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A NEW ERA OF EMPLOYER LIABILITY IN NEGLIGENCE

Chandran a/l Subbiah v. Dockers Marine Pte. Ltd.[1]

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I. INTRODUCTION

Actions by aggrieved employees injured during the course of their employment have always accounted for a significant proportion of claims in tort, both at common law and under relevant employment protection legislation.[2] In Singapore, courts have frequently been called on to determine the scope and extent of employers' obligations on the facts of particular cases, but until recently there has been no broad review of the law in this area. Now, however, the Court of Appeal in *Chandran* has taken the opportunity to conduct an extensive re-evaluation of the common law duties of employers in negligence, and to lay down "uncompromising legal requirements"[3] with respect to the safety of workers. The decision is notable not only for its detailed consideration of the rules governing industrial safety, but also for its strong policy statements about the evolving nature of law, and its need to respond to the expectations of an increasingly enlightened society.

II. THE FACTS AND THE DECISION OF THE TRIAL JUDGE

The claimant was a Malaysian work permit holder who worked in Singapore as a stevedore for a number of employers, including the defendant. On 18 October 2005,

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1 [2010] 1 S.L.R. 786; [2009] SGCA 58 [*Chandran*].

2 In 2009 alone, industrial accident cases decided (whether at first instance or on appeal) in Singapore included *Zheng Yu Shan v. Liang Beng Construction (1988) Pte. Ltd.* [2009] 2 S.L.R. 587; [2009] SGHC 6, *Liu Haixing v. China Construction (South Pacific) Development Co. Pte. Ltd.* [2009] SGHC 21; *Lu Bang Song v. Teambuild Construction Pte. Ltd. and Another and Another Appeal* [2009] SGHC 49; *Akhinir Nashu Kazi v. Chong Siak Hong (trading as Hong Hwa Marine Services)* [2009] SGHC 138; *Ma HongFei v. U-Hin Manufacturing Pte. Ltd. and Another* [2009] 4 S.L.R.(R) 336; [2009] SGHC 172; *Tipu Sultan Mohammed Ali v. Trancom Engineering Pte. Ltd.* [2009] SGDC 18, *Song Bao Jun v. Great Resources M & E Pte. Ltd. and Another* [2009] SGDC 48; and *Murugaian Saravan v. Teambuild Construction Pte. Ltd.* [2009] SGDC 365.

3 *Chandran, supra* note 1 at para. 65.

he was employed by the defendant to move cargo containers into and out of a hatch in the hold of a vessel, the *Tasman Mariner*. To do this, he had to enter and leave the hatch using a chain of metal rung ladders, which hung vertically alongside the vessel's inner hull. The top of each ladder was welded to the hull itself, and the bottom was welded in two places to the next ladder in line. While he was descending one of the ladders, it suddenly detached from both the hull and the ladder immediately below. The claimant, who was at the time about ten metres from the bottom of the hatch and wearing no safety equipment, fell onto the top of a container, and from there onto the vessel floor. He sustained severe head injuries, the long-term effects of which included visual defects, cognitive impairment and headaches. Not satisfied with the compensation for no-fault accidents assessed under the *Work Injury Compensation Act*,[4] he brought an action against the defendant.[5]

In the High Court,[6] the claimant's case was based on three arguments. These were that the defendant had breached its common law duty of care as employer, its common law duty as occupier of the vessel, and its statutory duty under the *Factories Act*.[7] The judge, Judith Prakash J., rejected all three arguments. Referring to *Parno v. SC Marine Pte. Ltd.*[8]—the leading Singapore authority on an employer's common law duty to its employees—she noted that the three traditional elements of this duty were the provision of competent workers, adequate material, and a proper system of work with adequate supervision. Distinguishing a safe system of work from a safe place of work, she held that, in this case, the dangers associated with entering and exiting the hatch could not be regarded as part of the system of work and that there was, moreover, no evidence of any industry practice suggesting that harnesses or other safety equipment should have been used in the course of moving into and out of the hatch. And while there was clearly a duty to provide a safe place of work, Prakash J. concluded that only if a master stevedore was aware of obvious dangers or defects would it owe a duty to its employees to inspect a vessel owned by a third party. In this respect, she applied the decision of the House of Lords sitting as the final court for Scotland in *Thomson v. Cremin*,[9] as well as the subsequent Scottish decision in *William Durie v. Andrew Main & Sons*,[10] and chose

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4 Cap. 354, 1998 Rev. Ed. Sing.

