Jaidin bin Jaiman *v* Loganathan a/l Karpaya and another
[2012] SGHC 199

Case Number : Suit 370 of 2011/Q

Decision Date : 01 October 2012

Tribunal/Court : High Court

Coram : Philip Pillai J

Counsel Name(s) : Michael Han Hean Juan (Hoh Law Corporation) for the Plaintiff; Roger Yek (Lawrence Chua & Partners) for the first Defendant; Anthony Wee (United Legal Alliance LLC) for the second Defendant.

Parties : Jaidin bin Jaiman — Loganathan a/l Karpaya and another

Res Judicata – Issue Estoppel

1 October 2012 Judgment reserved.

Philip Pillai J:

1 The Plaintiff's claim against the first and second Defendants arises out of a road accident on 14 December 2009. At the material time, the Plaintiff was a pillion rider on the motorcycle bearing license plate number JJR 1500 ridden by the first Defendant the motorcyclist. The motorcyclist was travelling straight along International Road and averred that the traffic lights turned green in his favour as he approached the junction with Jalan Boon Lay. The driver of the car bearing license plate number SFA 3400 H, had travelled along International Road from the opposite direction and was making a right turn at the junction leading to Jalan Boon Lay. He averred that the right turn arrow was showing green for him at the time. The two vehicles collided in the junction and the driver of the car was charged by the Traffic Police for inconsiderate driving, for which he paid a composition fine.

2 The motorcyclist was injured in the same accident, and filed a claim against the car driver in DC Suit No 3018 of 2010. The claim had proceeded for Court Dispute Resolution in the Primary Dispute Resolution Centre at the Subordinate Courts. The Settlement Judge indicated preliminary liability apportionment to be 80% as against the driver. However, the motorcyclist subsequently compromised his claim and consented to Interlocutory Judgment being recorded for 60% as against the driver, the damages to be assessed.

3 In the present suit, the pillion rider claims damages from both the motorcyclist and the driver for injuries sustained from the same accident. The action is bifurcated and brought in the High Court as the final judgment is to be enforced out of Singapore. The only issue before me is whether the consent judgment which recorded the apportionment of liability as between the driver defendant and the motorcyclist defendant is *res judicata* in this action by the pillion rider against the driver and the motorcyclist for the same accident. The driver's case is that the consent Interlocutory Judgment in DC Suit No 3018 meant that the issue of liability for the pillion rider's claim in the present action is *res judicata*. The motorcyclist's case is that *res judicata* does not apply and that the court should determine apportionment afresh. In such a fresh apportionment of liability, the motorcyclist submits that a 20%-80% apportionment would be more appropriate in the light of the preliminary indicative apportionment of the Settlement Judge in Court Dispute Resolution.

4 The relevant principle of *res judicata* here is issue estoppel, a principle which prevents the re-

litigation of issues that have already been litigated and decided on the merits. In *Lee Tat Development Pte Ltd v MCST Plan No. 301* [2005] SGCA 22 ("*Lee Tat*") at [14]-[15], the Court of Appeal held that the following requirements are necessary to establish issue estoppel:

(a) There must be a final and conclusive judgment on the merits;

(b) The judgment must be by a court of competent jurisdiction;

(c) There must be identity between the parties to the two actions that are being compared; and

(d) There must be an identity of the subject matter in the two proceedings.

Upon consideration of the abovementioned requirements, it is my decision that *res judicata* applies in the present case and that judgment should be entered to reflect the consent Interlocutory judgment entered in DC Suit No 3018. My reasons are as follows.

5 The motorcyclist argues that the first requirement in *Lee Tat* of a final and conclusive judgment on the merits has not been met in the present case. This argument is misconceived. The question here is whether *res judicata* only applies to judgments on the merits or extends to consent judgments. This particular question was not before the Court of Appeal in *Lee Tat* on the facts. The fact that an order is entered by consent would not prevent it forming the basis of an issue estoppel as long as the order was final (see *Spencer Bower, Turner and Handley (Butterworths, 3rd Ed, 1996)* at [38]). Finality for the purposes of *res judicata* refers to a declaration or determination of a party's liability and/or his rights or obligations leaving nothing else to be judicially determined (see also *Goh Nellie Goh Lian Teck and others* [2007] 1 SLR(R) 453 at [28]). In the present case, it is clear that the consent Interlocutory Judgment is final as there remains nothing more to be decided in relation to the principal parties' liabilities arising from the accident.

