



มูลนิธิเพื่อสิทธิมนุษยชนและการพัฒนา (นสพ.)
Human Rights and Development Foundation

เลขที่ 109ซอยสิทธิชน ถนนสุทธิสารวินิจฉัย แขวงสามเสนนอก เขตห้วยขวาง กรุงเทพฯ 10310
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Press Release

Eight years of the wait for justice

Supreme Court affirming the status of 'employee' of the wheelchair bound Shan migrant worker, Nang Noom Maisaeng, who suffered severe injury from construction work, entitling her to access to the Workmen's Compensation Fund

Yesterday (30 March 2016), the Labour Court Region 5 read the verdict of the Supreme Court (no.1558/2558) the case of Nang Noom Maisaeng who sued the Workmen's Compensation Fund (WCF)'s 13 board members. Previously, the WCF's board has decided to reject her request to have access to the Fund even though the Shan migrant worker had suffered an injury from her construction work while building a famous hotel in Chiang Mai. As a result, both of her legs become disable and she is permanently wheelchair bound. The WCF deemed she should have asked for compensation from the employer directly. Nevertheless, the Supreme Court determines that Nang Noom is an 'employee' per the 1994 Workmen's Compensation Fund Act and as she has suffered an injury related to her work, she is therefore entitled to compensation from the Fund. That her employer has failed to pay contributions to the Fund cannot be cited as a reason to deny her the right to have access to the Fund. The Supreme Court thus vacated the decision made by the WCF board and ordered the Fund to provide compensation to Nang Noom covering the outstanding monthly compensation her employer has failed to provide her for the disability she suffers (per Article 18 (3)) at the monthly installment of 2,418 baht for four months and twenty days.

In December 2006, Nang Noom Maisaeng suffered an injury from her work. She then requested for compensation from the Social Security Office (SSO) in Chiang Mai. The SSO officer instead instructed her employer to provide the compensation (the order no.1/2550 dated 20 April 2007 and the order no. 2/2550 dated 11 July 2007) covering two parts including

- (1) for the missing monthly salary as she was unable to work for longer than three days consecutively (Article 18 (1) for the amount of 18,251.45 baht (2,418 baht/month x 7 months 17 days) and
- (2) the monthly compensation for her disability (Article 18
- (3)) for the amount of 435,240 baht (2,418 baht/month x 15 years). She appealed the decision.

Later, her employer, the construction subcontractor, has offered to pay her in lump sum, which can be used by the employer for deduction at 2% of his contributions per annum. Eventually, Nang Noom has received the compensation per Article 18(3) for the amount of 362,796.72 baht and the monthly compensation per Article 18 (1) for just 6,206.20 baht (2 months 17 days) from her employer, four months and twenty days less than what she should have been entitled to. As the WCF board deemed she has received the compensation from her employer already and coupled with the SSO's Circular no. RS 0711/W751 which requires that in order to have access to the Fund, the migrant worker must be able to produce personal documents including a passport, or a document of an alien and a work permit and the worker's employer must have paid the contributions to the WCF as required by law. Even though, Nang Noom was an irregular migrant worker, but she was registered and had work permit issued by the Ministry of Labour and registered in the TR38/1 civil registration system run by the Department of Provincial Administration, but she was disqualified by the WCF board and "was denied access to the remaining monthly compensation her employer owed her". The WCF board has also made a decision (no. 401/2550) to dispose of her appeal with regard to the Circular no. RS 0711/W751.

With support from the Human Rights and Development Foundation (HRDF), Nang Noom has filed the case with the Labour Court Region 5 in 2008 asking the Court to vacate the decision made by the WCF board and to instruct the board to provide her the compensation for the amount of 12,045.25 baht the amount of which is owed to her by her employer. The Court dismissed the case, and thus she appealed with the Supreme Court.

The verdict of the Supreme Court can be summarized as follows;

1) Whether Nang Noom is entitled to the remaining monthly compensation for 4 months and 20 days or not?

The Supreme Court deems that even though Nang Noom has previously accepted and received part of the compensation, but she has not withdrawn her appeal with the WCF board requesting for the remaining compensation. Therefore, the Supreme Court deems that the board, instead of disposing of the case, should determine if Nang Noom was entitled to the monthly compensation per Article18(1) owed to her by the employer or not. The Supreme Court deems that Nang Noom is entitled to the remaining compensation.

2) In relation to that, whether Nang Noom has the right to oblige the WCF to provide for the remaining compensation or not?

The Supreme Court deems that Nang Noom was an employee per the definition set forth in the Workmen’s Compensation Fund Act. Even though she was an irregular migrant worker, but she was well registered and was issued with personal documents per the civil registration procedural law and had a work permit. Thus, she was entitled to the protection provided by the WCF Act and was entitled to the compensation from the Fund. She could not be disqualified by the issuance of the Circular no. RS 0711/W751. As to that the employer has failed to pay contributions to the Fund, the Supreme Court deems that the payment of the contributions is a direct responsibility of the employer per the WCF Act. Should the employer fail to make the payment, he shall be obliged to provide additional payment (Article46) and subject to criminal liability (Article62). The SSO is compelled (by Article47) to take action against the employer who fails to act according to the law and it could not be cited as a reason to deny the right of Nang Noom. In addition, no clauses in the WCF Act can be cited to restrict an employee’s right to have access to the Fund of by citing that the employee must have paid personal income tax, prior to the decision was made by the Chiang Mai SSO to deny the right of Nang Noom to have access to the Fund. Therefore, the Circular issued by the SSO was unlawful.

3) The Supreme Court decides to vacate the decision made by the WCF board, just for the part on the outstanding monthly compensation per Article18 (1), for 4 months and 20 days.

Mr. Somchai Homlaor, Secretary General of HRDF, said that the verdict of the Supreme Court albeit being fraught with delay, reflect that the Thailand’s judicial system still clings on to the rule of law and human rights principle, even though attempts had been made by some Thai state agencies to deviate the intent of the laws as a result of their biases and discrimination. HRDF will remain vigilant on how the verdict will be executed by the officers of the SSO.

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