5 In the High Court, the defendant—which did not dispute that it was the claimant's employer for the purposes of the action—successfully included the vessel's owners as a third party. On being informed that the owners had apparently settled with the claimant, the defendant decided not to pursue the third party action before the Court of Appeal, but reserved the right to seek contribution if it were to be held liable. The Court of Appeal, while finding in favour of the claimant, did not address the issue of relative responsibility between the defendant and the owners.

6 *Chandran a/l Subbiah v. Dockers Marine Pte. Ltd. (Owners of the Ship or Vessel "Tasman Mariner," third party)* [2009] 3 S.L.R.(R) 995; [2009] SGHC 109 [*Chandran (H.C.)*].

7 Cap. 104, 1998. Rev. Ed. Sing.

8 [1999] 3 S.L.R.(R) 409; [1999] 4 S.L.R. 579.

9 [1956] 1 W.L.R. 103 [*Cremin*]. In *Cremin*, a labourer employed by a firm of Glasgow stevedores was injured when a shore designed to hold a shifting-board fell on him. The shore had been fixed by shipwrights in Australia. The House of Lords held that the firm was not negligent. It was not part of the regular practice of master stevedores to inspect shores, and the firm would have been obliged to have taken precautions only if it had observed a defect in a particular shore.

10 [1958] S.C. 48 [*Durie*]. *Durie*, a decision of the Second Division of Scotland, involved a labourer who was injured when a section of handrail which had been propped against the side of the main handrail fell on him. It was held that a master stevedore did not owe any general duty to its employees to ensure that a ship the employees were boarding to discharge cargo was in a safe condition. Only if a master stevedore

not to apply decisions such as *Marney v. Scott*[11] and *McDermid v. Nash Dredging & Reclamation Co. Ltd.*,[12] which supported the notion of a broader duty being imposed on master stevedores. *Marney* she rejected on the grounds that it was older than, decided by a lower court than, and arguably factually distinguishable from *Cremin*,[13] and *McDermid* she distinguished on the ground that it related to a safe system of work rather than a safe place of work.[14] On the other two arguments, Prakash J. held that the defendant had exercised no control over the vessel, and so had not been a legal 'occupier',[15] and that the vessel's hold, where the accident occurred, did not constitute 'premises' for the purposes of the *Factories Act*.[16]

III. The Decision of the Court of Appeal

The claimant appealed to the Court of Appeal. The Court of Appeal's decision, focusing only on the first argument—that relating to the common law duty of care owed by employers—was delivered by V.K. Rajah J.A. Since the Court found in favour of the claimant on this point, it did not consider it necessary to examine the remaining two arguments.[17]

Rajah J.A. began by considering Prakash J.'s judgment, which he concluded had been "premised on rather dated Scottish legal precedents."[18] He then went on to examine the origins of the common law on employer liability, which had historically been characterized by negative rules merely requiring employers to avoid

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were to be aware of some obvious danger would there be an obligation to take immediate precautions. (Prakash J. also referred in support of her conclusion on this point to a third Scottish case, *Shephard v Pearson Engineering Services (Dundee) Ltd.* [1980] S.L.T. 197. See *Chandran (H.C.), supra* note 6 at para. 15.)

[11] [1899] 1 Q.B. 986 [*Marney*]. *Marney*, decided at first instance some fifty years before *Cremin*, involved a labourer on a ship who was injured when a ladder which he was descending came adrift from the side of the ship. The labourer was in the employ of a master stevedore, who had been contracted by the defendant, the charterer of the vessel. Bigham J. in the High Court held that it had been the defendant's responsibility to inspect the vessel before allowing the stevedore and its employees to board, and that since the "slightest examination" (*ibid*. at 993) would have revealed the defect in the ladder, the defendant was liable to the labourer.

