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

[2021] SGHC 95

Registrar's Appeal (State Courts) No 1 of 2021 and Summons No 1006 of 2021

Between

Mukeswara Muniandy

… *Appellant*

And

Muhammad Sufi bin Mohamed Sudar

… *Respondent*

GROUNDS OF DECISION

[Damages] — [Assessment]
[Civil Procedure] — [Appeals]

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v
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[2021] SGHC 95

General Division of the High Court — Registrar's Appeal (State Courts) No 1 of 2021 and Summons No 1006 of 2021

Andre Maniam JC
4 March 2021

22 April 2021

Andre Maniam JC:

Introduction

1 On an appeal against an assessment of damages, should fresh evidence as to matters after the assessment be admitted?

2 This appears to be a recurring issue: it was also in issue in HC/RAS 19/2020, which I heard less than half a year ago. It may thus be opportune to review the applicable principles.

Applicable principles

The Ladd v Marshall *rule*

3 The rule in *Ladd v Marshall* [1954] 1 WLR 1489 generally prescribes conditions for the adducing of fresh evidence on appeal. Denning LJ (as he then was) stated it as follows (at 1491):

> [t]o justify the reception of fresh evidence or a new trial, three conditions must be fulfilled: *first*, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; *secondly*, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; *thirdly*, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible.
>
> [emphasis added]

4 In *Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2019] 2 SLR 341 ("*Anan Group*"), the Court of Appeal held that the *Ladd v Marshall* rule is to be applied contextually, in a nuanced manner. Cases should be analysed as lying on a spectrum. On one end of the spectrum, where the appeal was against a judgment after a trial or a hearing having the full characteristics of a trial, the rule should generally be applied in its full rigour. On the other end, where the hearing was not upon the merits at all, the rule served as a guideline which the court was entitled but not obliged to refer to. For cases in the middle of the spectrum, it was for the court to determine the extent to which the first condition of the rule, *viz*, non-availability, should be applied strictly, having regard to the nature of the proceedings (see *Anan Group* at [35]).

5 The *Ladd v Marshall* rule furthers the interests of finality in litigation, and the fair administration of justice (*Anan Group* at [23]–[26]). Nevertheless,

the court has an unfettered discretion to act as the interests of justice require (*Anan Group* at [31], [35] and [37]–[38]).

Fresh evidence on appeals against assessments of damages

6 Our courts have been strict about the adducing of further evidence on an appeal against an assessment of damages.

7 The High Court in *Lassiter Ann Masters v To Keng Lam (alias Toh Jeanette)* [2003] 3 SLR(R) 666 ("*Lassiter (HC)*") applied the *Ladd v Marshall* rule to a registrar's appeal from an assessment of damages, and declined to allow fresh evidence. On appeal, the Court of Appeal held that a judge in chambers hearing a registrar's appeal exercises confirmatory and not appellate jurisdiction: as such, it was not appropriate to impose the stringent first condition of non-availability of the *Ladd v Marshall* rule (see *Lassiter Ann Masters v To Keng Lam (alias Toh Jeanette)* [2004] 2 SLR(R) 392 ("*Lassiter (CA)*") at [10] and [22]–[26]). Sufficiently strong reasons must nevertheless be shown why the new evidence was not adduced at first instance (*Lassiter (CA)* at [24]). The Court of Appeal upheld the High Court's decision not to allow the fresh evidence.

8 Between *Lassiter Ann (HC)* and *Lassiter Ann (CA)*, the High Court decided *Ang Leng Hock v Leo Ee Ah* [2004] 2 SLR(R) 361 ("*Ang Leng Hock*") where the court found, on a registrar's appeal from an assessment of damages, that neither the first nor second conditions of the *Ladd v Marshall* rule were met (*Ang Leng Hock* at [16]). In any event, the court declined to exercise its discretion to allow the fresh evidence, which would go only to credit, would not add much to the case, and which, if allowed, would result in more expense and delay than the evidential value of the new evidence was worth (at [17]). The

court noted that, as an assessment had the characteristics of a trial, the court should not allow further evidence to be freely adduced on appeal (at [15]). The Court of Appeal in *Lassiter (CA)* agreed with this, stating that the parties should, as a rule, "present their entire evidence at the assessment" (at [20]; see also *Anan Group* ([4] above) at [33]).

9 *Lassiter* and *Ang Leng Hock* did not, however, concern fresh evidence as to matters *after* the assessment. That scenario was considered in *Tan Sia Boo v Ong Chiang Kwong* [2007] 4 SLR(R) 298 ("*Tan Sia Boo*"), where the defendant sought to adduce further evidence of a surveillance video taken after the assessment, and medical expert evidence commenting on that video.

10 The plaintiff contended that the post-assessment video was (by definition) not available at the time of the assessment, and so the non-availability criterion of the *Ladd v Marshall* rule was satisfied. However, the court noted that surveillance could have been done before the assessment, for use during the assessment (*Tan Sia Boo* at [3]). The court stated that it was not sufficient to say that the fresh evidence would show that the plaintiff's disability (which formed the subject of the damages assessment) was not as serious as that found at the assessment when there were no attempts to have a video recording of this nature at the assessment (at [5]). Indeed, "[i]f fresh evidence were to be permitted on this ground, every defendant will hope to regard this as a precedent for him to produce post-hearing surveillance evidence" (*Tan Sia Boo* at [5]). Accordingly, the court did not allow the fresh evidence to be adduced.

