IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC(A) 25

Civil Appeal No 111 of 2021

Between

Leow Peng Yam

… *Appellant*

And

Aryall Kang Jia Dian

… *Respondent*

In the matter of District Court Appeal No 15 of 2021

Between

Leow Peng Yam

… *Appellant*

And

Aryall Kang Jia Dian

… *Respondent*

GROUNDS OF DECISION

[Civil Procedure — Limitation]
[Limitation of Actions — Particular causes of action — Tort]
[Limitation of Actions — When time begins to run — Section 24A of the Limitation Act]

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v
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23 May 2022

15 June 2022

Woo Bih Li JAD (delivering the grounds of decision of the court):

Introduction

1 This appeal arose from a claim by the respondent, Ms Aryall Kang Jia Dian, against the appellant, Mr Leow Peng Yam, for negligently causing her personal injury. On 14 May 2016, the respondent was severely injured in a collision with a bus driven by the appellant and she suffered serious cognitive difficulties as a result.

2 The appellant has accepted that the respondent's injury was caused by his negligence and the parties agreed that the appellant's liability was to be fixed at 85% in the respondent's favour if she succeeds in her claim. The sole issue related to whether the respondent's action was time-barred. The respondent succeeded in her claim at first instance before a District Judge (the "DJ"). The appellant's appeal to a Judge of the General Division of the High Court (the

"Judge") was dismissed: see *Aryall Kang Jia Dian v Leow Peng Yam* [2021] SGDC 91 (the "Trial GD") and *Leow Peng Yam v Aryall Kang Jia Dian* [2021] SGHC 275 (the "HC GD") respectively. The appellant then sought, ultimately, to bring a further appeal to the Appellate Division of the High Court (the "AD"). We dismissed the appeal in the circumstances mentioned below.

Background to the dispute

3 On 14 May 2016, when the respondent was crossing a signalised traffic junction, an SMRT Corporation Ltd (the "SMRT") bus driven by the appellant collided with her. She was conveyed to Khoo Teck Puat Hospital ("KTPH") by ambulance and was found to have, among other injuries, severe head and brain injuries as well as psychological conditions and symptoms, as follows:[1]

> (a) "Fracture of the left parietal bone, acute subdural haematoma along right frontal, temporal and parietal lobes with traumatic subarachnoid haemorrhage in the right sylvian fissure and haemorrhagic contusion of the left occipital lobe. Continuing disabilities including anosmia/hyposmia, poor memory, inability to concentrate and anxiety, MRI brain in 2017 showed siderosis in the bilateral temporal lobes";
>
> (b) "Adjustment disorder with mixed anxiety and depressed mood";
>
> (c) "Benign positional paroxysmal vertigo"; and
>
> (d) "Cognitive disabilities in terms of immediate and delayed memory and attention span".

[1] 3 ROA pp 13 and 14 at para 7.

4 As a result of the above injuries, the respondent was in considerable pain, and was dazed and disoriented. She was also in a state of amnesia, which affected her memory of the accident and her short-term memory.[2]

5 On 23 May 2016, the respondent was discharged from KTPH and given hospitalisation leave until 23 August 2016.[3] On the day of her discharge, the respondent filed a police report regarding the accident with the traffic police at a neighbourhood police centre. She did so because while she was hospitalised, a police officer had informed her that the traffic police required her to lodge an accident report so that they could begin investigations. She claimed that because she had no recollection of the accident at the time, her father helped her with this task and she simply signed the report.[4] Despite her memory loss, she was also able to provide the traffic police with details of the accident location, and time and date, because she had previously been given a "green card" either by a nurse or the traffic police at the hospital.[5] Also, it was assumed below that on that same day, the respondent had asked the traffic police for the bus driver's name but was told that this information was confidential.[6] However, it was unclear when this question and response actually took place. We will say more about this later.

6 The respondent met with lawyers on 11 October 2016 and subsequently discovered the identity of the driver of the bus that had collided into her, *ie,* the appellant. However, as noted by the Judge, the respondent did not state the date

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2 3 ROA p 14 para 9.

