Ong Wah Chuan *v* Seow Hwa Chuan
[2011] SGHC 98

Case Number : Originating Summons No 1227 of 2010

Decision Date : 26 April 2011

Tribunal/Court : High Court

Coram : Quentin Loh J

Counsel Name(s) : Ramesh Appoo (Just Law LLC) for the Applicant; Perumal Athiham (Yeo Perumal Mohideen Law Corporation) for the Respondent.

Parties : Ong Wah Chuan — Seow Hwa Chuan

Civil procedure – Appeals – Leave

26 April 2011

Quentin Loh J:

1 This Originating Summons ("OS") raises the issue of whether leave of court is required to appeal against a decision of the District Court or Magistrates' Court in a case where only liability has been decided and there has been no decision on quantum. What is the position if it is not clear whether the quantum will or will not cross the threshold of $50,000? The significance of this threshold is that leave to appeal is required under section 21(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) (" SCJA"), if the amount in dispute or the value of the subject-matter does not exceed $50,000 but there is an appeal as of right if it exceeds $50,000.

2 I should mention that section 21(1) SCJA has been amended by the Supreme Court of Judicature (Amendment) Act 2010 (Act 30 of 2010), which came into effect on 1 January 2011. However my judgement is based on the provisions before the amendments as the previous provisions govern these proceedings.

3 The claim in this case arose from a road traffic accident between the plaintiff's motorcycle and the defendant's motor van on 19 June 2006. The plaintiff brought his claim in the Subordinate Courts. There was a bifurcation of liability and quantum, both of which were disputed. The trial on liability was heard on 24 September 2010 and the learned District Judge ("DJ") delivered oral judgement on 21 October 2010, holding the defendant 90% liable for the accident. The learned DJ then ordered that damages be assessed by the registrar with costs and interest being reserved to the registrar.

4 The defendant filed a notice of appeal on 2 November 2010 against the learned DJ's decision. On 4 November 2010, the Subordinate Courts Registry informed the defendant's solicitors that the learned DJ took the view that leave of Court was required before an appeal could be lodged pursuant to section 21(1) SCJA.

5 The defendant's solicitors wrote to the Subordinate Courts Registry on the same day, stating that the plaintiff's claim was for both personal injuries and property damage, and pointed out that the special damages alone, pleaded pursuant to Order 18 rule 12(1A)(b) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules of Court"), amounted to $44,770.45. The defendant's solicitor also sought the views of the plaintiff's solicitor who confirmed in writing that, in his view, his client's claim was well in excess of $50,000. Both solicitors therefore took the view that leave to appeal was not

required as the claim was above $50,000. The learned DJ disagreed and directed that an application be filed to seek the District Court's leave to appeal to the High Court. The defendant's solicitors complied and filed Summons No.19086/2010/Q in DC Suit No.1680/2009/R seeking leave to appeal.

6 This application was heard by the learned DJ on 18 November 2010. Both counsel submitted that leave was not required in this case, given that special damages alone came up to $44,770.45 with general damages yet to be taken into account. On 1 December 2010, the learned DJ delivered a written judgement dismissing the defendant's application with no order as to costs.

7 The defendant's solicitor thereupon filed this OS asking that the decision of the learned DJ made on 21 October 2010 be set aside and/or reversed and/or varied or further or in the alternative, that I grant a declaration that leave is not required to appeal against the learned DJ's decision on liability or alternatively, that leave be granted to the defendant pursuant to section 21(1) SCJA to file an appeal against the DJ's decision on liability.

8 The learned DJ felt that the defendant's application for leave to appeal raised an important practical question because of the large number of cases before the Subordinate Courts involving unliquidated claims or claims without an ascertained quantum due to bifurcation of liability and quantum. In the latter type of case, there is often no or incomplete evidence on quantum as that issue was to be dealt with at a later stage. How then does one measure "the amount in dispute" for the purposes of determining whether leave is required to appeal?

