Wang Jianbin *v* Hong De Development Pte Ltd and another [2015] SGHC 242

Case Number	: Suit No 613 of 2013 (HC/Registrar's Appeal No 229 of 2015)
Decision Date	: 25 September 2015
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Eric Liew Hwee Tong (Gabriel Law Corporation) for the plaintiff; Ramesh Appoo (Just Law LLC) for the defendants.
Parties	: Wang Jianbin — Hong De Development Pte Ltd — Chiu Teng Construction Co Pte Ltd

Damages – Assessment

25 September 2015 Judgment reserved.

Choo Han Teck J:

1 The plaintiff was injured by a metal pipe in the course of work on 8 July 2011. He commenced this action against his employers (the first defendant) and the main contractors (the second defendant) for damages. The parties came to an agreement in respect of liability and entered interlocutory judgment in the proportion of 80% liability against the defendants with 20% contributory liability by the plaintiff.

2 Damages were assessed by the learned Assistant Registrar ("the AR") against whose decision of 22 July 2015 the plaintiff appeals. He appeals against the AR's refusal to award pre-trial loss of income, transport and medical expenses, loss of earning capacity, and loss of future earnings, as well as the award of $28,000 for general damages for pain and suffering and $2,000 for future medical expenses. The overall award of the AR was $30,000. As the parties agreed that the plaintiff was to bear 20% of the liability, the amount he will receive will be $24,000 (based on 80%). The AR ordered that interest be fixed at 5.33% per annum from the date of the filing of the writ of summons to the date the offer to settle was served. The AR further ordered the defendants to pay the plaintiff costs fixed at $5,500, not inclusive of reasonable disbursements. The costs were for the period from the filing of the writ of summons to the date that an offer to settle was filed (24 October 2014), and fixed on a standard basis using the scale of costs in the State Courts. The AR ordered the plaintiff to pay costs of $23,000, not inclusive of reasonable disbursements, to the defendants for the period after the offer to settle had been served on him because he had rejected the defendants' offer to settle at a sum higher than that awarded. The costs due to the defendants were fixed on an indemnity basis and were similarly based on the scale of costs in the State Courts. The final position is that the plaintiff will receive only $6,500, out of which he will have to pay his solicitors' costs.

3 The plaintiff is a Chinese national and was 37 years old at the time of the accident in July 2011. According to the plaintiff, he suffered the following injuries from the incident:

(a) right forearm laceration with severed radial nerve;

(b) left pinna laceration;

(c) left periorbital haematoma;

(d) left zygoma laceration;

(e) residual numbness over the radial three fingers (thumb, index and middle fingers);

(f) persistent right elbow pain;

(g) soft tissue injury to right elbow;

(h) post-concussion syndrome;

(i) multiple scars; and

(j) post osteoarthritis.

The defendants challenged these claims and the AR agreed that some of the claims had not been proved. The details of the injuries will be discussed in the next part of the judgment.

4 In respect of the damages for pain and suffering, the AR accepted the incontrovertible evidence that the plaintiff suffered "a laceration of his right forearm with his right superficial radial nerve severed entirely". The evidence of Dr Chong (the defendants' neurology expert) and Dr Lee (the defendants' orthopaedics expert), which was correctly accepted by the AR, was that the plaintiff's injured right forearm was almost as well developed as his left forearm and there were no signs of muscle wasting. The plaintiff claimed $15,000 for this injury but the AR awarded $5,000. She compared the awards for similar injuries and concluded that the plaintiff's reference for support was cases involving serious fractures. According to the guidelines in Charlene Chee *et al*, *Guidelines for the Assessment of Damages in Personal Injury Cases* (Academy Publishing, 2010) ("the Guidelines") which were cited by the plaintiff, the range of damages awarded for serious fractures is between $18,000 and $45,000 while that for less serious fractures is from $8,000 to $18,000. The plaintiff suffered no fracture to his arm. From the Guidelines, damages for a plain laceration would be in the region of $3,000 and so, given the severed nerve, which did not affect his muscle control and had no serious consequences, the award of $5,000 is, in my view, a fair one.

