

Employment Update¹

Clarifying and Possible Changes to the Operation of Singapore's Statutory Work Injury Compensation Scheme.

- *Case Update of MST Ruma Khatun v T & Zee Engineering Pte Ltd and another [2017] SGHC 115*

I. Introduction

In Singapore, an employee can claim for work injury compensation against his employer either through the civil courts or the statutory work injury compensation scheme pursuant to the Work Injury Compensation Act² ("WICA"). As the scheme ("WICA Scheme") provides a relatively quicker and cheaper means to have a claim decided, this is preferred, especially if higher litigation costs can be avoided. WICA sets out a clear process for how the scheme operates and it is administered by the Commissioner for Labour ("Commissioner")³.

On 23 May 2017, the Singapore High Court ("HC") released its decision⁴ ("HC Decision") on an appeal brought against the decision of the Assistant Commissioner⁵ for Labour under WICA ("Commissioner's Decision"). The HC Decision is noteworthy as it clarifies many important and practical aspects on the operation of the WICA Scheme. Not only that, this HC Decision is likely to result in changes to WICA or its present implementation.

II. Key Takeaways

The key takeaways of the HC Decision are:

- 1) A further objection to a Notice of Assessment may be raised after the expiry of the prescribed objection period, provided that the notice has not taken effect as an order of the Commissioner⁶ and subject to the below consideration⁷.

¹ The author extends his heartfelt gratitude to Ms Mary Lisa Chua for her assistance with this article.

² CAP 354, 2009 Rev Ed.

³ Section 2 of WICA.

⁴ *MST Ruma Khatun v T & Zee Engineering Pte Ltd and another* [2017] SGHC 115

⁵ Pursuant to Section 2A of WICA, Assistant Commissioner(s) may be appointed to assist the Commissioner and exercise his power as delegated.

⁶ Section 24(3) of WICA provides that a notice of assessment of compensation that is served on an employer and the person claiming compensation shall be deemed to have been agreed upon by the employer and the person claiming compensation and shall have the effect of an order under Section 25D if no objection is received after 14 days or all objections raised are withdrawn within 28 days.

⁷ Paragraphs 61 to 63 of the HC Decision.

- a. A late objection must be raised in the prescribed form, and not orally.⁸
- b. The factors (“Extension of Time Factors”) to be considered are:⁹
 - i. The length of the delay;
 - ii. The reasons for the delay;
 - iii. The chances of the objection succeeding if the late objection were allowed;
and
 - iv. The prejudice caused to the opposing party if the late objection were allowed.

Relying on a late objection is highly discouraged. An employer or insurer should remain prudent in setting out all objections comprehensively within the prescribed period upon receiving the Notice of Assessment.

- 2) If an appeal against a Commissioner’s decision to the High Court were filed out of time, the same Extension of Time Factors apply for the High Court to determine if the late appeal would be allowed.¹⁰ In this specific case, the High Court found that the purported unclarity of when the period to file an appeal commences was an understandable reason, which resulted in the delay.¹¹ Moreover, the chances of the appeal were not weak¹² and there was no additional undue prejudice to the other party.¹³
- 3) As an observation, this HC felt that the prescribed period for a party to appeal a preliminary order or decision of the Commissioner to the High Court commences from the date of the substantive decision by the Commissioner.¹⁴
 - a. As this is merely persuasive at present, a party should be prudent and appeal any decision of the Commissioner, preliminary or otherwise, within 28 days from the date such decision was given.
- 4) It was further observed that the term “Labour Court” should no longer refer to the Commissioner when it acts as a tribunal pursuant to any written law.¹⁵ It is likely that the Ministry of Manpower

⁸ Paragraph 59 of the HC Decision.

⁹ Paragraphs 63 and 39 of the HC Decision.

¹⁰ Paragraph 39 of the HC Decision.

¹¹ Paragraph 40 of the HC Decision.

¹² IBID.

¹³ IBID.

¹⁴ Paragraphs 38 of the HC Decision.

¹⁵ Paragraph 33 of the HC Decision.

will soon refer to the “Labour Court” by a different name.

- 5) The HC highlighted and urged that the many mismatches between WICA and its operation should be reconciled.¹⁶ All relevant parties should be alive to the likelihood of existing forms and practical procedures being amended. Alternatively, the WICA may be amended instead.

III. Brief Summary of the Case

After the demise of a worker (“Worker”)¹⁷, the next-of-kin (“Claimant”) lodged a work injury compensation claim under WICA. A Notice of Assessment (“Notice”) was subsequently issued, validating the claim and computing the compensation amount payable to be \$170,000¹⁸.

Upon being served with the Notice, the employer’s insurer, Liberty Insurance Pte Ltd (“Insurer”), filed its written objection on the prescribed form on the basis that the Worker was not employed by the employer, T & Zee Engineering Pte Ltd (“Employer”), at the material time (“Employee Objection”).¹⁹ The Employer also filed its own objection on the same ground thereafter shortly²⁰. Both objections were filed within the prescribed objection period of 14 days²¹.

