

HONG KONG / JUDGMENT

CHOI SIN FUN AND ANOTHER v. CHARTERED ENVIRONMENTALIST LTD AND ANOTHER

COURT

District Court

DECIDED

16 October 2008

CASE / FILE NUMBER

DCEC1000/2007

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bjbj DCEC1000/2007 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION EMPLOYEES COMPENSATION CASE NO. 1000 OF 2007

BETWEEN CHOI SIN FUN NG CHI HO family members of NG CHI WAI, the Deceased Applicants
and CHARTERED ENVIRONMENTALIST LIMITED (formerly known as LUEN FAT
CONSTRUCTION LIMITED) 1st Respondent NG KA WAI (formerly trading as CO-AGENT 2nd
Respondent ELECTRICAL PROJECT COMPANY)

Coram: Deputy District Judge Frederick HF Chan in Court Date of hearing: 14th October 2008
Date of judgment: 16th October 2008

JUDGMENT

The claim The late Mr. Ng Chi Wai was born on 18th August 1973 and was 2 days short of his 32nd birthday (the Deceased) on 16th August 2005 (Date of Accident) when he met an industrial accident. On the evening of that fateful day at about 9:56 p.m., he suffered an electric shock and was seriously injured whilst working as an employee for the 2nd Respondent as an electrician (the Accident). The Deceased was sent to the Kwong Wah Hospital for treatment. It was alleged that at the material time, the 1st Respondent was the principal contractor of the 2nd Respondent. The Accident happened in Fu Tor Loy Shopping Centre, Phase II, Tai Kwok Tsui, Kowloon, Hong Kong (the Shopping Centre). On 24th August 2005, the 2nd Respondent filed up and signed the Form 2 to confirm that he was the employer of the Deceased on the Date of Accident and the principal contractor was the 1st Respondent. He also stated frankly that he did not any employer s insurance policy to cover the Deceased and the Accident. Unfortunately, on 2nd September 2005, the Deceased met his demise when he just turned 32. Subsequently, the Accident was

thoroughly investigated by the police and the Labour Department. The Labour Department's investigations were focused upon section 40 of the Ordinance which provided that: (1) no employer shall employ any employee in any employment unless there is in force in relation to such employee a policy of insurance issued by an insurer. On 10th October and 1st November 2005 respectively, the 2nd Respondent was interviewed by the officers from the Labour Department and provided two cautioned statements whereby he made the following admissions: The Deceased became his employee from 22nd July 2005 when he answered the 2nd Respondent's advertisements in the newspapers to recruit an electrician; He was the employer of the Deceased; On the Date of Accident, he made the arrangements for his two employees (the Deceased and a Mr. Lee Kui Leung) to work in the Shopping Centre; He had not taken out any compulsory insurance in respect of the Deceased, who was one of his employees; On the Date of Accident, the electric tools were funded and provided by him to the Deceased; For each working day, the Deceased would be given a daily salary of HK\$350. On 9th August 2007, the Deceased's mother (Madam Choi Sin Fun) and his younger brother (Mr. Ng Chi Ho), as members of the Deceased's family, commenced the present proceedings to seek statutory compensation under the Employees Compensation Ordinance (Cap. 282) (the Ordinance) against the 1st and 2nd Respondents: Under section 6(1)(a) of the Ordinance, the claim is for HK\$776,160; Under section 6(5) of the Ordinance, for reimbursement of the funeral expense totaled HK\$35,000 which was the maximum amount prescribed by Sixth Schedule of the Ordinance. In the light of the clear evidence that on the Date of the Accident, the Deceased was not insured by the 2nd Respondent under an insurance policy, the Applicants' solicitors had duly served a notice of the present EEC proceedings to the Employees Compensation Assistance Board under section 25B of the Employees Compensation Assistance Ordinance (Cap. 365). The criminal proceedings On 21st February 2006, the Prosecutions Division of the Labour Department issued a letter to the 2nd Respondent and informed him that after investigations, the Labour Department had decided to prosecute him for one offence of failing to take out the compulsory insurance in respect of the Deceased and a summons had been issued against him. The letter also enclosed a copy of section 40 of the Ordinance for the 2nd Respondent to peruse (the Criminal Proceedings). Subsequently, the 2nd Respondent was duly convicted of the offence. Between 21st and 22nd September 2006, a death inquest was held by in the Coroners Court before Mr. Josiah Lam to determine the cause of and the circumstances connected with the death of the Deceased (the Death Inquest). The 2nd Respondent's stance On the date of trial i.e. 14th October 2008, the 2nd Respondent appeared in person. The 1st Respondent chose to be absent from the trial and the trial proceeded in the 1st Respondent's absence. At trial, the 2nd Respondent disarmingly conceded in open court that: On the Date of Accident, the Deceased was indeed his employee; The Deceased's monthly income was HK\$9,240; He would not take issue with the quantum of compensation payable under section 6(1)(a) of the Ordinance should be HK\$776,160; He agreed that the funeral expenses under section 6(5) of the Ordinance to be HK\$35,000; Further, he agreed that on the sum of HK\$776,160, there should be interest under section 21 of the Ordinance and that such interest should be at half of the judgment rate of the District Court from the Date of Accident to the date of the judgment; He also agreed that for the funeral expenses, there should be interest at half of the judgment rate of the District Court from the date of death of the Deceased to the date of

