



Amardeep Singh Toor  
Partner  
**Employment &  
Industrial Relations**  
E: [ast@lh-ag.com](mailto:ast@lh-ag.com)



Ashreyna Kaur Bhatia  
Associate  
**Employment &  
Industrial Relations**  
E: [akb@lh-ag.com](mailto:akb@lh-ag.com)

24 AUGUST 2023

### **Enhanced Protection for Employees under the SOCSO Act When They ‘Balik dari Kampung’**

The Employees’ Social Security Act 1969 (the “**Act**”) is a critical piece of social legislation, enacted with the aim of safeguarding employees against social and/or economic difficulties.

There are two schemes under the Act: the Employment Injury Scheme, and the Invalidity Scheme. The Employment Injury Scheme protects employees against employment injury such as, among others, personal or bodily injuries arising out of and in the course of their employment. This may include ‘commuting accidents’ which occur when the employee is traveling:

- (a) en route between their place of residence or stay, and their place of work;
- (b) on a journey made for any reason which is directly connected to their employment; or

- (c) on a journey between their place of work and the place where they take their meal, during any authorised recess.<sup>1</sup>

The Act provides that an employment injury shall not be found if the accident takes place during any interruption of, or deviation from, the journey made for any of the purposes under (a) to (c) above.

### **Conflicting High Court Decisions**

Prior to the decision of the Court of Appeal, there were conflicting decisions at the High Court level. There is a line of cases suggesting that journeys on the weekend, which were not ordered by the employer, shall not constitute an employment injury.<sup>2</sup> On the flipside, there is a separate line of cases favouring a purposive approach when interpreting the Act – by deciphering the primary purpose of the employee’s travels, (e.g. whether the journey was work-related, or whether the accident could have been avoided had the employee not been in employment when the accident occurred).<sup>3</sup>

### **Court of Appeal’s decision of Sathiseelan Nagappan v Ketua Pengarah, Pertubuhan Keselamatan Sosial<sup>4</sup>**

Sathiseelan Nagappan spent the weekend at his home in Ipoh. He worked in Kulim Hi-Tech Park at the material time. He intended to return to Kulim on Sunday to rest before proceeding to work the next day. Whilst returning to Kulim, he met with an accident. Mr. Sathiseelan applied to the Social Security Organization (“**SOCSO**”) for temporary disability claims. SOCSO refused his application on

---

<sup>1</sup> Section 24(1)

<sup>2</sup> Wong Yew Loy v Ketua Pengarah Pertubuhan Keselamatan Sosial [2010] 5 CLJ 467

<sup>3</sup> Ketua Pengarah Pertubuhan Keselamatan Sosial v Tham Tian Siong [2008] 8 CLJ 341

<sup>4</sup> Sathiseelan Nagappan v Ketua Pengarah, Pertubuhan Keselamatan Sosial [2023] 4 MLRA 282

the ground that the injury sustained was not an employment injury. Mr. Sathiaseelan, dissatisfied with SOCSO's decision, appealed to the Social Security Appellate Board.

The Appellate Board dismissed his appeal. Mr. Sathiaseelan then appealed to the High Court. The High Court dismissed his appeal.

Mr. Sathiaseelan then appealed to the Court of Appeal. The crucial issue to be decided was whether the injury suffered, by Mr. Sathiaseelan was an employment injury.

Mr. Sathiaseelan contended that though there was a break in his journey before proceeding to work in Kulim the next day, it was a journey undertaken because of his need to work in Kulim. He argued that the Act should be interpreted expansively and liberally, that any dispute should be resolved in favour of the employee in line with the *ethos* of the Act. SOCSO argued that the journey was neither instructed nor required by the employer, but one that Mr. Sathiaseelan chose to undertake for personal reasons.

The Court of Appeal allowed Mr. Sathiaseelan's appeal. The Court of Appeal considered that:

- (a) there could be various reasons for making the journey back to Kulim from Ipoh on an off-day, such as the need to properly rest to be in a better frame of mind to work the next day; and
- (b) Mr. Sathiaseelan would not have made the journey if not for his employment on Monday morning.

The Court of Appeal therefore held that Mr. Sathiaseelan's journey, albeit on a Sunday, was

**Head Office**

Level 6, Menara 1 Dutamas  
Solaris Dutamas  
No. 1, Jalan Dutamas 1  
50480 Kuala Lumpur  
Malaysia  
Tel: +603 6208 5888  
Fax: +603 6201 0122

**Johor Office**

Suite 21.01  
21st Floor, Public Bank Tower  
No.19, Jalan Wong Ah Fook  
80000 Johor Bahru, Johor  
Tel: +607 278 3833  
Fax: +607 278 2833

**Penang Office**

51-12-E, Menara BHL Bank,  
Jalan Sultan Ahmad Shah,  
10050  
Penang  
Tel: +604 299 9668  
Fax: +604 299 9628

**Email**

[enquiry@lh-ag.com](mailto:enquiry@lh-ag.com)

**Website**

[www.lh-ag.com](http://www.lh-ag.com)

directly connected to his employment, as it was necessary for him to arrive at work the next day, after having rested a night at his place of stay in Kulim. The Court of Appeal further held that there is no requirement that the employer must have instructed him to make the journey.

This is an important issue and decision. There were 72,149 recorded cases of accidents involving SOCSO members. A staggering 45.7% or 32,976 cases involved commuting accidents.<sup>5</sup>

This decision demonstrates the posture of the Court of Appeal in upholding employees' rights. This decision does not, however, mean that every claim relating to commuting accidents will be allowed. The Court of Appeal noted the need to ascertain the primary purpose of the employee's movement or travel before coming to a decision.

Written by: **Amardeep Singh Toor, Ashreyna Kaur Bhatia** and **Ng Choon Kiat** (Pupil-In-Chambers).

If you have any queries please contact Associate, **Ashreyna Kaur Bhatia** ([akb@lh-ag.com](mailto:akb@lh-ag.com)), or her team Partner, **Amardeep Singh Toor** ([ast@lh-ag.com](mailto:ast@lh-ag.com)).