5 The plaintiff also claimed $15,000 for the injury to his neck. The AR awarded him $1,000 on the basis that the plaintiff suffered a mild neck sprain. Throughout the proceedings before the AR, the plaintiff's claim in respect of this item was for an injury to his neck. It was only in his counsel's closing submissions that the plaintiff tried to slip in a claim for an injury to his right upper limb and shoulder. Even leaving aside the fact that the claim for the shoulder and upper right limb was made at such a late stage, the claim itself was not made out. The AR examined the medical evidence not only from the defendants' doctors but also those of the plaintiff and concluded rightly that there was no contemporaneous evidence of any injury to the shoulder. As for the injury to the right upper limb, the AR correctly pointed out that this was already accounted for under the item for the laceration of the right forearm. The AR was thus correct to consider the neck injury on its own. The plaintiff did not suffer any fracture to his spine or neck. The evidence showed, on a balance of probabilities, that he suffered a neck sprain which was not severe but was noticeable when he turned his head and reduced his quality of life to some extent. I agree with the AR that $1,000 is a fair amount to award for the mild neck sprain.

6 The plaintiff also claimed for an injury to his right elbow and osteoarthritis, and sought $25,000 for it. His position on appeal is that $20,000 is an appropriate sum for this injury. The AR reviewed the

evidence and found that the plaintiff had relied on precedents in the Guidelines that are intended for serious elbow injuries (the range being $16,000 to $30,000). These refer to cases where there are compound fractures which resulted in a huge impairment of function and required extensive surgery and physiotherapy. In this case, there was no evidence of a fracture of the elbow. There was only evidence of a soft tissue injury for which I agree with the AR that a sum of $5,000 would be fair.

7 The plaintiff also claimed $25,000 for "post-concussion syndrome, loss of consciousness, headache and giddiness". After considering the closing submissions of counsel, the AR accepted that the plaintiff was making his claim only for headaches and giddiness and for that she awarded $5,000. The AR explained in detail that the plaintiff had not adduced any evidence in support of any other injury or complication with regard to the alleged head injury. Again, I see no reason to disturb this award. The plaintiff has indicated that he is not appealing against this award.

8 The plaintiff is also not appealing against the AR's decision to award $1,500 and $2,500 for his claim for lacerations to his forehead and left ear and to award $8,000 as damages for the eight scars that were resulted from the injuries. Similarly, he is not appealing against the AR's finding that his claims of a chest laceration, injuries to his left arm and lower back, weakness in his lower limbs, impaired vision and tinnitus were unsupported by the evidence. In any event, I agree with the AR's assessment in respect of these claims.

9 Moving to special damages, the plaintiff claimed the sum of $65,712.55 for pre-trial loss of earnings from the date of the accident to the date of the assessment hearing (24 November 2014). This was derived in the following manner:

(a) from the date of accident (8 July 2011) to the date of the expiry of his work permit (5 September 2011): $1,617.80 x 2 months = $3,235.60;

(b) from after the expiry of his work permit (6 September 2011) to the date of his return to China (19 July 2012): his average monthly income of $1,617.80 x 10 months and 14 days = $16,908.62; and

(c) from after his return to China (20 July 2012) to the date of the assessment hearing (24 November 2014) and continuing: $1,617.80 x 28 months and 5 days = $45,568.03.

10 The plaintiff acknowledged that the first defendant paid him a total sum of $12,313.29 as salary while he was on medical leave in Singapore. His claim was therefore for the balance sum of $53,398.96. The defendants asserted that the plaintiff was only entitled to loss of income from the time of accident until the time his work permit expired (*ie*, the sum of $3,235.60) and thus, the plaintiff had already received more than what he was entitled to. On appeal, counsel for the plaintiff revised his claim and submitted that a sum of $60,296.93 (instead of $53,398.96) ought to be awarded. This sum was derived in a similar manner as that in [9], apart from the calculation of loss of income after his repatriation. The change lies in the plaintiff's present position that he is entitled to loss of income up to the date of appeal (26 August 2015) but that $200 ought to be subtracted from the multiplicand to factor in the income that the plaintiff could have obtained if he had worked in a sedentary job in China during that period.

11 After considering the parties' submissions and the case of *Liu Haixiang v China Construction (South Pacific) Development Co Pte Ltd* [2009] SGHC 21 ("*Liu Haixiang*"), the AR concluded that the plaintiff had not proved his pre-trial loss of earnings. The AR was of the view that there was no evidence of what transpired in the period between the expiry of the plaintiff's work permit and his return to China. She pointed out that although the plaintiff had produced medical certificates, no

evidence was adduced to explain why he needed medical leave. As for the claim for loss of earnings from the date of his repatriation to the date of the assessment hearing, the AR concluded that no evidence was given to show the plaintiff's earnings or of his efforts to find employment in that period of more than two years.

