

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 07

Suit No 310 of 2015

Between

SULASTRI BTE ACHMAD

... Plaintiff

And

- 1. TAN HEE HANG**
- 2. KENDO TRADING PTE LTD**

... Defendants

JUDGMENT

[Damages] – [Compensation and Damages] – [Dependency]

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Sulastri bte Achmad
v
Tan Hee Hang and another

[2017] SGHC 07

High Court — Suit No 310 of 2015
Tan Lee Meng SJ
29, 31 March 2016; 30 May 2016

7 February 2017

Judgment reserved

Tan Lee Meng SJ:

1 This case involves a dependency claim by the plaintiff, Mdm Sulastri binte Achmad (“Mdm Sulastri”), whose husband, Mr Mohamed Ismail bin Surip (the “deceased”), was fatally injured after he was hit by a lorry on the Ayer Rajah Expressway (“AYE”) on 17 February 2015, as well as a claim for damages by the deceased’s estate (the “Estate”).

2 The first defendant, Mr Tan Hee Hang (“Tan”), drove a lorry bearing number YL50X (“the lorry”) that hit the deceased while he was riding his motor-cycle bearing number FBC 8642E. The second defendant, Kendo Trading Pte Ltd (“Kendo”), who is Tan’s employer, was the owner of the lorry at the material time. Kendo is being sued on the basis that it is vicariously liable for the actions of its employee or agent, Tan. Kendo admitted that Tan was authorised to drive the lorry in the course of his employment and that the

accident occurred while he was driving the lorry back to its premises after having ferried its workers to their dormitories in Tuas.

The accident and interlocutory judgment against the defendants

3 On 17 February 2015, the deceased, then aged 51 years and 11 months, was riding his motor-cycle along the AYE and heading towards the city near the Jurong Hill Flyover at around 3.30 am. He was riding along the third lane away from the central road divider when he was hit from the rear by the lorry. The deceased suffered multiple injuries and he died at the scene of the accident.

4 Initially, Mdm Sulastri asserted that the defendants were wholly liable for the accident while the defendants asserted that the deceased had cut into the path of the lorry and contributed to the accident. Tan claimed that the deceased was travelling on another lane before cutting into his lane and that he could not apply his brakes in time to avoid hitting the deceased’s motor-cycle.

5 Mdm Sulastri engaged the services of a traffic accident reconstructionist, Mr Kelvin Koay Hean Lye (“Kelvin Koay”), from Koay’s Consulting Pte Ltd, who concluded in his report that at the material time, Tan was travelling at a speed of around 80-88 km per hour, which was well above the speed limit of 70 km per hour for that stretch of the road and that Tan was wholly responsible for the accident.

6 The implications of Mr Koay’s report need not be considered because the parties reached a settlement on the issue of the deceased’s liability for the accident on the first day of the trial. Under the settlement, it was agreed that the deceased should bear 5% of the responsibility for the accident. In view of the settlement, interlocutory judgment was entered against the defendants for

95% of the damages assessed as due to the Estate and to Mdm Sulastri for her dependency claim.

The claims of the Estate

7 The deceased died intestate. Upon the application of Mdm Sulastri and her daughter, Ms Nur Fatin binte Mohamed Ismail (“Nur Fatin”), the Family Justice Courts issued the Grant of Letters of Administration on 26 March 2015.

8 The Estate claimed general damages for bereavement, which amounted to \$15,000, as well as the following special damages:

| | | |
|-----|---------------------------------------|---------|
| (a) | Funeral expenses | \$1,300 |
| (b) | Cost of the letters of administration | \$4,115 |
| (c) | LTA Transfer fee | \$11 |
| (d) | PIN fee | \$5.35 |
| (e) | Tombstone | \$1,000 |
| (f) | Loss of the motor-cycle | \$2,000 |
| (g) | Towing fee | \$35. |

9 The claim for damages for bereavement was accepted by the defendants, who also admitted liability for items (a) – (d) of the special damages listed in the above paragraph. However, the defendants denied liability for the cost of the deceased’s tombstone, the loss of the motor-cycle

and the towing fee for removing the damaged motor-cycle from the accident scene.

10 The defendants initially contended that the claim of \$1,000 for the deceased's tombstone should be dismissed because there was no documentary evidence of any payment for this alleged expense. On the last day of the trial, Mdm Sulastri finally furnished a receipt for \$900 from Jasman Marble Contractor, who installed the deceased's tombstone. The defendants accepted the authenticity of the marble contractor's receipt and in their closing submissions, they agreed to pay the said \$900.