3 3 ROA p 14 para 8.

4 3 ROA p 14 at para 10; p 135 lines 15 to 20.

5 3 ROA p 140 at lines 2 to 6.

6 3 ROA p 146 at lines 14 to 24.

on which she actually discovered the appellant's identity: see the HC GD at [13]. She filed the writ of summons against the appellant on 18 June 2019, which was three years, one month and four days after the accident on 14 May 2016.

7 From at least February 2017, the respondent was treated by, *inter alios*, Dr Eugene Yang ("Dr Yang"), a Senior Consultant and the Head of the Division of Neurosurgery in the Department of Surgery at KTPH.[7] The respondent adduced Dr Yang's expert evidence in support of her case.

Procedural history and the decisions below

8 At first instance, the appellant did not dispute that he was negligent and at the commencement of the trial, the parties informed the court of their agreement that the liability of the appellant was to be fixed at 85% in the respondent's favour, should she succeed in her claim: see the Trial GD at [2]. The sole issue concerned whether the respondent's claim was time-barred. The appellant submitted that the action was brought out of time under s 24A(2)(*a*) of the Limitation Act (Cap 163, 1996 Rev Ed) (the "Limitation Act") because under that provision, the respondent was to bring her action within three years from the date on which the cause of action accrued. Therefore, she should have filed her action before 14 May 2019. The respondent relied on s 24A(2)(*b*) of the Limitation Act which allows her three years from the earliest date on which she has the knowledge required for bringing an action for damages in respect of her injuries. Under s 24A(4)(*b*), the knowledge required means knowledge of the identity of the bus driver, *ie*, the appellant. The respondent submitted that a period of eight weeks should be factored in calculating the limitation period in

[7] 3 ROA p 15 para 14.

view of her cognitive impairment caused by the accident. Her action was therefore not time-barred.

9 On 28 April 2021, the DJ decided in favour of the respondent. She issued her grounds of decision on 3 June 2021. She stated that, having regard to the respondent's medical condition, the earliest point in time when the respondent could reasonably have started to have the requisite knowledge to bring an action against the appellant would be at least eight weeks from the date of the accident on 14 May 2016, *ie*, around mid-July 2016: see the Trial GD at [34] and [38]. Hence, the DJ held that the respondent's action was not time-barred.

10 On 16 September 2021, the appellant's appeal was dismissed by the Judge: see the HC GD at [14] and [37].

11 The Judge agreed that the action was not time-barred. Pertinently, the Judge held that, on a plain and ordinary reading of s 24A of the Limitation Act and from the extant case law, a fact-specific approach was to be taken to ascertain the requisite knowledge under the provision. In her view, the court should have regard to *all* of the particular plaintiff's circumstances in determining whether the plaintiff could reasonably have been expected to acquire the requisite knowledge from facts observable and ascertainable by her. In other words, whatever a plaintiff's personal characteristics or intelligence may be, she is still held to the standard of reasonableness: see the HC GD at [24]. Hence, a plaintiff, such as the respondent, whose cognitive functioning was impaired such that she could not reasonably be expected to acquire the relevant knowledge until a later date fell squarely within the class of plaintiffs for whose benefit ss 24A(2)(*b*), 24A(4)(*b*) and 24A(6) of the Limitation Act were enacted: see the HC GD at [28].

12 The Judge also dismissed the appellant's contention that the facts showed that the respondent should have reasonably acquired knowledge of his identity by 23 May 2016 and, relatedly, his challenge against Dr Yang's evidence: see the HC GD at [29]–[36].

13 On 15 October 2021, the appellant filed an appeal to the AD and subsequently applied unsuccessfully in CA/OS 4/2022 to transfer the appeal from the AD to the Court of Appeal. The appeal was then fixed for hearing by this court. As we will elaborate below, there was a preliminary issue as to whether leave to appeal to this court was required.

