Karuppiah Ravichandran v GDS Engineering Pte Ltd and Another
[2009] SGHC 119

Case Number : OS 642/2008

Decision Date : 19 May 2009

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Kamala Dewi d/o Poologanathan and Seetha Lkshmi P S Krrishnan (Yeo Perumal Mohideen Law Corporation) for the applicant; Thomas Lei (Lawrence Chua & Partners) for the respondents

Parties : Karuppiah Ravichandran — GDS Engineering Pte Ltd; United Overseas Insurance Ltd

Employment Law – Commissioner for labour – Appeal against Commissioner's decision – Whether Commissioner had failed to apply presumption under s 3(6) Workmen's Compensation Act (Cap 354, 1998 Rev Ed) – Whether there was a substantial question of law – Section 29(2A) Workmen's Compensation Act (Cap 354, 1998 Rev Ed)

19 May 2009 Judgment reserved.

Kan Ting Chiu J:

1 The applicant is seeking to have the decision of the Commissioner for Labour against him set aside or reversed. The applicant had made a claim for compensation under the Workmen's Compensation Act (Cap 354 1998 Rev Ed)) for back injuries he said he had sustained on 26 April 2006 while he was lifting a motor pump in the course of his work. (This Act was amended and renamed the Work Injury Compensation Act on 1 April 2008. I shall refer to the Act in its pre and post amendment forms as "the Act".)

2 The applicant's employers are liable to pay compensation under s 3(1) of the Act:

> 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.

3 The applicant's claim came on for hearing before a Commissioner of Labour ("Commissioner") between 29 August 2007 and 8 May 2008. After hearing the evidence of the applicant, a co-worker and their supervisor who were present at the time of the alleged accident and two doctors who saw the applicant, the Commissioner found that the applicant had not incurred the back injuries out of and in the course of his employment.

4 The applicant was not satisfied with the Commissioner's decision and applied to have it set aside or reversed. However, his right of appeal against the Commissioner is limited under s 29(2A) of the Act which states:

> No appeal shall lie against any order [of the Commissioner of Labour] unless a substantial question of law is involved in the appeal and the amount in dispute is not less than $1,000.

5 In the application, the applicant stated that substantial questions of law were involved in this matter and set out a list of 23 criticisms and disagreements the applicant had against the

Commissioner's findings. Matters came into sharper focus when the application came on for hearing, and in the written closing submissions, the grounds were narrowed to:

a) The Commissioner had failed to apply the presumption under Section 3(6) of [the Act] and as such had failed to shift the burden of proof onto the Respondents as required under Section 3(6) of [the Act]; and

b) The Commissioner had failed to decide the case based on the evidence tendered in Court and had come to her decision based on evidences [*sic*] not tendered in Court.

6 Section 3(6) states:

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.

7 The effect of s 29(2A) is that the decisions of the Commissioner are not appealable unless:

(i) a substantial question of law is involved; and

(ii) the amount in dispute is not less than $1,000.

(In this application, there was no issue with regard to the second requirement.)

8 This provision reflects a policy decision that work injury claims are to be heard by the Commissioners and that their decisions are final, save where substantial serious questions of law are involved, and even then, only in cases where the amount in dispute is not less than $1,000.

9 Decisions of the Commissioner are not to be examined as though they are decisions of a court of law. Their hearings are not conducted as hearings in courts of law. The rules of evidence do not have to be applied strictly; reg 16 of the Workmen's Compensation Regulations which was in force till 1 April 2008, and reg 9 of the Work Injury Compensation Regulations 2008, which came into force on the same day, state that:

The Evidence Act (Cap. 97) and any other law relating to evidence need not be followed strictly in all proceedings before the Commissioner.