11 The defendant rejected the Estate's claim for \$2,000 for the loss of the deceased's motor-cycle on the ground that there was no documentary proof of this loss. They were justified in doing so as Mdm Sulastri's evidence on this claim was most unsatisfactory. She initially testified that the estimated value of \$2,000 was furnished by the "shop people", who wanted to scrap the motor-cycle. She also claimed that she possessed a document from the shop in question that stated that the motor-cycle was worth \$2,000. When it was pointed out to Mdm Sulastri that the document issued by the "shopkeeper" on the estimated value of the deceased's motor-cycle was not exhibited in her affidavit of Evidence-in-Chief ("AEIC") or in other documents before the court, she maintained that she had the said document in her possession and added that it was perhaps in her own files. However, she retracted her testimony a few minutes later and admitted that she had no such document in her possession. She then admitted that the estimated value of \$2,000 had not been suggested by the alleged "shopkeeper", as she had testified that she claimed \$2,000 for the loss of the motor-cycle after discussing the position with her counsel.¹ As there was insufficient evidence of the value of the

deceased's motor-cycle, the Estate's claim of \$2,000 for the deceased's motor-cycle is dismissed.

12 The remaining claim of the Estate that was rejected by the defendants concerned \$35 for towing the motor-cycle from the accident scene. The defendants pointed out that the invoice furnished by Mdm Sulastri with respect to this claim which was dated 29 May 2015, more than three months after the accident, showed that \$35 was paid for "repair" and did not indicate that any towage services were undertaken. As such, the Estate's claim for this sum is dismissed.

The dependency claim

13 The legal basis for Mdm Sulastri's dependency claim is found in sections 20(1) and 20(2) of the Civil Law Act (Cap 43, Rev Ed 1999) ("the CLA"), which provides as follows:

Right of action for wrongful act causing death

20.—(1) If death is caused by any wrongful act, neglect or default which is such as would (if death has not ensued) have entitled the person injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured.

(2) Subject to section 21(2), every such action shall be for the benefit of the dependants of the person (referred to in this section and in sections 21 and 22 as the deceased) whose death has been so caused.

14 Section 20(8)(a) of the CLA provides that a dependant of a deceased includes the wife, husband, parent or child of the deceased. As such, Mdm

¹ Notes of Evidence, Day 2, p 16, lines 15-16.

Sulastri is a dependant of the deceased and is entitled to claim damages for loss of dependency.

15 As for how damages for a dependency claim are to be assessed, section 22(1)(A) of the CLA provides as follows:

In assessing the damages under subsection (1), the court shall take into account any moneys or other benefits which the deceased would be likely to have given to the dependants by way of maintenance, gift, bequest or devise or which the dependants would likely to have received by way of succession from the deceased had the deceased lived beyond the date of the wrongful death.

16 In relation to Mdm Sulastri's dependency claim, some salient facts should be noted. At the time of the accident, the deceased was aged 51 years and 11 months. He and Mdm Sulastri, who is now 47 years old, have two children. Their daughter, Nur Fatin, who is now 25 years old, holds an administrative job while their son, Mr Mohamed Iskandar bin Mohamed Ismail ("Mohamed Iskandar"), who is now 24 years old, is currently enrolled at the Institute of Technical Education ("ITE") in a course leading to a Diploma in Mechanical Engineering. He is expected to graduate in 2018.

17 The deceased held two jobs at the time of his death. He was employed as a tool maker by Trend Singapore West Pte Ltd ("Trend Singapore") and his last drawn salary at Trend Singapore was \$2,140.

18 Apart from his full-time job at Trend Singapore, the deceased worked as a part-time delivery man for Niche Courier Services Pte Ltd ("Niche Courier"), a company that has a contract with McDonalds to deliver food to McDonalds' customers. He was not an employee of Niche Courier or McDonalds and he earned \$5.20 per hour for working in the midnight shift. His earnings as a delivery rider varied from time to time depending on the

number of hours of work. Niche Courier's director, Mdm Chan Hui Kiang, testified that the deceased's average monthly earnings from her company amounted to \$1,466.83.

19 The deceased's earnings were not the only source of financial support for Mdm Sulastri as she admitted that her daughter, Nur Fatin, who has been working for a number of years, gave her around \$600 every month and that for 3 years before the deceased passed away, she was dependent on financial support from her daughter.² Apart from this, although Mdm Sulastri is now a homemaker, she had previously held part-time jobs to supplement her income.

20 The calculation of the damages to which a dependant is entitled for loss of dependency is done by what is known as the multiplier-multiplicand approach. The multiplier refers to the number of years for which a dependant can claim for his or her loss while the multiplicand relates to the value of the dependency per year.