[12] [1987] A.C. 906 [*McDermid*]. In *McDermid*, a deckhand was working at the behest of his employers, the defendants, on a tug owned by a Dutch company. The captain moved the tug before the deckhand had given the agreed signal that he had finished untying the mooring ropes. The rope snaked around the deckhand's leg, causing him serious injuries. The House of Lords held that the deckhand's employers were liable, since they owed him a non-delegable duty to devise a safe system of work, and to see that the system was properly operated.

[13] Prakash J. considered the requirement of the "slightest examination" in *Marney* to be vague and irreconcilable with *Cremin* and *Durie*. She was of the view that had *Marney* fallen to be considered after *Cremin*, it might well have been decided differently. (See *Chandran (H.C.)*, *supra* note 6 at para. 19). Alternatively, since in *Marney* the defect in the ladder was readily apparent, whereas the loose shore in *Cremin* was not, she concluded (*ibid*. at para. 20) that the cases related to different situations, and that *Marney* might anyway have fallen within the narrow category of duty envisaged in *Cremin*.

[14] *Chandran (H.C.)*, *supra* note 6 at para. 21.

[15] *Ibid*. at para. 35.

[16] *Ibid*. at paras. 25 to 31.

[17] *Chandran, supra* note 1 at para. 11. (Note, however, Rajah J.A.'s observation, at para. 50, that the *Factories Act*, *supra* note 7, did not expressly apply to stevedoring operations carried out onboard a ship. See *infra*, text at note 51.)

[18] *Ibid*. at para. 10.

"unnecessary" or "unreasonable" risks. These rules had ensured that for many years the common law had moved at a "glacial [pace] … towards employee welfare"[19] and that their harshness had best been illustrated by the "unholy trinity"[20] of employer-friendly defences in the form of common employment (under which an employer could not be held vicariously liable for injuries sustained by one employee at the hands of another), voluntary assumption of risks and contributory negligence.[21] Not until the landmark decision in *Wilsons & Clyde Coal Company, Limited v. English*[22] in 1938 had the House of Lords side-stepped the doctrine of common employment[23] and expanded the primary liability of employers to offer genuine workplace protection to employees.[24]

Wilsons had marked the turning point, and in the ensuing decades the law had continued to progress to the stage where an employer's obligation to protect its employees from hazards at work was now firmly entrenched, as illustrated by decisions such as that of the House of Lords in *Barber v. Somerset County Council*.[25] There was a well-established 'golden rule'—recognized locally in *Araveanthan v. Nippon Pigment (S) Pte. Ltd.*[26]—under which employers owed a "single overarching duty"[27] to take reasonable care for the safety of their employees in all circumstances, by weighing the likelihood that particular risks might lead to injury and taking effective, practicable and proportionate precautions against these risks.[28] This duty was a comprehensive one, and while the standard of care required of employers under it might often conveniently be described in terms of the *Parno* categories on which Prakash J. had focused in her judgment, it was essential that these categories not be "overstated and mechanically applied".[29] Emphasizing the fluid and evolving nature of the duty, and the need when considering its content to take account of

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[19] *Ibid*. at para. 16.

[20] In this respect, Rajah J.A. referred to the description used by John Cooke and David Oughton in *The Common Law of Obligations*, 3rd ed. (London/Edinburgh/Dublin: Butterworths, 2000) at 596.

[21] *Chandran, supra* note 1 at para. 14.

[22] [1938] A.C. 57 [*Wilsons*].

[23] The defence of common employment was finally abolished by statute in 1948.

[24] *Chandran, supra* note 1 at para. 14.

[25] [2004] 1 W.L.R. 1089 [*Barber*]. *Barber* concerned an employee who suffered from stress in the workplace. The House of Lords held that once an employer is aware that an employee is at risk of suffering occupational stress, it has an obligation to do something about it.

[26] [1992] 1 S.L.R. 545.

[27] *Chandran, supra* note 1 at para. 24.

