

Tan Yong Heng Jeffrey v Tay Kiah Por
[2003] SGHC 278

Case Number : Suit 600007/2001, NA 600004/2003
Decision Date : 13 November 2003
Tribunal/Court : High Court
Coram : Tai Wei Shyong AR
Counsel Name(s) : Ramasamy K Chettiar (ACIES Law Corporation) for plaintiff; Paul Yap Tai An (Lawrence Chua and Partners) for defendant
Parties : Tan Yong Heng Jeffrey — Tay Kiah Por

1 On 24 May 1999, the plaintiff was riding his motorcycle along Lornie Road towards Adam Road on his way to work when he collided with the defendant's car and sustained injuries to his left ankle and foot. They were:

(a) A tear of the left anterior talo-fibular ligament of the ankle; and

(b) A fracture of the 5th metatarsal bone.

2 Interlocutory judgment was entered by consent against the defendant with liability agreed at 80%, with costs to be reserved to the registrar hearing the assessment of the damages. In the event, the assessment hearing came before me and I awarded the plaintiff 80% of the following amounts in damages:

<u>Pain and Suffering and Loss of Amenity</u>		
(a) Tear of left ankle ligament:		\$5,000.00
(b) Fracture of left 5 th metatarsal:		\$3,000.00
(c) Potential osteoarthritis for left ankle:		\$3,000.00
(d) Potential osteoarthritis for metatarsal:		\$2,000.00
<u>Loss of Earnings</u>		
(e) Pre-trial loss of earnings:		\$27,066.00
(f) Loss of future earnings:		\$44,070.00
(g) Loss of earning capacity		\$10,000.00
<u>Other Heads of Damage</u>		
(h) Future medical costs:		\$5,000.00

(i) Cost or repair of motorcycle:		\$400.00
(j) Crutches		\$32.00
(k) Transport		\$60.00
Total		\$99,628.00

In addition, I awarded the plaintiff 80% of interest at 6% per annum of \$13,492 from the date of the writ (18 February 2000) to 30 September 2003, and 80% of interest at 3% per annum on \$27,066 from the date of the accident (24 May 1999) to 30 September 2003. As for costs, I awarded \$9,000.00 for the interlocutory judgment, and \$17,000.00 for the assessment hearing.

3 The plaintiff has appealed against the awards for pain and suffering and loss of amenity, loss of future earnings, loss of earning capacity and interests and costs. I set out below my reasons for the sums awarded under these heads of damage.

Pain and Suffering and Loss of Amenities

4 The total amount awarded under this head for the two injuries was \$13,000.00, including awards for potential osteoarthritis in the future. The evidence adduced at the hearing was that the plaintiff's left anterior talo-fibular ligament had torn. Further, he had fractured the 5th metatarsal bone of the left foot.

5 The plaintiff had been examined by Dr Yeo Khee Quan on 19 April 2000. At the time, it was observed that the fractured metatarsal had 'united with slight distortion of the tarsal-metatarsal joint of the 5th metatarsal.' The ankle was observed to be stable.

6 When examined by Dr C S Lai on 25 October 2000, he complained of pain around his left ankle and foot when standing, walking, running or squatting. He also said he had difficulty standing for long periods, and that his ankle had given way a few times in the past. However, Dr Lai did not observe the ankle to be swollen.

7 The plaintiff was further examined by Dr Ngian Kite Seng, the defendant's specialist, on 29 August 2001. There was residual pain and stiffness, although clinically and radiologically, the ankle was stable.

8 In court, the plaintiff's evidence was that he had pain in the ankle and was unable to squat down. He also said that it had given way a few times. Prior to his accident, he was actively engaged in Taekwondo, scuba diving and was on the national Tug-of-War team. However, as a result of his injuries, he was no longer engaged these activities, although he could still engage in 'light swimming'.

