Wong Foong Chai v Lin Kuo Hao
[2005] SGHC 77

Case Number : BOC 265/2004, SIC 6580/2004

Decision Date : 26 April 2005

Tribunal/Court : High Court

Coram : Andrew Phang Boon Leong JC

Counsel Name(s) : Ganesh S Ramanathan and Renuka Chettiar (Karuppan Chettiar and Partners) for the applicant; Chan Wang Ho (Insolvency and Public Trustee's Office) for the Public Trustee

Parties : Wong Foong Chai — Lin Kuo Hao

Civil Procedure – Rules of court – Whether presumption under O 59 r 28(2)(b) Rules of Court conclusive – Whether s 18(3) Motor Vehicles (Third-Party Risks and Compensation) Act operating as overriding statutory provision – Section 4(3) Evidence Act (Cap 97, 1997 Rev Ed), s 18(3) Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed), O 59 r 28(2)(b) Rules of Court (Cap 322, R 5, 2004 Rev Ed)

Legal Profession – Bill of costs – Contentious business agreement – Traffic accident case – Agreement between solicitor and client for amount of costs – Whether agreement should be upheld by court – Sections 111, 113 Legal Profession Act (Cap 161, 2001 Rev Ed)

26 April 2005

Andrew Phang Boon Leong JC:

Introduction

1 Traffic accidents are an unfortunate fact of (especially) urban life. Singapore is no exception. They generate not only human pain and anguish but legal issues as well. Cases, both civil and criminal, often come before the courts. This is inevitable, indeed, necessary. There is a weighty public element involved. This public element is clearly present when it is decided to prosecute offenders under, for example, the Road Traffic Act (Cap 276, 2004 Rev Ed) or even the Penal Code (Cap 224, 1985 Rev Ed). It is also present in civil claims, although the primary area of law (principally with regard to tortious negligence) involves, on the face of things, individual claims and, hence, individual rights. This is due to the widespread nature of traffic accidents themselves. Other issues, besides liability between and amongst the parties, arise as a result. One such instance is the regulation of lawyers' fees, albeit, as we shall see, with a "light touch". This, as we shall also see, constitutes the crux of the present decision.

2 In so far as the issue of the regulation of lawyers' fees is concerned, it is important to note at the outset that the law is almost invariably about *balance*. Whilst lawyers perform an important, even laudable, function and ought therefore to be remunerated adequately for their efforts, as already alluded to above, the sheer number of traffic accidents introduces a not insignificant measure of public policy into the entire equation.

3 To this end, the Singapore Parliament enacted s 18 of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed) ("the MVA"). This provision aids in ensuring that lawyers' remuneration in the context of traffic accident cases is fair not only to the lawyer but also (and more importantly) to the client.

Section 18 of the Motor Vehicles (Third-Party Risks and Compensation) Act

4 Because s 18 of the MVA is not only the focus of the present decision but must also be read as well as interpreted in its entire context, it is presently set out in full, as follows:

Prohibition of solicitation in respect of claims

18.—(1) No person shall, directly or indirectly, solicit instructions or authority to act on behalf of any other person in respect of the making or commencement of any claim or action for damages for the death of or bodily injury to any person arising out of the use of a motor vehicle or in respect of the negotiation, compromise or settlement of that claim or action.

(2) No person, other than a public officer or an advocate and solicitor properly acting in the course of his profession, shall, directly or indirectly, for personal gain make or commence or cause to be made or commenced on behalf of any other person any claim or action for damages for the death of or bodily injury to any person arising out of the use of a motor vehicle or negotiate, settle or compromise that claim or action when made or commenced.

(3) Notwithstanding the provisions of any other written law, a public officer or an advocate and solicitor, acting in respect of the matters referred to in subsection (2), shall not receive or accept any payment of money for so acting other than —

(*a*) such costs as are agreed between him and the Public Trustee;

(*b*) taxed costs, in default of such agreement with the Public Trustee; or

(*c*) such costs as the Public Trustee may determine to be the costs of the public officer or advocate and solicitor, if the public officer or advocate and solicitor fails to begin proceedings for taxation of costs within 3 months after the relevant date unless before that time the public officer or the advocate and solicitor has agreed with the Public Trustee on costs.