12 In *Liu Haixiang*, Judith Prakash J held at [20] that whether a claim for pre-trial loss of income from the expiry of the claimant's work permit to the date of his repatriation can succeed depended on whether the claimant can "prove that he had no choice but to stay on in Singapore to deal with the various procedures and that during the prolonged stay he made efforts to find some sort of employment but was not successful". I agree with Prakash J's opinion on the law. But as the AR pointed out, the facts of this case differ from that of *Liu Haixiang*. *Liu Haixiang* involved a plaintiff who was no longer on medical leave when his work permit expired more than six months after the accident and who was repatriated after a further six months had passed. In contrast, the plaintiff's work permit expired about a month after the accident (5 September 2011) but he continued to be on medical leave for the most part of the one-year period after the accident up to his repatriation (19 July 2012). In such a situation, what is important is not whether the plaintiff's stay in Singapore was justified, but whether he was genuinely unable to work during that period.

13 In this regard, the plaintiff produced 22 medical certificates that were from Changi General Hospital ("CGH"), the Singapore National Eye Centre and Sengkang Polyclinic. The medical certificates collectively cover the period from the accident to his repatriation apart from 10 to 16 January 2012, 21 and 23 February 2012. Although the plaintiff has not provided more details on why he was given medical leave by the various clinics throughout the period, the fact remains that he was certified to be unfit for work by the doctors who had signed the medical certificates after examining him. The copies of medical appointment cards from CGH and other clinics in the agreed bundle of documents also show that he had sought medical treatment during that period. In the absence of any evidence to show that these medical certificates or appointment cards were forged or have been tampered with, I accept that the plaintiff was on medical leave and was unfit for work during that period. The plaintiff should thus be awarded damages for pre-trial loss of earnings up to the period of his repatriation, which amount to $20,144.22. It was undisputed that the plaintiff was already paid $12,313.29 while he was on medical leave in Singapore. After deducting this sum, the plaintiff ought to be awarded a sum of $7,830.93 for pre-trial loss of income up to the date of his repatriation.

14 As for the plaintiff's claim for loss of income from the period of his repatriation up to the date of the assessment hearing or date of appeal, I agree with the AR that no award should be given considering that no evidence was produced in respect of his earnings during that period or his efforts to find employment. There was also no satisfactory evidence on whether he continued to be unfit for work after his repatriation and if so, for how long a period.

15 The plaintiff made three other claims under the heading of special damages. These were for medical expenses incurred in China, medical expenses incurred in Singapore and transport expenses. The medical expenses that the plaintiff incurred in Singapore from the time of the accident to his return to China had been fully paid for by the first defendant. Although the plaintiff stated in his affidavit (at paragraph 41) that there was still a sum of $171.66 due to him, the AR rightly dismissed this claim, which was neither pleaded nor substantiated by the plaintiff. The plaintiff is not pursuing this claim on appeal. As for the claim for transport expenses, the plaintiff appears to be appealing against the AR's refusal to award him $460 in transport expenses to hospitals and clinics in Singapore for medical consultation. Given that there is a dearth of evidence or even any submissions, both before the AR and on appeal, on how these transport expenses were incurred, this claim was rightly dismissed.

16 On the issue of medical expenses incurred in China, the plaintiff claimed a sum of $5,266.06, which was converted from RMB26,330.30. This was disputed by the parties. The plaintiff asserted that he incurred these medical expenses on his two visits to Baoding No 1 Central Hospital ("Baoding Hospital"). According to him, he was first admitted from 22 July to 1 August 2012, during which he received acupuncture treatment on his right hand and was given some western medication, which was for relief for the pain in his right hand and elbow. He stated that he returned to seek treatment for a second time because of his headaches and problems with his thumb and was admitted from 6 to 13 November 2012. The plaintiff was unable to produce the originals of the two receipts or the medical certificate that was issued at the end of the first visit. All that was adduced in evidence was copies of the two receipts and the medical certificate that he claimed were re-issued by Baoding Hospital.

17 The defendants disputed the authenticity of the receipts and relied on the investigation report which had been prepared by Mr Zhou Wenguo, a Chinese private investigator engaged by the defendants, after he had conducted investigations at Baoding Hospital. I agree with the AR that Mr Zhou's report and evidence must be treated with caution. Parts of his evidence were based on hearsay and little information was given on how he conducted his investigations and on what observations he had made whilst doing so. But the plaintiff's evidence on this item is equally inadequate. Not only did the plaintiff fail to adduce the originals of the documents, which he claimed he could not find, even the photocopied receipts that he produced were not very legible. He also failed to show why the photocopied receipts should be accepted as evidence under the rules governing hearsay. The burden of proving that these medical expenses have been incurred lies with the plaintiff. I agree with the AR that the plaintiff has failed to discharge this burden of proof and thus no award should be made.

18 I move on to consider the plaintiff's claim for loss of future earnings. Before the AR, the plaintiff claimed a sum of $198,081.60. The claim was dismissed in its entirety. On appeal, the plaintiff reduced the quantum to $115,773.60.