9 A number of cases were cited to me by counsel as precedents, but I refer to only the more relevant ones. Mr Yap first cited the case of *Tan Swee Khoon v Balu a/l Sinnathamby* (DC Suit No 225 of 1998). In that case, the plaintiff was a male lorry driver aged 28 at the time of his accident earning a salary of \$1,500. He suffered an open fracture to of the medial malleolus of the right ankle, and was predisposed to arthritis. He was awarded \$12,000 for pain and suffering and \$3,000 for the

pre-disposition for osteoarthritis. Another case cited by Mr Yap was *Lim Kheok Chew (Administrator of the estate of Valens Lim Kheok Heng, deceased) v Bestwell Woodworking & Renovation, formerly known as Bestwell Woodworking (sued as a firm)* (DC Suit No 4752 of 1998). In that case, the plaintiff had suffered a Pott's fracture of the left ankle, for which diastasis screws had been inserted. However, the wound healed poorly and became infected, which led to septicaemia and ultimately to his death. The Court awarded \$12,000 for pain and suffering for the injury. Finally, I refer to the case of *Aw Ang Moh v OCWS Logistics Pte Ltd* (Suit No 960 of 1996). In that case, the plaintiff had suffered, among other injuries, open fractures of the 4th and 5th metatarsals, for which he was awarded \$5,000 damages for pain and suffering.

10 For his part, Mr Ramasamy submitted that I should award \$15,000 for the ligament tear and \$12,000 for the metatarsal fracture. He based his submissions in part of the cases of *Eh Khan Sio Eh Dam v Choo Chiu Nan* (DC Suit No 105 of 1998), and *Ong Kia Cheo & Anor v Ong Ah Tee* (Suit No 153 of 1991). The former case involved an osteochondral fracture of the talus and a fracture of the base of the fifth metatarsal. Degenerative changes had developed ie. osteoarthritis and the forefoot had fixed at 10 degrees inversion, with resulting pain on running or carrying heavy objects and on rainy days. He was awarded \$15,500 for the injury to the foot including an award of \$4,000 for osteoarthritis. The latter case involved comminuted fractures of the lower end of the right tibia and fibula, and a comminuted fracture of the right calcaneum. The plaintiff was awarded \$18,000 for the tibia and fibula fractures, and \$15,000 for the fracture of the calcaneum. Counsel for the plaintiff also relied on some cases where there had been torn ligaments in the knee, among them *Leonardo Sundrason v Yeo Yeow Kwang & Anor* (Suit No 431 of 1991). In that case, the plaintiff had suffered hemarthrosis with a torn collateral ligament and posterior cruciate ligament of the right knee, resulting in knee ache, inability to squat fully and impaired sexual performance. For this, he was awarded \$12,000.

11 Almost all the precedents cited to me involved fractures to the ankle or leg, and the injuries suffered appeared to be more serious than in the present case, where there was no fracture of the ankle, although the plaintiff had lost some function. Having said that, there was in this case, a closed fracture of the 5th metatarsal, which had not healed perfectly. Bearing the precedents in mind, I felt that an award of \$5,000 for the torn ankle ligament and \$3,000 for the fractured metatarsal was appropriate. I also felt that \$5,000 in total for potential osteoarthritis was a fair award.

Loss of Future Earnings

12 The plaintiff's claim for loss of future earnings was a claim for a special allowance which he had received as a member of an elite police unit. Persons in that unit are entitled to a special allowance of \$650.00 per month, and there was no dispute that as a result of his injuries, the plaintiff could no longer be part of that unit. The plaintiff's evidence in court was that he had intended to stay in the unit until his retirement, and his claim under this head was for a multiplicand of \$850.00 per month (which factored in an increase in the allowance and also 13% for employer's CPF) and a multiplier of 15 years, which would have come to \$153,000.

13 The plaintiff's solicitor had called Ms Wendy Koh from the Singapore Police Force to give evidence in relation to this head of claim. However, I did not find her evidence particularly instructive, as she was precluded for reasons of confidentiality from giving relevant details of the elite unit such as the drop out rate and the usual career development of officers in the unit. She did confirm that an officer *could* remain in the unit as long as he meets the fitness and shooting criteria, but on the other hand, she also said that there had been no officers who had remained there until retirement, since the unit was only set up in 1993. She further added that there had been officers

who had been transferred out of the unit for their career development, and in that case, they would be given the special allowance for another 2 years, if they remained fit and liable to recall to the unit for emergencies.