The parties' cases

14 We briefly set out the parties' respective cases in this appeal.

15 The appellant made the following three main contentions:

(a) First, in determining the requisite knowledge under s 24A(2)(*b*) read with ss 24A(4)(*b*) and 24A(6)(*a*) of the Limitation Act, the court should apply an objective test which excludes a plaintiff's subjective characteristics in determining when the three-year period begins to run. In this regard, the Judge erred in applying a fact-specific approach.[8]

(b) Second, the Judge erred in accepting Dr Yang's evidence as expert testimony and according it substantial weight.[9]

(c) Third, the Judge erred in finding that it was irrelevant that the respondent had applied her mind to the question of the appellant's

8 AC at paras 8 to 9.

9 AC at paras 72 to 75.

identity when she asked a police officer the identity of the bus driver, without receiving an answer, on 23 May 2016.[10]

16 The respondent made the following contentions in reply:[11]

(a) First, the Judge did not err in law by using a fact-specific approach and in any case, it was unnecessary for the court to decide the issue of whether an objective test should apply since it would lead to the same outcome on the facts of the present case.

(b) Second, Dr Yang is a qualified doctor, and his evidence was credible and unbiased. Also, the appellant did not testify at the trial, call any witness, or adduce any other evidence to contradict Dr Yang's testimony.

(c) Third, the Judge correctly found that given the respondent's cognitive impairments, she could not reasonably be expected to acquire knowledge of the appellant's identity or to do more to acquire specific knowledge of the appellant's identity, by the mere fact that she asked the police officer if the traffic police knew the identity of the bus driver on 23 May 2016.

Preliminary issue: whether leave to appeal was required

17 In their respective cases and written submissions, the parties did not address the issue of whether leave from this court was required for a further appeal from the General Division of the High Court.

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10 AC at paras 76 and 77.

11 RC at para 2.

18 The Supreme Court of Judicature (Transfer of Specified Proceedings to District Court) Order 2016 (Cap 322, S 597/2016) (the "Transfer Order"), as originally made on 3 November 2016 (the "2016 Version"), states as follows:

> In exercise of the powers conferred by section 28A of the Supreme Court of Judicature Act, the Chief Justice makes the following Order:
>
> **Citation and commencement**
>
> **1.** This Order is the Supreme Court of Judicature (Transfer of Specified Proceedings to District Court) Order 2016 and comes into operation on 1 December 2016.
>
> **Proceedings transferred to District Court**
>
> **2.** The following proceedings commenced in the High Court on or after 1 December 2016 are transferred for hearing and determination by a District Court:
>
> (*a*) any action arising out of an accident on land due to a collision or an apprehended collision involving one or more motor vehicles (whether or not involving any claim for personal injuries), where the amount claimed in the action does not exceed $500,000;
>
> (*b*) any action for personal injuries arising out of an industrial accident, where the amount claimed in the action does not exceed $500,000.
>
> …
>
> **Appeals**
>
> **5.**—(1) An appeal lies to the High Court from a decision of a District Court in any proceedings heard and determined by the District Court under this Order, regardless of the amount in dispute or the value of the subject matter.
>
> (2) Except with the leave of a Judge of the High Court, no appeal is to be brought to the Court of Appeal from a decision of the High Court in respect of any appeal heard and determined by the High Court under sub-paragraph (1), regardless of the amount in dispute or the value of the subject matter.
>
> (3) An order of a Judge of the High Court giving or refusing leave under sub-paragraph (2) is final.

> (4) The procedures for appeals from the proceedings mentioned in sub-paragraph (1) to the High Court and, after that, to the Court of Appeal are as specified in the Rules of Court (R 5).
>
> …

19 Subsequently, through the Supreme Court of Judicature (Transfer of Specified Proceedings to District Court) (Amendment) Order 2020 (Cap 322, S 1079/2020) made on 18 December 2020 and which came into operation on 2 January 2021, the 2016 Version of the Transfer Order was amended. We set out the material provisions of the Transfer Order in force from 2 January 2021 to 31 May 2022 (the "2021 Version") here:

> In exercise of the powers conferred by section 28A of the Supreme Court of Judicature Act, the Chief Justice makes the following Order:
>
> **Citation and commencement**
>
> **1.** This Order is the Supreme Court of Judicature (Transfer of Specified Proceedings to District Court) Order 2016 and comes into operation on 1 December 2016.
>
> **Proceedings commenced in High Court before 2 January 2021 transferred to District Court**
>
> **2.** The following proceedings commenced in the High Court on or after 1 December 2016 but before 2 January 2021 are transferred for hearing and determination by a District Court:
>
> (*a*) any action arising out of an accident on land due to a collision or an apprehended collision involving one or more motor vehicles (whether or not involving any claim for personal injuries), where the amount claimed in the action does not exceed $500,000;
>
> (*b*) any action for personal injuries arising out of an industrial accident, where the amount claimed in the action does not exceed $500,000.
>
> **Proceedings commenced in General Division transferred to District Court**
>
> **2A.** The following proceedings commenced in the General Division are transferred for hearing and determination by a District Court:

> (*a*) any action arising out of an accident on land due to a collision or an apprehended collision involving one or more motor vehicles (whether or not involving any claim for personal injuries), where the amount claimed in the action does not exceed $500,000;
>
> (*b*) any action for personal injuries arising out of an industrial accident, where the amount claimed in the action does not exceed $500,000.
>
> …
>
> **Appeals**
>
> **5.**—(1) An appeal lies to the General Division from a decision of a District Court in any proceedings heard and determined by the District Court under this Order, regardless of the amount in dispute or the value of the subject matter.
>
> (2) Leave is required before an appeal may be brought against a decision of the General Division in respect of any appeal heard and determined by the General Division under sub-paragraph (1), regardless of the amount in dispute or the value of the subject matter.
>
> (2A) For the purposes of sub-paragraph (2), leave must be obtained from the court to which the appeal is to be made under section 29C of the Act.
>
> (3) An order giving or refusing leave under sub-paragraph (2) is final.
>
> (4) The procedures for appeals from the proceedings mentioned in sub-paragraph (1) to the General Division and, after that, to the Appellate Division or the Court of Appeal are as specified in the Rules of Court (R 5).

20 It is clear that the above amendments to the Transfer Order were made in light of the establishment of the AD and the renaming of the High Court as the General Division of the High Court on 2 January 2021, pursuant to the coming into force of the Supreme Court of Judicature (Amendment) Act 2019 (Act 40 of 2019).

21 The present case was transferred at first instance to the District Court pursuant to para 2(*a*) of the 2016 Version of the Transfer Order read with s 28A of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) (the "SCJA").

22 Paragraph 5(1) of the 2021 Version allows an appeal to the General Division of the High Court. However, pursuant to paras 5(2) and 5(2A) of the 2021 Version read with s 29C of the SCJA, leave from the AD is required before a further appeal may be brought against a decision of the General Division to the AD, regardless of the amount in dispute or the value of the subject matter. Hence, for this appeal, it appeared to us that leave to appeal was required from this court but was not sought.

23 We directed the parties to address us on this issue at the hearing.

24 The appellant submitted that the 2021 Version was inapplicable. Paragraph 5(1) of the 2021 Version refers to "any proceedings heard and determined by the District Court *under this Order*" [emphasis added]. On the appellant's view, "under this Order" in the 2021 Version refers to the 2021 Version only and not the 2016 Transfer Order. Also, para 2 of the 2021 Version refers to proceedings which "are transferred" for hearing to the District Court and not to those which had already been transferred. As the case at first instance was commenced on 18 June 2019 in the High Court and had been transferred to the District Court pursuant to the 2016 Version, the 2021 Version did not apply. The appellant therefore submitted that leave to appeal under para 5(2) of the 2021 Version was not required.

