

Guo Xinhua v Lee Chin Ngee and Another
[2001] SGHC 190

Case Number : Suit 159/2000/C, RA 87/2001 and 91/2001
Decision Date : 19 July 2001
Tribunal/Court : High Court
Coram : Woo Bih Li JC
Counsel Name(s) : Ramasamy K Chettiar (Harry Elias Partnership) for the plaintiff; Patrick Yeo Kim Hai (Khattar Wong & Partners) for the defendant
Parties : Guo Xinhua — Lee Chin Ngee; First Capital Insurance Limited

JUDGMENT:

Background

1. The deceased, Huang Jilong, died in a road accident on 29 January 1999.
2. His date of birth ('dob') was 3 November 1962. At the date of his death, he was about 36 years and 3 months old.
3. The dependants of the deceased are:
 - (a) His wife, who was the Plaintiff, Guo Xiuhua, dob: 29 July 1961 (about 37 years old at the date of the accident)
 - (b) His son, Huang Hui, dob: 29 March 1985 (almost 14 years old at the date of the accident)
 - (c) His daughter, Huang Jiao, dob: 11 December 1986 (just past 12 years old at the date of the accident)
 - (d) His father, Huang Zihua, dob: 1930 (about 69 years old at the date of the accident)
4. The deceased was a Chinese national. He came to Singapore to work in 1993. He obtained permanent resident status on 20 May 1996. On 2 November 1998, permanent resident status was granted to his wife, i.e to the Plaintiff and their two children.
5. The deceased was a steel reinforcement worker. He obtained a certificate from the Construction Industry Development Board and had told the Plaintiff that this was the basis on which permanent resident status was granted to him and later to his family.
6. The annual income of the deceased based on income tax documents was:
 - 1995 \$16,500 (\$1,375 per month)
 - 1996 \$11,700 (\$975 per month)
 - 1997 \$20,440 (About \$1,700 per month)
7. There was no income tax document for the deceased's income for 1998, perhaps because he was

killed on 29 January 1999.

8. Information was also provided by the Central Provident Fund ('CPF'). It is common knowledge that each employer and each employee has to make a contribution to the CPF. The income of a person can be derived based on the amount of contribution to the CPF and the rate of contribution.

9. For 1995 and 1996, the CPF records indicate that the annual income of the deceased was the same amount as indicated in the income tax documents.

10. However for 1997, there was a discrepancy. Based on the CPF records, his annual income would have been \$7,200 instead of the \$20,440 disclosed in the income tax document. There was a difference of \$13,240 or about \$1,100 per month.

11. Although there was no income tax document for the deceased's income for 1998, some information from CPF was available up to November 1998.

12. The CPF information showed that until February 1998, the deceased was working for Wuzhou Development Pte Ltd and earned \$600 per month. From March to November 1998, he was working for Fang Cheng Contractors Pte Ltd and earned \$1,200 per month.

13. There was no information from CPF to enable a determination of the deceased's income from December 1998.

14. The Plaintiff also claimed that the deceased was the sole breadwinner but this was clearly untrue. According to her own evidence, she had come to Singapore in July 1998 and started work from 1 December 1998 as a stall assistant in Serangoon Gardens earning about \$1,600 per month (as at January 2001 when she signed her affidavit).

15. The two children came to Singapore on 8 March 1999 i.e over 1 month after the death of the deceased.

Appeals

16. After interlocutory judgment, the damages were assessed by Assistant Registrar ('AR') Chong Chin Chin who made her decision on 30 April 2001. The Plaintiff was represented by Mr Ramasamy K Chettiar. The Defendant Lee Chin Ngee did not appear and was not represented. The Co-Defendant First Capital Insurance Limited was represented by Mr Patrick Yeo.

17. The Plaintiff and the Co-Defendant were each not satisfied with the AR's decision in relation to the pre-trial and post-trial damages and appealed.

18. In addition, the Co-Defendant was also not satisfied with the AR's decision in relation to the claim for loss of CPF contribution.

19. The appeals were heard by me.

Deceased's income and the multiplicand

20. Although the Plaintiff and the Co-Defendant have appealed against the multiplicand used by the AR in her decision on the pre-trial and post trial damages, neither has appealed on the multiplicand used by the AR for the claim for loss of CPF contribution.

21. Mr Ramasamy explained that he had based his claim for loss of CPF contribution on 20% CPF contribution from the employee and 20% CPF contribution from the employer. In 1998, the total CPF contribution was \$480 per month working out to an income of \$1,200 per month. He had sought \$624 per month for loss of CPF contribution based on a projected 30% increase in the deceased's income in so far as it was from a source of income attracting CPF contribution. The AR had instead used \$550 for this.

22. The \$550 per month for CPF contribution was based on a total of 40% of the deceased's income, i.e 20% for the employee's CPF contribution and another 20% for the employer's CPF contribution. Working backwards, this works out to an income of \$1,375 per month. This figure takes into account any likely increase in the deceased's income.

