# MFH Marine Pte Ltd v Asmoniah bin Mohamad
# [2000] SGHC 141

**Case Number** : DA 46/1999

**Decision Date** : 15 July 2000

**Tribunal/Court** : High Court

**Coram** : S Rajendran J

**Counsel Name(s)** : MP Rai (Cooma & Rai) for the appellants/defendants; Chong Yuen Hee, Subbiah Pillai and A Tiwary (Pillai & Pillai) for the respondent/plaintiff

**Parties** : MFH Marine Pte Ltd — Asmoniah bin Mohamad

*Civil Procedure – Pleadings – Judge deciding case on point not pleaded by parties – Whether judge entitled to do so*

*Limitation of Actions – When time begins to run – Plaintiff's claim under Workmen's Compensation Act (Cap 354, 1998 Rev Ed) unsuccessful – Whether time of civil action begins running only when plaintiff informed of Commissioner of Labour's decision*

: The plaintiff/respondent (`respondent`) was an employee of the defendants/appellants (`appellants`). On 31 March 1995, whilst the respondent was at work, a stack of frozen fish fell on him and he suffered injuries. Shortly thereafter he made a claim for compensation under the Workmen`s Compensation Act (Cap 354). Slightly, more than a year later, on 28 June 1996, the Commissioner for Labour (`Commissioner`) wrote to the respondent rejecting the claim for compensation. On 21 July 1998 the respondent learnt from a friend that he could commence a civil action against the appellants. He consulted solicitors and on 21 January 1999 - a period of 3 years and 10 months after the accident - the writ in this action was filed.

Under s 24A(2) of the Limitation Act (Cap 163), an action such as this, has to be commenced either (a) within three years from the date the cause of action accrued or (b) within three years of the earliest date on which the respondent had the knowledge required to bring the action. The three-year period under (a) would have expired on 31 March 1998. The respondent sought, in his pleadings, to come within the provisions of (b). In para 7 of the statement of claim the respondent averred:

> *The material facts relating to the plaintiff`s cause of action herein were outside his knowledge actual or constructive before 21 July 1998 which is within three years before the date of the commencement of this action.*

The fact that a claim for compensation under the Workmen`s Compensation Act had been made and that the Commissioner had, on 28 June 1996 rejected that claim was not referred to in the pleadings or in the affidavits of evidence-in-chief. Although that fact came to light in the course of oral testimony, no submission was made that time would only run as from the date the Commissioner rejected the claim for compensation.

Before the trial commenced the parties arrived at an agreement on liability and quantum. The defence of limitation, which had been pleaded by the appellants, was the only issue that the court had to consider. The learned district judge ( `DJ`) ruled that the claim was not barred by the Limitation Act and entered judgment for the respondent for the amount agreed. The appellants appealed against that decision.

Before the learned DJ, respondent`s counsel had argued, consistent with the pleaded case, that as

the respondent did not, until July 1998, know that he could commence proceedings against the defendants in the civil courts, s 24A(2)(b) of the Limitation Act applied and the three-year time bar would begin to run only from July 1998. The learned DJ rejected that submission and in so doing said:

> *... ignorance about one`s right could not be an excuse and if any party wanted to utilise a statutory provision, they* ***must adduce sufficient facts to the court to show they come within the requirements of the statute****. [Emphasis added.]*

In saying that, the learned DJ was, no doubt, referring to s 24A(4) of the Limitation Act which limits the meaning of the word `knowledge` in s 24A(2) to four specified categories. The respondent`s alleged lack of knowledge that he could sue his employer in the civil courts did not fall within any of the four categories specified in s 24A(4). Before me neither party sought to fault the learned DJ on this finding.

Having decided that ignorance about his right to commence civil proceedings did not entitle the respondent to rely on the extended limitation period available under s 24A(2)(b), the learned DJ went on to consider the question whether the time taken by the Commissioner (a period of slightly over one year) to reject the respondent`s claim should be taken into account in determining whether the civil claim was statute-barred. As noted above, this was an issue not pleaded and not dealt with in the submissions before the learned DJ. The first time the matter was raised was in the Grounds of Decision of the learned DJ. In raising the matter, the learned DJ noted that the pleadings in the case left much to be desired but took the view that poorly drafted pleadings should not deprive the respondent of his rights.