The multiplier

21 In the context of the multiplier for a dependency claim, the Court of Appeal stressed in *Ho Yeow Kim v Lai Hai Kuen* [1999] 1 SLR(R) 1068 ("*Ho Yeow Kim*") that each case must be taken on its own facts. The court noted (at [32]) that the important factors in selecting the multiplier for a dependency claim are the age and expected working life of the deceased, because he is the source of the dependency, and coupled with these factors are the age and expected life span of the deceased's dependants. Furthermore, for the determination of the appropriate multiplier, a discount is applied to the number of years a victim of an accident may be expected to have continued to work if

² Notes of Evidence, Day 2, p 42, lines 1-4.

not for the accident to take into account the vicissitudes of life and the fact that there is an upfront payment of damages for loss of dependency.

22 Initially, Mdm Sulastri pleaded that the multiplier should be 7 years and the defendants accepted that this should be the multiplier for her case. However, during the trial, she amended her claim to increase the multiplier from 7 years to 10 years. She contended that the deceased, who was aged 51 years and 11 months at the time of the accident, was a hardworking man who was in good health. As such, he was likely to have worked until he was 70 years old and she asserted that a multiplier of ten years would be appropriate in the circumstances of this case.

23 In response to Mdm Sulastri's new position on the multiplier, the defendants submitted in their closing submissions that the appropriate multiplier in this case should be not more than 8 to 9 years as the deceased was almost 52 years old at the time of the fatal accident. More importantly, there was insufficient evidence that he would have worked past the usual retirement age.

24 To support her case that the multiplier should be 10 years, Mdm Sulastri relied on *Lassiter Ann Masters (suing as the widow and dependant of Lassiter Henry Adolphus, deceased v To Keng Lam (alias Toh Jeanette)* [2005] 2 SLR(R) 8. In this case, the deceased, who controlled two companies in the real estate business, was 48 years old when he was killed while crossing a road. The Assistant Registrar adopted a multiplier of eight years for a dependency claim by his widow. Woo Bih Li J, who heard the appeal against the Assistant Registrar's decision, accepted that the deceased could have worked until he was 70 years old in view of his good health, working habits and ambitious character. This meant that he would have worked for another 22

years had he not been knocked down and killed in the road accident. As such, the judge increased the multiplier from 8 years to 10 years. The defendants pointed out that despite the increase, the multiplier of 10 years was only around 54% of the 22 years that the deceased would have continued to work had he not been knocked down and killed in the accident.

25 The defendants, on the other hand, pointed out that *Ng Kum Thong v Moktar bin Yusof* [2012] SGHC 254 (“*Ng Kum Thong*”) supports their contention that the multiplier should be less than 10 years. In that case, the deceased was knocked down by a lorry while he was riding a bicycle. He was a cleaning supervisor and he was 58 years old at the material time. His employer stated in a letter that there was no retirement age for cleaners due to labour shortage and the court accepted that the plaintiff could have continued to work as a cleaning supervisor until he was 75 years old. As such, he could have worked for another 17 years had he not been killed in the accident. Lee Sei Kin J found that a multiplier of 11 years was appropriate. This meant that the multiplier was around 65% of the remaining 17 years of the deceased’s working life if he had not been killed in the accident.

26 While the deceased in the present case appears to have been a hardworking man, the fact remains that unlike *Ng Kum Thong*, where evidence was adduced from the claimant’s employer to show that he would have been able to work until he was 75 years old, no one from Trend Singapore came to court to testify as to how long more the deceased could be expected to work as a tool maker in that company. Assuming that the deceased, who was already almost 52 years old when the accident occurred, could have worked until he was around 65 – 67 years of age, he would have 13 – 15 years of working life ahead of him but for the unfortunate road accident at Clementi. Given that there should be a discount for the vicissitudes of life and receiving an upfront

payment, I hold that a multiplier of 9 years with respect to the deceased's employment at Trend Singapore would be appropriate.

27 Different considerations arise with respect to the deceased's second job as a midnight shift delivery rider with Niche Courier to deliver food to McDonalds' customers. For this delivery job, a multiplier of 9 years would certainly be quite inappropriate. The deceased was not an employee of Niche Courier and he did not have a permanent position in this company. Furthermore, as was conceded by Niche Courier's director, Mdm Chan Hui Kiang, during cross-examination,³ there is no guarantee that McDonalds will continue to award Niche Courier the contract for delivering food to its customers for the next nine years after the death of the deceased. It also cannot be overlooked that the deceased's second job as a delivery rider for Niche Courier involved working on the midnight shift after having worked a full day at Trend Singapore from 8 am to 5.30 pm on weekdays and that the deceased did not hold two jobs until 2009.

28 In any case, when asked whether or not the deceased would have continued to work as a delivery rider for Niche Courier indefinitely had he not been killed in the accident, Mdm Sulastris readily testified that he would not have done so. The relevant part of her testimony during cross-examination is as follows:

Q: Madam, my question to you is: Would it be ... reasonable for us to say that once ... your two children have started working, the expenses clearly would be less because they can look after themselves? Your husband would not need to carry on that ... second job at middle of the night---at midnight.