(4) Subsection (3) shall not apply to a public officer or an advocate and solicitor claiming costs in respect of a judgment or settlement for a sum not exceeding the relevant amount.

(5) For the purposes of subsection (3) (*c*), "relevant date" means —

(*a*) the date the Public Trustee accepts or the court approves the payment referred to in section 6, as the case may be; or

(*b*) the date the judgment of the court referred to in section 9 (1) is given,

as the case may be.

(6) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 or to imprisonment for a term not exceeding 12 months or to both.

(7) Any agreement to pay any money other than the costs referred to in subsection (3) (*a*), (*b*) or (*c*) to any person for work done or to be done or services rendered or to be rendered in respect of the matters referred to in subsection (1) or (2) shall be void.

(8) Any money paid under subsection (7), shall be recoverable by action brought in a court

by the person who has paid it.

(9) Where it is shown that any money other than costs referred to in subsection (3) (*a*), (*b*) or (*c*) has been paid to any clerk employed by an advocate and solicitor for work done or to be done or services rendered or to be rendered in respect of the matters referred to in subsection (1) or (2), it shall be presumed in, and for the purposes of, any action against the advocate and solicitor that the money was received by the clerk on behalf of the advocate and solicitor and the money shall be recoverable from the advocate and solicitor.

5 As we shall see, the Public Trustee's role also figures prominently in the issues that follow. In this respect, s 19 of the MVA is also relevant and reads as follows:

Public Trustee may appear in court

19. The Public Trustee shall have the right to appear and be heard in a court in any proceedings under this Act or in relation to any claim or action for damages for the death or bodily injury of any person arising out of the use of a motor vehicle.

The issues stated

6 The crucial issue in the present decision turns on a construction of s 18 in general and s 18(3) in particular of the MVA (the relevant provisions are reproduced at [4] above). *What, in particular, is the effect of s 18 in relation to the presumption under O 59 r 28(2)(b) of the Rules of Court* (Cap 322, R 5, 2004 Rev Ed) (reproduced at [13] below)?

7 However, before proceeding to analyse the key issues as well as points of law which are the focus of the present decision, it would be appropriate to set out briefly the specific context of this case.

8 The present proceedings arose, in fact, in the context of a relatively typical case. Indeed, as an even cursory perusal of the main provision in this case itself (s 18(3)) will reveal, this particular subsection deals, *inter alia*, with the costs recoverable by an advocate and solicitor in so far as claims involving death or bodily injury arising out of the use of motor vehicles are concerned. As I have pointed out right at the outset, such claims are – unfortunately – very commonplace in the Singapore context.

9 Indeed, this case involved precisely a claim arising out of a traffic accident involving a motor vehicle. The plaintiff was travelling as a pillion rider on a motorcycle ridden by the defendant and was injured as a result of a collision between the said motorcycle and a motor car. After the matter had been resolved (which involved interlocutory judgment against the defendant, followed by the assessment of damages), there remained the issue of costs. The plaintiff had in fact engaged her own counsel, who is the applicant in the present proceedings. Unfortunately, the applicant and the Public Trustee were unable to agree as to the costs between solicitor and client. If they had (under s 18(3)(a)), that would have been, in my view, the best or most ideal outcome. Costs were therefore sent before an assistant registrar for taxation pursuant to s 18(3)(b) (there being no issue of timing which would have triggered the operation of s 18(3)(c)). The learned assistant registrar fixed costs for Section 1 of the applicant's bill of costs in favour of the applicant at $15,000. The applicant was dissatisfied with the order and hence applied for its review. That was the precise issue before me in the present proceedings.

10 Counsel for the Public Trustee in fact vigorously opposed any revision upwards of the costs

fixed by the assistant registrar. On the contrary, he was of the view that they were in fact too high. He also tendered specific arguments as to why I should dismiss the application. I turn, however, to arguments by counsel for the applicant first. I will then set out the arguments by counsel for the Public Trustee before proceeding to analyse all these arguments as well as to express my decision.

