Teo Seng Kiat v Goh Hwa Teck
[2000] SGHC 202

Case Number : Suit No 2224 of 1998, RA No 600003 of 2000

Decision Date : 30 September 2000

Tribunal/Court : High Court

Coram : G P Selvam J

Counsel Name(s) : Florence Koh and Joshua Lim (Engelin Teh & Partners) for the plaintiff; Ramasamy Chettiar (Harry Elias Partnership) for the defendant

Parties : —

Damages – Measure of damages – Assessment – Appeal from Registrar to judge in chambers – Role of appellate judge

Damages – Measure of damages – Personal injuries cases – Interlocutory judgment – Assessment of damages – Pre-trial and future loss of earnings distinguished from loss of earning capacity – Multiplier and multiplicand to be used – Probability of Malaysian working in Singapore indefinitely

injuries - Interlocutory judgment - Assessment of Damages - Pre-trial and future loss of earnings - Loss of earning capacity - Multiplier and multiplicand to be used - Whether a Malaysian could work in Singapore indefinitely.

Facts

On 12 March 1998, the plaintiff was riding his motor-cycle along Sims Avenue. There was a collision between the motor-cycle and a motor van driven by the defendant. The plaintiff suffered injuries. He then issued a writ seeking damages. The defendant did not deny liability. Interlocutory judgment was entered by consent. Damages were then assessed by in the aggregate amount of $329,788. Out of that amount, the court below awarded $16,500.42 for pre-trial loss of earnings, $183,600 for loss of future earnings and $20,000 for loss of earning capacity. The defendant appealed.

Held

, varied the amount of damages for pre-trial and future loss of earnings to a global sum of $120,000 and no award for loss of earning capacity:

> (1) In this case, the loss of earnings was in respect of past and prospective earnings and there can be no additional claim for loss of earning capacity. The plaintiff in this case was working before the accident and returned to work after the accident and the loss of earnings was known and assessable. Accordingly, he was not entitled to additional general damages for handicap in the future as loss of earning capacity (see 9).
>
> (2) In view of the medical evidence, there was sufficient objective basis to conclude that the plaintiff's earning capacity, as in loss of future earnings, was indeed diminished. The evidence adduced, however, did not support a drastic loss of 60% as asserted by the plaintiff. He magnified it to maximize his claim for damages. The defendant's counsel conceded that while the plaintiff suffered "a mild disability", it was not, however, so minimal to apply the *de minimus* doctine. The fair and reasonable loss was about 25% (see 11).
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> (3) As the plaintiff was only 28 years old, the court determined a multiplier of 18 years. This accorded with the current trend in relation to a healthy young man (see 12).
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> (4) It was contended that as the plaintiff was a Malaysian he could not work in Singapore indefinitely.

In this regard, the court noted that the plaintiff was not an unskilled labourer confined to work at a construction site. He had acquired a specialised skill for which there would always be a need in Singapore. Additionally, his employer could not find an equally skilled replacement during his absence. The probabilities were that Singapore would hold out a job for him (see 13).

(5) Based on the objective income tax returns of the plaintiff, the court accepted the plaintiff's income as $2,100 per month. In keeping with an estimate of 25% loss of ability, the court decided on an estimated monthly loss of $500. That was the amount the court used in calculating his past and future loss of earnings after he returned to work. The court was of the view that that was the most reasonable basis in the special circumstances of this case. Based on 22 months of pre-assessment loss of earnings at $500 per month amounting to $11,000 and prospective loss of earnings at $500 per month x 18 years x 12 months amounting to $108,000, the court arrived at a total of $119,000. This figure was then rounded off to $120,000 (see 14-15).

Case(s) referred to

Chang

Ah Lek v Lim Ah Koon [1999] 1 SLR 82 (refd)
Davis v Powell Duffryn Associated Collieries Ltd [1942] AC 601 (refd)
Flint v Lovell, [1935] 1 KB 354 (refd)
Low Swee Tong v Liew Machinery (Pte) Ltd [1993] 3 SLR 89 (refd)
Moeliker v Reyrolle & Co Ltd [1977] 1 WLR 132 (refd)
Pritchard v Cobden [1987] 2 WLR 627 (refd)
Teo Sing Keng v Sim Ban Kiat [1994] 1 SLR 634 (refd)
Wee Sia Tian v Long Thik Boon [1996] 3 SLR 513 (folld)

Judgment

GROUNDS OF DECISION

The decision

1. On 12 March 1998, at about 5 pm the plaintiff was riding his motor-cycle along Sims Avenue. There was a collision between the motor-cycle and a motor van driven by the defendant. The plaintiff suffered injuries. He then issued a writ seeking damages. The defendant did not deny liability. Interlocutory judgment was entered by consent. Damages remained to be assessed by the Registrar.

