Zhang Xiao Ling (personal representative of the Estate of Chan Tak Man, deceased) v Er Swee Poo and Another
[2004] SGHC 21

Case Number : Suit 1052/2000, NA 86/2003

Decision Date : 10 February 2004

Tribunal/Court : High Court

Coram : Amy Tung Chew Ming AR

Counsel Name(s) : Andrew J Hanam (PK Wong and Advani) for plaintiff; Abdul Salim A Ibrahim (Assomull and Partners) for co-defendant

Parties : Zhang Xiao Ling (personal representative of the Estate of Chan Tak Man, deceased) — Er Swee Poo; NTUC Income Insurance Co-operative Ltd

The deceased (32 years of age) was killed when a lorry driven by the defendant collided into him while he was cycling along Corporation Road on a bicycle on 1 March 2000. His widow commenced a dependency claim against the defendant on behalf of herself and her 4 children. On 27 March 2001, judgment in default of appearance was entered against the defendant, ordering him to pay the plaintiff, *inter alia,* damages for loss of support to be assessed and special damages.

2 At the first assessment hearing, damages were awarded to the plaintiff in default of appearance by the defendant. NTUC Income Insurance Co-operative Ltd subsequently took out an application to set aside the award of damages and for leave to be joined as co-defendants in the proceedings and take out fresh directions for assessment of damages. An order-in-terms was granted in respect of that application, and the second assessment of damages came before me.

3 During the hearing, counsel for plaintiff applied orally for an amendment to the statement of claim to include a prayer for damages for bereavement and funeral expenses, which had been inadvertently left out by the previous set of solicitors. Counsel for the co-defendants had no objections and I granted the application, with directions that the amended statement of claim be filed and served by the next working day.

4 After hearing all the evidence from the plaintiff and the co-defendants, I made an award totalling **$ 332,942**. I now give my reasons for the award.

Bereavement

5 The amount of **$10,000** as provided by the Civil Law Act was awarded to the plaintiff.

Funeral expenses

6 The amount, as agreed between the parties, was **$5,000.**

Special damages

7 I awarded the amount of **$230** for the police reports, damage reports and ROV search fees, as particularised in the amended statement of claim.

Loss of Dependency

8 In *Gul Chandiram Mahtani v Chain Singh* [1999] 1 SLR 154, S Rajendran J stated, in dealing with a claim for loss of dependency, that:

It seems to me that the simplest and most appropriate way of assessing the 'reasonable expectation of pecuniary benefit' suffered by a dependent is to make a direct assessment of the value of that expectation.

9 Indeed, where there is evidence of the actual or reasonable estimates of how much the deceased was providing for each of his dependants every month, the preferred method of assessment for the court is clearly to take those figures as a starting point.

10 During cross-examination, the plaintiff gave estimates of the living expenses which the deceased had provided for herself and each of her 4 children; $500 for herself, $500 for her eldest child who had entered secondary school, $300 for the second child and $250 and $200 for the third and fourth child respectively. Nevertheless, she clarified subsequently that she was unsure of the individual amounts but that the total sum of $1,750 was expended on the whole family every month. The figures which she put forward were not supported by documentary evidence. In addition, from the plaintiff's affidavit and testimony in court, I found that she had an unrealistic view of how much the deceased had been earning. In her affidavit, she stated that the deceased's total income was $3,265 a month at the time of his death. This was, however, contrary to the figures reflected in his payslips which were exhibited.

11 In the circumstances, I found that in order to arrive at the correct multiplicand, I would have to work backwards, using the deceased's earnings as the starting point.

12 The deceased had been working at Primary Industries Pte Ltd (Primary Industries) as a butcher from November 1998. His basic salary was $850 a month. However, he was also paid allowances, reimbursements for food and drinks and for overtime work.

13 He took on another job with Eng Heng Noodle Factory Pte Ltd (Eng Heng) as a noodle-maker in May 1999 and had been holding two jobs till his untimely demise in March 2000. His gross monthly salary at Eng Heng was $1,200.

14 The plaintiff called as witnesses Ms Nancy Tan ("NT"), the Admin/Accounts Manager at Eng Heng and Mr Tan Peng Chiok ("TPC"), the Senior Human Resource Manager at Primary Industries. It transpired during the hearing that TPC had no knowledge of the deceased's second job. He gave evidence that his company did not condone moonlighting and that the deceased could have his services terminated if he continued to hold two jobs. Both TPC and NT gave evidence that the deceased was a full-time employee at their respective companies at the time of his death. I will deal with this aspect of the evidence subsequently.

The multiplicand

15 Counsel for the plaintiff submitted that the deceased earned an average of $1,110 a month, excluding overtime pay, at Primary Industries. He arrived at this figure by adding the basic pay of $850, night allowance of $87, night attendance incentive allowance of $86 and an estimated amount of $77 for reimbursement of food and drinks. There was evidence that in the last twelve months prior to the deceased's death, he had worked overtime in four months as follows :

Month	Amount
Mar 99	$ 288.87

Nov 99	$ 309.29
Jan 00	$ 626.45
Feb 00	$ 486.10
	$1,710.71

16 This worked out to be an average overtime pay of $142.60 per month. The average monthly salary at Primary Industries was thus $1,242.60.