25 In our view, the appellant's submission was unmeritorious.

26 Paragraph 5(2) of the 2021 Version applied to this appeal because the appeal from the District Court was heard by the General Division. Furthermore, as seen from para 1 of the 2021 Version, the reference to "this Order" within the Transfer Order must be to all versions of the Order from the 2016 Version up to the present version at hand (*ie*, 2021 Version). The 2016 Version was not deleted but merely amended by the 2021 Version. Moreover, the amendments to the 2016 Version did not introduce any new step in substance. Under para 5(2) of the 2016 Version, an appellant is required to seek leave from the High Court for an appeal to the Court of Appeal. This was the case before the AD became operational on 2 January 2021. Thus, even under the 2016 Version, the appellant was required to obtain leave to appeal (albeit from the High Court).

27 The appellant's next argument was to suggest that neither the 2016 Version nor the 2021 Version applied. This lacked merit. It cannot be that the case was in some limbo between the two versions. The appellant should have obtained leave to appeal.

28 In the circumstances, where a case has been transferred to the District Court under the 2016 or 2021 Version, an appeal may be made to the High Court or the General Division of the High Court, as the case may be. In the latter case, a further appeal to the AD is possible if leave to appeal is obtained from the AD.

29 However, it was clear that by the date of the hearing before us on 23 May 2022, the appellant was out of time to seek leave to appeal. Hence, upon learning from the court that leave to appeal was required, counsel for the appellant made an oral application for an extension of time to seek leave. Although counsel for the respondent initially appeared to oppose the oral application, he eventually decided not to do so. It was therefore for the appellant to persuade the court as to why leave should be granted.

30 In the light of the background as to how the appellant came to this position, the appellant did not rely on the usual three grounds for leave to appeal set out in *Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 ("*Tang Liang Hong*") at [16]. Instead, the appellant strove to show that there was merit in the appeal.

The applicable test for determining whether the respondent had the requisite knowledge

31 The appellant submitted that the Judge had erred in law by applying an incorrect test in determining whether a plaintiff had constructive knowledge under s 24A(2)(*b*) read with ss 24A(4)(*b*) and 24A(6)(*a*) of the Limitation Act.[12]

32 In the HC GD, the Judge held as follows (at [24]):

> 24 In my judgment, s 24A, given a plain and ordinary reading, has as its sole focus a plumbline of reasonableness. Rather than considering whether an impairment in cognitive function is a personal characteristic or a function of intelligence, it is preferable to adopt a *fact-specific approach*. Such an approach must perforce take reference from the particular plaintiff in all the circumstances of her case. *The role of the court is to ask whether, given such circumstances, the plaintiff could reasonably have been expected to acquire the requisite knowledge from facts observable and ascertainable by her. In other words, whatever a plaintiff's personal characteristics or intelligence may be, she is still held to the standard of reasonableness.* In interpreting reasonableness, the absence of an equitable lever should be irrelevant to the statutory construction of the reasonable attribution of knowledge. [emphasis added]

33 The appellant submitted that as the Judge had adopted a fact-specific approach to this inquiry, this was a position that departed from the prevailing position in the United Kingdom. In *Adams v Bracknell Forest Borough Council* [2005] 1 AC 76 ("*Adams*"), the majority of the House of Lords held that in

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12 AC at para 9.

relation to s 14(3) of the Limitation Act 1980 (c 58) (UK), which is *in pari materia* with ss 24A(6) and 24A(7) of the Limitation Act, an objective test applies in determining the requisite knowledge on the part of the plaintiff. This inquiry concerns the knowledge that a reasonable person placed in the situation of the plaintiff would have been expected to acquire (*per* Lord Hoffmann at [47] and [49], Lord Phillips of Worth Matravers at [58] and Lord Scott of Foscote at [71] and [73] of *Adams*). In this regard, aspects of character or intelligence which are peculiar to the plaintiff should not be considered. In contrast, on the appellant's view, the fact-specific approach adopted by the Judge suggested that the court *could* take into account the personal characteristics of the plaintiff. The appellant submitted that the objective test in *Adams* should have been used instead and this was an important point of law which had not yet been decided in Singapore. Indeed, the appellant's case went into a lengthy discourse on why the objective approach should apply in Singapore, citing various case authorities in the United Kingdom, Hong Kong and Australia. We add that if this question was applicable, it would have come within one of the grounds for leave to appeal set out in *Tang Liang Hong*, *ie*, a question of general principle decided for the first time.