10 What is a "substantial question of law" that is needed under s 29(2A)? Counsel for the employers referred to the decision of the Indian Supreme Court in *Kondiba Dagadu Kadam v Savitribai Sopangujar & Ors* [1999] 2 LRI 617. This was not a work injury claim. It was a claim for specific performance arising from a disposal of agreement for the sale of land. When the claim was dismissed, the plaintiff appealed against the decision and the appeal (the first appeal) was allowed. However, the defendant then lodged an appeal (the second appeal) to the High Court, which reviewed the evidence and interfered with the findings of the first appellate court. The matter then went before the Supreme Court on the question whether the High Court should have heard the second appeal. The right to appeal to the High Court was governed by s 100 of the Code of Civil Procedure 1908:

Second appeal. – (1) Save as otherwise expressly provided in the body of this Code or by any

other law for time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

11 The Supreme Court set aside the decision of the High Court and restored the decision of the first appellate court. In the judgment delivered by R P Sethi J, he quoted with approval in [3] a passage from another decision of the Supreme Court in *Sir Chunilal V Mehta & Sons Ltd v Century Spinning and Manufacturing Co Ltd* AIR 1962 SC 1314; [1962] Supp 3:

> The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd, the question would not be a substantial question of law.

and at [5] Sethi J added that:

> If the question of law termed as substantial question, stands already decided by a larger bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on the facts of the case would not be termed to be a substantial question of law. Where a point of law has not been pleaded or is found to be arising between the parties in the absence of any factual format, a litigant should not be allowed to raise that question as a substantial question of law in second appeal. The mere appreciation of the facts, the documentary evidence or the meaning of entries and the contents of the document cannot be held to be raising a substantial question of law.

12 Sethi J found that the findings of the first appellate court were based on an appreciation of the evidence, and the finding was not perverse or unsupported by evidence, and he concluded in [7] that:

> No question of law much less any substantial question, was involved in the second appeal requiring interference by the High Court in exercise of its jurisdiction under s 100 of the Code of Civil Procedure.

13 These decisions of the Supreme Court do not appear to have been considered by our courts, which have taken a broader approach to the issue. In *Ng Swee Lang and Another v Sassoon Samuel Bernard and Others* [2008] 1 SLR 522, Andrew Ang J reviewed the decisions on the "question of law" issue. He referred to cases on appeals from arbitration awards, namely *Northern Elevator Manufacturing Sdn Bhd v United Engineers (Singapore) Pte Ltd (No 2)* [2004] 2 SLR 494, *Ahong Construction (S) Pte Ltd v United Boulevard Pte Ltd* [2000] 1 SLR 749, and on appeals from statutory bodies, namely, *MC Strata Title No 958 v Tay Soo Seng* [1993] 1 SLR 870 and *Koh Gek Hwa v Yang Hwai Ming* [2003] 4 SLR 316. He also quoted a passage from *Halsbury's Laws of England* Vol 1(1) (Butterworths, 4th Ed Reissue 1989) ("*Halsbury*") 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.

and a passage from Lord Radcliffe's judgment in *Edwards v Bairstow* [1956] AC 14 at 35–36 that:

> If a party to a hearing before commissioners expresses dissatisfaction with their determination as being erroneous in point of law, it is for them to state a case and in the body of it *to set out the facts* that they have found as well as their determination. … If the case contains anything *ex facie* which is bad law and which bears upon the determination, it is, obviously, *erroneous in point of law*. But, without any such misconception appearing ex facie, it may be that the facts found are such that no person acting judicially and properly instructed as to *the relevant law* could have come to the determination upon appeal. In those circumstances, too, the court must intervene. It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination. So there, too, there has been error in point of law. [emphasis added]

14 Ang J came to the conclusion that the "question of law" test for appeals from arbitrators is different from the test for appeals from statutory board decisions, and that for the latter appeals, the quoted passages from *Halsbury* and *Edwards v Bairstow* apply, and I concur with his conclusion.

15 I do not think the passage from *Halsbury* means that any one of the listed errors would constitute a sufficient error of law for an appeal. The nature and effect of the error should be considered and there will be appeals when there are errors which have a bearing on the ultimate decision. For the present purposes, the requirement for there to be a *substantial* question of law makes that abundantly clear.