A: Yes, I agree.

³ Notes of Evidence, Day 1, p 15, lines 27-29.

29 Furthermore, when re-examined by her own counsel, Mr Andrew Hanam, Mdm Sulastri confirmed that the deceased would have stopped working for Niche Courier after 2018 and would only work for Trend Singapore from that year. The relevant part of the proceedings is as follows:⁴

Q: *Did your husband inform you whether he would be prepared to give up his second job?*

A: Yes.

Q: What did he tell you?

A: If my son completed schooling and has a full-time job, he would stop work.

....

Q: So in other words, your husband would only have one job after 2018?

A: Yes.

Q: Did your husband indicate if he would take on another second job after 2018? Or after giving up the courier job?

A: He wants to work full-time one job, he would no longer be working two jobs.

Q: *So he would stay with the tool maker job?*

A: Yes.

[emphasis added]

30 Faced with the evidence, Mdm Sulastri conceded in her closing submissions that she should not expect the second job at Niche Courier to be taken into account after 2018. It is trite that a multiplier may be split into periods, each of which has a different multiplicand because of changed circumstances during the different periods. In view of the circumstances and Mdm Sulastri's testimony that the deceased planned to stop working for Niche Courier in 2018, I hold that in relation to the deceased's second job at

⁴ Notes of Evidence, Day 2, p 65, lines 25-29 and p 66, lines 2-8.

Niche Courier, a multiplier of three years and six months years would suffice.

The multiplicand

31 In *Ho Yeow Kim*, the Court of Appeal pointed out (at [16]) that damages in relation to a claim for dependency “represent the injury to the dependants resulting from the death of the deceased”. The court cited with approval the House of Lords’ decision in *Davies v Powell Duffryn Associated Collieries Ltd* [1942] AC 601, where Lord Wright held (at p 611) that in an action for a dependency claim by a wife or other member of the family, the court awards “such damages as may be thought proportioned to the injury resulting to such parties from the death”. The court accepted Lord Wright’s view that “damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value” and that the calculation of the value of the dependency, otherwise known as the multiplicand, is a matter of hard dollars and cents subject to the element of reasonable future possibilities.

32 For the purpose of determining the appropriate multiplicand, there are, as a general rule, two approaches for determining the appropriate multiplicand for a dependency claim. In *Hanson Ingrid Christina and others v Tan Puey Tze and another appeal* [2008] 1 SLR(R) 409 (“*Hanson Ingrid Christina*”), Judith Prakash J, as she then was, explained (at [26]):

The final aim of any court in calculating loss of dependency is to make a direct assessment of the value of the reasonable expectation of pecuniary benefit: *Gul Chandiram Mahtani v Chain Singh* [1999] 1 SLR(R) 154. This may be done in two ways: (a) the court may simply add together the value of the benefits received by the dependants from the deceased (“traditional method”); or (b) the court may deduct a percentage from the deceased’s net salary consisting of his or her exclusively personal expenditure (“percentage deduction method”).

33 Where the traditional method of assessment is employed, the claimant must prove the value of the benefits received by him or her from the deceased. In contrast, there is no need for this to be done under the percentage deduction method. In *Harris v Empress Motors Ltd* [1984] 1 WLR 212 (“*Harris*”), where the English Court of Appeal considered a dependency claim by a wife and her two children on the basis of deduction of a percentage from the deceased’s net income, O’Connor LJ explained what the percentage deduction method of assessing a dependency claim entails as follows (at 217):

In times past the calculation called for a tedious inquiry into how much housekeeping money was paid to the wife, who paid how much for the children's shoes, etc. This has all been swept away and the modern practice is to deduct a percentage from the net income figure to represent what the deceased would have spent exclusively on himself. *The percentages have become conventional in the sense that they are used unless there is striking evidence to make the conventional figure inappropriate because there is no departure from the principle that each case must be decided upon its own facts.* Where the family unit was husband and wife the conventional figure is 33 per cent and the rationale of this is that broadly speaking the net income was spent as to one-third for the benefit of each and one-third for their joint benefit. Clothing is an example of several benefit, rent an example of joint benefit. No deduction is made in respect of the joint portion because one cannot buy or drive half a motor car. Part of the net income may be spent for the benefit of neither husband nor wife. If the facts be, for example, that out of the net income of £8,000 p.a. the deceased was paying £2,000 to a charity the percentage would be applied to £6,000 and not £8,000. Where there are children the deduction falls to 25 per cent; as was the agreed figure in the *Harris* case.

