

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 123

Originating Summons No 277 of 2022

In the matter of Section 21(1)(a) of the Supreme Court of Judicature Act 1969

And

In the matter of Section 24A(2)(b) of the Limitation Act 1959

And

In the matter of Section 37 of the Probate and Administration Act (Ch 251)

And

In the matter of Order 18 Rule 11 of the Rules of Court (Ch 322, r 5)

Between

Syed Almagdad bin Syed Faraj
Administrator of the Estate of Musoling bin Faraj, deceased

... Applicant

And

India International Insurance Pte Ltd,
personal representative of the estate of Chellappan Chivadasan, deceased

... Respondent

JUDGMENT

[Civil Procedure – Limitation – Limitation Act]

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**Syed Almagdad bin Syed Faraj
(administrator of the estate of Musoling bin Faraj, deceased)**

v

**India International Insurance Pte Ltd
(personal representative of the estate of
Chellapan Chivadasan, deceased)**

[2022] SGHC 123

General Division of the High Court — Originating Summons No 277 of 2022
Choo Han Teck J
5 May 2022

24 May 2022

Judgment reserved.

Choo Han Teck J:

1 A 75-year-old man, Musoling bin Faraj (“Musoling”), was crossing the road when he was knocked down by a taxi driven by Chellapan Chivadasan (“Chellappan”) on 3 December 2013. Both men died some time after the accident for causes unrelated to the accident. Musoling died on 16 January 2015 of cancer. Chellappan died a year after that on 7 April 2016. The claim is a small one, and the only witnesses to the accident — Musoling and Chellappan — have both died, their deaths unrelated to the accident.

2 This action for damages in negligence was brought by Musoling’s brother as the administrator of his estate (“the Administrator”) against the insurers of Chellappan (“the Defendant”) for injuries suffered by Musoling in

the accident. The Defendant applied to strike out the action on the ground that the action was time-barred. The suit was filed on 2 February 2018 in the Magistrates' Courts. The accident took place on 3 December 2013 which meant that the claim would have been time-barred under s 24A(2)(b) of the Limitation Act (Cap 163, 1996 Rev Ed) ("Limitation Act"). The relevant portion of that section reads:

24A (1) This section shall apply to any action for damages for negligence, nuisance, breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any written law or independently of any contract or any such provision).

(2) An action to which this section applies, where the damages claimed consist of or include damages in respect of personal injuries to the plaintiff or any other person, shall not be brought after the expiration of –

(a) 3 years from the date on which the cause of action accrued; or

(b) 3 years from the earliest date on which the plaintiff has the knowledge required for bringing the action for damages in respect of the relevant injury, if that period expires later than the period mentioned in paragraph (a).

3 A Deputy Registrar ("the DR") in the State Courts held the action was not time-barred because he was of the opinion that the "plaintiff" referred to in s 24A(2)(b) must mean the plaintiff as named in the action, and therefore, the knowledge required to found an action must be the knowledge of the Administrator for the purposes of calculating the time limitation. He therefore dismissed the Defendant's application to strike out the action.

4 The Defendant appealed to DJ James Leong ("DJ Leong"). DJ Leong agreed with the DR that the Defendant has not shown that the action ought to be struck out, but he differed in his reading of s 24A(2)(b) in that the relevant

knowledge referred to is the knowledge of the injured person, Musoling, and not his personal representative, the Administrator. He concluded that the action was not plainly or obviously unsustainable in fact or law, and thus dismissed the Defendant's appeal.

5 The action then proceeded to trial before DJ Wong Peck ("DJ Wong"). DJ Wong found that Musoling had the knowledge necessary to commence an action by 20 March 2014 because that was the date that Musoling went, unaided, to lodge a police report about his accident. He went because the police sent him a letter dated 5 December 2013 requesting that he lodge a police report about the accident. DJ Wong thus found that the action, having commenced on 2 February 2018, was time-barred. She thus dismissed the Plaintiff's action.