2. Assessment of damages was done by Ms Tan Wen Shan AR. She awarded general damages in the aggregate amount of $329,788. The breakdown was as follows :

1. General damages	$329,000.00
(a) fracture of clavicle	$ 8,000.00
(b) fracture of scapula	$ 6,000.00
(c) fracture of ribs	$ 8,000.00
(d) reduced sense of smell	$ 10,000.00
(e) scarring and abrasions	$ 3,000.00

(f) head injuries $ 90,000.00

(g) loss of future earnings $183,600.00

(h) loss of earning capacity $ 20,000.00

(i) cost of future medical cares $ 1,188.00

3. Then there were special damages. They were as follows :

(a) Medical expenses (agreed) $ 7,113.91

(b) Pre-trial transport (agreed) $ 150.00

(c) Pre-trial loss of earnings
from 12 March 1998 to
6 August 1998 $ 8,771.78

(d) Pre-trial eanrings
from 7 August 1998 to
28 December 1999 $ 16,500.42

(e) Taxi fare to and from work
@ $15 per day from 7 August
1998 to 21 May 1999 $ 4,290.00

4. The defendant appealed against the decision of the Assistant Registrar. I varied the earnings part of the award of the Assistant Registrar as follows : 1(g), (h) and 2(d) to $120,000.00. I awarded a lump-sum to include the items.

5. The defendant has filed an appeal against the award of $120,000. I shall therefore elucidate this item.

The law

6. First, the legal principles. A finding on damages differs from an ordinary finding of fact in that it is generally much more a matter of speculation and estimate. This statement is true in respect of some cases than of others. Assessment of general damages, in cases like breach of contract for the sale of goods, for instance, is largely an objective exercise. Findings in such cases differ little from any other finding of fact. Assessment of damages for pain and suffering or wrongs such as slander are almost entirely matter of impression and of common sense. See ***Davis v Powell Duffryn Associated Collieries Ltd*** [1942] AC 601 at 624.

7. An appellate court is not justified in substituting a figure of its own for that awarded below because it would have awarded something different if it had tried the case. An appellate court will intervene only when the Judge, in assessing the damages, applied a wrong principle of law; or, short of this, the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage. ***See Flint v Lovell***, [1935] 1 KB 354, ***Davis v Powell***. This rule, however, does not apply to an appeal from the Registrar to the Judge-in-Chambers. See ***Chang Ah Lek v Lim Ah Koon*** [1999] 1 SLR 82. It settled the law that an assessment of damages which comes on appeal to a Judge-in-Chambers is quite unlike an appeal from a trial judge to the Court of Appeal. The restrictions that bind the Court of Appeal do not limit function of the Judge. The Judge addresses the issues before him and assesses the damages *de novo*. He makes his own findings based, however, on the evidential material written and collected by the Registrar and the findings made by him. This is why the Court below is not required to give reasons for its decision; and the appellant is not required to state the grounds of appeal enumerating the errors of the Court below. Additionally points not canvassed before the Registrar may be presented before the

Judge. Nonetheless, his decision must be judicial. Unlike the Registrar, the Judge must write his reasons if his decision is appealed. Even so, the Judge-in-Chambers ought not unnecessarily embark on an exercise of tinkering with the decision of the Court below with the view of fine tuning the decision. That would demolish the important function of the Court below.

Loss of earnings

8. In the case of non-fatal injury cases the injured is entitled to recover both past and prospective earnings. The date of trial or assessment provide the dividing line. This bifurcation is important because the multiplier is determined from the date of trial or assessment without any deduction for the time before the trial long though it might be. See ***Pritchard v Cobden*** [1987] 2 WLR 627. In that case Pritchard suffered brain damage in 1976. He became unable to work because of the injury. The assessment of damages was done at the trial in 1986. Swinton Thomas J took a multiplier of 14 from the date of trial and applied a multiplicand of 9,000 per annum. The total loss of earnings, past and prospective, amounted to 126,000. He rejected a submission that the multiplier should be reduced by the time elapsed since the accident. The Court of Appeal affirmed his decision. That decision settled the law that : damages for loss of earnings of a living plaintiff should continue to be assessed as special damages for the earnings lost between the date of the accident and the date of assessment. Calculation of the future loss of earnings is computed from the date of assessment by selecting an adequate multiplier for the multiplicand to compensate for the likely loss of earnings for the remainder of his working life.

