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### Press Release

**Court of Appeal for Specialized Cases Region 5 upholding verdict to allow descendants of migrant worker who died from work-related injury to have immediate access to Workmen Compensation Fund even though employer deliberately failed to register the worker and pay contributions to WCF**

On 20 August 2024 at 9am, the Labour Court Region 5 read the Court of Appeal for Specialized Cases Region 5's verdict regarding a migrant employee who died from work-related injury, but his descendants have been denied access to Workmen's Compensation Fund. Two key issues from the verdict can be summarized as follows;

Firstly, the Court found the company had deliberately avoided to register the deceased employee and apply for his work permit and failed to act in compliance with the Workmen's Compensation Fund Act B.E. 2537. The company recruited the migrant worker to work in its construction project. Instead of directly employing the worker, the company had the worker registered as an employee of a third party which was not a contracted as the company's subcontractor. Therefore, the subcontractor agreement was deemed falsely made and void by the Court. The Court determined that in fact the company was the actual employer of the deceased migrant worker.

Secondly, the Workmen's Compensation Fund Act B.E. 2537 prescribes for the Social Security Office to establish the **"Workmen's Compensation Fund"** aiming to ensure protection and remedy for an employee who suffers from danger, sickness, death or disappearance during the course of their work and to ensure the employee or their descendants (in case of death) are entitled to receiving the compensation including medical costs and other expenses from the **"Workmen's Compensation Fund"** directly without having to demand from their employer. It

legally provides that an employee shall be entitled to receiving money from WCF regardless of their employer has paid contributions to the Fund or not. This helps to prevent the employee or their descendants, in case of the employee's death, to encounter their financial vulnerability or to face any abuse by the employer or other uncertainty regarding their access to receive compensation from their employer.

Therefore, the Chiang Mai Social Security Office and the Workmen's Compensation Fund Committee are not allowed to cite the employer's deliberate avoidance or failure to pay contributions to the Fund as a reason to deny the deceased worker's descendants access to WCF. **The Social Security Office has issued a guidance according to the circular letter no. R-NG 0607/W987 dated 31 May 2012 regarding the protection of alien worker suffering from work-related danger or sickness which provides that an alien worker who suffers from work-related danger or sickness shall be eligible to receiving compensation from WCF provided that they can produce their registration papers and their work permits. Such worker must also be deemed to have entered the country legally or have undergone nationality verification process pursuant to the cabinet resolution dated 13 February 2012. Without such documentation, the employer must be required to have paid contributions to the WCF according to the Workmen's Compensation Fund Act. The Court has found the guideline unlawful.**

In concurrence with the Labour Court Region 5, the Court of Appeal for Specialized Cases ordered the revocation of the Social Security Office's Order no. 1/2564 dated 1 December 2021 and the revocation of the Workmen's Compensation Fund Committee's decision no. 15/2566 dated 18 January 2023 which instructed the company to provide compensation to the deceased migrant worker's wife. **Upholding the Labour Court Region 5's verdict, the Appeals Court instructed the Social Security Office to provide compensation to the deceased migrant worker's wife.**

Regarding this verdict, HRDF deems that it is incumbent on the Social Security Office to revoke various guidelines which appear to discriminate and exclude migrant

worker denying their access to remedy since they stand contrary to the spirit of Constitution of the Kingdom of Thailand B.E. 2560 including its Section 27 and the International Convention on the Elimination of All Forms of Racial Discrimination to which Thailand is a state party.

This case has stemmed from an incidence on 19 December 2020 when a Myanmar migrant worker employed for general construction work by a real estate company based in Chiang Mai had suffered from work-related injury while removing a 3x3 meters steel window frame as it fell and hit his head. He was transferred to receive the treatment at the San Sai Hospital and the Nakornping Hospital and was pronounced dead on 22 December 2020. The deceased worker's wife has asked for help from staff of the **Human Rights and Development Foundation (HRDF)** in order to receive the compensation. HRDF's staff has thus acted as follows;

1. On 25 December 2020, the deceased's wife as his legal representative has gone to the Chiang Mai Social Security Office to apply for compensation from the Workmen's Compensation Fund. The Social Security Office has later issued the order of competent official no. 1/2564 regarding a compensation for work-related death to indicate that the amount of 750,391.50 baht shall be awarded as a compensation, although the legal representative shall have to access to the compensation from WCF. And the authority simply instructed the employer to make such payment citing that the employer had failed to register the employee with the Chiang Mai Office of Employment and had failed to register him with the Workmen's Compensation Fund and failed to pay contributions to the Fund as required by law. Any appeal could be lodged within 30 days.
2. On 29 December 2021, the deceased's wife has authorized HRDF's staff to appeal the decision with WCF Committee in order to apply for the compensation. The WCF Committee in its decision no. 15/2566 upheld the decision of the Chiang Mai Social Security Office.

3. On 23 March 2023, the employer sued the Chiang Mai Social Security Office and the WCF Committee with the Labour Court Region 5 claiming that it was not the deceased's employer and the deceased was in fact employed by the company's subcontractor which had registered the deceased as its employee.
4. On 28 March 2023, HRDF designated an attorney to help the deceased's wife to file the case against the Chiang Mai Social Security Office and the WCF Committee with the Labour Court Region 5 to revoke the decisions which made the deceased's wife ineligible to receiving compensation from WCF.
5. The Labour Court Region 5 merged the two cases and ruled on 25 September 2023 that the subcontractor agreement made between the company and its subcontractor which claimed to be the deceased's employer appeared to have been made with mischievous collusion simply to claim the deceased was employed by the subcontractor, and not employed directly by the company and determined that the agreement was void and the company was the actual employer of the deceased. The case filed by the company was therefore dismissed.
6. As to the case filed on behalf of the wife by HRDF's staff to hold the Social Security Office liable, the Labour Court Region 5 ruled to revoke the Social Security Office's Order no. 1/2564 and the WCF Committee's Decision no. 15/2566 and instructed WCF to provide the deceased's wife with compensation from its fund.
7. Later, the employer, the Social Security Office and the WCF Committee have appealed the decision of the Labour Court Region 5 with the Court of Appeal for Specialized Cases Region 5. This has led to the aforementioned ruling made by the Court of Appeal for Specialized Cases Region 5.

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