9 Section 21(1) of the SCJA reads as follows:

> **Appeals from District and Magistrates' Courts**
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> **21**. —(1) Subject to the provisions of this Act or any other written law, an appeal shall lie to the High Court from a decision of a District Court or Magistrate's Court in any suit or action for the recovery of immovable property or in any civil cause or matter where the amount in dispute or the value of the subject-matter exceeds $50,000 or such other amount as may be specified by an order made under subsection (3) or with the leave of a District Court, a Magistrate's Court or the High Court if under that amount.
>
> [emphasis added]

10 The learned DJ felt there were two lines of authority on the ascertainment of the amount in dispute for the purposes of leave to appeal. The first looked at the amount in dispute in the appeal (pursuant to section 21(1) SCJA), and the other at the amount or value of the subject-matter at the trial (pursuant to section 34(2)(a) SCJA). With respect, I do not think that is quite right because section 34(2)(a), which applies to cases which are commenced in the High Court, is worded differently:

> **Matters that are non-appealable or appealable only with leave**
>
> **34. ...**
>
> **(2) Except with the leave of the Court of Appeal or a Judge, no appeal shall be brought to the Court of Appeal in any of the following cases:**
>
> (a) *where the amount or value of the subject-matter* ***at the trial*** *is $250,000* or such other amount as may be specified by an order made under subsection (3) or less;

[emphasis added in italics and bold italics]

The phrase "at the trial " is not present in section 21(1). That phrase underlies the Court of Appeal ("the CA") decisions like *Tan Chiang Brother's Marble (S) Pte Ltd v Permasteelisa Pacific Holdings Ltd* [2002] 1 SLR(R) 633 ("*Tan Chiang Brother's Marble (S) Pte Ltd*") and *Teo Eng Chuan v Nirumalan V Kanapathi Pillay* [2003] 4 SLR(R) 442 ("*Teo Eng Chuan")* which lay down the rule that for the purpose of establishing whether the $250,000 threshold was met in respect of section 34(2)(a) of the SCJA, the figure to be considered was the quantum of the original claim at the trial.

11 In *Teo Eng Chuan's* case, the plaintiff, who suffered a whiplash injury and posterior disc prolapses, obtained interlocutory judgement with damages to be assessed. On assessment, the plaintiff was awarded $100,000 made up of $20,000 for pain and suffering, $20,000 for cost of future surgery and $60,000 for loss of future earning capacity. Special damages of $35,361.78 were also awarded, making it a total of $135,361.78. On appeal, the plaintiff claimed about $1.5 million, but the judge in chambers only increased the damages for pain and suffering to $30,000 and future loss of earning capacity to $180,000 making it a total of $265,361.78.

12 The CA said, at [16], that the defendant "would have been entitled as of right to appeal against the judgment entered against him" simply on the basis of the plaintiff's claim before the judge in chambers being close to $1.5m. The CA then went on to elaborate at [21] that assuming the plaintiff claimed general and special damages totalling more than $250,000, if the plaintiff had only been awarded $200,000, he would be entitled as a matter of right, without the need for leave, to appeal to the CA as the sum claimed was in excess of $250,000. Similarly, if the plaintiff decided for reasons of his own, not to appeal the $200,000 award, but the defendant felt the award should not be more than $120,000, the defendant was also entitled as a matter of right to appeal to the CA. The underlying basis for this approach is clearly set out at [22] of the judgement of the CA where it ruled that the test for both scenarios was the same: "what is the value of the subject matter at the 'trial'?" This was clearly based on the words used in section 34(2)(a). The learned DJ below appears to have correctly recognised the differences in wording between section 21(1) and section 34(2)(a) by citing some examples given by the CA at [21] – [23] of their judgement (see [29] and [30] of the learned DJ's grounds of decision). These cases correctly reflect the position today on section 34(2)(a) SCJA.

13 For section 21(1), which applies to cases commenced in the Subordinate Courts, there is a separate line of cases consisting of *Anthony s/o Savarimiuthu v Soh Chuan Tin* [1989] 1 SLR(R) 588, *Augustine Zacharia v Goh Siam Yong* [1992] 1 SLR(R) 746 ("*Augustine Zacharia*"), *Sethuraman Arumugam v Star Furniture Industries Pte Ltd* [1999] SGHC 144 ("*Sethuraman Arumugam*") and *Abdul Rahman bin Shariff v Abdul Salim bin Syed* [1999] 3 SLR(R) 138 which make clear that for the purpose of establishing whether the $50,000 threshold is met, the figure to be considered is the amount disputed in the appeal.

14 *Augustine Zacharia* was also a claim for damages arising from a road traffic accident. After the plaintiff obtained interlocutory judgement, damages were assessed by a deputy registrar at $4,780.89. This amount was lowered on appeal to a district judge in chambers to $1,177.50. At that time, the threshold under section 21(1) SCJA was $2,000. The court held that the amount in dispute was the difference between the sum assessed by the deputy registrar and the sum allowed by the district judge and as this exceeded $2,000, leave to appeal was not required. As *Augustine Zacharia* is a CA decision it is binding on me.