6 Counsel for the Administrator, Mr Mohamed Ibrahim applied by this summons for leave to appeal against DJ Wong's decision. Mr Fendrick Koh appeared on behalf of the Defendant. Both counsel agreed that the issue was whether the knowledge required under s 24A(2)(b) should be that of the injured person or the plaintiff as named in the action. They agree that if the requisite knowledge is that of the injured person, Musoling, then the action would have been time-barred.

7 Mr Mohamed submitted that the term "plaintiff" is not defined in section 24. He pointed out that whereas s 24A(2) refers to a claim for damages for injuries to "the plaintiff or other person", s 24A(2)(b) only refers to "the plaintiff". He therefore argues that the knowledge required under s 24A(2)(b) must refer to the knowledge of the Administrator as the plaintiff named in the action. DJ Wong had found that the Administrator only found out about Musoling's accident when he found the police report among his brother's

personal effects. The Administrator had testified that he found the police report after Musoling had died, namely, after 15 January 2015. Mr Mohamed submits that the Administrator only had knowledge of the cause of action after 17 October 2017 because he did not know until then, that Chellappan was the driver involved in the accident with Musoling.

8 Section 24A(2) sets out the types of actions that the section applies to — actions where the damages claimed relate to personal injuries suffered by “the plaintiff or any other person”. The phrase “the plaintiff or any other person” refers to the person who sustained the personal injury in the cause of action. Sometimes an injured person would be unable, as in this case, to bring an action himself. Thus, “the plaintiff” in s 24A(2) refers to the person who might bring the action on behalf of the injured person, and the injured person is thus the “other person” referred to in this section.

9 Section 24A(2)(b) is intended to prevent the harshness of the three-year limitation in cases when a “plaintiff” has no knowledge to pursue his claim, by having the start of the three-year limitation period commence from the “plaintiff” gained the requisite knowledge to bring the claim. The reference to “plaintiff” here has a different purpose from the reference in s 24A(2) — it is to identify the person whose knowledge is relevant in determining whether the time bar should be extended under s 24A(2)(b).

10 When a person is injured, he will be the plaintiff in any action arising from a claim by him, but when he dies, or is a minor, someone else, namely his personal representative will have to sue on his behalf. The personal representative does not bring the case in his own personal capacity — he sues in his capacity as a representative of the plaintiff. It is not the knowledge of the

personal representative, who is merely stepping into the shoes of the injured, but the knowledge of the injured person that is relevant under s 24A(2)(b). Therefore, the “plaintiff” under s 24A(2)(b) refers to the injured, not the representative bringing the action on behalf of the injured.

11 Where it has been proven that the injured had the necessary knowledge to commence an action for personal injury by reason of an accident, whether caused by another person or by an unknown vehicle, the time limitation would have started to run from the date the injured had the requisite knowledge. If the injured chooses not to bring the action and subsequently dies, the three-year limitation period does not “reset” when the administrator of the deceased’s estate learns about the incident and decides to bring the action.

12 This is different from the position adopted in the United Kingdom (“UK”). Section 11(5) of the UK Limitation Act 1980 (“UK Limitation Act”) provides that where the injured person dies before the expiration of the three year period, the limitation period would be “renewed” for three years from the date of his death or the date of the personal representative’s knowledge, whichever is later. Unlike the UK Limitation Act, there are no express provisions dealing with estate claims in our Limitation Act.

13 In the absence of legislative amendments, I am of the view that we cannot interpret our provision to achieve a result similar to the UK position. Holding otherwise will lead to a situation where a cause of action that is clearly time-barred can be revived after the injured has died and the personal representative subsequently obtains knowledge of the tort. This unwelcome result can be illustrated with a simple example. For example, a person hit by a car in 2010 with knowledge of his cause of action against the driver, but did not

sue, and subsequently dies in 2014. Then, in 2022, the administrator of his estate, finds out about the accident for the first time, and seeks to bring the claim. If s 24A(2)(b) refers to the “knowledge” of the personal representative, then the cause of action against the driver, which is clearly time-barred, can be raised from the dead. That cannot be the intention of parliament in legislating s 24A(2)(b). It runs contrary to the very purpose of the Limitation Act, which is to provide certainty to the defendant’s exposure in the first place.

