Insurance & Personal Injury

What is the Meaning of “Injury by Accident” in the Context of Employees’ Compensation?

Introduction

Pursuant to section 5(1) of the Employees’ Compensation Ordinance, Cap.282, if in any employment, personal injuries by accident arising out of and in the course of employment is caused to an employee, his employer shall be liable to pay compensation in accordance with the Ordinance. It is generally and rightly understood that “accident” excludes injury caused by disease or self-infliction and “accident” is associated with something external, such as slip and fall caused by slippery floor condition, hit by fallen object or back sprain in manual lifting. An exploration of the case law reveals that “injury by accident” has a much wider meaning.

The meaning of “injury by accident” in the UK

In *Fenton v J. Thorley & Co. Limited*, the injured worker tried to move a wheel of a machine which could not turn. In the course of doing so, he felt “a tear in his inside”. It was later found that by the act of over-exertion in trying to turn the wheel, the injured worker broke the wall of his abdomen.

The House of Lords in considering the term of “accident” stated that “accident” denotes an unlooked-for mishap or an untoward event which is unexpected or unintended and produces hurt or loss. It is unnecessary to show any sudden occurrence in order to prove the presence of “accident”. If a workman, in the reasonable performance of his duties, sustains a physiological injury as a result of the work he is engaged in, it is an injury by accident arising out of his employment. In common language, it was a case of accidental injury in the course of employment. Therefore, despite absence of evidence of any slip, wrench or sudden jerk, the House of Lords held that there was an accident.

In *Clover, Clayton & Co. Ltd. v Hughes*, the deceased worker suffered from the disease of aneurism in a very advanced state. The aneurism might have burst even without the accident, for example, while he was asleep. At the time of the accident, the deceased worker was tightening a nut with a spanner. He ruptured the aneurism and died.

In his finding of liability in favour of the deceased worker, Lord Loreburn stated that “I think it may also be something going wrong with the human frame itself, such as the straining of a muscle or the breaking of a blood vessel. If that occurred when he was lifting a weight it would probably be properly described as an accident. So, I think, rupturing an aneurism when tightening a nut with a spanner may be regarded as an accident”. Therefore, “injury by
“accident” includes disease by accident. It is not necessary to show a sudden dramatic occurrence. It is sufficient that if the employment is one of the contributing causes without which the accident which actually happened would not have happened. In other words, the accident does not need to be the sole cause for the injury.

**Hong Kong cases**

The above two leading English cases have been cited and followed by Hong Kong courts. The notable Hong Kong cases are:

In *Ho Woon-king v The Hong Kong & Kowloon Wharf & Godown Co. Ltd.*, the deceased worker whilst turning the rope to coil it around a bollard at the deck of a lighter, suffered a stroke and died 2 weeks later of cerebral haemorrhage. It was found that the deceased worker, unknown to himself, had a pre-existing cerebral vascular disease. The manual labour caused or accelerated the attack of cerebral haemorrhage. The Court held that although the deceased worker had a pre-disposing physical condition, the work he was doing contributed to his death. He died as a result of an accident arising out of and in the course of his employment.

In *Lam Sik v Sen International Ventures Corp (HK) Ltd.*, the injured worker was a garbage collector. He had been working long and hard before he blacked out. The medical expert could not tell the exact cause of the blackout but suggested fatigue. The Court found that it was more probable than not that the injured worker fell as a result of a blacking out which was brought on by fatigue caused by the strenuous work that he had been doing before the accident.

In *Yip Ho v Hong Kong & Kowloon Wharf & Godown Company Limited*, the deceased worker worked every day for 4 or 5 years. The work of the day of accident was particularly heavy. The deceased worker was found lying unconscious in the toilet. The cause of death was myocardial infarction. The medical expert could not say that (i) if the deceased worker had not worked on that day, he would not have died and would probably die on a later date, and (ii) even if the deceased worker had rested at home, he would have died on that day. The Court found that probably the deceased worker’s condition had gradually deteriorated over a prolonged period owing to continuous strain of work. The additional workload on the day of accident operated on his already weakened physical condition in such a way as to cause his death. It was the disease and strain of work that caused the death of the worker.

