SPC Guiding Case No. 191: Liu Caili v. Yingde Municipal People’s Government, Guangdong Province (Administrative Reconsideration)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Administrative / administrative reconsideration / work-related injury determination / work-related injury insurance liability

Holding

Where a construction enterprise, in violation of laws and regulations, hands over a project it has contracted to a natural person for actual construction, and that natural person is injured or dies from a work-related accident, the people's court shall support the social insurance administrative department's determination, by reference to the relevant provisions of paragraph 1 of Article 3 of the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Administrative Cases of Work-Related Injury Insurance, that the construction enterprise is the unit bearing work-related injury insurance liability.

Basic Facts

On March 31, 2016, Zhu Zhanxiong and Maoming Maonan Jian'an Group Co., Ltd. (hereinafter "Jian'an Company") entered into a construction contract for the Zhu Zhanxiong commercial-residential building project, with Zhu Zhanxiong as the developer and Jian'an Company as the contractor. A supplementary agreement stipulated that Jian'an Company would set up a special account for the payment of workers' wages, with the account holder named Lu Haifeng. Subsequently, the construction filing procedures for the Zhu Zhanxiong commercial-residential building project were handled with Jian'an Company as the construction unit. The project in issue was constructed by workers organized by Liang X, and Lu Haifeng also participated in management on site. Prominent positions of the construction site gate, construction signboard, and other facilities were all marked with Jian'an Company as the construction unit of the project. It was further ascertained that Jian'an Company had insured the project in issue under a group personal accident insurance for construction workers, and the insurance policy listed 30 insured persons without an attached list of names. On June 9, 2017, Liang X and Lu Haifeng received an inspection notice from the housing and construction department of Yingde City, and the two of them and other site personnel waited in a rented room for the inspection. The rented room was leased by Liang X and used for site meetings, work arrangements, and wage distribution. At about 15:00 that day, Liang X was found lying in the rented room, and the cause of death was sudden death.

Liang X's wife, Liu Caili, applied to the Yingde Municipal Human Resources and Social Security Bureau of Guangdong Province (hereinafter the "Yingde HRSS Bureau") for a work-related injury determination. The Yingde HRSS Bureau issued the Decision on Determining Liang X as Deemed to Have Died from a Work-Related Injury (hereinafter the "Deemed Work-Related Death Determination"), determining that Liang X suffered a sudden illness during working hours and at the workplace and died within 48 hours after rescue efforts failed, which conformed to the circumstances prescribed in item 1 of paragraph 1 of Article 15 of the Regulations on Work-Related Injury Insurance, and was deemed to have died from a work-related injury. Jian'an Company, dissatisfied, applied to the Yingde Municipal People's Government of Guangdong Province (hereinafter the "Yingde Government") for administrative reconsideration. The Yingde Government

issued an Administrative Reconsideration Decision, revoking the Deemed Work-Related Death Determination made by the Yingde HRSS Bureau on the grounds that the facts were unclear, the evidence was insufficient, the applicable basis was erroneous, and the procedure was unlawful. Liu Caili, dissatisfied, filed a lawsuit requesting the revocation of the Administrative Reconsideration Decision and restoration of the validity of the Deemed Work-Related Death Determination.

Judgment

On July 27, 2018, the Qingyuan Intermediate People's Court of Guangdong Province rendered Administrative Judgment (2018) Yue 18 Xing Chu No. 42: dismissing Liu Caili's claims. Liu Caili, dissatisfied with the first-instance judgment, filed an appeal. On September 29, 2019, the Guangdong High People's Court rendered Administrative Judgment (2019) Yue Xing Zhong No. 390: dismissing the appeal and affirming the original judgment. Liu Caili, dissatisfied with the second-instance judgment, applied to the Supreme People's Court for retrial. On November 9, 2020, the Supreme People's Court rendered Administrative Ruling (2020) Zui Gao Fa Xing Shen No. 5851, ordering the retrial of this case. On April 27, 2021, the Supreme People's Court rendered Administrative Judgment (2021) Zui Gao Fa Xing Zai No. 1: first, revoking Administrative Judgment (2019) Yue Xing Zhong No. 390 of the Guangdong High People's Court; second, revoking Administrative Judgment (2018) Yue 18 Xing Chu No. 42 of the Qingyuan Intermediate People's Court of Guangdong Province; third, revoking the Administrative Reconsideration Decision Ying Fu Fu Jue [2018] No. 2 made by the Yingde Government; and fourth, restoring the validity of the Deemed Work-Related Death Determination Ying Ren She Gong Ren [2017] No. 194 made by the Yingde HRSS Bureau.

Reasoning

The Supreme People's Court held:

I. Jian'an Company should be the unit bearing work-related injury insurance liability

As a contracting unit qualified as an employing entity, since it enjoys the rights of a contracting unit, it should also perform the obligations of a contracting unit. In terms of bearing work-related injury insurance liability, although Jian'an Company and Liang X did not directly sign a subcontracting contract, Jian'an Company allowed Liang X to use its qualifications and to carry out construction by affiliation. By reference to Article 4 of the Notice of the former Ministry of Labor and Social Security on Relevant Matters Concerning the Establishment of Labor Relations (Lao She Bu Fa [2005] No. 12), point 7 of the Opinions of the Ministry of Human Resources and Social Security on Several Issues Concerning the Implementation of the Regulations on Work-Related Injury Insurance (Ren She Bu Fa [2013] No. 34, hereinafter the "MOHRSS Opinions on the Work-Related Injury Insurance Regulations"), and the spirit of items 4 and 5 of paragraph 1 of Article 3 of the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Administrative Cases of Work-Related Injury Insurance (hereinafter the "Provisions on Administrative Cases of Work-Related Injury Insurance"), Jian'an Company may be determined as the unit bearing work-related injury insurance liability.

