Zhao Feng Guo v Tan Hong Soon t/a Intense Engineering Construction [2003] SGHC 106

Case Number : Suit 958/2001, RA 80/2003

Decision Date : 06 May 2003

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Namasivayam Srinivasan (Hoh & Partners) for the plaintiff/respondent; Mahendra S. Segeram (Segeram & Co) for the defendant/appellant

Parties : Zhao Feng Guo — Tan Hong Soon t/a Intense Engineering Construction

Civil Procedure – Judgments and orders – Setting aside – Judgment obtained in default of appearance – Whether non-discovery of documents amounting to illegality warrants setting aside of judgment

Civil Procedure – Judgments and orders – Whether judgment irregular due to bad service of Writ of Summons – Weight to be attached by court

Damages – Measure of damages – Tort – Maxim of ex turpi causa non oritur – Whether applicable in tort – Whether relevant in consideration of quantum of damages

Tort – Misrepresentation – Causation – Whether too remote

1 The defendant was at all material times a company. The plaintiff was employed as an engineer by the defendant and was assigned various duties including those of a supervising engineer in the construction of a porch roof for a motorcar showroom. In the course of duty, the plaintiff was injured in an accident involving a power cutter on 15 January 2001.

2 On 31 July 2001 the plaintiff issued a writ of summons against the defendant. The writ was served on the defendant on 19 September 2001 and interlocutory judgment in default of appearance was entered on behalf of the plaintiff on 2 October 2001. Nothing more was done after the summons-for-direction was heard on 23 November 2001 until about a year later when, on 6 November 2002, a summons-for-further-directions was heard for the assessment of damages.

3 The assessment of damages was fixed for hearing on 4 March 2003. However, the defendant applied to set aside the interlocutory judgment on 28 February 2003, three days before the assessment. The application was heard on 4 March 2003 and dismissed by the Senior Assistant Registrar. The assessment proceeded and is virtually completed save for the possibility of calling a medical expert on behalf of the defendant. In the meantime, the defendant appealed before me against the dismissal of its application to set aside the interlocutory judgment.

4 The defendant's case was as follows. It allowed judgment to be entered because it did not have sufficient grounds to defend the action initially, but after about a year and many letters to the Ministry and the Immigration Department, it managed to get evidence that the plaintiff was deported six days before he issued the writ. The evidence showed that he (the plaintiff) had misled the immigration authorities in declaring that he had the qualifications of a Bachelor in Economics Management when, in fact, he did not. Mr Segeram also submitted that the plaintiff had represented that he had an engineering degree when he had none. It is not clear what degree the plaintiff was supposed to have represented to the defendant that he possessed.

5 Mr Segeram submitted two grounds for the purposes of this appeal. First, he submitted that the plaintiff's failure to give discovery of the documents relating to his repatriation amounted to an

illegality, and secondly, that the judgment was irregular on the ground that the writ of summons was found on the floor beneath the defendant's door when the rules required the writ to be pasted on the door.

6 Augmenting his first ground, Mr Segeram argued that the defendant had been diligent in writing to the authorities for the reason of the plaintiff's repatriation. It was only on 14 February 2003 that the defendant discovered that there were irregularities in the plaintiff's immigration documents. Mr Segeram's point was that had the plaintiff been honest, the defendant would not have employed him and the accident would not have occurred. Furthermore, counsel submitted, the defendant would not have made the plaintiff a supervisor. Lastly, he said that the plaintiff should not be allowed to plead that there was no adequate supervision when he was himself the supervisor. This last ground has no merit for the purposes of this appeal because that ground could have been advanced as a defence to diminish the defendant's liability whether or not the plaintiff was truthful about his academic qualifications.

7 In respect of the alleged falsification of documents relating to the plaintiff's qualifications, it must be borne in mind that that allegation had not been proved. It leads to the next question, namely, whether the plaintiff's misrepresentation was relevant at the trial of the tort action? I do not think so. It is far too remote from the point of causation in tort to say that if the plaintiff had not misrepresented his qualifications he would not have been employed and therefore he would not be where he was on 15 January 2001, and the accident would not have occurred, and the defendant would not have been sued. I agree with the Senior Assistant Registrar that counsel's reliance on *Ooi Han Sun & Anor v Bee Hua Meng* [1991] SLR 824 was misplaced. That was a case dealing with the quantification of damages arising from a road accident. The court there held that the *maxim ex turpi causa non oritur actio* has its application in contract but not in tort, at least not insofar as liability for the tortious act was concerned. It may be relevant only where the quantum of damages is being considered.

8 *Ang Kim Soon v Sunray Marine Pte Ltd* [1997] 3 SLR 619 is more on point. In that case, the applicant employer applied to set aside an interlocutory judgment entered against it by its employee. The application was made only after the judgment in a related action had been handed down. In that other judgment, the employer was found not to be responsible for the accident and that the liability lay with a third party, namely the ship owner. It was too late to set aside the interlocutory judgment in that case because the plaintiff would have been prejudiced in not pursuing against the ship owner in order to establish some liability on its part (as against the plaintiff). An innocent plaintiff who is injured in an accident need only succeed in showing that a tortfeasor was 1% responsible for the cause of the tortious act to be entitled to claim 100% from him. Thus, the plaintiff in that case, by virtue of the employer's failure to set aside the interlocutory judgment, was not obliged to press his claims against the third party, which he might have done had the judgment against his employer been set aside in good time. He (the plaintiff) was entitled to recover entirely from the employer, against whom he already had judgment.

9 In the present case before me, it is also too late for the defendant to set aside the interlocutory judgment. That judgment was on the verge of perfection because the assessment of damages was almost over. The only evidence remaining was that of the defendant's medical expert whose evidence, Mr Segeram tells me, may not even be necessary if it does not differ from the medical evidence already adduced.

10 Neither grounds given by the defendant justify the setting aside of the judgment obtained on 2 October 2001. I have already stated why the defendant's inability to obtain documentary proof of the plaintiff's qualifications was not relevant. I would reiterate the point that even if the documents

were available, they would only be relevant for the purposes of a contractual claim, and the defendant may not yet have been precluded from such action. But that is a separate matter.

11 In respect of the second ground, namely that the judgment was not a regular judgment because the writ was not pasted on the door of the defendant, I am of the view that it was an argument entirely without merit. It was not disputed that the writ was found on the defendant's doorstep. So, even assuming that the service clerk threw it there instead of pasting it, the irregularity is of so minor a nature that I would not give it any weight at all. In any event, if that was a valid objection, it was one that could and should have been made more than a year ago. In the circumstances, this ground too, cannot succeed.

The appeal was therefore dismissed.