15 *Sethuraman Arumugam's* case involved a claim for damages arising from an industrial accident. The plaintiff there claimed general and special damages. At the trial, damages were quantified by the

plaintiff's counsel at $52,560. The district judge dismissed the plaintiff's claim and the plaintiff applied to the High Court for leave to appeal against the dismissal of his claim. It is not clear from that decision whether there was a bifurcation of liability and quantum below and therefore the judgement below only dealt with liability; or whether the district judge below found against the plaintiff on liability and decided there was no need to deal with quantum. What is clear is that the judgement below did not indicate any quantum. Hence the real issue was not whether leave should be granted but whether leave was required at all. Kan Ting Chiu J ("Kan J") seemed to be at pains, at [6], to obtain confirmation from counsel that the claim was quantified at $52,560 at trial. Since the defendant had denied liability in that case, the amount in dispute on appeal would consequently be the entire sum of $52,560. He therefore ruled that leave was not required.

16 Kan J raised what he saw to be an interesting question – what if the district judge had only allowed part of the claim, *ie*, $30,000 instead of the whole $52,560 claimed? If the plaintiff appealed, he was only seeking $22,560 more and if the defendant appealed, it was seeking to avoid $30,000. Kan J did not have the benefit of *Augustine Zacharia's* case being cited to him but on considering the purpose of section 21(1), which was to discourage non-serious appeals, he came to the same conclusion as the CA in *Augustine Zacharia*, *viz*, the threshold of section 21(1) was the disputed amount in the appeal rather than the disputed amount in the original claim (see [17]-[18] of *Augustine Zacharia*). Kan J pointed out (at [18]) the anomalous situation caused by setting the threshold limit as the original sum claimed at trial: where a claim for $30,000 was dismissed, leave to appeal would be required; but where only $30,000 was awarded on a larger $60,000 claim, the appeal also involved $30,000 but leave to appeal would not be required. The purpose of setting the threshold limit by Parliament would not be furthered by such a construction and one should look at the amount in dispute in the appeal. However he declined to give a definite opinion as the issue was not before him.

17 Before going any further, we need to examine the ratio in *Augustine Zacharia's* case. The CA ruled that the phrase "the amount in dispute" in section 21(1) SCJA means the amount in dispute in the appeal. Where the Subordinate Court registrar had assessed the plaintiff's damages at $*x* and, on appeal by the defendant, the district judge had reduced that sum to $*y*, the amount in dispute in the appeal by the plaintiff against that reduction is the difference between $*x* and $*y*. It should be noted that in *Augustine Zacharia's* case the plaintiff/respondent did not contend that he was entitled to more than the $4,780.89 initially assessed by the deputy registrar. This was because the plaintiff was satisfied with an award at $4,780.89 and did not appeal. It was the defendant who appealed to the district judge. Having had his $4,780.89 award reduced, it was the plaintiff who then wanted to appeal against that reduction (and argued that it did not require leave to do so); see the decision at [2]:

> ... The appellants [defendant] appealed to a district judge in chambers who reduced the damages to $1,177.50. The respondent filed a notice of appeal to the High Court against this reduced assessment ...

and at [12]:

> ... In the present case, however, it was the plaintiff who sought to appeal against a reduction in the award from the sum of $4,780.89 assessed by the deputy registrar to the sum of $1,177.50 allowed by the district judge, a difference of some $3,603.39. This was the "amount in dispute", and it obviously exceeded $2,000.

1 8 *Augustine Zacharia's* case did not lay down the rule that the difference between the amount adjudged due by the court below and the amount claimed to be the correct amount in the appeal is

always the amount in dispute for the purposes of section 21(1) SCJA. In my view, what the CA ruled in *Augustine Zacharia's* case was that we always have to ask: what is the true amount in dispute in the appeal in question for the purposes of section 21(1) SCJA? And that means we have to consider each case on its facts and as contemplated in the appeal sought to be brought. We now need to look at two cases that were decided after *Augustine Zacharia's* case.