II. Jian'an Company should bear the work-related injury insurance liability for Liang X

The Yingde Government and Jian'an Company argued that, under the relevant provisions of the law, Liang X was a "labor contractor" without the qualification of an employing entity, and was not a laborer it recruited or an employee it hired, and therefore the work-related injury and death of Liang X should not be subject to work-related injury insurance liability borne by Jian'an Company. In this regard, the Supreme People's Court held that incorporating a "labor contractor" who suffered a work-related injury or death into the scope of work-related injury insurance, granting him the right to enjoy work-related injury insurance benefits, and having the contracting unit qualified as an employing entity bear the work-related injury insurance liability that an employer should bear in accordance with the law, conforms to the original intention of establishing the work-related injury insurance system and to the legislative purpose of the Regulations on Work-Related Injury Insurance and related regulatory documents.

First, in the construction engineering field, a contracting unit qualified as an employing entity bears work-related injury insurance liability for employees who suffer work-related injuries or deaths on projects it has illegally subcontracted or sub-packaged, without the precondition of the existence of a legal labor relationship or a de facto labor relationship. Under point 7 of the MOHRSS Opinions on the Work-Related Injury Insurance Regulations and Article 3 of the Provisions on Administrative Cases of Work-Related Injury Insurance, in order to safeguard the work-related injury insurance benefits of employees recruited by organizations or natural persons without employing-entity qualifications in the construction industry who suffer work-related injuries or deaths, to strengthen the preferential protection of laborers, and to punish units that illegally subcontract and sub-package, the current work-related injury insurance system has established the rule of presuming the formation of a constructive labor relationship between employees who suffer work-related injuries or deaths and the contracting unit, that is, directly treating the contracting unit that illegally subcontracts or sub-packages as the employing entity and having it bear work-related injury insurance liability.

Second, incorporating "labor contractors" into the scope of work-related injury insurance conforms to the development direction of work-related injury insurance in the construction engineering field. Under the spirit of the Opinions of the General Office of the State Council on Promoting the Sustained and Healthy Development of the Construction Industry (Guo Ban Fa [2017] No. 19) and the Notice of the General Office of the Ministry of Human Resources and Social Security on Further Improving the Work-Related Injury Insurance Work in the Construction Industry (Ren She Ting Han [2017] No. 53) and other regulatory documents, it is required to improve the work-related injury insurance participation policies that conform to the characteristics of the construction industry and to vigorously expand the coverage of work-related injury insurance participation by construction enterprises. That is, targeting the characteristics of the construction industry, construction enterprises shall participate in work-related injury insurance as employers for relatively fixed employees; for construction workers used by construction projects, especially migrant workers, who cannot participate as employers, they shall participate in work-related injury insurance on a project basis. Therefore, having all laborers, including "labor contractors," participate in work-related injury insurance on a project basis and expanding the coverage of work-related injury insurance participation by construction enterprises conforms to the development direction of the work-related injury insurance system in the construction engineering field.

Third, incorporating "labor contractors" into the scope of work-related injury insurance objects conforms to the legislative purpose of the work-related injury insurance system of "full coverage of those who should be covered." The provision of the Regulations on Work-Related Injury Insurance concerning "all employees or hired workers of the unit" does not exclude special employing entities such as individual industrial and commercial households and "labor contractors" from also participating in work-related injury insurance themselves. In other words, neither the original intention of establishing the work-related injury insurance system nor the specific provisions of the work-related injury insurance regulations have excluded, nor should they exclude, "labor contractors" from the scope of work-related injury insurance. As laborers, "labor contractors" are at the very end of the interest chain of acts such as illegal subcontracting and sub-packaging, participate in and bear the specific management work of the construction site, and some also directly participate in specific construction, and they may likewise suffer injury or death during working hours and at the workplace due to work. There is no essential difference between a "labor contractor" who suffers a work-related injury or death and the construction workers he recruits who suffer work-related injuries or deaths, in terms of the work-related injury insurance system and work-related injury insurance liability. If the scope of application of the Regulations on Work-Related Injury Insurance is artificially narrowed and "labor contractors" are not incorporated into the scope of work-related injury insurance, substantive inequality will be formed; while incorporating special entities such as "labor contractors" into the scope of work-related injury insurance is conducive to realizing preferential protection for all laborers and manifesting the superiority of the socialist work-related injury insurance system.

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Finally, the legal liability of a "labor contractor" for illegally undertaking a project does not conflict with his right to participate in social insurance. Under Articles 1 and 33 of the Social Insurance Law, work-related injury insurance, as an important component of the social insurance system, is compulsorily implemented by the state through legislation, is the state's social responsibility to employees, and is also a basic right that employees should enjoy. The right of a "labor contractor" to enjoy social insurance cannot be denied because he illegally undertook a project in violation of the legal norms of the construction field. A contracting unit contracts a construction project in its own name and with its own qualifications, while having a subject without qualification conditions actually construct it, and obtains benefits from illegal subcontracting, sub-packaging, or affiliation; having it bear the corresponding work-related injury insurance liability conforms to the concept of fairness and justice. Of course, after the contracting unit bears work-related injury insurance liability in accordance with the law, it may, in accordance with the law and where the statutory conditions are met, separately require the corresponding liability subject to bear the corresponding liability.

Relevant Legal Provisions

Article 15 of the Regulations on Work-Related Injury Insurance.

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