During the hearing phase and after the prescribed objection period, the Insurer raised two additional grounds of objections orally: 1) the insurance policy only covers workers working as “tilers”, but the worker was performing electrical works before his death (“Tiler Objection”) and 2) the policy only insures up to five employees, but the Employer had employed more than five employees at the material time (“Headcount Objection”).²²

On 17 March 2016 and as a preliminary matter, the Assistant Commissioner for Labour (“AC”) decided to allow the Tiler Objection and the Headcount Objection to be raised, though the Claimant had objected to them as these were raised after the prescribed objection period.²³ The matter proceeded and the written grounds of decision and the certificate of order were issued subsequently on 23 June 2016.²⁴

The AC had allowed the Insurer to raise the 2 late objections as she concluded that she had the discretion to extend the prescribed objection period of 14 days until the day of the hearing.²⁵ The AC

¹⁶ See Section V of this article.

¹⁷ Paragraph 17 of the HC Decision.

¹⁸ Paragraph 18 of the HC Decision.

¹⁹ Paragraph 19 of the HC Decision.

²⁰ IBID.

²¹ IBID.

²² Paragraph 20 of the HC Decision.

²³ Paragraphs 21 and 22 of the HC Decision.

²⁴ Paragraph 22 of the HC Decision.

²⁵ Paragraph 23 of the HC Decision.

thought proper to exercise her discretion because the Insurer had already filed an initial written objection on liability, and merely followed up with additional grounds orally at the hearing.²⁶ Furthermore, the late oral objections were related to policy coverage, to which the initial written objection also related, as opposed to them being unrelated or fresh.²⁷

Substantively, the AC decided, based on the Tiler Objection alone, the policy issued by the Insurer was not engaged by the work injury compensation claim.²⁸ Dissatisfied with the AC's final decision, the Claimant appealed to the HC.²⁹

Naturally, the Claimant's case for the appeal was that AC did not have the discretion to allow the Insurer to make additional oral objections outside of the prescribed objection period unless an application for an extension of time was made before the expiry thereof.³⁰ Even if the AC had such discretion, she had wrongly exercised that discretion because the Insurer had no good reason for its delay in raising the Tiler Objection.³¹

Conversely, the Insurer's case was that the AC had the discretion to allow Liberty to make additional oral objections outside of the prescribed objection period, and she had correctly exercised her discretion.³² Additionally, the Insurer raised a preliminary argument that the appeal to the HC was filed out of time by the Claimant.³³

IV. Holdings of the Decision

The issues to be determined in this appeal were:³⁴

- 1) Whether the appeal against the AC's decision to the HC was out of time, and, if so, whether an extension of time ought to be granted ("First Issue"); and
- 2) Whether the AC had the discretion to allow the Insurer to make additional oral objections outside of the prescribed objection period and not in the prescribed form, and if so, whether the AC had correctly exercised her discretion in allowing the Tiler Objection to be made ("Second Issue").

²⁶ IBID.

²⁷ IBID.

²⁸ Paragraph 24 of the HC Decision.

²⁹ Paragraph 1 of the HC Decision.

³⁰ Paragraph 25 of the HC Decision.

³¹ IBID.

³² Paragraph 26 of the HC Decision.

³³ IBID.

³⁴ Paragraph 27 of the HC Decision.

The First Issue arose because under the Rules of Court³⁵ (“ROC”), which govern an appeal to the High Court, there are 2 possible reference dates from which the period limited to file an appeal (“appeal period”) begins. This depends on who renders the decision. If it is a decision of a Court, the appeal period commences from the date of the judgment or order or the date on which the decision was given.³⁶ If it is a decision of other entities, the appeal period commences from the date on which notice of that decision was given to the appellant.³⁷ In this case, there was a disagreement as to whether the “Labour Court” is a Court or otherwise.³⁸

In respect of the First Issue, the HC felt that even if the appeal had been out of time, the HC would have granted an extension of time.³⁹ Considering the Extension of Time Factors, the reason for the delay was the most important factor.⁴⁰ It was unclear when the appeal period starts to run and it was understandable why the Claimant thought that time starts to run only when the certificate of order was issued.⁴¹ Moreover, the chances of the appeal succeeding were not weak and there was no undue prejudice to the Insurer beyond the usual prejudice if an extension of time was granted.⁴²

The HC therefore did not decide if the “Labour Court” is a Court.⁴³ However, the HC was of the tentative view that “Court” as used in the ROC refers to one established by legislation, as it has a formal meaning.⁴⁴ It does not include any tribunal or person or committee or organisation which conducts a hearing.⁴⁵ Otherwise, there will be more uncertainty.⁴⁶

In respect of the Second Issue, the HC found that a late objection must also be made in the prescribed form, as in the case of an objection made in time.⁴⁷ Further, the AC did have the discretion to allow a late objection to be made before the Notice of Assessment takes effect as an order of the Commissioner.⁴⁸ However, such discretion is fettered. The HC held that the Extension of Time Factors were applicable guidelines in determining if such a discretion should be exercised. In this case, the AC had incorrectly exercised her discretion. In the context of a WICA Scheme, where the purpose is to facilitate expeditious payment to a worker on a no-fault basis, the most important consideration was the reasons for the delay. In this case, there was no good reason for the failure to raise the Tiler Objection

³⁵ R 5, Cap 322, 2004 Rev Ed.