19 A claim by an injured person for loss of future earnings is made and awarded on the basis that as a result of the injury suffered, the plaintiff will be unable to carry on earning the same income because he would be incapable of performing the job he did. To succeed, the plaintiff must prove that he suffers from a permanent disability as a result of the injury. The AR found that there was poor evidence of any permanent disability. The injuries have all healed with no residual disabilities except for the headaches and giddiness and possibly some numbness in his right arm. Nonetheless, she held that she was prepared to "give him the benefit of the doubt and accept that there was permanent disability to him resulting from the accident". The AR was here being generous to a fault. If a plaintiff has not proven on a balance of probabilities that he suffers from a permanent disability, the court must so find and dismiss his claim on that basis. From the evidence in this case, I am not satisfied that the plaintiff has discharged this burden of proof. No award should thus be made for this item.

20 On the basis that there was some permanent disability, the AR found that the plaintiff did not provide sufficient evidence for calculating his loss in future wages and dismissed his claim. I agree with the AR that the plaintiff had not proved his claim and that no award for loss of earnings would be made on this ground as well. Before the AR, the plaintiff's claim for loss of future earnings was made in two segments. The first was for $1,617.80 less $200 for six years (total: $102,081.60) and another for $1,200 less $200 for eight years (total: $96,000). The first was for his job in Singapore and the second for loss of a similar job in China. The AR rightly held that these claims are specific items (special damages) that must not only be pleaded but proved. The AR found no evidence of the loss of earnings even though the plaintiff could have adduced them at the time but did not. Counsel for the plaintiff adduced no evidence of the plaintiff's inability to find a comparable job in China. Despite

having returned for two years, he has provided no evidence of any attempt to find jobs. The AR found that the plaintiff was making up evidence in the witness box on matters that ought to have been set out in his evidence-in-chief and supported by reasonable evidence. None of that was available and the AR therefore dismissed the claim for loss of future earnings. The medical evidence clearly does not rule him out of work, but would he have earned less than he did before the accident? The AR searched for the evidence and found none. She also rightly rejected the plaintiff's unmeritorious attempt to overcome his failure to prove a loss of future earnings by claiming loss of earning capacity as an alternative claim. These two are not mutually exclusive and can be claimed separately and in addition to each other but as with the plaintiff's claim for loss of future earnings, he adduced no evidence of a loss of earning capacity.

21 On appeal, the plaintiff altered his position. For the second segment (loss of future earnings in China), the plaintiff uses a multiplier of seven years (instead of eight years) and a multiplicand of $163. The multiplicand is derived by deducting $200 from the supposed national annual average wage in the construction industry of $363 (converted from RMB19,591). The figures of $200 and $363 were obtained by the plaintiff from the China Statistical Yearbook 2011.

22 I agree with Mr Ramesh Appoo, counsel for the defendants, that the plaintiff having realised the inadequacies of his evidence and his case, is hoping to overcome them not with evidence but a plea that the court should find it reasonable to accept that many of the missing evidence could and should be assumed. The reliance on the China Statistical Yearbook 2011 and the submission that I should use the national statistics in China are clearly such attempts. Counsel for the plaintiff appears to argue that since the figures from the China Statistical Yearbook 2011 were accepted in *Liu Haixiang*, they should be in this case as well. In *Liu Haixiang*, the statistics were before the court at first instance and were not challenged. In the present case, the plaintiff did not present this evidence before the AR. Not surprisingly, Mr Appoo objects to the furnishing of fresh evidence at this late stage.

23 Although a judge hearing an appeal from a decision of an assistant registrar on an award of damages exercises confirmatory and not appellate jurisdiction and reviews the matter *de novo*, it does not mean that fresh evidence can be freely admitted at the appellate stage. To allow further evidence to be freely adduced at the appellate stage could lead to abuse of process. The rule of evidence and procedure are designed not only for a fair trial but also a speedy one for it is imperative that litigation should not be protracted. It is only when the courts demand a strict adherence to these rules that we can have a high standard of professionalism in the legal profession.

24 In *Lassiter Ann Masters v To Keng Lam* [2004] 2 SLR(R) 392 ("*Lassiter*"), the Court of Appeal held that in a case where the proceedings before the assistant registrar had the characteristics of a trial (*eg*, assessment of damages), a variation of the test in *Ladd v Marshall* [1954] 1 WLR 1489 applied. The Court of Appeal stated that the second and third conditions of the *Ladd v Marshall* test had to be met, but the first condition (that it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial) need not be as it was too stringent. Nonetheless, the party has to show sufficiently strong reasons why the new evidence was not adduced at the assessment before the assistant registrar.