[emphasis added]

34 The percentage deduction method of assessing a dependency claim may be inappropriate in some circumstances. In *Hanson Ingrid Christina*, Judith Prakash J explained (at [26]) that while the percentage deduction method “is a good guide when a stable pattern has been established in a marriage and virtually all net earnings are spent on living expenses, it would

not be appropriate where, for example, the dependant is a young childless widow, or the husband is a high earner who may well spend a higher proportion on himself”.

35 Mdm Sulastri wanted her dependency claim to be assessed on the basis of the percentage deduction method and not the traditional method. In paragraph 20 of her reply submissions, her position was put as follows:

[T]he plaintiff submits that the only relevant method for the Court to apply in assessing the Plaintiff’s dependency claim is the percentage method since, in the present case, *the Plaintiff is unable to adduce any evidence of the actual or reasonable estimates of how much the Deceased was providing for her.*

[emphasis added].

36 If the percentage deduction method is applied to Mdm Sulastri’s dependency claim, a deduction of one-third of the deceased’s monthly take-home salary (“monthly income”) would be made for her husband’s expenses for the purpose of determining the multiplicand. However, she was not content with the conventional deduction and claimed that only 10 per cent of the deceased’s income should be deducted for his own expenses and that she should be awarded 90 per cent of the deceased’s monthly income because that was the amount that she received from him every month.

37 Strangely, Mdm Sulastri contended that as she was relying on the percentage deduction method and not the traditional method of assessing a dependency claim, she need not furnish documents to the court to prove that she received 90% of the deceased’s monthly income. When cross-examined, she admitted that she had the relevant documents in her possession to assist the court but she steadfastly refused to furnish these documents to the court to prove her monthly expenditure. Her counsel, Mr Hanam, explained why in his view, she did not and need not furnish documentary evidence of her monthly

expenses to the court to support her contention that she was entitled to 90% of the deceased's monthly income in the following terms:⁵

[T]he plaintiff's case is straightforward. There are two ways that we can prove dependency. One would be to show the expense and the amounts that the plaintiff had incurred and to claim for that amount, as being a loss that is occasioned to the plaintiff.

The other way is ... to look at the deceased's income and then to persuade the court whether it should be around two-thirds of the income that should be awarded to the plaintiff as dependency, or something perhaps more than two-thirds, if we can show the Court that the deceased was a frugal man and he was a generous husband. We are going by the second approach, as our affidavit shows, which is why we are not bothered to exhibit documents on her expenses because that's irrelevant as far as the second approach goes.

38 Mdm Sulastri's position is flawed because the ramifications of the percentage deduction method were misunderstood. This method, as explained by O'Connor LJ in *Harris* (see [33] above), is intended in appropriate cases to avoid a tedious inquiry into how much housekeeping money was paid to the wife. Notably, O'Connor LJ explained that the percentage to be deducted from the deceased's earnings has become conventional in the sense that they are used unless there is *striking evidence* to make the conventional figure inappropriate because each case must be decided on its own facts.

39 It follows that a person in Mdm Sulastri's shoes, who is claiming that less than the conventional percentage of one-third should be deducted from the deceased's monthly income for the deceased's own expenditure and that he or she is entitled to more than two-thirds of the deceased's monthly income, must furnish evidence to support the claim. As such, it would be to her advantage if she justified her claim by furnishing the best available evidence, which would

⁵ Notes of Evidence, Day 2, p 23, lines 16-30.

include the documents that might help to show just how much she had received from the deceased every month.

Evaluation of Mdm Sulastri's evidence

40 As Mdm Sulastri declined to produce relevant documents to the court to prove her claim, there was no evidence that the deceased gave her 90% of his monthly income other than her bare testimony. Her counsel, Mr Hanam, submitted that her evidence should be given “significant weight” because she has proven herself to be a credible witness. However, her evidence on what she received from the deceased every month was not credible. Far too often, her evidence was rather contrived and contradictory and she undermined her case by changing her evidence to suit her purposes before she finally admitted that she received far less than what she originally claimed to be the monthly amount given to her by the deceased.

41 Mdm Sulastri appeared to be a rather simple lady who wanted to say anything to advance her claim for dependency, regardless of the effect on the credibility of her case. She clutched at straws in her attempt to buttress her claim that she received 90% of the deceased's salary every month by saying that the deceased's Post Office Savings Bank (“POSB”) account book showed that he handed 90% of his monthly income to her. It was quite obvious that while the deceased's POSB account book showed that he withdrew his monthly income *in cash* and kept very little money in the account, it did not show that he handed over the money withdrawn by him to Mdm Sulastri or to anybody else. Indeed, other than her uncorroborated evidence that 90% of the deceased's salary was handed over to her in cash, there was no evidence of what the deceased did with the money that he withdrew from his POSB account.