19 In *Hua Sheng Tao v Welltech Construction Pte Ltd & Anor* [2003] 2 SLR(R) 137 ("*Hua Sheng Tao*"), there were two defendants. The plaintiff was a plasterer who was injured in the course of his work. He sued the first defendant, the main contractor, who put up the scaffolding, including a metal deck which was inherently defective, and which gave way, causing him to fall and sustain injuries; and the second defendant, the subcontractor, who was his direct employer. The plaintiff sued for damages. At the trial, the plaintiff quantified his claim at $188,872.89. The district judge dismissed his claim against the first defendant but allowed his claim against the second defendant. He also found the plaintiff had contributed to the accident to the extent of 40%, assessed damages at $59,872.39 and consequently awarded the plaintiff $35,923.43 in damages for his injury. Neither the second defendant nor the plaintiff was pleased with this result and sought to appeal.

20 The judgement states at [2] that it was not disputed that the second defendant required leave to appeal under section 21(1) SCJA. I pause here to make an observation. There was no explanation in the judgement as to why this was so. Perhaps the second defendant did not contend that its liability was zero on the cross-appeal and argued for a higher level of contributory negligence only whilst accepting that on a 100% liability, quantum was $59,872.39. However it seems to me that even if the second defendant accepted quantum at 100% was $59,872.39, and was contending on appeal that the plaintiff was totally to blame or for some other reason liable for his own loss and damage to the exclusion of the second defendant it would appear that the second defendant did not need leave to appeal as the amount in dispute would be above $50,000.

21 Leaving that to one side, the second defendant in accepting that it needed leave to appeal, contended that the plaintiff similarly required leave. Choo Han Teck J ("Choo J") disagreed and held that the amount in dispute may well be the amount claimed by the plaintiff at first instance and not the judgement sum granted by the appellate court. This would have been correct if the plaintiff maintained on appeal that his award should have been the sum he claimed at trial, *viz*, $188,872.89 and not $59,872.39. Choo J adjudged that to be the case before him and held that the plaintiff did not need leave to appeal. More importantly, Choo J held that since there was a sufficiently strong nexus between the two intended appeals, fairness required that leave be granted to the second defendant to appeal. But, he added the caveat that just because one party was allowed to appeal as of right, as the threshold had been crossed, it did not mean that the other party, whose claim did not exceed the threshold, would automatically be entitled to leave to appeal as well.

22 The claim in *Ang Swee Koon v Pang Tim Fook Paul* [2006] 2 SLR(R) 733 also arose from a traffic accident. The plaintiff had his damages assessed by a district judge who awarded him $51,000 in total: $31,000 for pain and suffering (neck, back, right knee and right wrist injuries) and $20,000 for loss of earning capacity. Being aggrieved with both awards, the plaintiff appealed. No leave was required because the two awards when added together crossed the section 21(1) threshold of $50,000. After the appeal was filed, and after the learned DJ issued his grounds of decision, the plaintiff decided not to appeal against the damages for pain and suffering. Consequently, when the plaintiff filed his appellant's case, the appeal was limited to the award for the loss of earning capacity. Upon the defendant's objection that leave was required since the amount in dispute was now only $20,000, Kan J, with respect, correctly held at [26] that leave was required because the amount in the dispute in the appeal was now below the $50,000 threshold. The learned judge then gave the plaintiff (at [30]) an extension of one week from the date of the judgement to apply to the district

court for leave to appeal against the award on the loss of earning capacity.

23 In his judgement in *Ang Swee Koon's* case, Kan J took the opportunity to review the cases. He pointed, (at [18]), to the passage, (at [9]), of Choo J's judgement in *Hua Sheng Tao* which suggested that in respect of s 21(1) SCJA, one should look at the amount claimed at the trial:

> ...
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> Although the two sections in the same Act differ in that s 21(1) refers to the amount in dispute while s 34(2)(*a*) refers to the amount at trial, *it seems to me that there is no justification in applying a diametrically opposite principle on account of such difference*. It must not be forgotten that the words 'amount in dispute' in s 21(1) qualify the preceding words, 'in any civil cause or matter'. So, in so far as one examines the purposive approach taken by the Court of Appeal, it only reveals that the court ... did not regard the amount adjudicated by the trial judge to be the pivotal sum for the purposes of determining whether leave to appeal is required.
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> [Kan J's emphasis]

Kan J found this inconsistent with the other authorities reviewed by him. Kan J held at [25] that he was bound by the decision of the CA in *Augustine Zacharia* and that "amount in dispute in the appeal" was the correct test to apply to section 21(1). He said that we have to look at the amount of the judgement sum under appeal or the amount in dispute in the appeal (see [21] and [25]).