Discriminating loss of earnings and loss of earning capacity

9.(i) The expressions "loss of earnings" and "loss of earning capacity" are often confused. Sometimes they are user tautologically. In this sense they encompass past and future loss of ascertainable earnings. The loss may be total or partial. In either case the loss is attributable to loss or reduction in earning ability. A claim for damages under this head are relatively easy to assess because the numbers that work the established formula are readily available.

(ii) There is another sense to the expression "loss of earning capacity". This arises when the claimant returns to work without any immediate loss of earning. There is, however, the risk that in the future he may be at a disadvantage due to a lingering disability by reason of the injury in getting another job if he loses the present job. Alternatively he may suffer a pay-cut in the future on account of the disability. This is sometimes referred to as handicap in the labour market. In this sense the expression is a term of art. To justify an award under this head there must be a substantial or real risk that the plaintiff would lose his present employment during his working life. If there was such a risk the assessment of damages would depend on the degree of the risk, the time when the loss of employment might occur and the factors affecting the plaintiff's chances of obtaining other employment. See ***Moeliker v Reyrolle & Co Ltd*** [1977] 1 WLR 132. ***Low Swee Tong v Liew Machinery (Pte) Ltd*** [1993] 3 SLR 89 and ***Teo Sing Keng v Sim Ban Kiat*** [1994] 1 SLR 634. A claim under this head is hugely speculative and difficult to assess. Except when clear evidence is adduced a large amount will not be given under this category. In any event, a claim under this head cannot arise where the injured was working before the accident and suffered a permanent total or partial loss of earnings.

(iii) The two heads are alternative and not cumulative. In the case before me, as the loss of earnings was in respect of past and prospective earnings there can be no additional claim for loss of earning capacity in the second sense of the term. The plaintiff in this case was working before the accident and returned to work after the accident and the loss of earnings was known and assessable. Accordingly he was not entitled to additional general damages for handicap in the future as loss of earning capacity in the second sense of the expression.

The facts

10.(i) The claim for loss of earnings due to reduction in earning capacity was based on the following evidential material.

(ii) Dr Karen Chua of Tan Tock Seng Hospital in a medical report dated 21 May 1999 said that : It is likely that subsequent improvement will be slow and the likely estimated percentage awarded for permanent disability is 20% (twenty) percent for his residual high level cognitive impairment.

(iii) Dr Kanwaljit Soin, Orthopaedic Surgeon, an acknowledged expert in her field, said in a report dated 16 July 1999 on the plaintiff : The patient is a mechanic but as a result of the injuries sustained from the accident, especially the fracture of the clavicle, *he is unable to carry heavy objects*.

(iv) The plaintiff's own assertion on the matter was : "After the accident, I could no longer carry or handle heavy objections. The scope of my work is thus restricted. I also take more time to plan and figure out how to produce more complicated items. Due to the weakness in my limbs, my speed of work also slowed down. I became less productive and my employer reduced by pay to $850 with effect from November 1998. Further, after the accident, I could not work the long hours I used to. I have been advised by Dr Karen Chua to take more rest and not to strain myself. I feel very tired after usual working hours and o longer have the stamina to work long hours. I therefore go home after working hours and rest on Sunday."

(v) The plaintiff's employer's evidence on the loss of earnings aspect of the case was this :