In a recent case *Chau Shui v Tai Tau Tsai Environmental Engineering Limited* (judgment was handed down on 27 March 2015), the injured worker was an odd job worker on a construction site. At the time of the accident, the injured worker was assisting in the lifting of 2 stack-up wooden boxes by crane. Due to the narrowness of the working space, the injured
worker adopted an awkward bending posture to pass a strap underneath wooden boxes to his co-worker on the other side. As soon as the injured worker stood up again, he felt numbness in his legs. His condition deteriorated rapidly and he became wheel-chair bound eventually.

The diagnosis is spinal infarction with paraplegia. Medical evidence reveals that the injured worker had pre-existing disc prolapse but disc bulging at T2/3 and T9/10 was mild.

Most cases of infarction are due to aortic disease, diabetes or hypertension. One possible cause of spinal cord infarction is compression of the spinal arteries against a protruded inter-vertebral disc. There are also medical case reports reporting cases of cord infarction after minor trauma such as after weight lifting or waist bending.

The expert for the injured worker concedes that he does not know the direct cause of the injured worker's spinal cord infarct. He admits that it is possible there are other causes of spinal infarction which may not be connected to body movement. However, the expert believes the disc prolapse suffered by the injured worker is a probable cause of the spinal cord infarct as the injured worker does not have any history of aortic disease, diabetes, hypertension or other risk factors. The only physiological abnormality detected in the injured worker is the disc protrusions at T2/3 and T9/10. The expert opines that the onset of the spinal cord infarct occurred soon after the incident. The posture adopted by the injured worker involved bending of his body. This posture might have caused the spinal arteries to have compressed against the protruded inter-vertebral discs in the injured worker's spine.

Both experts cannot completely rule out the possibility that the injured worker's disc prolapse caused or triggered the onset of the spinal cord infarct after the awkward position adopted by him in carry out his work duties.

The Court found that the facts and medical evidence suggest the accident caused a physiological change in the injured worker and somehow triggered the onset of the spinal cord infarction. After referring to the above English cases, the Court held that disc prolapse together with the awkward posture that the injured worker adopted is a cause of his spinal cord infarct. The spinal cord infarct is an injury caused by the accident.

In contrast to the above cases, in Sit Wing Yi Sibly v Berton Industrial Ltd., the claim for employees' compensation was dismissed. In Sit, the deceased worker was discovered slumped on the floor of a toilet at work with blood in his mouth and nose. He died before reaching hospital. The cause of accident could not be determined at all.
The Court of Final Appeal held that the expression “injury by accident” encompasses cause and effect, with accident as the cause and injury as the effect. The accident must be distinct from the injury, with the accident being at least a contributory cause and injury being the effect. Without a known cause of death, the injury could hardly be “by accident”. Since there is no evidence to suggest that the death was due to a pre-existing condition or previous medical conditions, it follows that there is no evidence to show that the death was a result of the deceased worker’s employment.

Conclusion

The propositions of the above cases can be summarized as follows:-

1. The term “injury by accident” means unlooked-for-mishap or an untoward event which is unexpected or unintended and produces hurt or loss. The term simply means nothing more than “accidental injury”.

2. “Injury by accident” includes disease by accident. If it can be shown on the balance of probabilities that the accident is the contributing cause of the injury, there is sufficient causal connection. It needs not be shown that the accident is the sole cause of the injury. It is only if the accidental injury has no causal connection with the employment at all then it can be said not to arise out of it.

3. “Injury by accident” encompasses cause and effect, with accident as the cause and injury as the effect. If the cause of the injury could not be determined, the injury could hardly be “by accident”.

One last thing to note is, unlike common law claim where there would be apportionment of damages due to the claimant’s pre-existing condition, compensation awarded under the Employees’ Compensation Ordinance would not be apportioned even if the injured worker’s pre-disposing condition contributes to the injury.