[28] In this respect, Rajah J.A. referred (*ibid*. at para. 14) to the House of Lords' approval in *Barber* of the decision in *Stokes v. Guest, Keen and Nettlefold (Bolts and Nuts) Ltd.* [1968] 1 W.L.R. 1776, and in particular Swanwick J.'s summary (at 1783) of the relevant duty owed by employers to their employees: "[T]he overall test is … the conduct of the reasonable and prudent employer, taking positive thought for the safety of his workers in the light of what he knows or ought to know … [W]here he has in fact greater than average knowledge of the risks, he may thereby be obliged to take more than the average precautions. He must weigh up the risks in terms of the likelihood of injury occurring and the potential consequences if it does; and he must balance against this the probabl[e] effectiveness of the precautions that can be taken to meet it and the expense and inconvenience they involve. If he is found to have fallen below the standard to be properly expected of a reasonable and prudent employer in these respects, he is negligent."

[29] *Chandran, supra* note 1 at para. 24. (For Prakash J.'s consideration of *Parno*, see *Chandran (H.C.)*, *supra* note 6 at para. 9 *et seq*.)

unique jurisdictional circumstances, Rajah J.A. observed:

> … the common law in this area of employers' duties and responsibilities to their employees has to conform to the prevailing needs and contemporary values of society. Legal obligations and standards in the workplace must … now be determined in the light of the prevailing regulatory framework, current work safety attitudes, and advances in knowledge and improvements in technology as well as community expectations ... Even if current case law from foreign common law jurisdictions may appear relevant, each such decision … must … be carefully scrutinized and evaluated to ensure that it was not based on policy considerations peculiar to the times and place concerned, social mores or regulatory circumstances that might not be applicable to Singapore.[30]

Rajah J.A. also stressed the personal and non-delegable nature of the employer's duty to assess—and take steps to prevent—risks to its employees, emphasizing the fact that "[o]nce an employment relationship is formed at law, the golden rule, along with its non-delegable feature, is uncompromising but practical."[31] While this did "not mean that the duty to assess risks is absolute",[32] and while there might be circumstances in which the golden rule would not require such an exercise—as in the case of *Cook v. Square D. Ltd*.,[33] where it had been held that it was unreasonable to expect an employer to carry out risk assessment for an employee who was temporarily assigned overseas in a fundamentally sedentary job—an employer *would* nevertheless be obliged to bear the consequences of all risks which it should reasonably have "anticipated and addressed".[34] *Cook* and cases like it did not "diminish the general applicability of the expectation that employers are to perform a preliminary risk assessment exercise before their workers commence their work."[35]

On the facts, Rajah J.A. held that the defendant had owed its employees a duty to undertake a risk assessment of the immediate area in which they were deployed, and that it had been negligent both in failing to carry this out and in failing to take reasonable measures to minimize the risk of workers falling from heights by the provision of safety belts and harnesses.[36] Observing that "[t]he real issue is not where the employees work but what reasonable steps their employers are required to take … to protect these employees, whether it be on the employer's own premises or third party premises",[37] he rejected as inappropriate for Singapore the narrow duty

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[30] *Ibid*. at para. 16.

[31] *Ibid*. at para. 18.

[32] *Ibid*. at para. 33.

[33] [1992] I.C.R. 262 [*Cook*]. In *Cook*, the claimant was an electronics engineer employed by a company based in the United Kingdom. He was sent by his employer to Saudi Arabia to complete a project. While there, he slipped on a raised tile in the workplace. Deciding that the employer was not liable for the injuries suffered by the claimant, Farquharson L.J.—while accepting that an employer must take all reasonable steps to ensure the safety of its employees—held that on the facts, the employer had fulfilled its obligations by sending the employee to a reliable company which was aware of the need for employee safety. It was not, therefore, obliged to monitor day to day events thousands of miles away. For a discussion of Rajah J.A.'s interpretation of *Cook*, see *infra* text at note 61.

[34] *Chandran, supra* note 1 at para. 25.

[35] *Ibid*. at para. 33.

[36] *Ibid*. at para. 26.