11 I only pause to add that although the factual matrix was exceedingly straightforward, the various arguments made were extremely significant – if only because claims under the MVA are (and this is one occasion when repetition is in fact in order) all too common and, hence, a pronouncement on the general legal position is appropriate.

Counsel's arguments

The applicant's arguments

12 This case related to a situation of costs as between solicitor and client. Not surprisingly, therefore, the applicant's main argument centred around O 59 of the Rules of Court in general (which deals directly with the situation of solicitor-client costs) and r 28(2)(*b*) thereof in particular.

13 In addition to this particular provision, I now set out, further, O 59 r 28(1) as well as O 59 r 28(2)(*a*) and (*c*), in order to place the first-mentioned provision in its general context:

> **28.**—(1) This Rule applies to every taxation of a solicitors' bill of costs to his own client.
>
> (2) On a taxation to which this Rule applies, costs shall be taxed on the indemnity basis but *shall be presumed* —
>
> (*a*) to have been *reasonably incurred* if they were incurred with the *express or implied approval of the client*;
>
> (*b*) to have been *reasonable in amount* if their amount was, *expressly or impliedly, approved by the client*; and
>
> (*c*) to have been unreasonably incurred if, in the circumstances of the case, they are of an unusual nature unless the solicitor satisfies the Registrar that prior to their being incurred he informed his client that they might not be allowed on a taxation of costs *inter partes*.
>
> [emphasis added]

14 The applicant's argument, in essence, was this: that in view of the agreement by the client to pay her solicitor (the applicant) $40,000 as costs, the amount awarded by the assistant registrar (of $15,000) for Section 1 of the applicant's bill of costs was too low and ought to be reviewed and, indeed, reversed. The agreement just referred to is to be found in the following paragraph of a letter written by the plaintiff to the applicant dated 4 August 2004:

> Since the Defendant is not prepared to file an appeal if I don't do so, I am not prepared to file an appeal. In this way, I am assured that my damages will not be reduced. *However, since the costs given to you is too low and does not reflect the actual work done by you, I am prepared to agree to pay you a sum of $42,000.00 for your solicitor-and-client costs ($10,000.00 to be paid by the Defendant and $32,000 to be paid by me).* [The defendant had submitted $30,000 for party and party costs but the assistant registrar fixed the award at $10,000.] *The sum of*

$42,000 comprises of $40,000.00 for your professional fee and GST of $2,000.00. You will recover your disbursements from the Defendant.

I authorise you to give a copy of this letter to the Public Trustee at the appropriate time.

I confirm that I have made this decision after consulting my father and it is made in my own free will.

I thank you for your work done in this matter.

[emphasis added]

15 The applicant's argument rested, in particular, on the presumption under O 59 r 28(2)(b) of the Rules of Court, which provision has been set out above (at [13]). Indeed, counsel went so far as to argue that the presumption was conclusive and that the said agreement should govern these proceedings and that costs of $40,000 should therefore be payable by the client to the firm, as agreed.

16 I should add at this juncture that I detected no untoward motives in the applicant's argument. However, the fact that the applicant was under the clear impression that the argument centring on the presumption mentioned in the preceding paragraph was clearly correct makes it imperative that the argument itself should be analysed and ruled upon – if nothing else, because of the significant implications that arise from the sheer number of traffic accidents that occur, albeit unfortunately, each day.

17 The main plank of the applicant's case centred, as just mentioned, around O 59 r 28(2)(b). It is true, however, that an application for review of taxation (such as the present proceedings) is a hearing *de novo* (see the Singapore Court of Appeal decision of *Tan Boon Hai v Lee Ah Fong* [2002] 1 SLR 10), although this does *not* mean "the taxation process begin[s] afresh before the judge" as "[t]he power to decide afresh and conducting the proceedings afresh are not the same thing" and that, hence, "[t]here is no necessity to begin completely afresh" (see *per* Choo Han Teck JC (as he then was) in the Singapore High Court decision of *Lau Liat Meng & Co v Lum Kai Keng* [2002] 4 SLR 400 at [10])).

18 Although the applicant did canvass a few specific arguments, I was not convinced that they merited an award of costs beyond that awarded by the assistant registrar after a half-day hearing. If there were to be an upward revision of the costs awarded to the applicant in the present case, it would have to be premised on the main plank mentioned at the outset of [15] above.