Section 33(2) of the Workmen`s Compensation Act precludes a workman from instituting any action for damages in a civil court if he has applied for compensation under the provisions of the Workmen`s Compensation Act. The learned DJ held that, in view of s 33(2), the respondent, even if he had wanted to, could not have commenced civil action against the appellants until the Commissioner had made his ruling on the claim. As the Commissioner had rejected the respondent`s claim on 28 June 1996, the learned DJ held that the three-year time bar would begin to run only from that date. His reasons were as follows:

> *It would appear that from s 33(2)(b) of the said Act that once the plaintiff filed a claim with the Department, he is precluded from commencing any action in court until the resolution of his claim by the Department. Defence counsel argued that notwithstanding this, the period of limitation still continued to run. That may well have been the case before the 1992 amendments to the Limitation Act. In my view, the intention of Parliament when the Limitation Act was amended in 1992 was to prevent hardship and injustice to the plaintiff by providing* ***an alternative starting date for the limitation period where the plaintiff lacked knowledge****. In this case, even if the plaintiff wanted to, he could not commence his action till the Department ruled on his claim. It is unfortunate that the Department took about a year to reject the plaintiff`s claim. Therefore, to my mind,* ***the plaintiff only had knowledge*** *that he could commence a civil claim on 28 June 1996, that is, the date of the Department`s reply to him. [Emphasis added.]*

If the three-year limitation period was to run from 28 June 1996, the date the Commissioner rejected the compensation claim, the civil action would not be time-barred. The learned DJ therefore rejected

the defence of limitation and entered judgment for the respondent in the agreed sum.

Mr MP Rai, who appeared before me on behalf of the appellants, criticised this finding on two grounds:

(a) that the learned DJ was wrong in his finding that the prohibition in the Workmen`s Compensation Act on the employee commencing civil action whilst a claim under the Act was pending, precluded time from running; and

(b) that it was not open to the learned DJ to have decided the limitation defence that was raised on a basis that was not in the pleadings and on which no submissions were made by counsel.

I agree with the learned DJ`s comments, in the passage from his grounds of decision quoted above, that the effect of the 1992 amendments was to provide an alternative starting date for the limitation period where a plaintiff lacked `knowledge`. But, as the learned DJ himself acknowledged in the earlier part of the grounds of decision referred to above, the `knowledge` that is referred to in those amendments, is knowledge of the very specific kind defined in s 24A(4). The fact that a plaintiff was statutorily precluded from commencing civil action does not fall within that definition. That being so, the amendments in 1992 were not, in my view, of any assistance to the respondent in overcoming the plea of limitation raised by the appellants.

Mr Chong Yuen Hee, who appeared as counsel for the respondent, sought, however, to uphold the decision of the learned DJ, not by reference to the 1992 amendments to the Limitation Act, but simply on the grounds that so long as the respondent was prohibited by law from commencing civil action against the appellants, time, for the purposes of limitation, could not begin to run. He submitted that the effect of s 33(2) of the Workmen`s Compensation Act was to prohibit the respondent from commencing civil action against the appellants; he submitted that that being so, time could only begin to run when that prohibition was lifted. In support of this submission, Mr Chong quoted the following passage from the judgment of the Court of Appeal in **Ying Tai Plastic & Metal Manufacturing (S) Pte Ltd v Zahrin bin Rabu** SLR 117 where FA Chua J said at p 121:

> *Under s 33(1)(a) [which was the equivalent of the present s 33(2)(a) of the Workmen`s Compensation Act]* ***the worker is debarred from bringing a common law action for damages so long as there is an application by the workmen before the Commissioner for compensation****. But this debarment in no way affects the cause of action already vested in him. The Act does not prohibit the withdrawal of the application for compensation.* ***As soon as the application for compensation is withdrawn, the right to maintain an action revives*** *and the workman can then proceed with the action for damages in court. The workman`s right to compensation under the Act lies dormant whilst he pursues his common law action ... [ Emphasis added.]*

Relying on the above passage, Mr Chong submitted that as the respondent`s right to commence civil action was not extinguished but remained dormant and revived when the prohibition (or `debarment` to use the language adopted by FA Chua J) ceased to exist, time, for the purposes of the Limitation Act, can only begin to run when his right revived.