11 The House of Lords decision in *Mulholland and another v Mitchell* [1971] 1 AC 666 ("*Mulholland v Mitchell*") also concerned fresh evidence sought to be led as a result of developments after the damages assessment. The fresh evidence was, however, allowed because of the exceptional circumstances

of the case. Damages had been assessed on the basis that it would be possible for the plaintiff to be looked after at home, or at least in an ordinary nursing home. The proposed fresh evidence was that after the assessment, the plaintiff's condition had unexpectedly deteriorated such that he had to be admitted to hospital on an emergency basis; he was thereafter cared for at an authorised psychiatric nursing home at double the cost of an ordinary nursing home (*Mulholland v Mitchell* at 676). The English Court of Appeal exercised its discretion to allow the fresh evidence, and that decision was upheld by the House of Lords.

12 The House of Lords noted that damages are assessed "once for all" at the time of the assessment, notwithstanding that uncertain matters as to the future have to be taken into account (*Mulholland v Mitchell* at 674 and 676). In exceptional cases, however, fresh evidence will be allowed. Their Lordships variously expressed this as follows: "a dramatic change of circumstances" (*per* Lord Hodson at 675, with Lord Diplock agreeing at 682); "events after the trial have falsified [the basis on which damages were assessed]" (*per* Viscount Dilhorne at 677); "[fresh evidence] may be admitted if some basic assumptions, common to both sides, have clearly been falsified by subsequent events" (*per* Lord Wilberforce at 679–680); an "exceptional [situation] … [where] events [have] happened which very materially falsified the expectations on which the judge had assessed the damages" (*per* Lord Pearson at 681).

13 Lord Wilberforce also said: "[p]ositively … it may be expected that courts will allow fresh evidence when to refuse it would affront common sense, or a sense of justice" (*Mulholland v Mitchell* at 680). That was cited by the High Court in *Chan Fook Kee v Chan Siew Fong* [2001] 2 SLR(R) 143 at [9], and by the Court of Appeal in *Anan Group* ([4] above) at [38].

14 It is noteworthy that the recognition in *Mulholland v Mitchell* that fresh evidence as to post-assessment matters will only be allowed in exceptional cases, stems from the principle that damages are assessed on a "once for all" basis.

15 In *Noble v Owens* [2010] 1 WLR 2491, the case before the English Court of Appeal concerned an assessment, the basis of which was that the plaintiff's mobility was severely restricted and would remain so; he was dependent on crutches and a wheelchair; and he would never work again, and would require much assistance with daily living (at [1]). Some months after the assessment, however, the plaintiff was filmed walking about without the aid of crutches or a walking stick, driving a dumper truck, sawing wood and moving a number of items, stretching and bending without apparent difficulty (at [2]). The defendant insurers applied for the post-assessment films of the plaintiff to be admitted as fresh evidence, and counsel for the plaintiff accepted that this fresh evidence should be admitted (at [4]). As to how to proceed, the court held that the issue of whether the plaintiff had defrauded the court should first be tried: if the allegation of fraud were rejected, the original award would stand; but if fraud were proved, then the damages should be reassessed (at [30], [60]–[61], [67] and [71]–[73]).

16 *Noble v Owens* illustrates that fresh evidence as to post-assessment matters will only be admitted in exceptional cases.

My decision

17 In the present case, the assessment of damages by a State Courts registrar had been upheld by a district judge in chambers. That was appealed to the High Court. Just two days prior to the hearing of the appeal, the appellant applied for

the court to appoint a medical expert to opine on his current medical condition and whether he needed further physiotherapy.

18 As to the first condition of the *Ladd v Marshall* rule (*viz*, non-availability), there was no good explanation why the appointment of a court-appointed expert was not sought at an earlier stage in the proceedings. While there was conflicting medical evidence, if the existence of conflicting medical evidence were a sufficient basis for the court to appoint yet another expert (as the appellant suggested), that could have been applied for before damages were assessed.

19 As to the second condition of the *Ladd v Marshall* rule (*viz*, relevance), the appellant could not say the evidence would probably have an important influence on the result of the case. No one knew what a court-appointed expert might say about the appellant's condition – his opinion might well fall within the range of the medical opinions already in evidence, and not be significant. Even if there were *some* difference between the new expert's opinion on the appellant's current condition and what had been canvassed at the assessment about the appellant's condition then, that would not be grounds for varying the assessment, or for putting in a fresh expert opinion for the appeal. As Lord Wilberforce stated in *Mulholland v Mitchell* ([11] above) (at 679):

> … an impossible situation would arise if evidence were to be admitted of every change which may have taken place since the trial. In the nature of things medical condition will vary from year to year, or month to month; earning prospects may change, prices may rise or even fall. If the [appellate court] were to admit evidence of changes of this kind (and it must not be overlooked that a facility given to one side cannot be denied to the other), not only would a mass of appeals involve the hearing of evidence but the [appellate court] would merely be faced with the same uncertainties as faced the judge, and of which the judge has, ex hypothesi, already taken account. In other words, an appellant's contention that factors such as these have changed

> since the trial must, in normal cases, be met with the answer that the judge, in his estimate, has already taken account of them.

20 The appellant did not suggest that the fresh evidence would be a dramatic change from what was before the assessing registrar, as was the case in *Mulholland v Mitchell* and *Noble v Owens* ([11] and [15] above). He simply hoped that the new expert might side with his present expert, and thereby sway the appellate court to vary the assessment in his favour.

Conclusion

21 Damages are assessed "once for all" at the time of the assessment. Given the objectives of finality in litigation and the fair administration of justice, fresh evidence on appeal as to matters *after* the assessment will only be allowed in exceptional cases.

22 This was not at all an exceptional case justifying fresh evidence as to post-assessment matters. Accordingly, I dismissed the application for the appointment of a court expert. I also dismissed the appeal.

Andre Maniam
Judicial Commissioner

Melissa Kor (Optimus Chambers LLC) for the appellant;
Devendarajah Vivekananda (Comlaw LLC) for the respondent.