The Public Trustee's arguments

19 Counsel for the Public Trustee argued, *inter alia*, that the whole case of the applicant centred around the fact that there had been an agreement between solicitor and client and that this would constitute, in effect, a "backdoor" around s 18(3) of the MVA. In his view, s 18 of the MVA necessarily overrides O 59 r 28 of the Rules of Court.

20 He also argued that the case in question involved no complexity and that the bulk of damages awarded constituted loss of earning capacity (this was correct inasmuch as it comprised $480,000 out of the total sum awarded of $670,641.72). Further, no experts had been called by the defendant.

The court's findings

21 Whilst the applicant's arguments were forcefully put, I was, unfortunately, unable to accept them.

22 First, I was not persuaded that the presumption of reasonableness of the amount under O 59 r 28(2)(b) was a conclusive or irrebuttable one. The language of the provision itself is clear and there is a presumption of reasonableness, but it goes *too far*, in my view, to argue that such a presumption is *conclusive or irrebuttable*. The draconian effect of a conclusive or irrebuttable presumption is underscored by the language of s 4(3) of the Evidence Act (Cap 97, 1997 Rev Ed) itself, which reads as follows:

> When one fact is declared by this Act to be conclusive proof of another, the court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

23 For that very reason, an irrebuttable or conclusive presumption ought not to be found by the court, save where it is clear from the language and/or intent of the provision concerned (see, for example, s 43(2) of the Evidence Act as well as ss 82 and 83 of the Penal Code).

24 Indeed, as Prof Jeffrey Pinsler, who furnished the illustrative statutory provisions referred to in the preceding paragraph, very aptly puts it in his learned volume, *Evidence, Advocacy and the Litigation Process* (LexisNexis, 2nd Ed, 2003), at p 252:

> As conclusive presumptions are absolute it may be more appropriate to regard them as rules of substantive law.

25 An even cursory reading of O 59 r 28(2)(b) will reveal that it militates against both reason as well as the general spirit behind the provision itself that a conclusive or irrebuttable presumption could have been intended – not least because the Rules of Court themselves deal, *ex hypothesi*, with rules of procedure and not substantive law as such.

26 Further, the argument against an irrebuttable presumption in so far as O 59 r 28(2)(b) is concerned is buttressed by the provisions of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("LPA"), in particular, those provisions that relate directly to agreements between solicitor and client in so far as remuneration of the former by the latter is concerned (and see generally the leading work by Prof Tan Yock Lin in *The Law of Advocates and Solicitors in Singapore and West Malaysia* (Butterworths Asia, 2nd Ed, 1998) at ch 9).

27 I have in mind, in particular, s 111 of the LPA, which relates to *contentious business agreements* between solicitor and client. The term "contentious business" is itself defined in s 2 of the LPA as meaning "business done, whether as an advocate or a solicitor, in or for the purposes of proceedings begun before a court of justice or before an arbitrator". There is no doubt that the present proceedings indeed related to "contentious business". Section 111 of the LPA itself reads as follows:

> **Agreement as to costs for contentious business**
>
> **111.**—(1) Subject to the provisions of any other written law, a solicitor or a law corporation may make an agreement in writing with any client respecting the amount and manner of payment for the whole or any part of its costs in respect of contentious business done or to be done by the

solicitor or the law corporation, either by a gross sum or otherwise, and at either the same rate as or a greater or a lesser rate than that at which he or the law corporation would otherwise be entitled to be remunerated.

(2) Every such agreement shall be signed by the client and shall be subject to the provisions and conditions contained in this Part.

28 The effect of an agreement made pursuant to s 111 is set out in s 112 of the LPA, but need not concern us in the present proceedings. Section 113, however, is relevant, and reads as follows:

Enforcement of agreements

113.—(1) No action or suit shall be brought or instituted upon any such agreement as is referred to in section 111.

(2) Every question respecting the validity or effect of the agreement may be examined and determined, and the agreement may be enforced or set aside without suit or action on the summons, motion or petition of any person or the representatives of any person, party to the agreement, or being or alleged to be liable to pay, or being or claiming to be entitled to be paid the costs, fees, charges or disbursements in respect of which the agreement is made, by the court in which the business or any part thereof was done or a Judge thereof, or, if the business was not done in any court, then by the High Court or a Judge thereof.

