seah himself has suggested that the work on 26 December 2005 could have entailed the use of the forklift.

29 I am of the view that the evidence on the whole suggests that the deceased had used the forklift for some purpose that was in connection with the respondent's work on 26 December 2005, although the evidence is unclear what exact purpose the forklift was used for. Henceforth, although the deceased was not authorised to use the forklift, and "was acting without instructions from his employer" when he used it, s 3(4) of the WCA would avail him, and the accident would still be deemed to have arisen in the course of his employment with the respondent. Hence, given the evidence adduced, I am of the view that the respondent has failed to rebut the presumptions in ss 3(4) and 3(6) that the accident had arisen out of and in the course of the deceased's employment with the respondent.

30 Given the conclusion above, there would strictly be no need to determine if s 17(1) of the WCA applies in this case. However, for the sake of discussion and completeness, this argument raised by the appellant would be dealt with briefly. Section 17(1) of the WCA provides as follows:

Where any person (referred to in this section as the principal) in the course of or for the purpose of his trade or business contracts with any other person (referred to in this section as the contractor) for the execution by the contractor of the whole or any part of any work, or for the supply of labour to carry out any work, undertaken by the principal, the principal shall be liable to

pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him.

31 The appellant's argument based on s 17(1) is this — if Meera is to be regarded as the employer of the deceased (as remarked by the Commissioner (see GD at [19])), then Meera is the "contractor" of the respondent who is tasked to carry out the respondent's works at the Terminal, and, accordingly, based on s 17(1), the respondent as "principal" was liable to pay compensation to the deceased.

32 I think that the appellant's argument is unfounded. It appears that s 17(1) is meant to apply only in instances where the principal had sub-contracted the works to an independent contractor (see *Lee Keng Hiong t/a William Trade & Tran-Services v Ramlan bin Haron* [2002] 2 SLR 52 at [28]-[29] where it was held that even if the *appellant's employee* was an *independent contractor*, this would not have absolve the appellant from liability because of s 17(1) of WCA). It is undisputed in this case that Meera was, at all material times, the employee of the respondent and was not an independent contractor. As such, I find that s 17(1) has no application in this case.

33 For the reasons above, this appeal is allowed, and the respondent is hereby ordered to pay \$78,624.00 as determined by the Commissioner in the Notice as compensation. I will hear the question of costs at a later date if parties are unable to agree costs.

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