17 Counsel for the co-defendants objected to the calculation of average overtime pay by using the figures in the last twelve months prior to the death of the deceased. He submitted that the correct time period to consider was the calendar year of 1999 since TPC gave evidence that there was usually more overtime work at the end of the year. I failed to see any merit in the argument, and accordingly I accepted that the deceased's average monthly salary, including overtime pay was $1,242.60. The deceased's total earnings from his two jobs would therefore be $2,442.60.

18 Counsel for the co-defendants submitted that the court should not disregard the high probability that the deceased's services with Primary Industries might be terminated, had he not met with the accident. If his services were terminated, his earnings at Eng Heng Noodle would be his *only* source of income. I was unable to accept this contention. While I acknowledged that there was a probability that the deceased might be dismissed from his job at Primary Industries, I was of the view that the deceased would, in most likelihood, have obtained another job. First, the plaintiff had emphasised over and over again that there was no choice but for the deceased to take on two jobs. The family had moved over to Singapore in 1997 and there were four children to feed. The deceased also had to send allowances to his parents in Hong Kong. In the circumstances, I found that the deceased would have likely taken on another job. This view was reinforced by the evidence on the deceased's character. According to the plaintiff, he was a very frugal man who spent very little on himself. He rode to work and back on a bicycle, ate at home, brought meals from home to work and did not drink alcohol, smoke or go out often. The impression created by the evidence was that the deceased was a very family-oriented man who would want to provide the best for his family. Secondly, I was of the view that the nature of the deceased's jobs, which required low-level skills, allowed him mobility in the job market. This was confirmed by the evidence of the plaintiff that when the family first arrived in Singapore, the deceased kept changing his jobs whenever there were opportunities to get better pay. Lastly, there was no evidence that the deceased could not hold down two jobs effectively. There were no adverse reports against his performance at either Primary Industries or Eng Heng. NT had described the deceased as a good and hard-working employee who was a fast learner and kept the machines clean and tidy. Due to the foregoing reasons, I did not accept the submission of counsel for the co-defendants to exclude the deceased's earnings at Primary Industries in the calculation of the multiplicand.

19 Counsel for the plaintiff had meticulously tabulated the amount of earnings which the deceased would have received based on a projected increment of 5% every year. Counsel for the co-defendants disagreed with his method of computation and argued that the method created speculation and assumed that the deceased would be receiving a 5% increase every year regardless of economic situations or any other exigencies. I must say that there was much force in that argument. NT gave evidence that in her company, there would be a minimum increment of $100 every year and had it not been for the accident, the deceased would have been employed indefinitely

as he was a good and hard-working employee. However, she also admitted that the company was 10 years old only and that questions in relation to earnings and increments would vary over time depending on the performance of the company and the economic situation. TPC testified that the increments at Primary Industries would have been at 2 – 3 %. However, there was a wage freeze across the board at the company for the last couple of years. In view of the evidence, I found it difficult to say that the deceased would have received a 5% increase in his earnings every year. In the circumstances, I rejected the computation by counsel for the plaintiff.

20 In my view, taking into account any likelihood of increments, deductions for taxes and vicissitudes of life, $2,850 would be a fair and reasonable figure to represent the deceased's average earnings per month over the years, had he not met with the accident. His disposable income would therefore be $2280 per month, after deductions for his share of the CPF contributions.

21 I accepted that the deceased was a very frugal man who spent very little on himself. I therefore did not agree with the co-defendant's submission of an apportionment of one-third as the deceased's own expenses. Instead, I would deduct 25% for the deceased's own expenses, which was reflective of the life that he had led. The plaintiff had also given evidence that the deceased sent $200-$300 every month to his parents in Hong Kong. Therefore, setting aside $250 for his parents and 25% for himself, this would leave $1460 for the plaintiff and their four children. Of this amount, I apportion this as to:

(a) 40 % for the plaintiff - $ 584

(b) 15% for each of the children - $ 219

22 In coming to the above figures, I did not give a discount for the fact that the plaintiff was also working and earning about $700 a month as a part-time cook at a Kentucky Fried Chicken outlet. The plaintiff gave evidence that her parents are staying with her family. She gives them about $300 every month for their personal use. In addition, she pays for their living expenses. In my view, whatever she has left from her salary as expenses for herself and her children is negligible.

The multiplier for the plaintiff

23 The deceased was 32 years old at the date of the accident. I was of the view that a multiplier of 14 years for the plaintiff for pre-trial and post-trial damages and also for the multiplier for the loss of CPF contribution was fair. In coming to this multiplier, I had considered the case of *Lim Fook Lau & Anor v Kepdrill International Incorporated SA & Ors* [1993] 1 SLR 917, which counsel for the plaintiff had taken great pains to emphasise. However, I was not inclined to follow that case and determine the multiplier at 16. In that case, the deceased was a private medical practitioner and 30 years old at the date of the accident. The court found that there was no compulsory retirement age for private medical practitioners and provided that she was in good health, she could probably have worked till her *late* 60s. The circumstances of this present case were not similar as to justify a multiplier of 16.