(3) Upon any such summons, motion or petition, if it appears to the court or Judge that the agreement is in all respects fair and reasonable between the parties, it may be enforced by the court or Judge by rule or order, in such manner and subject to such conditions (if any) as to the costs of the summons, motion or petition as the court or Judge thinks fit.

(4) If the terms of the agreement are deemed by the court or Judge to be unfair or unreasonable, the agreement may be declared void.

(5) The court or Judge may thereupon order the agreement to be given up to be cancelled, and may direct the costs, fees, charges and disbursements incurred or chargeable in respect of the matters included therein to be taxed, in the same manner and according to the same rules as if the agreement had not been made.

(6) The court or Judge may also make such order as to the costs of and relating to the summons, motion or petition and the proceedings thereon as the court or Judge thinks fit.

(7) When the amount agreed for under any such agreement has been paid by or on behalf of the client or by any person chargeable with or entitled to pay it, any court or Judge having jurisdiction to examine and enforce the agreement may, on application by the person who has paid the amount within 12 months after payment, if it appears to the court or Judge that the special circumstances of the case require the agreement to be reopened, reopen it, and order the costs, fees, charges and disbursements to be taxed, and the whole or any portion of the amount received by the solicitor or law corporation to be repaid by him, on such terms and conditions as to the court or Judge seems just.

(8) Where any such agreement is made by the client in the capacity of guardian or of trustee under a deed or will, or of committee of any person or persons whose estate or property will be chargeable with the amount payable under the agreement or with any part of that

amount, the agreement shall before payment be laid before the Registrar, who shall examine it and disallow any part thereof, or may require the direction of the court or a Judge to be taken thereon by summons, motion or petition.

(9) If in any such case the client pays the whole or any part of the amount payable under the agreement without the previous allowance of the Registrar or court or Judge as aforesaid, he shall be liable at any time to account to the person whose estate or property is charged with the amount paid, or with any part thereof, for the amount so charged.

(10) The solicitor or law corporation who accepts the payment may be ordered by any court which would have had jurisdiction to enforce the agreement, if it thinks fit, to refund the amount received by him or the law corporation.

29 What is germane for present purposes is the fact, in the words of a leading author, that all contentious business agreements entered into between solicitor and client "will have to survive the scrutiny of the court and it reflects the particular jealousy with which the court regards work done in court" (see Tan, [26] *supra*, at p 691).

30 It is also illuminating that the Practice Directions and Rulings (1989) issued by the Law Society of Singapore has this to say in the context of non-refundable deposits or retainers paid by clients to their solicitors in the context of contentious work (see ch 1, r 37(a)):

> The Council emphasises [that s 111] of [the] Legal Profession Act does not give solicitors a carte blanche to agree to an unreasonable fee and that it is well settled that over-charging a client whether in a bill of costs or otherwise may amount to professional misconduct.

31 In other words, no agreement for the payment of costs between client and solicitor is sacrosanct in the sense that it is conclusive and immune to, as well as impervious from, any investigation by the court itself. That such agreements can in fact be – and are – subject to the court's scrutiny, particularly from the perspective of reasonableness and fairness, is established in both local as well as English case law (see, for example, the Singapore High Court decisions of *Shamsudin bin Embun v PT Seah & Co* [1986] SLR 510 and *Re Nirumalan Kanapathi* [2000] 1 SLR 726, especially at [25]).