24 As noted earlier, we need to remember the ratio and guiding principle set out by the CA in *Augustine Zacharia's* case. The amount we have to consider, in deciding whether leave is required under s 21(1) SCJA, is the true amount in dispute in the appeal. We cannot lay down any rigid formula. It all depends on the facts of each case. These include, but are clearly not limited to, (a) which party is appealing, (b) what is being appealed against and (c) what the appellant is contending in the appeal. All these and other relevant factors go towards ascertaining what the amount in dispute in the appeal is.

25 As the decision in *Ang Swee Koon's* case, with respect, correctly illustrates, the position is not necessarily crystallised at the time the notice of appeal is filed. It is fluid, and if subsequent to filing of a notice of appeal as of right the amount in dispute in the appeal is reduced below the threshold set by s 21(1) SCJA by abandonment of some grounds or heads of appeal, leave will be required to continue with that appeal.

26 There are other fact permutations or factors which are or may become relevant in deciding what the true amount in dispute in the appeal is. Some rather fine distinctions and cases can arise. But if the guiding principle of the *Augustine Zacharia* case is kept firmly in mind, then I venture to think the way through is relatively clear. For example, let us take a situation where a defendant in the type of cases we have been looking at appeals or cross-appeals. Assume the plaintiff claims $60,000 for loss and damage arising out of a road traffic accident and the court awards him $30,000:

> (a) If the plaintiff appeals, maintaining that he should have been awarded the full $60,000 he claims, he requires leave because the amount in dispute in the plaintiff's appeal is $30,000.
>
> (b) However, if the defendant then, *ie*, subsequently, cross-appeals and maintains at trial and on appeal that he is not liable at all, then the amount is dispute in the defendant's appeal, (as far as the defendant is concerned), is $60,000 and not $30,000 because on appeal the amount in dispute in the defendant's appeal is not merely the existing judgement of $30,000 but the full

$60,000 the plaintiff says he is entitled to. It is possible to argue that amount in the defendant's appeal can only be the existing judgement of $30,000 as no court has yet ruled that the plaintiff is entitled to an award of $60,000 and under the Rules of Court, the defendant can set out in its respondent's case in the plaintiff's appeal the grounds supporting the quantum to no more than $30,000 and then file separately in its own appellant's case the grounds upon which it contends its liability is zero. However I do not think that is how s 21(1) should be construed and we should look at the true amount in dispute in the appeal. The defendant in effect is 'defending' himself against a judgement of $30,000 which he contends was wholly wrong, it should have been zero, as well as a claim of an additional $30,000 against him in the appeal. In such an event, by examining the amounts in dispute in the appeals, the defendant does not need leave, but the plaintiff needs leave to appeal. We then have to consider what Choo J said in *Hua Sheng Tao's* case, (see [20] above), where one party appeals as of right but the other has to seek leave to appeal.

(c) Suppose in the same example, it is the defendant who first files a notice of appeal against the plaintiff's award but there is no appeal by the plaintiff at that point in time; the defendant would need leave to appeal because the amount in dispute in the defendant's appeal is less than $50,000.

27 Let us take another, and not unusual, set of facts: assume the plaintiff claims $90,000 and the defendant denies the whole claim, counterclaims $20,000 and the district court only awards $25,000 to the plaintiff and dismisses the defendant's counterclaim. If the plaintiff chooses not to appeal and the defendant decides to appeal against the judgement of $25,000 and dismissal of his counterclaim, then the defendant needs leave to appeal under s 21(1) because the amount in dispute in the defendant's appeal is the plaintiff's award of $25,000 and the dismissed counterclaim of $20,000. However, if the plaintiff appeals first, claiming that he should have been awarded more than the sum adjudged due, *viz*, the $90,000 he claimed at trial, and the defendant subsequently cross appeals denying the plaintiff is entitled to anything at all and that his counterclaim should be allowed, then in the absence of anything more, neither side needs leave to appeal as the amounts in dispute on either side have crossed the $50,000 threshold.

28 As I noted earlier, taking the facts of *Hua Sheng Tao's* case, if the plaintiff appealed contending that the trial judge's assessment of damages (on 100% liability) was wrong *ie*, that it was not $59,872.39 but $188,872.89, then even if he did not appeal the 40% contributory negligence, there would be no need to seek leave because 60% of $188,872.69 is above the section 21(1) threshold. This would be all the more so if the plaintiff was also going to contend on appeal that he was not guilty of any contributory negligence at all. In such fact situations, taking into consideration the amount claimed at trial is not wrong if what was claimed at trial is the amount contended for in the appeal; the amount in dispute in the appeal is therefore the difference between the amount awarded to the plaintiff by the DJ and the sum the plaintiff/appellant contends he is entitled to on appeal, which is the amount he claimed at trial. If before the plaintiff filed any notice of appeal, the second defendant appealed contending that (i) it was not liable at all for the plaintiff's injuries but that it was the first defendant who should liable for the full sum, (ii) accepts that quantum at 100% was $59,872.39 and (iii) accepts the DJ's ruling on contributory negligence, then the second defendant would need leave because the amount in the appeal was only $35,923.43. However the position would be otherwise if the second defendant appealed after the plaintiff filed his notice of appeal as set out above.