[37] *Ibid*. at para. 45.

placed on master stevedores in *Cremin*[38] and *Durie*[39] (the cases on which Prakash J. had relied in her judgment),[40] and instead applied a broader approach, consistent with decisions such as the Australian case of *O'Connor v. Port Waratah Stevedoring Co. Pty. Ltd. and The Broken Hill Proprietary Co. Ltd.*[41] and the non-stevedoring English and Scottish cases of *Christmas v. General Cleaning Contractors Ltd.*[42] and *Crombie v. McDermott Scotland Ltd*.[43]

In rejecting the narrow duty of care for stevedoring firms, Rajah J.A. examined but dismissed the four most commonly canvassed arguments in its favour. For the first argument—that there was no industry practice to inspect vessels—he had little sympathy, holding that:

> … even if the local practice of stevedoring firms does not include an inspection of the vessels on which its employees would operate, such a practice cannot be accepted as establishing the appropriate legal standard of duty of care for this industry in Singapore … Given the potential injuries to employees of stevedoring companies in working from heights without adequate precautions taken for their safety, we are of the view that such an industry practice, if it exists, should not be countenanced by law.[44]

The second argument—that the duty to inspect would be too technical—he rejected on the ground that a stevedoring firm would not be required to conduct a comprehensive technical assessment, but would only have to "look out for ordinary hazards that may endanger the health and safety of its employees".[45] With respect to the third argument—that the performance of a specific task for a limited period made the task of inspecting the whole vessel too onerous—he reached a similar conclusion, holding that the stevedoring firm would only be required to inspect the area in which his employees were deployed.[46] And he considered that the final argument—that the stevedoring firm would have no right to interfere with the structure of the vessel—while true, was beside the point, since in this case an inspection would not have amounted to interference with the vessel, and any work which had been undertaken to repair the defective ladder would have been carried out by the vessel's owner, not the master stevedore.[47]

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[38] *Supra* note 9.

[39] *Supra* note 10.

[40] *Chandran (H.C.)*, *supra* note 6 at para. 14 *et seq*.

[41] 13 S.A.S.R. 119 [*O'Connor*]. In *O'Connor*, the Supreme Court of South Australia held that a stevedoring company was liable to its employee, who was injured due to the absence of a ladder handrail on a ship on which he was working.

[42] [1952] 1 K.B. 141 (C.A.); [1953] A.C. 190 (H.L.) [*Christmas*]. In *Christmas*, which involved a window cleaner who was injured in a fall, both the Court of Appeal and the House of Lords held that his employers owed a duty to inspect the premises in which he was employed for safety hazards, even where those premises were owned by a third party.

[43] [1996] S.L.T. 1238 [*Crombie*]. In *Crombie*, where an employee was injured when a wooden walkway he was using at work broke as he walked across it, the Outer House of Scotland held that, even if there was a rule that stevedores did not owe a general duty to inspect ships on which their employees were deployed, such a rule should not be extended to other employers.

[44] *Chandran, supra* note 1 at para. 36.

[45] *Ibid*. at para. 37.

[46] *Ibid*. at para. 38.

[47] *Ibid*. at para. 39.

Rajah J.A. completed his judgment with a survey of the legislative framework for workplace protection.[48] While acknowledging that statutory developments which had taken place after the date of the claimant's accident in 2005 were not strictly relevant and that, anyway, neither the *Workplace Safety and Health Act*[49] nor its predecessor, the *Factories Act*,[50] expressly extended to stevedoring operations carried out onboard a ship,[51] he nevertheless observed that a more employee-friendly common law position was consistent with the statutory rules on risk assessment and with the general measures that had been put in place in Singapore "to define responsibilities in the workplace and to persuade employers to take a more pro-active approach towards employee safety".[52]

IV. Discussion

The Court of Appeal's decision in *Chandran* is to be welcomed for its unequivocal approach to the importance of protecting employees from dangers at work, and for its determination to move industrial safety into the 21st century through the imposition of an extensive duty of care and high standards of employer conduct. Its recognition of a wide-ranging duty is consistent with the trend in all jurisdictions towards a broader formulation of a "duty of reasonable care in the circumstances", under which specific issues are considered at the breach stage. It also serves as a general reminder that law is an ever-evolving creature, which develops in response to changing times, increased societal expectations, and local circumstances. Singapore, a major centre for both construction and stevedoring which relies to a large extent on foreign workers, faces particularly sensitive issues in terms of workplace injuries. These issues extend well beyond the legislative and judicial arena, as is evidenced by the fact that the decision in *Chandran* coincides not only with general amendments to relevant health and safety legislation (referred to by Rajah J.A. in his judgment),[53] but also with the formation of a National Work at Height Safety Taskforce under the auspices of the Ministry of Manpower and the Workplace Health and Safety Council, which in December 2009 proposed a strategy to protect employees who work at heights.[54]

Chandran is thus a timely and topical decision, significant not merely for its rhetoric, but also in more tangible ways, perhaps the most notable of which is

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[48] *Ibid*. at paras. 47 to 61.

