

Cheong Gim Fah and Another v Murugian s/o Rangasamy
[2004] SGHC 93

Case Number : Suit 493/2002, NA 13/2004
Decision Date : 05 May 2004
Tribunal/Court : High Court
Coram : Ching Sann AR
Counsel Name(s) : Roy Yeo (Chia Yeo Partnership) for the plaintiffs; V K Rai (V K Rai & Partners) for the defendant
Parties : Cheong Gim Fah; Goh Jak Fong alias Goh Jit Fong — Murugian s/o Rangasamy

5 May 2004

Ching Sann, Assistant Registrar:

Undisputed facts

1 The deceased was aged 49 at the date of the accident on 20 February 2002. He was married to the first plaintiff, Mdm Cheong Gim Fah, and had three children, Alexander, Andrew and Amanda, aged 21, 21 and 14 respectively at the date of the accident. The deceased was employed as the commander of the Port of Singapore Authority (PSA) Police at the time of his death. Interlocutory judgment was entered for the plaintiffs at 85% liability against the defendant on 7 February 2004.

The plaintiffs' claim

2 The claim against the defendant was brought by the plaintiffs as administrators of the estate of the deceased, as well as for the deceased's dependants, namely, Mdm Cheong and the three children.

3 Heads of damage agreed between the parties were the following:

(i)	Bereavement under s 21 of the Civil Law Act	\$10,000
(ii)	Funeral expenses	\$12,000
(iii)	Medical report	\$75

The remainder of the plaintiffs' claim was contested by the defendant and comprised the following:

(iv)	Legal costs for obtaining letters of administration	\$13,174.60
(v)	Pre-and post-trial dependency claim for Alexander	\$38,000
(vi)	Pre- and post-trial dependency claim for Andrew	\$98,800

(vii)	Pre- and post-trial dependency claim for Amanda	\$67,000
(viii)	Pre- and post-trial dependency claim for Mdm Cheong	\$365,000

Decision

4 Having heard all the evidence and reviewed submissions from both parties, the following award is made:

Legal costs

5 The main ground of disagreement between the parties on this issue centered on a bill tendered by M/s Loh Lin Kok for \$12,968.60, which sum had been incurred for the purpose of obtaining letters of administration of the deceased's estate. Mr Rai submitted that those portions of Mdm Cheong's affidavit which related to this bill ought to be struck out, on ground of hearsay, as Mdm Cheong had not called anyone from M/s Loh Lin Kok as a witness. I had admitted the supporting evidence, subject to any adverse inferences which might be drawn in light of Mdm Cheong's failure to call a witness from M/s Loh Lin Kok.

6 Having considered the matter, I was of the view that no adverse inferences could be drawn in respect of Mdm Cheong's failure to call a witness to introduce the supporting documents. I accepted her explanation that she had simply paid the bill as drawn and had not had any ulterior motives in omitting to have the bill taxed in court. More importantly, there was no evidence whatsoever to suggest that the amount billed by M/s Loh Lin Kok was in fact excessive or unreasonably incurred. In the premises, I allowed the plaintiffs' claim of **\$13,174.60** for legal costs.

Dependency claims

7 In his submissions, Mr Rai sought to argue that only a nominal award should be made in respect of the dependency claims as various documents relied upon in support of the claims were inadmissible on ground of hearsay. I was of the view that it was far too late in the day for Mr Rai to make this argument. This was especially so given that Mr Rai had not only filed a notice of objections but also a summons-in-chambers on the issue of hearsay documents, and had chosen to limit his objections therein to the a bill from M/s Loh Lin Kok (referred to in paragraphs 6 and 7 above) and a letter from PSA attesting to the deceased's salary and position.

8 Mr Rai also submitted that the deceased had probably left behind substantial savings. However, he did not explain how the substantial savings, if any, would in any way influence the dependency claims. In any event, Mr Yeo referred me to the case of *Tan Harry v Teo Chee Yeow Aloysius & anor* [2004] 1 SLR 513, in which Woo Bih Li J held that in considering whether any benefit accruing to a dependent by reason of the relevant death had to be deducted from the dependency claim, a distinction had to be drawn between dependants who were older than the deceased and dependants who were younger than the deceased. In the latter situation, Woo J was of the view that no deduction should be made as the dependants would, in any event, ultimately inherit the assets. In the present case, given that the deceased's dependants were his wife and children, I was of the view that even if he had left behind substantial savings, this would not affect the dependency claims.