42 Mdm Sulastri's initial position was that the deceased handed over 90% of his monthly income to her *in cash* every month and that she kept all the cash, which exceeded \$3,000, in her wallet.⁶ In her AEIC, she stated at paragraph 189 as follows:

My husband was a frugal man who would hand over his monthly salary to me and I would give him a small allowance to cover the cost of petrol for his motor-cycle and basis living expenses. *The bulk of my husband's earnings, about 90%, would be spent on me and on Mohamed Iskandar.*

[emphasis added]

43 While Mdm Sulastri claimed that the deceased gave her 90% of his monthly income, she did not specify the amount received by her and she admitted that she did not receive the same amount from the deceased every month. The relevant part of her testimony during cross-examination is as follows:⁷

Q: *So am I correct to say that you actually did not know how much [the deceased] gave you every month?*

A: *Well, the payment is not fixed, sometimes more, sometimes less.*

Q: Could I suggest that you just told the interpreter "not consistent"?

Interpreter: *And she used the word "consistent", yes.*

[emphasis added]

44 If the deceased had really given Mdm Sulastri 90% of his monthly income, he would only have had 10% of his monthly income, or a little more than \$300, to spend on himself. However, when cross-examined, Mdm Sulastri testified that the deceased's personal expenses amounted to around

⁶ Notes of Evidence, Day 2, p 60, lines 2-4.

⁷ Notes of Evidence, Day 2, p 35, lines 25 – 32.

\$30 per day, which meant that he spent around \$900 per month. This sum exceeded 25% of his monthly income. Her testimony was as follows:⁸

Q: So would you agree with me that your husband's cost of daily needs of daily expenses for himself would be probably a number close to about \$50 a day, just for himself, adding up all the costs that he needs to maintain?

....

A: Less than \$50.

Q: *Can you give us an estimate?*

A: *About \$30....*

....

Q: Okay. Can I suggest to you, when you said \$30 ... you meant to say that in your family finance, *you budget ... for your husband every day about \$30 for his living expenses.*

A: *Yes.*

[emphasis added]

45 When Mdm Sulastri was reminded by the defendants' counsel, Mr Patrick Yeo Kim Hai ("Mr Patrick Yeo"), that her evidence was that the deceased had spent \$900 on himself every month, she must have realised the implications of her evidence on her claim as she suddenly changed tack and informed the Court that "maybe" she had given wrong evidence by mistake. She then testified most unconvincingly that the deceased's personal expenses amounted to only \$200 per month. This meant that the deceased had merely around \$6.66 per day to pay for his lunch, drinks, other personal expenses and the petrol required for his motor-cycle to travel from his home to Trend Singapore's office and back, and for the many trips in the night to deliver food

⁸ Notes of Evidence. Day 2, p 27, lines 2-11, p 28 lines 20-23.

to McDonald's customers. The relevant part of her testimony that the deceased spent \$30 per day and her rather sudden change of position is as follows:⁹

Q: Can I suggest to you, when you said to me or to the Court, you meant to say that in your family finance, *you budget--- ... for your husband every day about \$30 for his living expenses?*

A: *Yes, about that.*

Q: Yes, and if we were to then project this over one month, we are talking about ... something like as much as \$900 a month, right?

....

A: *Sorry, Sir, my husband received from me \$200 a month for his own expenses.*

Q: *Mdm Sulastri, you went from \$30 a day, when I ask you to project one month, suddenly it becomes 200. Why do you need to say something which is inconsistent with the earlier statement?*

A: *Maybe that was my mistake.*

Q: So Mdm Sulastri, which mistake? Which statement is a mistake? \$30 per day is a mistake or \$200 a month is a mistake?

A: The \$30 a day is a mistake.

[emphasis added]

⁹ Notes of Evidence, Day 2, p 28, lines 20-32 and p 29, lines 1-3.

46 When Mr Patrick Yeo suggested that a figure of between \$30 and \$50 was really what the deceased had required for his daily expenses, including the cost of petrol, Mdm Sulastris stood her ground and testified as follows:¹⁰

Q: Mdm Sulastris, I suggest to you that it's reasonable to--
-for me to say that your husband's daily needs when he's ... working outside earning two income from two jobs to support the family, right. He will ... probably spend or needs to spend about 30 to 50 dollars per day. Will you agree with me that that's a reasonable sum? That includes all his expenses - eating, his petrol, his road tax, his ERP, maintenance of his motor-cycle, and, of course, as you said, his pocket money. Right? 30 to 50 dollars a day. It's not too much. Agree with me?