[49] Cap. 354A, 2009 Rev. Ed. Sing.

[50] *Supra* note 7.

[51] *Chandran, supra* note 1 at paras. 48 and 50.

[52] *Ibid*. at para. 62.

[53] See *supra*, text at note 48 *et seq*.

[54] See, *e.g*., Ministry of Manpower Press Release: "Newly Formed National Work at Height Safety Taskforce Unveils Three-Pronged Plan to Address Fatal Falls," (2 December 2009), online: <http://www.mom.gov.sg/publish/momportal/en/press_room/press_releases/2009/20091202-PR_Work_at_height.html> which reported that the taskforce had proposed a three-pronged plan under which 1) strong capabilities would be built by having companies implement a fall protection plan to ensure all reasonable measures and procedures are taken before work begins; 2) the benefits of safe work at height would be promoted by highlighting the consequences of failure; and 3) an effective regulatory framework would be maintained. The press release stated that, while fatal falls in the workplace had decreased by 60% in the last decade—from 44 in 1998 to 19 in 2008—the aim was to halve the current rate by 2013, reducing it further by 2018. It was envisaged that the plan would be implemented in all construction sites and shipyards by 2012 and in all other workplaces by 2015.

its rejection of the industry practice of stevedoring firms in favour of a more demanding employee-friendly standard. Refusal to accept industry standards is, of course, nothing new. The precedent was set with respect to lawyers by the Privy Council in *Edward Wong Finance Co. v. Johnson, Stokes and Master*,[55] and it has since been extended to a number of other industries and professions. In Singapore, the comparatively recent judgment of the Court of Appeal in *JSI Shipping (S) Pte Ltd. v. Teofoongwonglcloong (a firm)*,[56] also delivered by Rajah J.A., confirmed that while industry standards are "highly persuasive signposts in so far as they represent some form of professional consensus on the standard of care", they "must not be applied unthinkingly".[57] The combined effect of *JSI* and *Chandran*—two major decisions of the Court of Appeal in the space of three years—is to provide confirmation that industries and professions cannot depend on the blanket protection of their own self-imposed practices. The one notable exception to this is, of course, the medical profession, which alone enjoys the privileged position of being assessed by the standards it sets for itself—particularly in Singapore, where the decision of the Court of Appeal in *Dr Khoo James & Anor v. Gunapathy d/o Muniandy*[58] affords doctors an unparalleled level of protection.[59]

There are few criticisms to be made of the judgment, but one possible point of concern relates to Rajah J.A.'s treatment of an employer's personal, non-delegable duty to conduct risk assessment, which in *Chandran* took the form of the master stevedore's personal duty to ensure that the ship was properly inspected. Rajah J.A.'s approach to the decision in *Cook* (where an employer based in the United Kingdom was held not liable for injury sustained by an employee working in Saudi Arabia), and in particular his somewhat ambiguous statement that the case did not "diminish the general … expectation that employers are to perform a preliminary risk assessment",[60] could be taken to imply that he viewed it as representing an exception to the non-delegable aspect of the employer's duty. However, there is a danger in regarding *Cook* as more than simply a case with an unusual factual scenario leading to an unusual decision, and in this respect, Rajah J.A.'s interpretation was perhaps slightly misleading. An employer's non-delegable duty is based not on the notion that the employer may not delegate the performance of a task, but rather on the notion

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[55] [1984] A.C. 296.

[56] [2007] SGCA 40; [2007] 4 S.L.R. (R) 460 ["*JSI*"].

[57] *Ibid*. at para. 34.

[58] [2002] 2 S.L.R. 414.