9 As for the value of the dependency claim, the first issue to be considered was the

deceased's actual salary. As already noted, Mr Rai had objected strenuously to the admission of a letter from PSA which stated the deceased's salary. Mr Yeo took the position that the letter was nevertheless admissible, and it was not until I declined to admit the letter that he proposed to admit the deceased's income tax statement or to call the maker of the PSA letter as a witness. I did not allow this late application as I was of the view that Mr Yeo could not be allowed to have his cake and eat it, especially when Mr Rai had already given ample notice that reliance on the PSA letter, without calling its maker, would be hotly contested. Nevertheless, I allowed Mdm Cheong to give oral evidence as to the deceased's salary on the basis that, as the deceased's wife, she would have at least some idea as to what her own husband earned.

10 Mdm Cheong's oral evidence was that her husband earned \$143,582.90 a year, ie slightly less than \$12,000 a month. Mr Yeo, for his part, used a lower figure of \$8,904.53 per month in his submissions on the deceased's salary. On the basis of this latter figure, Mr Yeo submitted that a 25% conventional deduction could be applied to the deceased's income to obtain the value of the dependency, ie, \$6,678.40 a month. He further submitted that this was an accurate figure, given that Mdm Cheong's, Alexander's, Andrew's and Amanda's dependencies were claimed at \$2,500, \$1,000, \$2,600 and \$500 a month respectively.

11 I had difficulty accepting these submissions. The disparity between Mdm Cheong's oral evidence and Mr Yeo's submissions on the deceased's salary could perhaps be partly explained by the fact that the deceased owned property which was rented out and which would have added to his total income. However, it was not explained whether either figure referred to the deceased's gross salary or his net salary and, if the former, whether it included both employer's and employee's CPF or employee's CPF only. In the premises, I was of the view that the doubt had to be resolved in favour of the defendant and that a more realistic figure to be applied in respect of the deceased's net income was \$7,000 a month. Finally, for reasons stated in the paragraphs below, I was of the view that a conventional deduction of 25% was not appropriate in the circumstances.

12 I had serious doubts about the value of the dependency as claimed by Mdm Cheong who worked and continues to work as a staff nurse at a baby and child clinic earning \$2,600 per month as her gross salary, or approximately \$2,080 per month as net salary. In her affidavit of evidence-in-chief, she stated that she used her income to "maintain myself and my own expenses including some maintenance, marketing, etc". In cross-examination, she stated that she had enjoyed medical benefits from the deceased and that the deceased had paid for the family's expenses, such as school fees, home maintenance and household expenses, upkeep of the car, and holidays. In face of the evidence adduced, I accepted that despite earning her own salary Mdm Cheong was dependent on the deceased to some extent. Furthermore, I was of the view that the issue of dependency also included non-monetary factors such as, but not limited to, emotional support. However, I did not see how any of these factors could in any way justify Mdm Cheong's claim of \$2,500 a month in dependency.

13 In light of the foregoing, I assessed Mdm Cheong's dependency at \$500 a month, such that her pre-trial dependency (ie for the 26 months between the accident and the assessment hearing) was **\$13,000**. As for her post-trial dependency, I was of the view that Mr Yeo's multiplier of ten years was too high. A multiplier of eight years was more appropriate given the deceased's age, and the need to avoid any double-counting of the pre-trial period. On that basis, I assessed Mdm Cheong's post-trial dependency at **\$48,000**.

14 Before considering the children's dependency, a further issue had to be dealt with. Although it may be true that the deceased had paid for all of the children's expenses while he was alive, Mdm Cheong herself nevertheless bore some responsibility for her own children's upkeep, such that the

deceased was only accountable for a proportion of the children's expenses – *Gul Chandiram Mahtani & anor v Chain Singh & anor* [1999] 1 SLR 154. Given the deceased's net income of \$7,000 a month and Mdm Cheong's net income of \$2,080, any dependency awarded to the children had to be reduced by 23%.