A: Well, whatever it is, I think *it is sufficient for my husband what I gave him, \$200 a month.*

[emphasis added]

47 Mdm Sulastris's testimony that she gave her husband only \$200 per month for his personal expenses and that she kept 90% of his monthly income to spend on herself and her son was completely undermined by her subsequent testimony that the deceased paid the electricity and water bills, telephone charges, conservancy charges and property tax. The relevant part of the proceedings is as follows:

Q: [C]an I suggest to you that before this - the accident happened in February last year, ... the running of the household ... such as paying bills, ... managing family finances; ... these were matters which you left to your husband because ... your educational level is very low, you left him to organise it.

A: Yes.

Q ... [S]o would you also agree with me that every month, ... you have some fixed expenses, you have to pay the mortgage, you have to pay the utility bills, you have to pay electricity, water, telephone, cable TV, the service

¹⁰ Notes of Evidence, Day 2, p 31 lines 1-10.

and conservancy charge for your HDB flat *These were monies which your husband took care of?*

A: Yes.

[emphasis added]

48 When Mdm Sulastri was re-examined by her counsel, she initially stuck to her position that the deceased gave her all his monthly income, out of which she gave him only \$200 per month. She testified as follows: ¹¹

Q: ... And you said the amount [your husband] gives you varies depending on whether he does overtime?

A: Yes.

Q: But this would be roughly around 3,400 a month?

A: Yes.

Q: And then how much would you give him back from this 3,400?

A: 200.

...

Q: *And does your husband come back to you to---for more money?*

A: No.

[emphasis added]

49 Within minutes after Mdm Sulastri testified that she gave the deceased only \$200 out of the \$3,400 that he allegedly handed over to her and that he did not come back to her for more money, she torpedoed her case that she was entitled to 90% of the deceased's monthly income when she testified as follows:¹²

Q: And so this \$3,400 that he gives you, after giving him back the 200, how much would you have left?

¹¹ Notes of Evidence, Day 2, p 60, lines 5-11, 18-19.

¹² Notes of Evidence, Day 2, p 60, lines 20-22.

A: 1,000 plus.

50 Obviously, there was a major problem with Mdm Sulastri's evidence because if she had handed over only \$200 to the deceased, she should have \$3,200 in her hands and not "1,000 plus". Nonetheless, when Mr Hanam asked the same question again she reiterated her new position as follows:¹³

Q: Can you tell us how much would be left for you to spend after giving the \$200 to your husband?

A: About 1,100.

51 Although Mr Hanam thought that Mdm Sulastri might have been confused by his question, she reiterated once again that she had only \$1,100 to spend each month. More importantly, she testified that she took only "\$1,000-over dollars" for herself and returned the "balance of the deceased's monthly income to him". Her new testimony was as follows:¹⁴

Q: Madam, at the end of every month, you say you have \$1,100 left?

A: *That 1,100 is not the balance, it's what I have to spend that month.*

Q: So before coming to the 1,100, what have you spent on?

A: *I took 1,000-over dollars for myself, for my family's expenditure, the balance I gave it back to my husband for him to pay for all the necessities, the expenditure which we---which I have already listed down.*

[emphasis added]

¹³ Notes of Evidence, Day 2, p 61, lines 1-3.

¹⁴ Notes of Evidence, Day 2, p 62, lines 23-27.

Conclusion on multiplicand

52 In view of Mdm Sulastri’s evidence that she only had around \$1,000 to spend, and that she gave the balance back to the deceased, as well as her contradictory evidence as to what the deceased spent on himself each month, there was no doubt whatsoever that she had failed to prove that the deceased gave her 90% of his monthly income.

53 For the purpose of determining the appropriate multiplicand, a number of points may be noted. To begin with, it was evident that Mdm Sulastri, who testified that the amount given to her each month by the deceased was not “consistent”, was not wholly dependent on the deceased for financial support as she admitted that her daughter, Nur Fatin, had been supporting her financially three years before the deceased was killed. The relevant part of the proceedings is as follows:¹⁵

Q: Can I suggest to you, Madam, that you were depending on your daughter for support from this bank account that you showed us?

A: Yes.

....

Q: With your three years record, can I suggest to you that your daughter has been supporting you for a period of 3 or more years *before the accident* at least?

A: Yes.

[emphasis added]

54 Secondly, Mdm Sulastri has worked previously as a part-time helper at Prima Deli. In fact, she received a workfare bonus from the Government in November 2012.

¹⁵ Notes of Evidence, Day 2, p 43, lines 10-12 and 28-32.

55 Thirdly, although Mdm Sulastri was not willing to furnish documents in her possession which helped to show how much financial support she received each month from the deceased, the fact remains that she finally admitted on numerous occasions that the deceased gave her only \$1,000 or “1,000-over dollars” each month to spend on herself. This means that she received around a third of the deceased’s monthly income.