In support of that proposition, Mr Chong also relied on the case of **Bell & Anor v Gosden** [1950] 1 All ER 266 (CA). That was a case involving war-time regulations in respect of recovery of rent in respect of premises declared to be in `evacuation areas`. By reg 4 of the Defence (Evacuated Areas) Regulations 1940, no rent payable was recoverable during the evacuation period. On 31 March 1947 an order was made terminating the relevant evacuation period. Proceedings were commenced by the

landlord in 1948 to recover rents which had accrued in 1940. The question arose whether, because of the six-year time limit for such proceedings under s 17 of the Limitation Act, 1939, the proceedings were time-barred.

The relevant part of the judgment of Sir Raymond Evershed in that case, that Mr Chong relied on (at p 270), read as follows:

> *There is nothing in the regulations of 1940 which refers in terms to the Limitation Act 1939. Regulation 4(1) provides that the rent shall not be recoverable during the evacuation period. That plainly means that no action shall be brought during that period for the recovery of the rent, but it is said that the fact that it cannot be recovered by action is not sufficient. The rent was due in 1940, it is argued, and it remained due although during the period of the so-called moratorium it could not be recovered by action as the result of the regulation, and s 17 states in unequivocal terms that after the expiration of six years no action can be brought.* ***In my judgment, the necessary effect of the regulation, which has, of course, the effect of an act of Parliament, when set beside the Limitation Act, is that, so long as it applied and the rent was irrecoverable by its terms the running of time under s 17 must be treated as suspended*** *... That is, I think, clear from the language of s 17 itself - `No action shall be brought ...` The basis of the section is that, if, during the period a person can bring an action but he does not do so, but delays for six years, then thereafter he shall be barred. [Emphasis added.]*

Mr Chong submitted that the principle in the ***Bell*** case - that so long as a party was precluded by statute from commencing proceedings in a civil court, time for the purposes of the Limitation Act does not begin to run - applies to the present case.

I accept that the ***Bell*** case is authority for that proposition. Were the effects of the statutory provisions in this case similar to these in the ***Bell*** case, I would have little hesitation in accepting that principle. But the effect of our statutory provisions are very different. The Workmen`s Compensation Act does not prohibit the worker from seeking his remedy in the civil courts. All it does is to grant the worker an alternative avenue of obtaining redress. This is clear from the judgment of FA Chua J in ***Ying Tai Plastic*** at p 120I:

> *Under the Act the worker, unlike the employer, is not obliged to inform the Commissioner of the accident, nor is he obliged to apply to the Commissioner for compensation in respect of it. The act of applying for compensation is purely a voluntary one on the part of the workman.*
>
> *...*
>
> *Section 33 provides for a limitation of the workman`s right of action but it does not specifically say that the workman`s common law right of action for damages is automatically extinguished if he applies to the Commissioner for compensation under the Act. What it does say is that a workman shall not maintain an action for damages if an application for compensation has been made by him to the Commissioner.*
>
> *It seems to us that it was never the intention of the legislature to deprive a workman of his common law rights against his employer.* ***The scheme of the Act is not to abrogate a workman`s common law cause of action but to***

> ***enable him, if he wishes, to get a speedy remedy for the injury suffered by him****. The Act sees to it that he does not get a double benefit - both compensation under the Act and damages under the common law for the one injury (s 18). [Emphasis added.]*

The prohibition from bringing proceedings to recover the rent in the ***Bell*** case was not the sort of `debarment` that FA Chua J was referring to in the passage of his judgment in the ***Ying Tai Plastic*** case relied by on Mr Chong. In an industrial accident to which the Workmen`s Compensation Act applies, the worker is not prohibited from bringing an action to obtain relief for the injury suffered. FA Chua J in the case above quoted expressly recognised that this was so when he said at the end of the passage from his judgment quoted above:

> *A workman`s cause of action in tort against his employer immediately vests in him under the common law* ***and he has the right to bring proceedings in the court and this right continues in him until such time as he may be debarred from doing so by the law of limitation****. [Emphasis added.]*

The legislature, by introducing the scheme under the Workmen`s Compensation Act whereby a worker can get compensation under that Act for injuries sustained in the course of his employment has not prohibited the worker from commencing civil action. What the legislature did was give the worker the option of an alternative avenue for obtaining redress. In such a situation, the underlying basis for the decision in the ***Bell*** case does not, in my view, exist.