15 Turning now to Alexander, Mdm Cheong had stated in her affidavit of evidence-in-chief that his monthly expenses were \$500 a month, not including his university fees which cost \$5,500 a year and his Japanese lessons which cost another \$500 a year. Mr Rai sought to suggest to Mdm Cheong that the Japanese lessons were an unnecessary expense. I disagreed, and in the premises allowed the full amount quantified by Mr Yeo claimed for Alexander's dependency, which, after making the applicable 23% deduction was **\$9,240** for post-trial dependency (being based on a multiplier of one year only) and **\$20,020** for pre-trial dependency.

16 For Andrew, it was stated in Mdm Cheong's affidavit of evidence-in-chief that his dependency was about A\$1,000 a month, not including his course fees of A\$12,500 a year and his airfare of \$600 a year. Given the exchange rate between the Australian dollar and the Singapore dollar, this would work out to about \$2,600 a month. Mr Rai submitted, however, that Andrew should not be allowed to claim any dependency as the deceased had already set aside money for Andrew's overseas education. I accepted that this concession had been made by Mdm Cheong in cross-examination, but also noted that she had subsequently explained in re-examination that this meant that the deceased had calculated how much money Andrew would need for his overseas studies before he embarked on them. Furthermore, Mdm Cheong stated explicitly that there was no bank account where a specific sum had been set aside for Andrew. I accepted Mdm Cheong's explanation and, following from that, that Andrew should be allowed to claim for his dependency.

17 However, I had doubts about one aspect of the dependency claim, namely A\$2,788.80 paid for Andrew's accommodation in Australia. The issue arose at the hearing as to whether the A\$2,788.80 was the full amount payable for a house rented by Andrew and his three roommates, or whether it was merely Andrew's share of the rental. After examining the evidence, I concluded that the former explanation was preferable, such that the amount of A\$2,788.80 ought to be reduced by three-quarters to A\$697.20. This meant that the claim of \$2,600 a month for Andrew, which I accepted was fair based on Mr Yeo's premises, ought to be reduced correspondingly to \$2,200 a month. Applied to the 26-month period applicable for pre-trial dependency, this amounted to **\$44,044** after making the 23% deduction. As for Andrew's post-trial dependency, Mr Yeo submitted that the same figures as applied to Alexander should apply to Andrew, ie \$1000 a month, on a multiplier of only one year, as Andrew would be able to support himself after he completed his studies. Bearing in mind that Andrew still had to complete his national service upon his return from Australia, I was of the view that the amount claimed was fair, and in the premises, awarded **\$9,240** in post-trial dependency.

18 Finally, in relation to Amanda, Mdm Cheong had originally claimed \$500 a month for her dependency. Mr Yeo argued in submissions, however, that her expenses would rise over time to \$750, such that while the former figure could apply for her pre-trial dependency, it was this latter figure which should apply for the post-trial dependency. I was of the view that this was a fair amount, once viewed in comparison with Alexander's expenses, which were significantly higher at \$1,000 a month. However, I was of the view the multiplier claimed for Amanda was too high, given that she was a female and would not have to serve national service, such that she would enter the workforce earlier than her brothers. Applying a multiplier of four years, and after making the 23% deduction, Amanda was awarded **\$27,720** in post-trial dependency. Her pre-trial dependency was **\$10,010** after the 23% deduction.

Conclusion

19 In summary, the awards made are as follows:

Estate:		\$25,249.60
Mdm Cheong:	Bereavement:	\$10,000
	Pre-trial dependency:	\$13,000
	Post-trial dependency:	\$48,000
	Sub-total:	\$71,000
Alexander:	Pre-trial dependency:	\$20,020
	Post-trial dependency:	\$ 9,240
	Sub-total:	\$29,260
Andrew:	Pre-trial dependency:	\$44,044
	Post-trial dependency:	\$ 9,240
	Sub-total:	\$53,284
Amanda:	Pre-trial dependency:	\$10,010
	Post-trial dependency:	\$27,720
	Sub-total:	\$37,730

The total award was \$216,523.60, with interest on \$122,323.60 at 3% from the date of the accident to the date of judgment, and on \$94,200 at 6% from the date of service of the writ to the date of trial, and usual consequential orders.