16 When Lord Radcliffe referred to findings *ex facie* erroneous in point of law and to findings which no person properly instructed on the proper law could have come to, I understand the second category of findings to be findings that no person would have come to if he had applied the law properly. It does not mean that every manifestly wrong finding of fact amounts to an error of law.

17 In *Next of kin of Ramu Vanniyar Ravichandran v Fongsoon Enterprises (Pte) Ltd* [2008] 3 SLR 105, errors in findings of fact arising out of errors of law were found to be made by the Commissioner. This case also arose from a claim under the Workmen's Compensation Act. The issue was whether a workman who died whilst operating a forklift was an employee of a company. He had been engaged on a part-time basis by Meera, the foreman of the company. The Commissioner found that the deceased was not an employee of the respondent company because:

(i) Meera "had no authority implied or otherwise" to employ the deceased; and

(ii) there was no evidence that the deceased was using the fork lift for the purposes of or in connection with the respondent's business.

18 On appeal to the High Court, Choo Han Teck J confirmed that Meera had no actual authority to engage the deceased. After a review of the evidence, Choo J concluded at [22] that:

> 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 at [25] that the issue was not to be decided by Meera's express or implied authority, and that:

> 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 he found that there was apparent authority.

19 As for the question whether the deceased was driving the forklift for some purpose that was in connection with the respondent's work, Choo J found at [29] that:

> … 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 [Workmen's Compensation Act] would avail him, and the accident would still be deemed to have arisen in the course of his employment with the respondent.

20 Having found that the Commissioner had made these wrong findings of fact resulting from errors in not considering apparent authority and not applying s 3(4), Choo J held that substantial questions of law had been raised, and allowed the appeal. The point to note is that the two errors related to the application of the law, and they had led the Commissioner to reject the claim for compensation.

21 The applicant argued that the Commissioner had erred in failing to apply the presumption in s 3(6) that:

> 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.
>
> [emphasis added]

22 The applicant argued that when the Commissioner held that:

> Having analysed the evidence vis-à-vis the demeanour of the witnesses, I find that the claimant had not proven his case on a balance of probabilities.

she had placed the burden of proof on the applicant when the burden was on the respondent to rebut the presumption.

23 That part of the Commissioner's grounds must be read with a latter part of her grounds where she stated:

> For the foregoing reasons, I find that *the claimant had not suffered the alleged accident* to his back on 260406 at the MI at Bukit Batok site out of and *in the course of his employment* with GDS.
>
> [emphasis added]

but the applicant did not give equal attention to.

24 It is important to place equal weight to both parts of the grounds. The presumption in s 3(6)

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

25 The applicant took issue that the Commissioner did not make reference to s 3(6) and may have been unaware of it. The Commissioner's silence does not imply ignorance or oversight because the effect of the findings was that the presumption did not apply. Even if the Commissioner had overlooked the presumption (and it is not clear that she did that), the fact remained that on her findings, the presumption did not apply.

26 The Commissioner found there was ambiguity whether the applicant had lifted the pump and contradictory accounts by the applicant of the back pains he experienced at the time of the accident.

27 The Commissioner referred to the evidence of the applicant, his supervisor Lim Beng Huat, his co-worker Sangaran Jayaprahash and two doctors, Dr S R E Sayampanathan and Dr Yu Ching Sing, who saw the applicant before she made her findings.

28 Counsel for the applicant submitted that the findings were not supported by the evidence, and referred to the notes of evidence to support her contention that the Commissioner had erred in her reading of some parts of the evidence.

29 On examining the submissions, I find that the complaints do not relate to questions of law (such as the alleged failure to apply the presumption in s 3(6)), and no error of law can be assumed to have been made which resulted in those findings. If the findings were wrong, they were errors of fact which did not point to any question of law.

30 Consequently, the applicant has not made out a case under s 29(2A) that there is any substantial question of law involved in the appeal, and the Commissioner's decision is therefore final. The application is dismissed with costs.