34 However, we were of the view that this question was in fact academic. As seen from [24] of the HC GD reproduced above at [32], the Judge was, in fact, applying the objective approach in *Adams*. The "fact-specific approach" mentioned by the Judge had to be read with her reasoning that "[t]he role of the court is to ask whether, given such circumstances, the plaintiff could *reasonably* have been expected to acquire the requisite knowledge from facts observable and ascertainable by her" [emphasis added]. In other words, the Judge was simply stating that *the objective test in Adams* entailed a fact-specific approach to the inquiry of whether a plaintiff could reasonably be said to possess the requisite knowledge under s 24A(2)(*b*) read with ss 24A(4)(*b*) and 24A(6)(*a*) of

the Limitation Act. The Judge further clarified this by stating that "*whatever a plaintiff's personal characteristics or intelligence may be*, she is still held to the standard of reasonableness" [emphasis added].

35 Furthermore, it was clear from the rest of the HC GD that the Judge did not allude to the personal attributes or characteristics of the respondent. All that the Judge did was to take into account the injuries suffered by the respondent (see the HC GD at [25]). This was something she was entitled to do even under *Adams* where Lord Hoffmann said at [49]:

> 49 In principle, I think that the judge was right in applying the standard of reasonable behaviour to a person assumed to be suffering from untreated dyslexia. If the injury itself would reasonably inhibit him from seeking advice, then that is a factor which must be taken into account. …

36 Thus, the Judge had applied the objective approach in *Adams* and this platform of the appellant's case failed. Accordingly, the issue of the applicable test for determining whether the plaintiff possessed the requisite knowledge under s 24A(2)(*b*) read with ss 24A(4)(*b*) and 24A(6)(*a*) of the Limitation Act did not arise for our consideration.

37 The second part of the appellant's case pertained to the application of the law to the facts. There was no suggestion that, for those parts of the HC GD referred to, the Judge had erred in law – this would have been another ground to apply for leave to appeal under *Tang Liang Hong*. Hence, on that score alone, the second part of the appellant's case would not have supported an application for leave to appeal.

38 Nevertheless, as parties had already tendered their cases on the substantive merits, we did not stop counsel for the appellant from addressing us

on the merits. This brought into play the next two contentions of the appellant mentioned above at [15(b)] and [15(c)].

Dr Yang's evidence

39 The appellant contended that Dr Yang's evidence should have either been disallowed as expert testimony or given *de minimis* weight.[13] He made two submissions in support.

40 Dr Yang had provided two medical reports dated 10 October 2019 and 5 December 2019, for which he was cross-examined on.[14] The 10 October 2019 medical report stated as follows:[15]

> …
>
> The patient suffered head injuries on 14th May 2016, resulting post-traumatic amnesia, which would require for at least 8 weeks or more to recover from her head injury.
>
> …

The 5 December 2019 medical report stated as follows:[16]

> …
>
> 1. On 14th May 2016, Aryall Kang was admitted for head injuries involving structural and cognitive brain injuries with psychological overlay.
>
> 2. I understand that she was unsure of how the accident happened, except that the police subsequently told her that a bus had hit her.
>
> 3. I understand that to discover the identity of the driver, she would have had to *apply her mind to the matter, search for*

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13 AC at para 75.

14 3 ROA at pp 177 to 184.