23. As neither party has appealed against the figure of \$550 per month for the claim for loss of CPF contribution, each party is bound by the multiplicand of \$1,375 per month as the income of the deceased from a source attracting CPF contribution for the pre-trial and post-trial damages.

24. In addition, I would have to deduct 20% from \$1,375 as that would be the employee's CPF contribution which has already been taken into account in the claim for loss of CPF contribution. The 80% works out to \$1,100 per month.

25. The next question is whether any sum should be attributed to another source of income which did not attract CPF contribution i.e a non-CPFable source.

26. Mr Ramasamy submitted that the deceased had an additional source of income which did not attract any CPF contribution. That is why the deceased's income for 1997 as reflected in the income tax document was more than the income derived from the contribution to CPF for the same year.

27. Also, the deceased had started a business as Long Wan Contractor on 1 June 1997.

28. However, even if the deceased had an alternative source of income, it was for the Plaintiff to establish how much the income from the other source would amount to.

29. The Plaintiff claimed that the deceased's total income from both sources was at least \$2,500 per month.

30. In cross-examination, she initially said she did not take any money from the deceased even though he had wanted to give it to her. Then she changed her evidence to say that the deceased had given her \$1,500 per month.

31. She was supposed to establish this from her bank passbook but the passbook did not show entries of \$1,500 per month or regular sums deposited into her bank account. There was a deposit of \$6,000.

32. The only concrete evidence was the additional \$1,100 per month which the deceased had earned in 1997, which did not attract any CPF contribution. Mr Ramasamy placed much emphasis on this. It will be recalled that the information was from an income tax document and no further income tax document was produced to reveal the deceased's income for 1998.

33. Mr Ramasamy ran his argument this way. He said that for 1997, the deceased's income from a non-CPFable source was \$13,200. This was 65% of the total income of \$20,440. Therefore the income from a CPFable source was 35%.

34. The CPF information showed that the deceased's income from a CPFable source from March to November 1998 was \$1,200 per month. Assuming that his monthly income was still \$1,200 per month at the time of death, and assuming that this source still represented only 35% of the total income, the total income would be $\$1,200 \times 35 \times 100 = \$3,428.57$ per month (there is a difference between Mr Ramasamy's figure of \$3,142.86 per month and mine because of an initial error he made when he was calculating the annual income i.e $\$1,200 \text{ per month} \times 12 = \$14,400$ and not \$13,200.)

35. I do not agree with Mr Ramasamy's approach.

36. First, the Plaintiff herself had claimed that the deceased's total income was not less than \$2,500 per month. I find that she did not mean over \$3,000 per month.

37. Secondly, if the deceased was earning more from a CPFable source, he would have less time to earn extra income from a non-CPFable source.

38. In 1997, when the deceased earned an annual income of \$20,440, his annual income from Wuzhou Development Pte Ltd had dropped to \$7,200 i.e \$600 per month. This continued in January and February 1998. However, from March 1998, he had changed employers to Fang Cheng Contractors Pte Ltd and his income increased to \$1,200 per month. So his income from a CPFable source had increased.

39. In the circumstances, I am of the view that it would be fair to attribute another \$600 to \$800 per month as the amount from the non-CPFable source of income of the deceased, taking into account any likely increase in future.

40. The average is \$700 per month and this will apply from the date of the accident.

41. The total net monthly income of the deceased, after deducting CPF, would therefore be:

(a) \$1,110 per month (i.e \$1,375 less \$275 per month being the employee's CPF contribution) and

(b) \$700 per month (with no CPF contribution).

This works out to \$1,810 per month.

42. From this figure, an apportionment should be made for the deceased's own expenses. Mr Ramasamy had suggested one-third.

43. I would deduct 34% for the deceased's own expenses.

44. Of the balance 66% i.e \$1,194.60, say, \$1,200, I apportion this as to:

(a) \$500 for the Plaintiff

(b) \$300 for the son

(c) \$300 for the daughter

(d) \$100 for the father.

Multiplier for the Plaintiff

45. Mr Ramasamy sought a multiplier of 14 years for the pre-trial and post-trial damages for the Plaintiff.

46. On the other hand, Mr Yeo sought a multiplier for the Plaintiff as awarded by the AR. However the multiplier, which the AR had used was inconsistent.

47. (a) For the Plaintiff's claim for pre-trial and post-trial damages for herself, the combined multiplier used by the AR was 11.25 years.

(b) However for the claim for loss of CPF contribution, the multiplier used by the AR was 12 years and not 11.25 years.

(c) When I brought the discrepancy up, Mr Yeo said he was prepared for the multiplier of 12 years to be applied to the Plaintiff for her pre-trial and post-trial damages.

48. The deceased was about 36.25 years old at the date of the accident. I am of the view that a multiplier of 13.75 years for the Plaintiff for the pre-trial and post-trial damages and also for the multiplier for the loss of CPF contribution is fair.

Multiplier for the two children

49. The AR had awarded a multiplier of 5 years for the son and 6 years for the daughter for post-trial damages. Taking into account the 2.25 years for pre-trial damages, the total was 7.25 and 8.25 years respectively.