29 There is admittedly room for abuse. Where an appellant inflates his claim, or for example if the plaintiff in *Ang Swee Koon's* case maintains his claim for pain and suffering without legal justification after the grounds of decision are published, and only for the purposes of crossing the $50,000

threshold, then he will be penalised in costs, see *Tan Chiang Brother's Marble (S) Pte Ltd's* case at [24]. If, unusually, a party can show the other party inflated his claim in bad faith just to cross such a threshold as in section 21(1), then the court can take a strong stand and treat the case as one with its true value and not one according to the inflated sum pleaded *mala fide*: see *Mason v Burningham* [1949] 2 KB 545, where Lord Greene MR (at 552-554) explained the less satisfactorily reported case of *Mayer v Burgess*, 4 E & B 655, 119 ER 241 ("*Mayer v Burgess*"). In *Mayer v Burgess*, Lord Campbell CJ held at 243:

> We must look at the real nature of the cause, not at the amount claimed. It is clear that here so much as 20*l*. could not have been recovered; so that there was jurisdiction under stat. 9 & 10 Vict. c.95, s.58, and it was not given by stat. 13 & 14 Vict. c.61, in which case only an appeal lies. We therefore have no jurisdiction to hear this appeal.

30 What of those cases where damages are unliquidated or where quantum has not been decided because of a bifurcation of issues – does the s 21(1) SCJA threshold apply at all? There is a question of law involved as well as a factual question.

31 On the question of law, I think that on its true construction, since s 21(1) specifically sets out a monetary amount, if there is no monetary amount set out (*ie* damages are truly at large) then the threshold criterion has no application. In other words, when damages are truly at large, leave to appeal is not required. However because of the policy considerations behind and purpose for the enactment of s 21(1) SCJA, I would add a qualification, *viz*, provided that on the facts the maximum possible amount in damages when assessed is not clearly below $50,000.

32 I find some support from the CA decision of *Hailisen Shipping Co Ltd v Pan-United Shipyard Pte Ltd* [2004] 1 SLR(R) 148 ("*Hailisen Shipping*"). Although this is a case dealing with s 34(2)(a) SCJA, that section similarly had a specified monetary amount and the court was faced with a situation where damages were not quantified. A shipyard, PUS, carried out repairs and supplied equipment to a vessel at the request of its owner, Castle Shipping. Castle Shipping failed to make payment and on 12 August 2001, PUS caused the vessel to be arrested. Negotiations ensued and a settlement was reached. Castle Shipping agreed to pay PUS $310,000 in 3 instalments. The first instalment of $140,000 was paid and the vessel was released. The second and third instalments of $85,000 each were to be paid on 14 September and 14 October 2001 respectively. Shortly after the first instalment was paid, Castle Shipping sold the vessel on 21 September 2001 to Hailisen and the vessel's name was changed. Castle Shipping failed to pay the remaining two instalments. PUS commenced an admiralty *in rem* action against Castle Shipping claiming for the balance of $170,000 and on 29 July 2002 caused a warrant of arrest to be issued against the vessel. Hailisen furnished security of $260,000 and on 10 August 2002, the vessel was released. Hailisen obtained leave to intervene in the admiralty action and applied to set aside the warrant of arrest on the ground that a breach of a settlement agreement did not give rise to an *in rem* right against the vessel and claimed damages for wrongful arrest. The assistant registrar set aside the warrant of arrest but did not grant Hailisen's claim for damages for wrongful arrest. Both PUS and Hailisen appealed, the former against the setting aside of the warrant of arrest and the latter against the refusal to award damages against the wrongful arrest. Ang J upheld the setting aside of the warrant of arrest and ordered PUS to pay damages to Hailisen for wrongful arrest of the vessel, such damages to be assessed.