15 CB Vol 2 at p 69.

16 CB Vol 2 at p 72.

> *suitable lawyers in order to attend at their office, discuss the matter and entire into a retainer by signing their warrant to act.*
>
> 4. In view of her condition for which she was hospitalized and her subsequent hospitalization leave, a reasonable period for her to recover sufficiently to be expected to apply her mind to this matter and take such steps to address the matter, would be at least 8 weeks.
>
> …
>
> [emphasis added]

41 The appellant first submitted that Dr Yang was not in a position to give independent, objective and impartial expert evidence on the reasonable period for someone in the respondent's position to recover sufficiently to apply her mind to searching for suitable lawyers to source for the identity of the bus driver.[17] In support of his submission, the appellant relied on the fact that Dr Yang had treated the respondent.[18]

42 The appellant also submitted that Dr Yang's evidence "should have been strictly confined to proving the medical report on the [r]espondent's condition at the time that he examined her" instead of "overreach[ing] in providing opinion evidence on constructive knowledge under s 24A(6) of the [Limitation Act]".[19]

43 The appellant's point was that as Dr Yang was the treating doctor of the respondent, he was not an independent expert. However, that did not mean that he was not an expert at all.

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17 AC at para 73.

18 AC at para 73.

19 AC at para 74.

44 It was a different question whether the court should have given weight to his evidence. On this point, the Judge was of the view that Dr Yang's evidence was uncontroverted. The appellant was not able to show that the Judge had erred in reaching this conclusion, especially when the cross-examination of Dr Yang was not as comprehensive and pointed as it could have been. Also, the appellant did not adduce evidence from another expert to challenge Dr Yang's evidence. Having said that, we accept that it is not always necessary for contrary expert evidence to be adduced to argue that the evidence of the sole expert should not be relied upon.

Whether it was irrelevant that the respondent had applied her mind to the question of the appellant's identity on 23 May 2016 and, if relevant, the consequence

45 It was undisputed that as of the respondent's date of discharge (*ie*, 23 May 2016), the respondent was aware: (i) of the date, time and location of the accident; and (ii) of the fact that it was an SMRT bus that had hit her.[20] As mentioned above at [5], the parties, the DJ and the Judge had proceeded on the premise that on 23 May 2016 when the respondent was discharged from hospital, she had made a police report about the accident and it was on that occasion that she had asked the police officer about the identity of the bus driver but was told that the information was confidential. However, even this date was not clearly established on the evidence.

46 The transcripts of the trial suggests that the date of 23 May 2016 was not necessarily correct. During cross-examination of the respondent on 2 February 2021, she was referred to the accident report that she had made on 23 May 2016. However, in her response, she mentioned that three months later,

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[20] AC at para 77(a); RC at para 30.

she had gone to the traffic police and realised that some aspects of what she had earlier recalled were different from the true facts.[21] After a few more questions about the information she had included in her report of 23 May 2016, she was questioned whether "[o]n that day" she had asked the traffic police for the name of the driver.[22] She said that she did but was not given the information.[23] This appears to be the premise on which the parties and the courts below used the date of 23 May 2016 as the date on which the respondent inquired about the identity of the bus driver.

47 However, we noted that in re-examination of the respondent, also on 2 February 2021, she said that she had gone to the traffic police three months later around August 2016 and when she had asked about the identity of the bus driver, she was told that the traffic police could not disclose the information.[24] Indeed, she specifically said that she "only went down to the traffic police around August" and "before that, [she] wasn't in contact with the traffic police at all".[25] Unfortunately, no one seemed to have picked up this inconsistency at the trial, *ie*, whether the inquiry and response were made on 23 May 2016 or in August 2016, and the respondent was not asked to clarify. If in fact she had asked about the identity of the bus driver only in August 2016, that would not assist the appellant because August 2016 would in any event be more than the eight weeks (after the date of the accident on 14 May 2016) mentioned by Dr Yang. On the other hand, even if 23 May 2016 was the correct date, the

21 CB Vol 2 at p 136 lines 22 to 26.

22 CB Vol 2 at p 137 lines 11 to 15.

23 CB Vol 2 at p 137 line 16.

24 CB Vol 2 at p 152 lines 11 to 15.

25 CB Vol 2 at p 151 lines 30 to 32.

appellant's case still suffered from a lack of focused cross-examination of the respondent and Dr Yang.