I can see nothing in the provisions of the Workmen`s Compensation Act that requires the court to adopt the approach canvassed by Mr Chong. Section 24A(2)(a) of the Limitation Act gives the worker three years from the date of the cause of action to institute civil action. If the worker chooses this option he has three years within which to act. If the worker chooses the option of applying for compensation under the Workmen`s Compensation Act, he has, by s 11(1)(b) of the Workmen`s Compensation Act, one year from the date of the accident to make the application. If the worker initially chose civil action, he cannot, after the one-year period specified in s 11, discontinue the civil action and apply for compensation. For the Commissioner to entertain such an application would, except in the circumstances prescribed in s 11(4), be a breach of s 11(1)(b). By the same token, if the worker had opted for compensation, he cannot, after the three-year period specified in the Limitation Act, withdraw his claim for compensation and seek to have the benefit of another three years within which to institute civil action. But if the worker was still within the one-year limit in respect of compensation or the three-year limit in respect of civil action, he would be entitled to withdraw from one avenue of redress and embark on the other.

***The pleadings***

As noted above, the respondent, in order to counter the defence of limitation, had pleaded that `the material facts relating to the respondent`s cause of action herein were outside his knowledge ... before 21 July 1998`. In support of that plea, the respondent had testified that it was on that date that he first came to know, through a friend, that he had the right to sue his employer in the civil courts. The hearing before the learned DJ proceeded on that basis. The learned DJ, however, on his own initiative and without inviting the attention of the parties to it, decided the case on the different basis that because s 33(2) of the Workmen`s Compensation Act prohibited the respondent from instituting civil action, time would begin to run from 28 June 1996 when the Commissioner rejected the

claim for compensation.

In taking that approach, the learned DJ was, as he indicated in his judgment, motivated by a desire not to allow poorly drafted pleadings deprive a party of his rights. That motivation is laudable but it has to be balanced against the requirement in our system of justice that issues for determination by the court should be carefully framed and all parties should have the opportunity to address the court on those issues before the court adjudicates thereon. It would be apposite in this context to quote Sir Charles Mathew CJ in **Haji Mohamed Dom v Sakiman** [1956] MLJ 45 where the learned CJ stated:

> *I think it is clear that a Judge is bound to decide a case on the issues on the record and if there are other questions they must be placed on the record ...*

The same sentiment was echoed by Sharma J, albeit in stronger language, in **Janagi v Ong Boon Kiat** [1971] 2 MLJ 196 where he said:

> *A statement of claim and the defence (together with the reply, if any) constitute the pleadings in a civil action. It is on the examination of the pleadings that the court notices the differences which exist between the contentions of the parties to the action. In other words the matters on which the parties are at issue are determinable by an examination of the pleadings. An issue arises when a material proposition of law or fact is affirmed by one party and denied by the other.* ***The court is not entitled to decide a suit on a matter on which no issue has been raised by the parties. It is not the duty of the court to make out a case for one of the parties when the party concerned does not raise or wish to raise the point****. In disposing of a suit or matter involving a disputed question of fact it is not proper for the court to displace the case made by a party in its pleadings and give effect to an entirely new case which the party had not made out in its own pleadings. The trial of a suit should be confined to the plea on which the parties are at variance. [Emphasis added.]*

The learned DJ in this case was quite correct in criticising the pleadings as poorly drafted. But whether the pleadings were poorly drafted or not, the learned DJ was not entitled to decide the case on the basis of an issue that was not canvassed before him. What the learned DJ should have done was to invite the respondent to apply to amend his pleadings and, if such application was made and (after hearing all parties) granted, to hear submissions on the fresh issue raised in the amendment before adjudicating on the matter. Had the learned DJ done that, there would have been no cause for the appellants to complain that the case had been decided against the appellants on issues not pleaded and not canvassed at the hearing.

***Decision***

For the above reasons, the appellants succeed on both the grounds raised by Mr Rai. This appeal is therefore allowed with costs both here and below.

**Outcome:**

Appeal allowed.