33 PUS appealed against Ang J's decision on both issues. Hailisen took out a motion contending that PUS was not entitled as of right, without leave, to appeal because the claim *in rem* was only for the sum of the 2 instalments, $170,000, and this was below the $250,000 threshold set by section 34(2)(a). The CA disagreed, holding that what was before Ang J was whether the warrant of arrest should be set aside and if so, whether there should be an order for an assessment of damages,

stating at [15]:

> Neither of them bore any specific value. Indeed the damages to be assessed was wholly at large. The claim of PUS in the main action could in no way limit the damages suffered by Hailisen due to the wrongful arrest. Therefore the matter did not fall within s 34(2)(a) and no leave was required.

We do not know if there was any estimate of damages in the affidavit evidence. I would venture to guess not given the language used in the judgement quoted above and the lack of any reference to any sum in the judgement although a known factor was that the second arrest for which damages were awarded by Ang J, lasted some 13 days. On my reading of this CA decision, it is authority for the following rule: no leave to appeal is required under s 34(2)(a) SCJA where the damages claimed bore no specific value, were to be assessed and were truly at large, as the matter did not fall within s 34(2)(a) SCJA.

34 In any event, I take the view that the damages in this case, although not yet assessed, were not truly at large as the value of the damages could be estimated. Therefore, with respect, I think the learned DJ was wrong in requiring the parties to obtain leave.

35 First, unless the damages bore no specific value and were truly at large, the parties and the court must ascertain, as best it can, the amount in dispute in the appeal on the facts of each case. I accept there will be difficulties in cases where there is no evidence at all on quantum and one is therefore in the dark whether the $50,000 threshold has been met or not. In such a case it behoves counsel resisting an application to dismiss the appeal for not having crossed the threshold to show that his client's claim has crossed the threshold. Perhaps counsel of prudence would also dictate that somewhere in the opening counsel should state what the envisaged damages are or the approximate amount being sought even in cases where there has been a bifurcation of damages, in the event that his client may wish to appeal an adverse or inadequate award of damages. This is what the learned DJ below seemed to be saying, perhaps rather wistfully, at [33]:

> ... If only the plaintiff had told me the amount of his claim, whether in his opening statement, somewhere in his affidavit of evidence in chief, possibly even in his closing submissions, there would have been material enough, be it that it was pure *ipse dixit* for the purpose of the trial on liability, and that would have sufficed, for the appeal to go forward without leave. Had the defendant been alert to the issue of an appeal, he could have secured from the plaintiff such a statement about his claim quantum. ...

The learned DJ then concluded that unfortunately there was simply no material before him to satisfy that there was an appeal as of right.

36 Secondly, with great respect, I cannot agree with the conclusion of the learned DJ. There was material before him to form a view that damages clearly exceeded the $50,000 threshold under s 21(1) SCJA. Thirdly, where both counsel responsibly say they agree and accept that the claim exceeds the threshold, that should be sufficient for the court.

37 The pleadings, the requisite medical reports and the Order 18 rule 12(1A)(b) Rules of Court statement of special damages contained the necessary material for the court to form a view. There were special damages pleaded in relation to medical expenses, ambulance services, hospital charges, transport expenses for treatment, cost of vehicle survey and repairs to the motor cycle, loss of earnings, loss of Central Provident Fund benefits and loss as a result of reduced earnings. All this totalled $44,770.45. This did not include general damages for pain and suffering nor future loss of earnings and future medical support. There were five medical reports from Changi General Hospital

stretching from 7 August 2006 to 21 April 2008 referring to fractures of the right distal radius and right transverse processes of thefirst to fourth lumbar vertebrae, disc degeneration, medication for pain treatment, symptoms of post-traumatic stress disorder, radiation of back pain to the right posterior thigh, numbness of two toes, and a "burning pain" sensation at the lateral aspect of the left calf. The plaintiff complained of continuing pain even in the neck and right upper limb. There was degenerative disc disease but whether that was from the accident or from a previous condition was not made clear in the medical reports. It is very clear that with general damages for pain and suffering, the total claim would comfortably exceed the $50,000 threshold. The fracture of the distal radius alone would amount to some $12,000 to $15,000 for pain and suffering, for the four lumbar fractures the figure, even with overlap would come to amount to approximately $15,000 to $18,000. Books on quantum for personal injuries would produce these figures. The court could also get assistance from counsel, if it felt it was necessary. The medical reports and pleadings show he had stopped working as an aircraft technician and was working as a concierge. Indeed before me, Mr Athitham, counsel for the plaintiff and respondent in these proceedings, quantified his client's loss and damage at about $252,000 and put the figure for damages for pain and suffering at $55,000.