48 We were of the view that if the respondent had asked about the identity of the bus driver on 23 May 2016, this inquiry was perhaps not as irrelevant as the Judge had thought. The Judge had thought that it was irrelevant because:

(a) the respondent did not acquire information about the driver's identity by posing that question;

(b) the respondent could not reasonably be expected to have acquired that information by posing the question;

(c) the respondent might have the ability to apply her mind to ask the question but, on Dr Yang's evidence, she could not reasonably be expected to do anything more for the time being to acquire the information.

49 We need address the third reason only. It is possible that Dr Yang's evidence might not have been accepted as the appellant was entitled to test it against the fact that the respondent had applied her mind on 23 May 2016 to ask for the identity of the bus driver.

50 That could have led to a train of inquiry, whether in further cross-examination of the respondent and/or Dr Yang, which could have established that, notwithstanding her cognitive impairment, it would not have taken the respondent much more in terms of time and effort to follow up on that inquiry to seek help to ascertain the identity of the bus driver. However, as the cross-examination of the respondent and Dr Yang before the DJ did not pursue this line of inquiry, the mere fact that the respondent had asked about the identity of

the bus driver did not assist the appellant. Furthermore, as mentioned above at [6], the respondent did not state the date on which she actually discovered the identity of the bus driver. Neither did the appellant seek to establish this in cross-examination. The quality of the evidence at trial left much to be desired.

51 Before us, the appellant argued that the respondent knew, by June 2016, that she could make a claim for her injuries. This had been established by cross-examination. However, that was not the point, which was whether she could have reasonably obtained the identity of the driver soon after 23 May 2016.

52 In the circumstances, we were of the view that the appellant was not able to overcome the evidence of Dr Yang.

Additional Observations

53 We make some additional observations.

54 First, the appellant's skeletal arguments argued that under the objective approach, the effects of an injury would be a factor which the court would take into account, but it would not in and of itself operate to prevent time from running.[26] However, on the Judge's fact-specific approach, the effects of the injury would be determinative of the outcome. We were of the view that there was no hard and fast rule. As can be seen from this case, the effects of the injury could be determinative of the outcome of a question on limitation even though the objective approach was applied.

55 Second, in the HC GD at [25], the Judge mentioned that if an injured person experienced a permanent loss of cognitive function, the suspension of

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[26] AWS at para 23(b).

limitation would not be indefinite. We think that in such a situation, it is likely that a different provision in the Limitation Act would apply, *viz*, s 24.

56 Third, the HC GD at [26] and [27] had addressed a different question, which was the degree or extent of knowledge that a plaintiff must have to trigger the running of time. In our case, it was not a question of whether the respondent had enough knowledge to establish a cause of action. She alleged that she did not know and could not have known the identity of the tortfeasor driver until at least eight weeks after the accident (in the light of Dr Yang's evidence) as she was unable to investigate due to her cognitive impairment.

57 It may be that the respondent could have commenced action against the SMRT under the doctrine of vicarious liability without information on the identity of the bus driver since other particulars of the accident were known to her. It is likely that such particulars would have been sufficient for the SMRT to ascertain the identity of the bus driver, if that information was not already known to the SMRT, and to mount a defence. On the other hand, the counter-argument could be that she was entitled to elect which party to proceed against. We say no more on the question of whether she could have claimed against the SMRT as this argument was not made.

Conclusion

58 For the above reasons, there was no merit in the appeal. We dismissed the oral application for an extension of time to apply for leave to appeal and we dismissed the appeal which was filed without leave.

59 We ordered that the appellant was to pay the respondent costs fixed at $30,000 (all-in). The usual consequential orders applied.

Woo Bih Li
Judge of the Appellate Division

Kannan Ramesh
Judge of the High Court

Hoo Sheau Peng
Judge of the High Court

Gregory Vijayendran *SC*, Evelyn Chua Zhi Huei and Tomoyuki Lewis Ban (Rajah & Tann Singapore LLP) (instructed), Ganesh S Ramanathan and Renuka d/o Karuppan Chettiar (Karuppan Chettiar & Partners) for the appellant;
Raj Singh Shergill and Koh Jia Min Desiree (Lee Shergill LLC) for the respondent.