IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 146

District Court Suit No 1680 of 2009
(HC/RAS No 12 of 2016)

Between

Seow Hwa Chuan

… *Plaintiff*

And

Ong Wah Chuan

… *Defendant*

JUDGMENT

[Damages] — [Assessment] — [Personal injuries]

Seow Hwa Chuan
v
Ong Wah Chuan

[2016] SGHC 146

High Court — District Court Suit No 1680 of 2009 (HC/Registrar's Appeal from the State Court No 12 of 2016)
Choo Han Teck J
18 July 2016

26 July 2016 Judgment reserved.

Choo Han Teck J:

1 The plaintiff was riding a motorcycle on 19 June 2006 when he met with an accident with a pickup driven by the defendant ("the 1st accident"). He sued the defendant on 13 May 2009. Liability was adjudged in the proportion of 90% in favour of the plaintiff. The defendant's appeal to the High Court was dismissed on 6 October 2011.

2 In the interim, the plaintiff met a second accident riding the same motorcycle on 12 November 2007 ("the 2nd accident"). He sued on 30 June 2010 and obtained a consent order for 75% liability in his favour.

3 The assessments of damages in respect of both accidents were fixed for hearing on 7 August 2014 before the same deputy registrar. That was an eminently sensible procedure because two main witnesses in both assessments

were the plaintiff and Dr Tan Mak Yong ("Dr Tan"), who examined the plaintiff in respect of both accidents.

4 The plaintiff subsequently settled his claim against the defendant in the 2nd accident and obtained an order by consent for the global sum of $30,000 inclusive of $5,000 for special damages and $25,000 for general damages. The deputy registrar then proceeded to assess damages in respect of the 1st accident and made the following award on 6 July 2015. The deputy registrar awarded $72,000 for general damages and $15,515.35 for special damages making a total award of $87,515.35. Both parties appealed to the district judge ("the DJ") who heard the appeals and handed down his decision on 18 March 2016. The DJ reversed the award to $95,000 and $19,355.35 respectively, making the overall award $114,355.35. The details were helpfully set out by the DJ in a table which I now reproduce:

S/No	Item	Award by Deputy Registrar # ($)	Award on appeal # ($)
	General Damages		
	Pain & Suffering		
1	Right wrist injury	5,000	10,000
2a	Tender left chest wall	1,000	2,000
b	Anterior chest contusion (haematoma)		
3	Haematoma on left elbow	0	2,000
4	Neck strain and exacerbation of pre-existing L4/L5 anterolisthesis	18,000	12,000
5	Right transverse process fractures	0	18,000
6	Post-Traumatic Stress Disorder (PTSD)	6,000	6,000
	Sub-total (Pain & Suffering)	30,000	50,000
	Others		
7	Loss of earning capacity	40,000	40,000

8	Future medical and transport expenses	2,000	5,000
	Total General Damages	**72,000**	**95,000**
	Special Damages		
9*	Medical Expenses	4,264.35	4,264.35
10*	Transport expenses	600	600
11*	Cost of vehicle repair and survey report fee (agreed at assessment)	1,851	1,851
12	Pre-trial loss of earnings for 20.6.2006 – 30.6.2007 (12 months) @ $320 per month	0	3,840
13	Pre-trial loss of earnings for 2.7.2007 – 4.11.2007 (4 months @ $2,200 per month	8,800	8,800
	Total Special Damages	**15,515.35**	**19,355.35**
	Grand Total	**87,515.35**	**114,355.35**

Note: # - the amounts were based on 100% liability.

* - no appeal was filed against award from the Deputy Registrar

5 The plaintiff suffered the following injuries –

(a) A fracture of the right wrist;

(b) A bruising injury to the left chest wall;

(c) A bruising injury to the left elbow;

(d) Neck strain;

(e) A fracture of the right transverse process (lower back) and

(f) Post-Traumatic Stress Disorder.

The total damages for the overall pain and suffering awarded by the DJ was $50,000. The defendant appeals against (a), (b), (d) and (e). He is also

appealing against the awards for future medical expenses ($5,000) and loss of earning capacity ($40,000). The plaintiff completed Secondary 4 schooling but did not obtain an "O" level certificate. Thereafter he worked as a technician. The evidence as to the plaintiff's salary at the time of the 1st accident was, as the DJ noted, not very clear but the deputy registrar and the DJ accepted that the plaintiff was earning $2,200. Before me, Mr Ramesh Appoo ("Mr Appoo"), counsel for the defendant, argued that the plaintiff was then only earning $1,800 but with overtime pay it was $2,100.

6 The plaintiff was unable to work for a while but he has been working as a chauffeur since September 2007. He worked, first at the St. Regis Singapore and then at Resorts World Sentosa ("RWS"). In January 2013, he left RWS to work as a chauffeur for Overseas Union Enterprise Limited ("OUE"), earning $2,500 a month. He is still with OUE at the time of this appeal.