> "The plaintiff has been in the employment of Cheong Hup Engineering Service since 1990. He is and has always been employed as a fitter and his job involves producing metallic fixtures and items of all shapes and sizes. The blue print would be given to him and his job includes planning and figuring out how to produce the items. His job therefore involve handling metals of various sizes and weight. Besides using machines to cut the metal, various tools are also utilised, which of course requires certain amount of strength.
>
> Prior to the accident he was drawing an average monthly salary of $2,100.00. His basic pay was $1,500.00 before August 1997 and with effect from August 1997, his pay was $1,300.00, after a $150.00 increment.
>
> He is very hard working and did overtime work almost every day including Sunday. The rate of his overtime pay was 1.5 times the hourly rate of his basic pay, for weekdays and 2 times of the same for Sunday.
>
> However, after the road accident on 12.3.98, the plaintiff no longer works over time as it is too tiring for him and he needs more rest.
>
> Since the accident, the plaintiff could not lift nor handle heavy objects any more. His scope of work is therefore also restricted as compared to the scope of work he could do before the said accident happened. Further, since the accident, his speed of work also slowed down thus becoming less productive. As Cheong Hup Engineering Services is making slim profits and profits are dependant on the number of items produced, I have no choice but to reduce his basic pay to commensurate his scope of work and productivity. Thus, from November 1998, his pay was reduced to $850.000."

The findings : Loss of earning capacity

11. Tan Wen Shan AR who saw the witnesses being cross-examined appears to have accepted the evidence of the plaintiff and his employer. In my view the evidence given by them was subjective and should be subjected to scrutiny. In view of the medical evidence and particularly that of Dr Kanwaljit Soin there was sufficient objective basis to conclude that the plaintiff's earning capacity in the first sense was indeed diminished. The evidence adduced, however, did not support a drastic loss of 60% ($850 over $2100) as asserted by the plaintiff. He magnified it to maximize his claim for damages. It was a case of a plaintiff psychologically opting out of hard work in the hope of recovering his perceived loss of earnings from the defendant who in fact was an insurance company . The defendant's counsel conceded that what the plaintiff suffered "a mild disability". It was not, however, so minimal to apply the *de minimus* doctine. The fair and reasonable loss was about 25%.

The multiplier

12. I now turn to the multiplier. As I have already stated this is ascertained from the date of the trial. In this case it was the date of assessment. As I heard the matter *de novo* the starting point for future loss was the date of my decision. It is to be borne in mind that the time that elapsed from the date of accident to the date of my decision was not too long for the defendant to grouse about. As the plaintiff was only 28 years old I determined a multiplier of 18 years. This accorded with the current trend in relation to a healthy young man.

The Malaysian factor

13. It was contended that as the plaintiff was a Malaysian he could not work in Singapore indefinitely. When considering this matter I noted that the plaintiff was not an unskilled labourer confined to work at a construction site. He had acquired a specialised skill for which there would always be a need in Singapore. Additionally, his employer could not find an equally skilled replacement during his absence. The probabilities were that Singapore would hold out a job for him. In this regard I shared the view of Judith Prakash J in ***Wee Sia Tian v Long Thik Boon*** [1996] 3 SLR 513 where she took judicial notice of the fact that a Malaysian construction worker in Singapore would continue to work here for a good length of time. A skilled worker has a better future than a construction worker in Singapore.

The multiplicand

14. Finally, the multiplicand. The plaintiff's case was that before the accident he earned an average of $2,100 per month. This was supported by Inland Revenue Authority document for the Year of Assessment 1998. His earnings for the whole year 1997 was $21,629.65. This amount had two components : First half : $8,988.40. Second half : $12,640.60. The average monthly income for the period July to December, therefore, was $2,106.77 ($12,640.60 6). This was independent and uncontroverted evidence. In view of this it was very probable and reasonable that his monthly earning at the time of accident was $2,100. This was number applied to calculate the earnings before the plaintiff returned to work on 7 August 1998. The plaintiff's employer was not a large organisation with an accounting staff. It was not surprising that there was not much documentation evidencing all the moneys his employer paid him. For this reason, the tax return was adequate proof of the plaintiff's earning before the accident. For the future the plaintiff's earnings, if anything, would only go up in the ordinary nature of things. The plaintiff contended for a loss of $1,250 per month. For reasons already stated this could not be sustained on an objective basis. In keeping with an estimate of 25% loss of ability I decided on an estimated monthly loss of $500. That was the amount I used in calculating his past and future loss of earnings after he returned to work. That was the most reasonable basis in the special circumstances of this case.

15. Those numbers gave these amounts :

Pre-assessment loss of Earnings from 7.8.98 to 26.5.2000 (22 months)	$ 11,500.00
Prospective loss of earnings 18 x 12 x $500	$108,000.00
Total :	$119,000.00

16. As the assessment of past and future earnings or loss of earning capacity in the first sense of that expression involved estimates I rounded the aggregate amount to $120,000. It was a global approach to derive a just result.

Sgd:

GP SELVAM

JUDGE

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