judgment. The Applicants then called Madam Choi Sin Fun to testify. On the basis of her evidence and the documents placed before me by the Applicants, I am satisfied on the balance of probabilities that on the Date of Accident: the Deceased was working as the employee of the 2nd Respondent; the 1st Respondent was the 2nd Respondent's principal contractor; the Accident occurred in the course of the Deceased's employment with the 2nd Respondent; both the 1st and 2nd Respondents are liable to pay employees compensation to the Applicants under the Ordinance. At trial, the 2nd Respondent submitted, in a terse yet passionate plea, that he considered the Deceased to be his friend. Many of his friends had tried to persuade him to deny that the Deceased was an employee who was working for him on the Date of Accident. He, however, decided to shoulder the responsibilities of the Accident. He said that he would try his best to compensate the Applicants. He added that, so far, he has indeed tried his best to provide redress to the family. In the premises, I would order that: The 1st and 2nd Respondents shall be held jointly liable to pay employees compensation to the Applicants in the sum of HK\$771,160 under the Ordinance; The 1st and 2nd Respondents shall be held jointly liable to pay the funeral expenses in the sum of HK\$35,000 to the Applicants under the Ordinance; There should be interest at half of the judgment rate of the District Court on the said sum of HK\$771,160 from the Date of Accident to the date of this judgment; There should be interest at half of the judgment rate of the District Court on the said sum of HK\$35,000 from the date of death of the Deceased to the date of this judgment; There should also be interest at full judgment rate on the said sums of HK\$771,160 and HK\$35,000 respectively from the date of judgment until the date of payment; Costs of the present proceedings should be paid by the 1st and 2nd Respondents jointly to the Applicants, to be taxed on the District Court scale if not agreed, with a certificate of counsel; The said sum of HK\$771,160 should be apportioned under section 6A of the Ordinance and 95% of the same should be paid to Madam Choi Sin Fun and 5% of the same should be paid to Mr. Ng Chi Ho. Frederick HF Chan Deputy District Judge Representations: Mr. Simon H. W. Lam instructed by Messrs. Chan, Evans, Chung & To, solicitors for the Applicants; 1st Respondent was absent; 2nd Respondent was in person. The Deceased's monthly earning was about HK\$9,240 and was aged below 40. The statutory multiplier under section 6(1)(a) of the Ordinance was 84. Collectively speaking, sections 2 and 25B of the Employees Compensation Assistance Ordinance (Cap. 365) provided to the effect that when an applicant issues EEC proceedings against the employer to claim for employees compensation, he must serve a notice of proceedings within 30 days of the EEC proceedings on the Employees Compensation Assistance Board. Otherwise, the applicant shall not be entitled to any statutory payments from the Employees Compensation Assistance Board in respect of any unsatisfied judgment for employees compensation against the employer.

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