14 In the circumstances, I did not think I could accept Mr Ramasamy's submission that the plaintiff ought to be treated as if he would remain in the unit until retirement. Clearly, this was a physically demanding unit and the chances of injury were substantial. It also required officers to maintain a very high level of fitness and this could not be presumed to his retirement. There was also the possibility of his being posted to another unit for his own career development somewhere down the line. I therefore felt that a multiplier of 5 years from the time of the hearing was fair, bearing in mind that this would be in effect awarding him the allowance from the time of his accident in May 1999 to September 2008.

15 As for the multiplicand, Ms Koh had indicated that there had been previous representations for the allowance to be increased, but to date no increase had been approved. Mr Ramasamy further invited me to use a higher multiplicand on the basis that the employer's CPF rate might rise in the future. In the end, I felt that it would be fair to use the present rate of allowance. There was no indication that the allowance was going to increase imminently, or at all. Nor was there any basis to presume a rise in the employer's CPF rate. In my view, it was equally possible that the rate might decrease in the next few years.

Loss of Earning Capacity

16 The following precedents were relied on by counsel in relation to the award for loss of earning capacity. First, Mr Yap relied on *Tan Swee Khoon v Balu a/l Sinnathamby* (DC Suit No 225 of 1998), which I have already referred to above. The plaintiff in that case was awarded \$12,000 as loss of earning capacity. Mr Ramasamy cited *Neo Kim Seng v Clough Petrosa Pte Ltd* (1996) 3 SLR 522. In that case, the plaintiff was a mechanic who worked in a shipyard and on board vessels. He had suffered open fractures on each left and right tibias, and a closed fracture on the left ankle. Some time later, he was found to have a neuroma of the right ankle, and eventually had recurring problems with infection and residual disability. He was unable to squat, and experienced great difficulty in climbing stairs. The evidence was that he remained with the same employers but he was unable to earn the same amount as he could not work for long hours. He was awarded \$25,000 for loss of earning capacity. Mr Ramasamy also cited the case of *Wee Sia Tian v Long Thik Boon* (1996) 3 SLR 513. The plaintiff in that case had sustained a fracture of the medial condyle of his left femur which extended into the knee joint; lacerations over the chin and right ring finger; a contusion of the right shoulder and a head injury. He was 48 years old and employed as a carpenter. He was also awarded \$25,000 in loss of earning capacity.

17 Counsel for the plaintiff submitted that the present plaintiff was only 31 years old and stood a high chance of being thrown in the labour market. Further, his "CEP" or Current Estimated Potential in the police force had dropped to SSGT to SGT.

18 While it was true that he had lost his position in the elite unit as a result of the accident, I did not feel that it would be right to compensate him for that under this head of damage as well. The relevant evidence before me was that prior his accident, his earliest chance of promotion to the next rank of SSGT would be in 2007. According to Ms Koh of the Singapore Police Force, the accident had not affected this *per se*. However, the chances of his promotion were drastically reduced as a result of the drop in his CEP from SSGT from SGT – I note that Ms Koh was not able to comment on why his CEP had dropped. When asked whether his prospects in the Police Force were any worse as a result of his injuries sustained in the accident, in particular the fact that he could not do the physical

fitness test, Ms Koh was also not able to give a direct answer. She did say that he could still progress to other jobs involving supervisory work, albeit he would be subject to time penalties. In the circumstances, I felt that \$10,000 was a fair award for damages under this head. This was bearing in mind that it was open to the plaintiff to do other types of police work for which he would not suffer any reduction in pay, and the fact that the injuries in the present case could not be classified to be as serious as those in the precedents cited.

Interest and Costs

19 I awarded the interest which was asked for by counsel for the plaintiffs, and I am therefore somewhat surprised by this head of appeal. In any event, I believe that the amount of interest awarded is in accordance with established norms.

20 In relation to costs, I awarded \$9,000 for the hearing and \$17,000 for the assessment of damages after hearing further arguments from the parties. Two factors were especially significant in my awarding these sums. The first was the fact that the trial had been settled on the first day at 80% liability, The second was the fact that the plaintiff's total award even on a 100% basis (but excluding interest) was far below the District Courts' jurisdictional limit of \$250,000. As Mr Yap pointed out, on that basis the suit should not have been transferred from the District Courts to the High Court. Taking these factors into account, I felt that a total award of \$26,000 was appropriate.