50. Mr Ramasamy had sought 7 years for the post-trial damages for both the son and the daughter. He had thought that this would make a total of 9 years if pre-trial damages were to be included. However, the period for the pre-trial damages was 2.25 years and not 2 years.

51. On another point, Mr Ramasamy relied on the case of *Ang Song Huay v Chu Yong Thiam*, an unreported decision of Justice Chao Hick Tin (as he then was) for the proposition that the dependency of a child does not necessarily end at 21 as his deceased parent might have wanted to provide him with a university education.

52. While this intention may also apply to the case before me, it does not mean that each child would necessarily have been admitted to a university or that the deceased, and his wife, would have been able to put each child through university.

53. Furthermore, the ages of the two children in that case were 9 and slightly less than 4 respectively at the time of assessment and they received a multiplier of 7 and 10.75 respectively.

54. Taking into account the ages of the two children in the case before me of about 16 years and 1 month and 14 years and 4 months respectively at the time of the assessment, the multiplier of 5 and 6 years respectively, for the post-trial damages, was already effectively higher than in the case of *Ang Song Huay*.

55. Mr Ramasamy said that the children were 2 years behind in school as they had only recently come to Singapore. However, even if this were taken into account, the multiplier for post-trial damages for the children would still be effectively higher than for the two children in the case of *Ang Song Huay*.

56. The Plaintiff must not forget that a discount must be applied for the uncertainties of life and the fact that the children are getting accelerated payment.

57. Therefore I see no reason to vary the post-trial multiplier used by the AR for the two children.

58. I also see no reason to vary the multiplicand I have mentioned above for the children to take into account any increase in expenses to maintain them.

59. The issue is not so much what the likely increase in maintaining the children would be but the increase in the deceased's income and this has already been taken into account in determining the multiplicand and then apportioning it between the deceased and his dependants.

Multiplier for the deceased's father

60. This was determined by the AR to be 2.25 years for pre-trial damages and 2 years for post-trial damage. Neither side has appealed against this aspect of the AR's decision.

Adjustments to be made

61. Mr Ramasamy submitted that when the amount payable for the deceased's father stops, it should be allocated to the other dependants.

62. I agree. The \$100 for the father should be allocated, after two years post-trial, to the children equally.

63. Mr Ramasamy also submitted that when the amounts for the children stop, they should be allocated to the Plaintiff.

64. I agree in principle but not all is to be allocated to the Plaintiff. I am of the view that half (of the amount attributable to the daughter as she is the last child dependent) should be allocated to the Plaintiff as the other half would be used by the deceased for himself.

65. I am also apportioning part of the amount attributable to the son i.e \$350 per month between the Plaintiff and the daughter when the amount attributable to the son stops. The apportionment is \$100 to the Plaintiff and \$100 to the daughter.

Loss of CPF contribution

66. The AR had awarded \$550 x 12 x 12 years for loss of CPF contribution but without giving any discount for the fact that not all the CPF monies would necessarily go to the Plaintiff if the deceased were alive.

67. In the appeal, Mr Ramasamy recognised this and suggested a discount of one-third on the formula used by the AR (and a multiplier of 14 years).

68. Mr Yeo suggested a discount of 60%.

69. I am of the view that a discount of 50% is fair.

70. I have already said above that the multiplier for this head of claim is 13.75 years.

Summary

71. Accordingly I set out below in tabular form the amounts for each of the dependants:

Name	Pre-Trial (2.25 years)	Post-Trial (for 2 years)	Post-Trial (for another 3 years)	Post-Trial (for another 1 year)	Post-Trial (for another 5.5 years)	Total
Guo Xiuhua (Plaintiff wife)	\$550 x 12 x 2.25 years	\$500 x 12 x 2 years	\$500 x 12 x 3 years	\$600 x 12 x 1 year	\$825 x 12 x 5.5 years	\$106,500
Huang Hui (the son)	\$300 x 12 x 2.25 years	\$300 x 12 x 2 years	\$350 x 12 x 3 years	-	-	\$27,900
Huang Jiao (the daughter)	\$300 x 12 x 2.25 years	\$300 x 12 x 2 years	\$350 x 12 x 3 years	\$450 x 12 x 1 year	-	\$33,300
Huang Zihua (the father)	\$100 x 12 x 2.25 years	\$100 x 12 x 2 years	-	-	-	\$5,100
Sub total						\$172,800
Loss of CPF contribution = \$550 x 12 x 13.75 x 50% =						\$45,375
Total						\$218,175

72. The total is less than the amount awarded by the AR for these heads of claim.

73. I fix costs of the appeal at \$5,000 to be paid by the Plaintiff to the Co-Defendant. Such costs may be set-off against the costs payable by the Co-Defendant to the Plaintiff for the trial and also

for the assessment of damages before the AR.

Sgd:

WOO BIH LI
JUDICIAL COMMISSIONER

Copyright © Government of Singapore.