

### **He sues boss and gets: \$100,000 By Crystal Chan-TNP**

If he had accepted the MOM assessment, he would have got only \$4,410 for injuries which have affected his speech and facial muscles.

MR ONG Kean Lim, 23, did what few foreign workers would dare to do: He said no to compensation for his injuries from the Manpower Ministry (MOM).

Instead, he took his employers to court. And won.

He walked away with \$100,000. If he had accepted the MOM assessment, he would have got only \$4,410 for injuries which have affected his speech and facial muscles.

The Malaysian was lucky to survive when he fell 7m (about two-storeys high) from a platform while doing wiring work on 7 Oct, 2005. He suffered fractures that required metal plates to be inserted in his face, and neck wounds that led to part of his thyroid gland being removed.

The MOM had assessed last year that he would get compensation of \$4,410 because his degree of disability was assessed to be only 3 per cent.

In September, he was awarded \$100,000 in damages after his former employer Mass Power Engineering accepted 90 per cent of the blame for the accident.

Mr Ong, who was an electrician, told The New Paper: 'What I got (from the court) is such a big difference from what the MOM offered. Till today, I'm wondering if I'm dreaming.

'I haven't paid my lawyer yet but I'll give her \$5,000 of what I get. The rest of her costs will be paid by Mass Power's insurer.'

Why did he take the risk? Because, he said, he felt the MOM's assessment was insufficient.

'There's permanent numbness in my face and I can't raise my voice anymore. I used to go for karaoke sessions regularly but I can't do this anymore.'

## Repeating himself

His said his voice is also hoarse and he often has to repeat himself to be understood.

He recalled his despair when he woke up in Singapore General Hospital to find that his voice had changed.

Mr Ong said: 'I asked the doctors why my speech was slurred. They said it was because part of my thyroid gland had to be removed because my injuries were serious.

'I felt very sad when I heard this. I also worried that I'd be disadvantaged when I go for job interviews.'

During the interview, Mr Ong had to pause after every 10 minutes of talking, because of facial numbness.

Mr Ong continued to work for Mass Power two months after the accident.

He resigned in December 2005 and filed the suit in July last year soon after he rejected the MOM's assessment of compensation.

He said: 'I resigned because my family was uncomfortable about my job, even though my supervisors were compassionate and stopped me from doing heavy tasks.

'In fact, when I told my ex-bosses I wanted to sue, they said it wasn't a problem as the company's insurers would pay.'

Are more foreign workers willing to follow Mr Ong's gamble?

MOM statistics show there were 14,927 workmen's compensation cases last year. Accepting the MOM's assessment means the worker cannot pursue legal action against the employer. Lawyers believe that for every 10 injured workers, at least five would sue their employers for more compensation, if they were aware of their legal rights.

Indeed, Mr Ong, who comes from Kuala Kurau, a fishing village in Perak, was worried about the consequences.

'If I'd lost, not only would I not get a cent, but I'd also have to pay Mass Power's legal costs. My family was also not confident. They tried persuading me to accept MOM's assessment and move on.'

**But Mr Ong's lawyer, Ms Grace Malathy, assured him she was confident of winning.**

**She said: 'When he came to me, I told him he could easily get at least three times what the MOM assessed for him because his employer had failed to provide a safe working environment.'**

What now? Mr Ong said he plans to continue working here as the salary is higher than what he would get in Malaysia. He earns \$850 a month as a general worker in a cabling company.

'I sued because I wanted to have some money in case I need more surgery in future.'

He may need what is called a thyroplasty or laryngoplasty to ease his voice conditions. The procedures would cost at least \$8,000. He would also need injections to relieve the itchiness of the T-shaped scar on his chest every year. The jabs would cost \$1,000.

Mr Ong said: 'I have a girlfriend but I doubt I'll marry soon because I want to earn more money.'

'I also have to pay my lawyer and, depending on how my work turns out, I may return to Malaysia to start a business.'

When The New Paper contacted the lawyer for Mass Power's insurer, he declined comment.

### **Why courts often award higher damages**

LAWYERS who spoke to The New Paper said workers usually get more compensation if they take their employers to court.

This is because the courts allow damages to be paid for a worker's 'suffering and pain' while the Work Injury Compensation Act does not.

One example is that of Mr Heng Yeow Pheow, who was killed in the Nicoll Highway collapse along with three others on 20 Apr 2004.

The MOM offered compensation of up to \$111,000 to the four victims.

But Mr Heng's widow, Madam Poa Beng Hong, sued the contractor, Nishimatsu-Lum Chang JV, and got \$410,000 in a settlement.

Employees doing manual work or those earning under \$1,600 a month are entitled to compensation if injured or killed.

Lawyer PE Ashokan of KhattarWong said: 'MOM's assessment is on a no-fault basis. Regardless of whether the employer is negligent or not, the worker will be compensated as long as he's injured.

'It's a trade-off because it's a faster process as the worker doesn't need to show the employer was at fault.'

The Work Injury Act also caps the claim for medical expenses at \$25,000. Claims for incapacity range from \$60,000 to \$180,000.

Mr Ashokan said the MOM's assessment for incapacity would depend on the worker's age and earning capacity.

Damages awarded by courts do not have any cap.

But another lawyer, MsAnuradha Tiwary of Vision Law LLC, cautioned that workers should not be quick to take legal action.

She said: 'When you go to court, the onus is on you to show that the employer was negligent.

'It's a risk you take, because if you lose, you have to pay your employer's legal costs, on top of not getting anything.'

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