32 Returning to O 59 r 28(2)(b) of the Rules of Court, where there is clear evidence that the amount was jarringly out of all proportion to that which would be awarded under any normal circumstances for similar work done by a solicitor for his or her client, then I should think that that would be a situation where the presumption under that provision would in fact be rebutted. It is true that such a situation might indicate that there was something amiss with the actual agreement between the client and his or her solicitor. However, it does not seem to me to be practical to place the onus on the client to challenge the agreement when that agreement is in fact before the court in the first place. Logic and common sense would suggest that the court ought to take the plain fact of the immense disparity into account when assessing what costs ought to be paid by the client to his or her solicitor – rather than allow the client to raise this point in perhaps a separate action. Indeed, one ought to bear in mind the fact that most clients are – apart from the wise counsel provided by their own solicitors – wholly ignorant of the law (interestingly, I note the following (and only) statement which apparently issued from the plaintiff's lips during the taxation proceedings before the learned assistant registrar, which was this: "We have already agreed on the amount of $38,000 (voluntarily). I do not know the law."). In the nature of things, the solicitor concerned could hardly be expected to advise the client as to whether or not the costs *that very solicitor* seeks is too high, *no matter how well-meaning* that solicitor might subjectively be. This is why, as I have mentioned, the

court has little choice but to decide the issue accordingly. And this applies equally to taxation or, as in the present proceedings, a review of taxation.

33 Indeed, the present factual matrix is precisely one such situation where the presumption under O 59 r 28(2)(b) *cannot* be conclusive for yet *another* – and *even clearer* – reason. This is where there is an *overriding statutory provision*. Indeed, this is precisely the situation in the present case. This statutory provision concerned is s 18 of the MVA, which has been reproduced above (at [4]).

34 The *legislative history and context* of the provision just mentioned is both instructive and, in my view, conclusive with regard to the proposition made in the preceding paragraph.

35 On a more general level, the MVA was first enacted as the Motor Vehicles (Third-Party Risks and Compensation) Ordinance in 1960 (as Ordinance No 1 of 1960). During the Second Reading of the Bill, the then Minister for Labour and Law, Mr K M Byrne, made the following observations (see *Singapore Parliamentary Debates, Official Report* (13 January 1960) vol 12 at col 18):

> The aim of the Bill is to put an end to the practice which is resorted to by some lawyers of engaging touts to solicit and obtain accident claims cases and arranging to keep a substantial portion of the compensation received for themselves. In this way the unfortunate victims of road accidents have been cheated of the sums rightly due to them by these unscrupulous lawyers, and I am glad to say that the majority of the members of the Bar and the insurance companies have welcomed the move of the Government to put a stop to this racket.

36 More specifically, in its *original form*, s 18(3) of the MVA actually made it *mandatory* that *all* costs payable to, *inter alia*, a solicitor would be *subject to taxation*. This provision apparently found its initial incarnation when the Act itself was first enacted in 1960. The provision (as the then s 17(3)) read, at that particular point in time, as follows:

> Notwithstanding the provisions of any other written law any costs payable to a public officer or an advocate and solicitor acting in respect of the matters referred to in subsection (2) of this section shall be taxed and such public officer or advocate and solicitor shall not receive or accept any payment of money for so acting other than such taxed costs.

37 Commenting generally on s 18 in its original form during the Second Reading of the Bill, Mr Byrne observed thus ([35] *supra*, at col 17):

> Clause 16 of the Bill makes it an offence for a person to solicit instructions or authority to act on behalf of any other person in respect of the making or commencement of any claim or action for damages for death or personal injury arising out of the use of a motor vehicle, or in respect of the negotiation, compromise or settlement of such claim or action. It is also made an offence for any person, other than a public officer or an advocate and solicitor, to make or cause to be made any claim on behalf of any other person for such damages. *A public officer or advocate and solicitor who acts for another person in respect of such claim will only be entitled to payment of his taxed costs, and if any other sum is paid for work done or services rendered in respect of any claim or action for such damages, such sum may be recovered by the person who paid it*. [emphasis added]

38 Section 18(3) was amended by the Motor Vehicles (Third-Party Risks and Compensation) (Amendment) Act 1994 (No 26 of 1994), where, by virtue of s 4 of this particular amendment Act, an exception to taxation of costs was made with respect to a judgment or settlement for a sum not

exceeding $5,000. To this end, the amended provision read as follows:

> Notwithstanding the provisions of any other written law, any costs payable to a public officer or an advocate and solicitor acting in respect of the matters referred to in subsection (2)*, except in respect of a judgment or settlement for a sum not exceeding $5,000,* shall be taxed and the public officer or advocate and solicitor shall not receive or accept any payment of money for so acting other than the taxed costs. [emphasis added]