7 The evidence relating to future medical expenses came mainly from Dr Tan. The plaintiff was examined by Dr Tan in respect of both accidents for the purposes of preparing a medical report to be used for the assessment of damages. Strangely, Dr Tan examined the plaintiff in respect of the 1st accident on 8 April 2013 but examined the plaintiff in respect of the 2nd accident two days earlier on 6 April 2013. His medical report in respect of the 1st accident is dated 22 May 2013 and his medical report in respect of the 2nd accident is dated 12 June 2013. Although in his report on the 2nd accident he mentioned that the plaintiff had sustained injuries in the 1st accident, he made no mention of the 2nd accident in his report on 1st accident. In both

reports he mentioned that the plaintiff had previous surgery to his spine in 1991.

8 The omission of any reference to the 2nd accident in Dr Tan's report in respect of the 1st accident may be justified from a logical point if we consider that at the time of the 1st accident, the second had not taken place. But this report was not prepared as a sequential account of the plaintiff's accident. It was prepared for the purposes of ascertaining the amount of compensation to be paid to him. The defendant in the 1st accident should not pay for any loss or injury that should be attributed to the defendant in the 2nd accident, and vice versa. Neither common sense nor the law allows a plaintiff to make a double claim.

9 Yet, the way the two medical reports were written, could have given the court the impression that none of the plaintiff's injuries could or should be attributed to the 2nd accident because there is nothing in the first medical report that indicates that there was a second accident.

10 More crucially, 11 items in Dr Tan's report in respect of the 1st accident were word-for-word identical to his report in respect of the 2nd accident. I set out below the relevant parts from Dr Tan's report on the 1st accident. Sub-paragraphs (a), (b), (c), (d), (g), (i), (j), (k), (n), (p) and (w) are identical to his report in respect of the 2nd accident –

> a) He still complained of anterior chest pain with exertion and when carrying heavy loads. There was no exertional breathlessness mentioned.
>
> b) He still experienced recurrent episodes of pain with stiffness over his neck, especially with exertion, after prolonged sitting and standing, when carrying heavy load (about 10 kilogram) as well as during cold, rainy

seasons. There was no radicular pain or numbness down his upper limbs felt.

c) Frequent lower back pain with back stiffness was experienced, worsened with exertion, whilst carrying heavy load (about 10 kilogram), following prolonged sitting and standing (about thirty minutes), after excessive walking as well as during cold, wet conditions. Left lower limb numbness was felt. There was no sciatica associated.

d) He still complained of right wrist pain, associated with wrist stiffness, especially with exertion, when carrying heavy load (about 5 kilogram) and during cold, wet weather. He also experienced relative loss of right upper limb strength after the bony injury.

g) Clinical examination of lumbar spine revealed a mid-line scar (from previous discectomy) and paraspinal muscular spasm. The range of lower back motions was limited (extension, flexion, lateral flexions and lateral rotations were two-third that of the normal range).

i) Clinical examination of right wrist revealed slight tenderness over dorsal aspect of distal radius and inferior radioulnar joint. No gross deformity or crepitation was detected over right wrist region.

j) Limitation of right wrist and forearm motions was observed:-

Wrist:-		Right	Left
	Dorsiflexion	50°	75°
	Palmar Flexion	40°	60°
	Ulnar Deviation	20°	40°
	Radial Deviation	10°	25°

Forearm:-		Right	Left
	Supination	80°	90°
	Pronation	65°	80°

k) Mid wasting of right forearm muscles (28.5cm circumference compared with 29.0cm for that of the left forearm muscultatures) was demonstrated.

n) Chest radiographs, done on 4 May 2013, did not show any fracture of sternum or ribs. No active lung lesion was seen.

> p) Radiographs of cervical spine, carried out on 4 May 2013, revealed loss of usual cervical lordosis. Osteophytic lipping with reduced intervertebral disc space at $C_{6/7}$ level was detected. Bilateral $C_{6/7}$ uncovertebral facet degeneration was seen. No bony injury or spondylolisthesis was observed.
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> w) Radiographs of right wrist, performed on 4 May 2013, revealed subchondral sclerosis with decreased joint space, in keeping with joint degeneration, over radiocarpal joint. Osteophytic lipping (sign of degenerative change) was seen at right distal radioulnar joint. No acute fracture or dislocation was observed.

11 Dr Tan made no comparison or co-relation between the two accounts in spite of the fact that he made 11 identical findings of the plaintiff's injuries. Mr Appoo submitted that Dr Tan admitted under cross examination that he was unable to say which of those injuries arose from the 1st and the 2nd accident. That the injuries overlap is obvious from the fact that Dr Tan noted 11 identical injuries in his two reports. However, Dr Tan's inability to differentiate the injuries is a serious problem for the plaintiff and the court because there is no evidence to help the court determine the nature, cause and extent of the overlapping injuries. This is particularly important when the question of the long term implication of the injuries and the appropriate award to be granted for them is concerned.

