# Working MOM – Calibrating the broadening scope of the Work Injury Compensation Regime

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It is no secret that the Work Injury Compensation regime, codified through the Work Injury Compensation Act ("**WICA**"), is structured in a manner that is often perceived to be generous towards injured workers. Indeed, the High Court has previously described the WICA as "social legislation" that should therefore be "interpreted purposively in favour of employees who have suffered injury during their employment" (see *Pang Chew Kim v Wartsila Singapore Pte Ltd*, [2011] SGHC 94; [2012] 1 SLR 15 at [27]). The High Court's recent decision in *Hauque Enamul v China Taiping Insurance* (Singapore) Pte Ltd, [2018] SGHC 118; [2018] 5 SLR 485 ("***Hauque Enamul***") is but the latest example of the Court's purposive interpretation of the WICA so as to give effect to the legislative intent of social insurance, while seeking to refrain from opening the floodgates to a flurry of tenuous claims from injured workers at the expense of employers or insurers.

**Facts, issues and decision**

In *Hauque Enamul*, the Claimant alleged that he had been injured on 8 August 2015 while lifting pipes at work and was then brought to hospital. However, the relevant medical reports, which were written based on information given through a translator, appeared to suggest that the Claimant sustained the injury on 7 August 2015, which was not a working day. At first instance, the MOM Assistant Commissioner dismissed the Claimant's claim on the basis that the Claimant's medical reports stated that his injury was sustained on 7 August 2015. The Claimant appealed to the High Court.

The High Court had to determine the following issues:-

(a) The preliminary issue of whether the appeal was properly brought within the WICA dispute resolution framework;
(b) Whether the Claimant's injury was caused by an accident; and
(c) Whether the accident arose out of and in the course of employment.

The High Court's decision may be summarised as follows:-

(a) The dispute involved a substantial question of law that would qualify for an appeal under the WICA dispute resolution framework;
(b) On a balance of probabilities, the Claimant had met with an accident on 8 August 2015 as claimed – the MOM Assistant Commissioner had placed excessive weight on the error in date as stated in the medical reports; and
(c) The Claimant's injury was therefore caused by an accident in the course of his employment, and would be presumed as arising out of the same in the absence of evidence to the contrary.

In arriving at its decision, the High Court discussed in some depth the effect of the rebuttable presumption established in Section 3(6) of the WICA that an accident that arises *in the course of* employment would be deemed to have arisen *out of* that employment. In effect, the claimant only needs to prove on a balance of probabilities that his injury was caused by an accident arising *in the course of* his employment, i.e. there is some temporal relationship between the accident and the employment. For instance, the claimant can show that the accident occurred during his working hours while he was at his place of work. The burden of proof would then shift to the party denying the claim to establish that the said accident did not *arise out of* the claimant's employment, i.e. it arose out of something the claimant did that was not connected with his employment.

**Apportioning the burden of proof**

Following from the High Court's discussion of the presumption in Section 3(6) of the WICA, the statutory posture is effectively such that the burden of proving or disproving particular elements of a Claimant's claim is apportioned between the parties. This is consistent with the legislative intent of facilitating a form of social insurance by allowing injured workers to bring their claims without having to first demonstrate any fault on the part of the employers (or for that matter, factor in contributory negligence on the part of the employee). Indeed, it makes intuitive sense as the employers should be better placed to produce the relevant documentation and records in order to establish the extent of an employee's job scope, and therefore to assist the Court's determination of whether an accident arose *out of* the employment.

At the same time, some balance is maintained by still requiring the Claimant to bear the initial burden of showing some temporal link between his accident and his employment. A worker who is unable to prove that an accident had taken place in the course of his employment will not be able to trigger the statutory presumption and shift the burden of proof to the opposing party. Our firm recently acted for insurers to dispute a worker's WICA claim where bare allegations were made concerning a back injury sustained, without any evidence of an accident occurring in the course of the Claimant's work. After hearing parties' evidence, the MOM Assistant Commissioner held that the statutory presumption was not triggered and dismissed the claim.

**Recalibration to promote fairness**

At the same time, it is evident from the regular substantive amendments to the WICA legislation (the most recent being in 2008, 2011 and 2016) that parliament is still in the process of tweaking the WICA regime to ensure optimum performance. We are of the humble view that the WICA regime as a whole may benefit from some slight recalibration in order to ensure fairness in implementation.

One such potential aspect for review arises in the assessment and calculation of permanent incapacity. Presently, medical professionals are guided by the MOM's *Guide to the Assessment of Traumatic Injuries and Occupational Diseases for Work Injury Compensation* to fill in a standard form assessing an injured worker's permanent incapacity based on his or her residual condition after undergoing medical treatment. In assessing the Claimant's permanent incapacity, the medical professional is presently not guided to highlight any possible issues of causation or if the Claimant's accident merely aggravated a pre-existing injury. This may at times result in over-compensation where a Claimant's injuries further to his accident actually did not cause the full extent of permanent incapacity assessed. The following suggestions may be worth consideration:-

(a) In appropriate cases, to allow medical professionals to specify a pre-accident and post-accident level of incapacity, so that the Claimant can be suitably recompensed for the portion of incapacity brought about as a result of his accident-related injuries; and
(b) To recognise that the issue of causation of injuries (and permanent incapacity) may be a legal question suitably traversed at the hearing before the MOM Assistant Commissioner, rather than being viewed purely as a medical opinion that cannot be disturbed other than through referrals to the Medical Board.

Another possible area that may require recalibration is in the arena of occupational diseases. Pursuant to Section 4(1) of the WICA, if a Claimant is able to demonstrate that he falls under the purview of the specified occupational diseases, the related job description and timeline stated in the Second Schedule, any incapacity or death that results from this occupational disease will be treated "as if the disease were a personal injury by accident arising out of and in the course of that employment". However, the reality is that some of the occupational diseases described in the Second Schedule may be gradual in their onset and vary in severity. This equally means that treatment or surgical intervention, at least at the earlier stages of such occupational disease, may be elective. For instance, our firm recently acted for insurers in disputing (and eventually settling) a worker's claim where he had been seeking treatment for cataracts for several years while still being employed in his job, before finally undergoing cataract removal surgery in 2017. Other occupational diseases in the Second Schedule such as musculoskeletal disorders, noise-induced deafness or occupational asthma may also similarly see gradual onset. Further clarification would be welcome to establish if gradually occurring occupational diseases should reach a certain level of severity or treatment before they fall under the scope of the Second Schedule.

**Conclusion**

The WICA regime is likely to require regular / constant recalibration in order to promote a fair balance between the interests of injured workers, employers and insurers. As things presently stand, the relevant statutory framework is largely interpreted in a manner geared to give effect to the legislative intent of social insurance, while still requiring some measure of proof from the Claimant. At the same time, the framework as a whole might also benefit from some clarification to facilitate fairness in implementation, particularly in relation to the causation of injuries / permanent incapacity and the treatment of occupational diseases.

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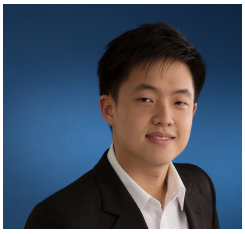


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