39 Even then, the interests of motor accident victims were paramount. In moving the Second Reading of the amendment Bill, the then Parliamentary Secretary to the Minister for Law, Assoc Prof Ho Peng Kee, observed thus, in so far as the rationale underlying this particular amendment was concerned (see *Singapore Parliamentary Debates, Official Report* (5 December 1994) vol 63 at col 942):

> [T]hese amendments, when passed, will also benefit motor accident victims whose claims are less than $5,000, as these claims no longer attract any court, stamp and solicitors' fees incurred in taxation of the solicitors' bills. The Public Trustee's fees in handling the case need no longer be paid. These are all savings in costs for the motor accident victim. In addition, with the absence of the Public Trustee's and the court's involvement in these cases, these accident victims will receive their compensation moneys earlier. This is something which I am sure the victims will appreciate.

40 The Act was further amended by s 9 of the Statutes (Miscellaneous Amendments and Repeal) Act 2000 (No 28 of 2000). During the Second Reading of the Bill, the then Minister of State for Law, Assoc Prof Ho Peng Kee, observed thus (see *Singapore Parliamentary Debates, Official Report* (9 October 2000) vol 72 at cols 833–834):

> The Act protects the interest of claimants by requiring lawyers acting on behalf of claimants to submit their charges to the courts for scrutiny. This is to ensure that the lawyers' charges are fair and reasonable. The Bill makes two adjustments to this system. First, the Bill makes it unnecessary for a lawyer to submit his charges for scrutiny by the courts if the Public Trustee agrees with the charges. This will result in savings in time and resources for the courts and the lawyers involved. Second, the Bill allows the Public Trustee to decide what charges the lawyer should claim if the lawyer fails to submit his charges for court scrutiny within three months after the compensation amount has been approved by the Public Trustee or fixed by a court. Delay by a lawyer in submitting his charges for court scrutiny means delay in the payment of compensation to his client. This is unfair to the client.
>
> The Bill also empowers the Public Trustee to appear and argue in any court case involving a claim of compensation for personal injury arising from traffic accident. This will give the Public Trustee greater flexibility in fulfilling his role of protecting the interests of persons claiming such compensation.
>
> [emphasis added]

41 The amendments effected by the amendment Act just mentioned are important as they resulted not only in the present form taken by s 18 (reproduced above at [4]) but also resulted in the introduction of s 19 (then numbered as s 18A, and reproduced above at [5]). These amendments were effected, respectively, by ss 9(4) and 9(5) of the Statutes (Miscellaneous Amendments and Repeal) Act 2000.

42 The legislative intention is clear. It is to ensure that *claimants or plaintiffs* are protected and that they pay their respective solicitors only such charges as are *fair and reasonable*. As we have already seen above (at [36]), it used to be the situation that *all* charges so payable were *subject to taxation* and that, to alleviate the situation, an exception was made in respect of a judgment or settlement for a sum not exceeding $5,000 (see above at [38]). The amendments effected by this latest Act were, as the extracts from the parliamentary debates just quoted above (at [40]) clearly confirm, intended to streamline the situation further by excluding the necessity for taxation if the Public Trustee agreed with the charges by the solicitor. This is in fact the very pith and marrow of s 18(3)(a) itself. It follows, therefore, that s 18(3) is *not* intended to sanction agreements for costs between solicitor and client without more. Indeed, the underlying legislative intention of this particular provision is, as we have just seen, *quite different*. Indeed, s 18(3) read with s 19 actually provides the legislative machinery for the Public Trustee with the necessary *locus standi* to argue *against* an agreement between solicitor and client *if this proves necessary*. Counsel for the Public Trustee in the present case stated that this was in fact a rare occurrence but that it was felt necessary for the Public Trustee to be involved in the present proceedings for the reasons briefly set out above.