[59] The law for assessing the standard of care applicable to the medical profession in Singapore remains firmly based on a practice accepted as proper by a body of a medical practitioner's peers. Applying the test first formulated in *Bolam v. Friern Hospital Management Committee* [1957] 1 W.L.R. 582 and adopted by the House of Lords in *Sidaway v. Bethlem Royal Hospital Governors* [1985] A.C. 871—as subsequently modified by the requirement in *Bolitho v. City and Hackney Health Authority* [1998] A.C. 232 that a medical practitioner's approach must not be "logically indefensible"—the Singapore courts remain generally sympathetic to the medical profession. For further discussion of the special position accorded to the medical profession in Singapore, see, *e.g*., Kumaralingam Amirthalingam, "Judging Doctors and Diagnosing the Law: *Bolam* Rules in Singapore and Malaysia" [2003] Sing. J.L.S. 125. Note, however, that the position in Malaysia is now far more patient-friendly, following the decision of the Federal Court in *Foo Fio Na v. Dr. Soo Fook Mun* [2007] 1 M.L.J. 593 to adopt the approach of the Australian High Court in *Rogers v. Whitaker* (1992) 175 C.L.R. 479, which rejected industry practice as being conclusive, and instead adopted the "prudent patient" test.

[60] *Chandra, supra* note 1 at para. 33, quoted *supra* text at note 35.

that should the employer do so, it cannot escape liability if, as a result of negligence, the employee is injured. *Cook* is merely a decision in which an employer was (albeit perhaps somewhat controversially) adjudged not to have delegated, or been in breach of, its duty to take care of an employee whom it sent to work overseas,[61] and it does not, therefore, represent an exception to the non-delegable nature of the employer's responsibility.

That being said, it is clear from the summary at the end of the judgment—"[t]he common law imposes a duty on all employers to take reasonable care for the safety of their workers. This duty is non-delegable and personal and employers cannot abdicate from this solemn responsibility"[62]—that Rajah J.A. acknowledged the immutable nature of an employer's duty. On the other hand, he also conceded that "at the end of the day … the standard of care required of employers does not extend beyond that which is reasonable in the circumstances of the case. The law will strike a balance between the extremes of requiring constant paternalism and licensing careless irresponsibility."[63] This is of course perfectly correct—liability in negligence is not absolute, but depends on establishing that the defendant has failed to meet the appropriate standard of care. Rajah J.A.'s recognition of this fact reminds us that, even with the "uncompromising legal requirements"[64] of *Chandran*, it will always be open to an employer to argue that its conduct has been sufficiently responsible to discharge its non-delegable duty to its employee, whatever damage the employee may have sustained.

V. Conclusion

The decision in *Chandran* is a product of its time. In contemporary Singapore, where a large number of construction and shipping workers, both domestic and foreign, are employed in potentially hazardous jobs, it is essential to have, and to be seen to have, rigorous rules to secure the greatest possible level of industrial safety, and to provide a legal environment in which an employee who is sent to work outside his employer's premises will not be prejudiced as a result. In *Chandran*, the Court of Appeal demonstrated its willingness not only to set tough standards—and in so doing to discard outdated attitudes—but also to recognize the interplay between legal and societal values. While compensation under no-fault statutory schemes will always be available for vulnerable employees working in inherently dangerous conditions, it is right that, where fault can be established, there should also be the option of common

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[61] See the judgment of Farquharson L.J., in *Cook*, *supra* note 33 at para. 31: "On the facts of the present case there was no delegation by the … defendant of its responsibility … [the] defendant was satisfied … that the site occupiers and the general contractors were both reliable companies and aware of their responsibility for the safety of workers on site. The suggestion that the home-based employer has any responsibility for the daily events of a site in Saudi Arabia has an air of unreality … Circumstances will, of course, vary, and it may be that in some cases where, for example, a number of employees are going to work on a foreign site or where one or two employees are called on to work there for a very considerable period of time that an employer may be required to inspect the site and satisfy himself that the occupiers were conscious of their obligations concerning the safety of people working there. But one cannot prescribe any rules in this context. It will depend on the facts of individual cases."

[62] *Chandran, supra* note 1 at para. 63.

[63] *Ibid*.

[64] *Ibid.* at para. 65.

law damages. Given the large number of industrial safety cases which come before the courts each year, *Chandran* is likely to be of immense statistical significance, with tentacles which will extend far beyond cases associated with the dangers of working at height. It is a watershed decision, and one which will remind industries of the high price to be paid for falling short where employee safety is concerned.