14 For completeness, the plaintiff’s cause of action in the above example would have been time-barred in the UK because s 11(5) of the UK Limitation Act only applies where the injured person dies before the expiration of the three-year period — it will not allow a revival of the cause of action if the injured person’s cause of action has already been time-barred before he died. Therefore, in the absence of a similar provision to s 11(5), the knowledge of the “plaintiff” in s 24A(2)(b) cannot be interpreted to mean the knowledge of the “personal representative” as the extrapolation will be a leap too far as will be evident from my explanation.

15 The above point is fortified by the Report of the Law Reform Committee in 2007 on the review of the Limitation Act (“2007 LRC”). The 2007 LRC observed at [164] that:

[w]hen s 24A of the Singapore Limitation Act was introduced in 1992 based on the UK Limitation Act 1980, the provisions which dealt with estate claims (s 11(5) to (7)) were not included ... therefore, the limitation period applicable to the estate for claiming damages for wrongful death continues to run as though the claimant had not died [and] the death of the claimant has no impact on the expiry of the limitation period

16 The 2007 LRC recommended that we adopt s 11(5) of the UK Limitation Act and extend the limitation period, in the event of the death of the claimant,

to three years from death or knowledge of the personal representative, whichever is later (at [167]). However, this recommendation was not implemented by Parliament. This fortifies the point that without legislative intervention, the current s 24A(2)(b) cannot be interpreted to operate in the same manner as s 11(5) of the UK Limitation Act.

17 However, the knowledge of the personal representative can sometimes be relevant. For example, where an injured person dies unaware of any cause of action, and the personal representative subsequently discovers that there was a cause of action, the limitation period will start on the date the personal representative became aware of the cause of action. Say, where a person was found dead on 1 January 2020, but no one knew until 1 January 2021 when the police disclosed that the latter was pushed by the defendant, and had not fallen by himself (as was previously believed), then the limitation period starts to run from 1 January 2021 when the personal representative acquired knowledge of the tort. This would be consistent with s 24A(2)(b) which states that the three-year period starts from the “earliest date” on which the plaintiff has the knowledge. In the example above, the injured was unaware of the cause of action at the time the tort was committed and had no knowledge even when he died — the “earliest date” that the plaintiff obtained knowledge of the tort is therefore the date on which the personal representative, after stepping into the shoes of the plaintiff, discovered the tort.

18 In the specific case of a claim for damages arising from a motor accident, the knowledge of the identity of the defendant is not relevant because the injured may sue by reason of the Motor Insurers’ Bureau of Singapore’s agreement with the Ministry of Finance to step into the shoes of an unnamed defendant driver (*Motor Insurance Bureau v AM General Insurance* [2018] 4 SLR 882).

Therefore, the injured may be said to have knowledge of his cause of action under s 24A(2)(b) even if he does not know the identity of the driver who injured him.

19 In the present case, the incontrovertible evidence was that Musoling had all the requisite knowledge to found his action by the time he lodged his police report on 20 March 2014 himself. It is also clear that although he was in a nursing home after the accident, it does not mean that he could not have the knowledge of his cause of action until he had been discharged. His family was looking after him, and presumably they too knew of the accident. Musoling had up to 20 March 2017 to file his claim, but he died in 2015, when he was still within time to sue. This action was filed on 2 February 2018 by his personal representative. As discussed above, unlike the UK position, the limitation period does not reset to a further three years upon the death of the accused. Therefore, the action is time-barred in the present case. The parties had already made full submissions on the point, and although s 24A(2)(b) needed explanation because of counsel's application, its meaning is clear, and there is no merit in allowing the Administrator's claim in the Magistrates' Court to proceed further.

20 Leave to appeal is refused.

- Sgd -
Choo Han Teck
Judge of the High Court

Mohamed Ibrahim and Low Shi Hou (Achievers LLC) for applicant
Francis Chan Wei Wen and Fendrick Koh Keh Jang (Titanium Law
Chambers LLC) for respondent