25 The plaintiff did not give any reason why he could not have adduced the evidence before the assistant registrar. The case of *Liu Haixiang* that counsel for the plaintiff cited had used these very statistics, which were available and could have been obtained before the assessment hearing. More importantly, the second condition of the *Ladd v Marshall* test has not been satisfied. The China Statistical Yearbook 2011 cannot be said to have an important influence on the result of this case. What is produced is not the 2014 or 2015 version of the statistics, but the outdated 2011 version. Counsel for the plaintiff has also not explained how he obtained the figure of $200, which supposedly

is the average salary for sedentary jobs. A plaintiff cannot simply place such statistics before the court and expect the court to make assumptions and randomly pluck figures from the various statistics. Although the plaintiff in *Liu Haixiang* had relied on the China Statistical Yearbook 2011, his counsel specifically selected the average salaries of four vocations and relied on them in his submissions on loss of future earnings. Prakash J eventually used three of those statistics to estimate that the plaintiff would be able to earn about $300 a month. In contrast, counsel for the plaintiff has merely tendered excerpts from the China Statistical Yearbook 2011 as evidence and is asking the court to assume that $200 is the salary that the plaintiff is likely to get without making any submissions or reference to any specific statistics in the report. His basis for using the figure of $200 seems to be that that was the figure Prakash J had used in *Liu Haixiang*. This is plainly inaccurate. The figure Prakash J had arrived was $300 (at [33] of the judgment). In any event, the plaintiff in this case suffered from different injuries as the plaintiff in *Liu Haixiang* and the figures cannot be indiscriminately adopted without explanation.

26 Even if *Lassiter* does not apply and I have unfettered discretion to admit the China Statistical Yearbook 2011 as fresh evidence, I do not think that the facts and circumstances of this case merit such an order. In any event, it is clear from [25] above that the China Statistical Yearbook 2011 would not have helped the plaintiff's claim for loss of future earnings.

27 The plaintiff also claimed a total of $31,900 for future medical expenses. This figure was derived after he applied a 50% discount "at China rate" to the sum of $63,800. He claimed $25,000 for medical reviews for the next ten years and physiotherapy for the next five years, $28,000 for an elbow replacement surgery that he may need in future, as well as $10,800 for medication for headaches that he claimed will be necessary for the next ten years. The AR declined to make any award for the costs of a possible elbow replacement surgery because there was insufficient evidence that such a surgery will be necessary. She also refused to make an award for the costs of the medication for headaches because there was no evidence that the plaintiff had to continuously consume the medication on a daily basis for the next ten years, not least because his own evidence was that the headaches occurred about three to four times a month and the giddiness once every two to three days. It was also unclear to her what medication was contemplated and whether there was any overlap between this item and the costs of future medical reviews that the plaintiff was claiming for. The AR was of the view that only nominal damages of $2,000 should be awarded for the future medical reviews (including medication) and physiotherapy treatments.

28 On appeal, the plaintiff has reduced the quantum that he is seeking. He now claims a sum of $8,050 (50% of $16,100), for which $3,500 is estimated for orthopaedic treatment, $7,200 for physiotherapy sessions for the next three years (instead of five years), and $5,400 of medication for headaches for the next five years (instead of ten years). The AR was generous to have awarded the plaintiff $2,000 even though she was not satisfied that sufficient evidence had been adduced to show that the medical expenses would be incurred. Even though the plaintiff has now reduced the quantum of his claim, there is still no evidence to show that the plaintiff will incur substantial medical expenses in future. I will therefore not depart from the AR's decision for this item.

29 For the reasons above, I will only allow the appeal in respect of the claim for pre-trial loss of earnings up to the date of repatriation, for which I award $7,830.93. The rest of the appeal is dismissed. The total amount on awarded is thus $37,830.93. The plaintiff is entitled to 80% of this amount, which is $30,264.74 (before interest).

30 I will make no order as to the costs of the appeal although this may be unfair to the defendants, but they at least had the comfort of obtaining substantial costs before the AR. That was so because the plaintiff had spurned the defendants' offer to settle the case for $50,000, which,

given the evidence, was a generous offer. Instead, the plaintiff made his own offer to settle in the sum of $196,000. The AR was right to order indemnity costs on account of the defendants' offer to settle. The award of costs on that scale is an important aspect of the idea behind the offer to settle. If a litigant believes that he is entitled to more, than he must accept the consequences if he fails. If the plaintiff's lawyers will consider waiving their own fees, the plaintiff would have returned to China with a bit of compensation – instead of a substantial debt.