38 I accept that there will be some borderline cases where it will be very difficult to ascertain if the $50,000 threshold has been crossed. However, in such cases, the parties and/or the courts will have to do the best it can to ascertain the amount that is in dispute. Invariably such questions will arise where one party contends that the other needs leave to appeal. Counsel can then be asked to assist the court in estimating the likely damages in dispute in the appeal. If counsel cannot agree and each side puts forward a sum falling on either side of the threshold, then the court will just have to decide who is more likely to be right, something courts are called upon to do all the time. There will be no prejudice as such a decision is only to ascertain quantum for the 'leave' stage, and it will not bind the judge who has to assess quantum eventually.

39 I do not see my decision here as opening the floodgates to allow appeals from the Subordinate Courts to inundate the High Court. For those claims arising from road traffic accidents, I think that one would be able to estimate with reasonable accuracy the likely damages in dispute. I would venture to say that this would hold true for many, if not most, other kinds of claims that come before the Subordinate Courts.

40 The new section 21(1) SCJA, which came into effect on 1 January 2011 pursuant to the Supreme Court of Judicature (Amendment) Act 2010 (Act 30 of 2010), reads as follows:

> **Appeals from District and Magistrates' Courts**
>
> **21**. —(1) Subject to the provisions of this Act and any other written law, an appeal shall lie to the High Court from a decision of a District Court or Magistrate's Court —
>
> (a) in any case where the amount in dispute, or the value of the subject-matter, *at the hearing* before that District Court or Magistrate's Court (excluding interest and costs) exceeds $50,000 or such other amount as may be specified by an order made under subsection (3); or
>
> (b) with the leave of that District Court or Magistrate's Court or the High Court, in any other case.
>
> [emphasis added]

With the inclusion of the words "at the hearing" in the new section 21(1)(a), it appears that the "amount in dispute *in the appeal*" test established by the case law relating to the previous

section 21(1) discussed earlier has become obsolete.

41 It should also be observed that the new section 34(2)(a) SCJA has similarly had the phrase "at the trial" deleted and the phrase "at the hearing" substituted therefor. Sections 21(1)(a) and 34(2)(a) are now uniform insofar as the determination of the "amount in dispute" is concerned. At the Second Reading of the relevant Amendment Bill, (see Singapore Parliamentary Debates, Official Report (18 October 2010) vol 87 (at col 1371)) the Senior Minister of State for Law explained that:

> Currently, a party does not require leave of court to file an appeal to the High Court or the Court of Appeal, as the case may be, if the "amount in dispute or value of the subject-matter" exceeds $50,000 for appeals to the High Court; or $250,000 for appeals to the Court of Appeal. Clauses 4(a) and 9(c) amend section 21 and section 34(2)(a) to clarify that the computation of this monetary threshold does not include interest or costs ordered by the court. *The amendment also puts it beyond doubt that the respective monetary thresholds of the High Court and Court of Appeal is computed by reference to the original amount claimed in the lower court and not the judgment sum awarded by the court, or the amount in dispute on appeal. This is consistent with recent Court of Appeal decisions*.
>
> [emphasis added]

Going forward therefore, sections 21(1)(a) and 34(2)(a) SCJA should be construed in accordance with the *Tan Chiang Brother's Marble (S) Pte Ltd* line of authorities, *viz*, one need only look at the amount in dispute at the hearing before the lower court. Indeed, this change avoids the uncertainties of the various hypothetical factual permutations discussed above.

42 Nevertheless, I think my earlier statements regarding the applicability of *Hailisen Shipping* to the previous section 21(1) of the SCJA, as well as my views on the likelihood of being able to estimate damages even for cases where there has been a bifurcation of liability and quantum remain relevant to the application of the new section 21(1)(a) of the SCJA.

43 In the circumstances, I grant the order and declarations prayed for:

(i) The decision of the Learned District Judge made on 1 December 2010 in Summons No. 19086/2010/Q in DCS 1680 of 2009/R be set aside;

(ii) I declare that no leave is required for the Defendant in DCS 1680 of 2009/R to file an appeal to the High Court against the decision of the Learned District Judge on liability made on 21 October 2010;

(iii) I declare and order that the Defendant's notice of appeal dated 2 November 2010 in DCS 1680 of 2009/R shall stand and is valid but time for all subsequent steps to be taken in the appeal shall be suspended as from 3 November 2010 to a date that is one week from the date of this judgement.

(iv) There be no order as to costs for these proceedings.

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