12 The DJ awarded the plaintiff a sum of $40,000 for loss of earning capacity. An award for the loss of earning capacity (in the context where the plaintiff is currently employed) can only be awarded if there is a substantial or real risk that the plaintiff could lose his or her present job at some time before the estimated end of his or her working life and that the plaintiff will, because of the injuries be at a disadvantage in the open job market (see *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587 ("*Chai Kang Wei Samuel*") at

[36] and *Teo Sing Keng and another v Sim Ban Kiat* [1994] 1 SLR(R) 340 at [40]). This inquiry is not a speculative one because the assessment is based on reasonable expectations. The first problem here is that the plaintiff has not adduced evidence as to the extent, if any, that this defendant is responsible for any loss of earning capacity.

13 The other problem for the plaintiff is that instead of showing evidence that may justify an award for loss of earning capacity, his evidence shows that he is in fact earning more. Mr Perumal Athitham ("Mr Perumal"), counsel for the plaintiff argued that it is well-known that there is a great demand for technicians and that the job prospects of a technician are very much better than that of a driver. All this was based on the unsubstantiated claims of the plaintiff and Mr Perumal. The only justification for awarding something by way of loss of earning capacity is to show that his pay as a technician would have increased beyond the $2,500 he is receiving presently as a driver. There is no such evidence. Mr Perumal submitted that the 'sum of $40,000 awarded [for loss of earning capacity] (having not given something for loss of future earnings) appears to be an appropriate sum'. This is based on the expectation that an injured plaintiff must always be given something either for a loss of future earnings or for a loss of earning capacity. This is wrong. If the evidence shows that the plaintiff is unlikely to incur either, then nothing should be given (see *Chai Kang Wei Samuel* at [19] to [22]). I will therefore allow the defendant's appeal on this item.

14 The DJ increased the amount of $5,000 awarded by the deputy registrar to the plaintiff for the "undisplaced right distal fracture" to $10,000. The original award by the deputy registrar was explained by the medical

evidence that the fracture did not require surgery. The increase by the DJ was based on the assumption that there were subsequent degenerative changes that were caused by the 1st accident. The evidence adduced by the plaintiff does not support this assumption in the light of Dr Tan's admission that he could not attribute the degenerative changes to any particular accident. I think that Mr Appoo and the deputy registrar were right that the burden of proof had not been discharged by the plaintiff, and the sum of $5,000 ordered by the deputy registrar should be reinstated.

15 It is not disputed that the plaintiff has been having a variety of back and spinal problems for more than 20 years and had surgery done in 1991. Mr Appoo submitted that there is no evidence of any exacerbation of the L_4/L_5 anterolisthesis that can be attributed to the 1st accident. Furthermore, this is one injury which, in time, may have been caused or contributed by the 2nd accident. I accept Mr Appoo's submission and allow the defendant's appeal in respect of this item by reducing the award from $12,000 (for both the neck strain and the exacerbation of the L_4/L_5) to $3,000. The reason for this is that I accept that there may still be some form of muscular strain to the neck or back as a result of the 1st accident.

16 Mr Appoo also submitted that there is no evidence of the hematoma on the plaintiff's chest or the one on his elbow, for which the DJ awarded $2,000 each. It is not clear but it seems that the DJ awarded $2,000 not just for the hematoma on the chest; it is also for the tenderness in the chest. I agree with Mr Appoo that the award for hematomas is usually $1,000 but I would not disturb the award in this case to allow a degree of latitude in the DJ's discretion. So, although $1,000 is a good guide, in the overall context, a court

may go below and above that figure provided it is not an excessive variation as the DJ did in this case.

17 Mr Appoo submitted that there was no evidence to support the award of $18,000 for the fracture of the transverse process. I do not think that the DJ was wrong in accepting that the fractures of the transverse process were caused by the 1st accident. The radiology report three days after the 1st accident seems to cover this injury. It was for Mr Appoo to challenge the evidence, but, as the DJ noted, it was not put to the doctors that the fractures can be attributed to some pre-existing condition. Although the amount of $18,000 appears slightly high, I will not disturb it.

18 For the reasons above, I reduce the general damages by $54,000. The deputy registrar's award for the pain caused by the right wrist injury is reinstated, the award for neck strain is varied and the award for the plaintiff's loss of earning capacity is struck out.

S/No	Item	Award by Deputy Registrar # ($)	Award on appeal to District Judge# ($)	Award varied by High Court Judge ($)
	General Damages			
	Pain & Suffering			
1	Right wrist injury	5,000	10,000	5,000
2a	Tender left chest wall	1,000	2,000	2,000
B	Anterior chest contusion (haematoma)			
3	Haematoma on left elbow	0	2,000	2,000
4	Neck strain and exacerbation of pre-existing L4/L5 anterolisthesis	18,000	12,000	3,000

5	Right transverse process fractures	0	18,000	18,000
6	Post-Traumatic Stress Disorder (PTSD)	6,000	6,000	6,000
	Others			
7	Loss of earning capacity	40,000	40,000	0
8	Future medical and transport expenses	2,000	5,000	5,000
	Total General Damages	**72,000**	**95,000**	**41,000**

19 I will hear the question of costs at a later date.

- Sgd -
Choo Han Teck
Judge

Perumal Athitham (Yeo Perumal Mohideen Law Corporation) for the plaintiff/respondent;
Ramesh Appoo (Just Law LLC) for the defendant/appellant.