³⁶ Order 55 rule 3(3) ROC.

³⁷ Order 55 rule 3(4) ROC.

³⁸ Paragraphs 29 and 31 of the HC Decision.

³⁹ Paragraph 39 of the HC Decision.

⁴⁰ Paragraph 40 the HC Decision.

⁴¹ IBID.

⁴² IBID.

⁴³ Paragraph 39 of the HC Decision.

⁴⁴ Paragraph 37 of the HC Decision.

⁴⁵ IBID.

⁴⁶ IBID.

⁴⁷ Paragraph 59 of the HC Decision.

⁴⁸ Paragraph 63 of the HC Decision.

within the prescribed objection time.⁴⁹ This was because the incident report had stated clearly that the Worker's job was an "Electrical Worker". Moreover, though both the Employee Objection and Tiler Objection relate to policy coverage, they were however different specific grounds.

V. Mismatches between how the WICA Scheme should be and is implemented.

This HC Decision is additionally noteworthy as the HC made significant observations on the mismatches between the WICA and its implementation. The HC further urged that they are resolved.⁵⁰ It is therefore likely that certain existing practices or forms would be amended, or the WICA itself.

First, the HC observed that the term "Labour Court" is unofficial as it is not a court constituted by any statute or subsidiary legislation.⁵¹ WICA refers only to a Commissioner for Labour.⁵² The term "Labour Court" has therefore been inaccurately used and such usage should cease to avoid confusion.⁵³

The second mismatch brought up by the HC concerns the insurer's role in the WICA Scheme and the *locus standi* between an insurer and a person claiming compensation.⁵⁴ Sections 24(2) and 25(1) of the WICA, which concern the service of the Notice of Assessment and giving Notice of Objection thereto respectively, make reference only to "employer" and "person claiming compensation". Nevertheless and additionally, a Notice of Assessment would be issued to the insurer as well.⁵⁵ The insurer would also be designated as "payer" on the Notice of Assessment, though its liability under the insurance policy has yet to be determined.⁵⁶ Furthermore, the insurer is allowed to object to the Notice of Assessment.⁵⁷

Consequential from the aforesaid, the deeming provision of Section 24(3) of the WICA is another source of mismatch. This section provides that where an employer fails to object, the Notice of Assessment is deemed to have been agreed upon by the employer and the person claiming compensation. In practice however, if the employee does not object but the insurer has objected, the notice of assessment would not be treated as having been agreed upon.⁵⁸

Fourth, Sections 25B and 25D of the WICA contemplate that only "parties" may attend pre-hearing conferences and hearings. Considering the earlier provisions, "parties" would mean only employer and

⁴⁹ IBID.

⁵⁰ Paragraphs 16 and 55 of the HC Decision.

⁵¹ Paragraph 33 of the HC Decision.

⁵² IBID.

⁵³ IBID.

⁵⁴ Paragraph 16 of the HC Decision.

⁵⁵ Paragraph 10 of the HC Decision.

⁵⁶ IBID.

⁵⁷ Paragraph 12 of the HC Decision.

⁵⁸ Paragraph 55 of the HC Decision.

the person claiming compensation. Be that as it may, the Commissioner includes the insurer in the pre-hearing conference⁵⁹ and the hearing.⁶⁰ In fact, the insurer is also permitted to ask witness of any other party questions.⁶¹

The HC presumed that the above is practiced because Section 32(1) of the WICA permits any proceedings against an employer to be brought against its insurer directly as if the insurer were the employer.⁶² However, this practice is inconsistent with this provision, which contemplates separate proceedings against either the employer or the insurer.⁶³

Last, there is a mismatch concerning the current practice of postdating the Notice of Assessment to give parties more time to file objections. Under Section 25(1) of the WICA, parties have up to 14 days from the service of the said notice to object. If the intention were to afford more time, then Section 25(1) of the WICA should be amended, rather than relying on an extra-legal process that might “undermine the integrity of the process or cause confusion”.⁶⁴

VI. Conclusion

While this case did not fully decide the issues raised by the appeal, it remains noteworthy as it clarifies several aspects of WICA and its implementation. Owing to the unequivocal urging of the High Court in resolving the numerous mismatches highlighted, it is likely that either WICA would be amended or there would be changes to existing prescribed forms and practices. Clients should be alive to these. Last and with all types of proceedings, it is always prudent to raise all objections comprehensively before any prescribed deadline where possible.

The views expressed in this article are those of the author. This article is not intended to be comprehensive nor should it be construed as legal advice. Please contact the author below if you need legal advice or you wish to discuss the above article. This article is written on 9 June 2017.



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⁵⁹ Paragraph 13 of the HC Decision.

⁶⁰ Paragraph 14 of the HC Decision.

⁶¹ IBID.

⁶² IBID.

⁶³ Paragraph 15 of the HC Decision.

⁶⁴ Paragraph 18 of the HC Decision.