6 It is not disputed that the consent judgment was entered by a court of competent jurisdiction.

7 The motorcyclist submits that the third requirement in *Lee Tat*, identity between the parties involved in the previous litigation and in the present proceedings, has not been met in the present case. To begin with, the motorcyclist argues that the plaintiff in the present suit was not a party in DC Suit No 3018 of 2010. In response, the driver argues that the pillion rider could not have affected the outcome of either the present or prior suit, as he could not have contributed to the accident in terms of liability. The driver thus contends that the pillion rider is in substance nothing more than a "nominal plaintiff", citing as authority the decision of Choo Han Teck J in *Tan Yeow Khoon and another v Tan Yeow Tat and others* [2003] SGHC 36, where the third defendant in that case was held to be a "nominal defendant". In my view, "identity of parties" must mean the identity of principal and effective parties to the determination of the apportionment of liability as between the driver and the motorcyclist. The pillion rider is not a principle or effective party to the determination of this apportionment and thus is akin to being a nominal plaintiff.

8 In further argument, the motorcyclist submits that his insurers are the "real" defendants in the present suit, pointing out that while he was entitled to compromise his own claim on such terms as he deemed fit in DC Suit No 3018 of 2010, it is his insurers who are ultimately liable to satisfy whatever judgment the pillion rider may obtain against him in the present suit. To this end, it is the motorcyclist's insurers who have conduct of the defence in this suit. It is well-established that where a party on the record is suing or defending "on account of or for the benefit of another" and relying on that person's right or title, the court can look behind the record to identify the "real" party:

Spencer Bower and Handley: Res Judicata (Butterworths, 4th Ed, 2009) ("*Res Judicata*") at paragraph 9.14. However, courts have sometimes refused to distinguish between a nominal party and his insurer who is acting with subrogation rights (see *eg*, *Wall v Radford* [1992] R.T.R. 109, 117; *Craddock's Transport Ltd v Stuart* [1970] NZLR 499 CA, 524). As pointed out by the authors of *Res Judicata*:

> There will be many fewer successful pleas of issue estoppel in road accident cases if a party suing or defending in the interest of an insurer is not the same person for *res judicata* when suing or defending in his own interest.

Where the earlier suit involves a party suing or defending in his own right, he can reasonably be expected to attempt to maximise his claim, or minimise his liability, whichever the case may be. The fact that the later suit is initiated or defended in the interest of an insurer does not without more prevent the earlier suit from being *res judicata*.

9 The final requirement for issue estoppel is the requirement of identity of subject matter in the two proceedings. In other words, the question is whether the motorcyclist's and driver's duty of care to each other (which was the subject matter in DC Suit No 3018 of 2010) and their duty to the pillion rider in the same accident (which is the subject matter of the present suit) are identical, as opposed to separate and distinct, duties. It has been established that the issues must be identical as a matter of law and not just similar (see *New Brunswick Railway Co Ltd v British & French Trust Corp Ltd* [1939] AC 1). The cases which have addressed this question (see eg, *Bell v Holmes* [1956] 1 WLR 1359, *Wall v Radford* [1991] 2 All ER 741, *Wood v Luscombe* [1966] 1 QB 169, *North West Water Ltd v Binnie & Partners* [1990] 3 All ER 547) have favoured a departure from so-called technical view adopted in *Randolph v Tuck* [1962] 1 QB 175, where the identity of duties is strictly construed. The "technical" view in *Randolph v Tuck* has been described by McCarthy J in *Craddock's Transport Ltd v Stuart* [1970] NZLR 499 in the following way: "if two duties cannot be formulated in precisely identical terms, no issue estoppel can arise." Conversely, recent cases such as *Wall v Radford* [1991] 2 All ER 741 advocate a more "robust" approach to determining identity (see *Craddock's Transport Ltd v Stuart* [1970] NZLR 499.). Such cases "favour seeking what they see as the substantial question involved — who caused the collision?" (ibid.) In *Wall v Radford*, the first action had determined the liability of the two drivers to a passenger while the second involved an action by one driver against the other. Popplewell J upheld the estoppel:

> Although a separate duty is owed to another driver from that owed to a passenger that does not mean ... that the duty is in any way different. **The facts giving rise to a breach of that duty are identical and liability for that breach of duty is identical**.
>
> [emphasis added]

The rationale behind this approach is encapsulated in the following observation by Streatfield J in *Wood v Luscombe* [1966] 1 QB 169:

> The whole of the facts governing the respective liabilities of the defendant and the third party have already been determined ... one wonders, therefore, what issue there is left for this court now to decide, because it is a principle in the law that there must be an end to litigation. It is true that people cannot have two bites at a cherry, and, as it seems to me, that is exactly what the third party is now seeking to do.

10 In the case before me, it is clear that the questions of fact involved in the apportionment of liability between the driver and the motorcyclist for injuries to the pillion rider in the same accident

which are to be determined in the present suit do not differ from the issues of fact in DC Suit No 3018 of 2010. Thus, the motorcyclist's argument, that there is no identity of subject matter in the two suits, must fail.

11 For the reasons stated above, I find that *res judicata* applies in the present suit and that Interlocutory Judgment should be entered in favour of the Plaintiff pillion rider against the first and second Defendants on the same apportionment of 60% liability on the part of the driver and 40% liability on the part of the motorcyclist.