Loss of dependency for the plaintiff

24 Therefore, the loss of dependency for the plaintiff, based on the multiplicand of $ 584 and a multiplier of 14 was as follows:

Pre-trial : $ 584 x 12 x 3.75 = **$ 26,280**

Post-trial : $ 584 x 12 x 10.25 = **$ 71,832**

Total : **$ 98,112**

The multiplier for the children

25 At the time of the assessment, the children were aged as follows :

Chan Tin Mun - 13 years 4.5 months

Chan Tin Sum - 9 years 3 months

Chan Lue Min - 7 years 2.5 months

Chan Ze He - 4 years 5.5 months

26 After considering the authorities cited and the circumstances of the present case, I was of the view that the multipliers for pre-trial and post-trial damages for each of the children (from the eldest to the youngest) should be 9, 11, 12 and 14 respectively.

Names	**Pre-trial multiplier**	**Post-trial multiplier**	**Total (yrs)**
Chan Tin Mun	3.75	5.25	9
Chan Tin Sum	3.75	7.25	11
Chan Lue Min	3.75	8.25	12
Chan Ze He	3.75	10.25	14

Loss of dependency for the children

27 The loss of dependency for each child, based on the multiplicand of $ 219 and their respective multipliers, was as follows : -

Chan Tin Mun:

Pre-trial : $219 x 12 x 3.75 = **$ 9,855**

Post-trial : $219 x 12 x 5.25 = **$ 13,797**

Chan Tin Sum:

Pre-trial : $219 x 12 x 3.75 = **$ 9,855**

Post-trial : $219 x 12 x 7.25 = **$ 19,053**

Chan Lue Min :

Pre-trial : $219 x 12 x 3.75 = **$ 9,855**

Post-trial : $219 x 12 x 8.25 = **$ 21,681**

Chan Ze He

Pre-trial : $219 x 12 x 3.75 = **$ 9,855**

Post-trial : $219 x 12 x 10.25 = **$ 26,937**

Total = **$ 120,888**

Further loss of dependency – the adjustments

28 Like the court in *Guo Xinhua v Lee Chin Ngee & Anor* (S 159/2000; RA 87/2001 & 91/2001), I accepted that when the dependency for one child stopped, the amount attributable to that child would be used for the benefit of the plaintiff, the other children and the deceased himself. I apportioned 25% to the deceased, whom I believed to be a family-oriented man who spent very little on himself. As such, the award which I gave for such adjustments was as follows :

Amount attributable to the 1st child = $219 x 12 x 5 = $ 13,140

Amount attributable to the 2nd child = $219 x 12 x 3 = $ 7,884

Amount attributable to the 3rd child = $219 x 12 x 2 = $ 5,256

Amount attributable to the 4th child = $ 0

Total amount (which would be used for the benefit of the plaintiff, the deceased and the other children when the dependency of each child stopped)
= $ 26,280

Loss of dependency for the plaintiff and the children = 75% x $26,280

= **$ 19,710**

Loss of CPF contributions

29 Based on 20% employee's contribution and 13% employer's contribution, the multiplicand for loss of CPF contributions would be $2,850 x 33% = $940.50

30 This amount should be apportioned between the deceased and the plaintiff equally i.e. $470.25 to the plaintiff.

Loss of CPF contributions to the plaintiff :

$470.25 x 12 x 14 = **$ 79,002**

31 In *Gul Chandiram Mahtani v Chain Singh* [1999] 1 SLR 154, Rajendran J stated that :

It is accepted law that the 'lost' CPF moneys of the deceased may, in appropriate case, form part

> of the dependency claim….The question that has to be asked is whether it can be said that the daughter, at the time the deceased would have withdrawn the CPF moneys, would have a reasonable expectation of benefitting from these funds.

32 Rajendran J distinguished the position of a wife or parents from that of a child. He was of the view that a child may not be in a position to expect that the CPF funds would be used for his or her benefit. By the time the parent withdraws the CPF moneys, the child may have grown up and be self-supporting. In fact, the stage may have come when it is the child that is supporting the parents.

33 In the present case, I noted that by the time the deceased was allowed to withdraw his CPF moneys (at age 55), his children would be in their twenties and thirties. In my opinion, it was highly unlikely that the children would be still financially dependent on the deceased at the time the CPF moneys were to be withdrawn. As such, I found that the children did not have a reasonable expectation of benefitting from the CPF funds and accordingly, I did not award them loss of CPF contributions.

Interest

34 I awarded interest on all special damages, including the pre-trial loss of dependency at the rate of 3% per annum from the date of accident to the date of trial.

35 The usual consequential orders will apply. I will hear the parties on costs.