43 It should, however, be noted that s 18(4) of the MVA continues to sanction costs claimed with regard to a judgment or settlement for a certain sum – or, to be more precise, "in respect of a judgment or settlement for a sum *not exceeding the relevant amount*" [emphasis added]. In this regard, s 18(3) is *expressly* stated to be *inapplicable*. And s 2 of the MVA defines "relevant amount" as meaning "*$5,000 or*, where an amount has been prescribed by the Minister under section 20 for the purposes of sections 6 (1), 9 (2) and (8) and 18 (4), the prescribed amount" [emphasis added]. It is equally clear, however, that the present situation does *not* fall within the purview of s 18(4) as the plaintiff recovered an amount far in excess of $5,000.

44 In the circumstances, it is clear that the weighty elements of public interest and policy contained within (especially) s 18(3) of the MVA clearly prevail over any agreement for costs entered into between solicitor and client. If so, the argument by the applicant to the effect that the presumption under O 59 r 28(2)(b) is an irrebuttable one *cannot* be maintained. The presumption just mentioned would, at most, have been a *rebuttable* one. It therefore follows that the argument by the applicant to the effect that the presumption is irrebuttable must fail.

45 Indeed, the overriding public interest element embodied within s 18(3) of the MVA is underscored by the words commencing "[n]otwithstanding the provisions of any other written law". It is also underscored by the other related subsections within s 18 itself. For instance, s 18(7) provides that "[a]ny agreement to pay money other than the costs referred to in subsection (3) (*a*), (*b*) or (*c*) to any person for work done or to be done or services rendered or to be rendered in respect of the matters referred to in subsection (1) or (2) *shall be void*" [emphasis added]. Indeed, s 18(8) provides that "[a]ny money paid under subsection (7), shall be recoverable by action brought in a court by the person who has paid it". And s 18(6) provides for *penal sanctions* for contravention of the provisions of s 18 itself.

46 I am fortified in my decision by a decision of then Senior Assistant Registrar (and now Justice) Tay Yong Kwang in *Phua Lay Chay v Chai Kuan Way* [1988] SGHC 97. An appeal against the learned Senior Assistant Registrar's taxation review was subsequently dismissed by Wee Chong Jin CJ. In that case, Snr Asst Registrar Tay dealt with a fact situation not unlike the present. The plaintiff had sued the defendant for injuries suffered during a road accident where the defendant's motor car had collided with the plaintiff's motorcycle. The action was subsequently settled and the bill was presented for taxation as between solicitor and client. It will be recalled that, at this particular point in time, taxation was compulsory (see generally [36] above).

47 The charges for work done and time expended were drawn for $32,000, while the party and party costs were agreed at $18,000. The Public Trustee agreed to a deduction of $9,000, leaving the costs at $23,000. However, Snr Asst Registrar Tay was of the view that $23,000 was excessive and reduced the amount by another $4,000, allowing the bill at $19,000 (not including disbursements). Of particular significance to the present case are the learned Senior Assistant Registrar's observations, as follows (at [18]):

> The fact that the client (the plaintiff) agreed also to paying the solicitor $23,000 can be dismissed from my mind. He is advised by the solicitor whose bill it is. He has hardly any idea of the amount of costs that he ought to pay. When he appeared before me at the taxation, he indicated to me that he would leave everything in my hands as he was a layman. *The legislative intent evident in s 18(3) and (5) of the Motor Vehicles (Third-Party Risks and Compensation) Act would be defeated if I were to allow solicitor and client costs in personal injury cases to be agreed through this back-door means.* [emphasis added]

Conclusion

48 Precedent, legislative history as well as reason and public policy compel me to arrive at three clear propositions, as follows.

49 Firstly, the presumption set out in O 59 r 28(2)(b) of the Rules of Court is merely a *rebuttable* one.

50 Secondly, even assuming that the presumption set out in O 59 r 28(2)(b) is otherwise conclusive, s 18 of the MVA is nevertheless an overriding provision and cannot be subject to, or constrained by, any prior agreement as to costs between client and solicitor.

51 Thirdly, the court has an overriding jurisdiction to examine every agreement for legal costs notwithstanding any prior written agreement. In cases where a solicitor enters into an agreement for costs with a client unschooled in the ways of commerce, the court will take particular care in scrutinising such agreements for fairness and appropriateness. This would be *a fortiori* the case where, as in the present proceedings, there are overriding public policy considerations involved as well.

52 In the circumstances, I dismissed the application with costs.

Application dismissed.