56 As Mdm Sulastri had given reasonable estimates of the financial support provided by the deceased, the traditional method of assessment of damages for dependency should be employed to determine the damages to which she is entitled for loss of dependency. In computing the amount due to her as damages for her dependency claim, it must be borne in mind that the deceased paid for joint expenses, including the monthly utility bills and telephone bills, conservancy charges and property tax. These expenses were not hefty. She testified that her monthly utilities bill for electricity, water and gas was slightly more than \$100, her monthly telephone bill amounted to about \$40 per month and the monthly service and conservancy charges for her flat totalled around \$69. The monthly housing loan repayment for her HDB flat was made by withdrawals from the deceased’s CPF funds. Internet services were paid for by her daughter, Nur Fatin.¹⁶

57 Mdm Sulastri’s counsel contended that if the court does not accept her evidence that the deceased gave her 90% of his monthly income while he was alive, she should, at the very least, be given 75% of the deceased’s monthly income. Reliance was placed on *Zhang Xiao Ling (personal representative of the Estate of Chan Tak Man, deceased) v Er Swee Poo and Another* [2004] SGHC 21 (“*Zhang Xiao Ling*”). However, that case is distinguishable from

¹⁶ Notes of Evidence, Day 2, p 25, lines 18-21.

Mdm Sulastri's case as that case concerned a claim by a widow who had four young children. The eldest child was aged a little over 13 years and the youngest child was only 4 ½ years old. Notably, in *Zhang Xiao Ling*, the widow only received 40% of the amount awarded to her and her children as damages for dependency, while each of her children was given 15% of the said sum. In contrast, Mdm Sulastri's two children were already adults at the time of the accident and, as mentioned, one of them was in fact already providing financial support to her from as early as three years before the deceased was killed in the accident.

58 The defendants submitted that if the traditional method is used to assess the damages for loss of dependency to which Mdm Sulastri is entitled, a provision of 50%-60% of the deceased's monthly income is not unreasonable. I agree and erring on the side of generosity, I award Mdm Sulastri 60% of the deceased's monthly income as damages for loss of dependency. For the purpose of determining the multiplicand, the deceased's gross monthly salary from Trend is \$2,140 while his gross monthly income from Niche Courier is \$1,466.82.

59 It is clear from the decision of the Court of Appeal in *Teo Sing Keng and another v Sim Ban Kiat* [1994] 1 SLR(R) 340 that a deduction of income tax should, in accordance with the rule in *British Transport Commission v Gourley* [1956] AC 185, be made as such damages represent the compensation for non-receipt of a taxable income.

CPF contributions

60 CPF contributions may be taken into account for a dependency claim if the dependant has a reasonable expectation of enjoying the benefit of the

CPF money. In *Singapore Bus Services (1978) Ltd v Lim Soon Yong* [1983–1984] SLR(R) 159 (“*Singapore Bus Services*”), where the Court of Appeal rejected the argument that CPF contributions cannot form part of a dependency claim, F A Chua J, who delivered the judgment of the court, stated as follows (at [15]):

CPF contributions are not chargeable with estate duty. The money does not go to the estate of the contributor.... Had the deceased lived to the age of 55 he would have withdrawn the sum standing to his credit in the CPF and the widow and children would necessarily have benefited from the deceased having this money if not for this accident. In our view, therefore, the CPF contributions do form part of the widow’s dependency claim.

61 The rules on withdrawal of CPF monies at the age of 55 have changed since the earlier cases such as *Singapore Bus Services*. Under the present CPF rules on withdrawal of funds, the deceased is not entitled to withdraw all his CPF funds upon reaching the age of 55. Instead, he would have been required to keep a minimum sum (the “retirement sum”) in a retirement account. Different retirement sums are applicable to different cohorts reaching the age of 55. In the case of the deceased, he would have had to keep \$85,500 in his retirement account and only the amount exceeding this figure could have been withdrawn by him had he reached the age of 55. He would then have been placed on the “CPF Lifelong Income for the Elderly” scheme (“CPF LIFE”), which is an annuity scheme providing a lifelong monthly payout to a CPF member starting from the age of 65.

62 The defendants accepted that the deceased would have had enough money in his CPF account to allow him to withdraw some money if he had reached the age of 55. They accepted, and rightly so, that Mdm Sulastri had

a reasonable expectation of receiving a portion of the sum that could have been withdrawn.

63 A question arises as to whether Mdm Sulastri can also expect to benefit from the monthly payouts from CPF LIFE had the deceased reached the age of 65. The defendants argued that with the changes in the CPF rules on withdrawal of CPF funds at the age of 55, Mdm Sulastri has no reasonable expectation of benefiting from the deceased's CPF contributions during the multiplier period.

64 Notably, only a few months ago and long after the changes in the CPF rules on withdrawal of CPF funds at the age of 55, in *Zhu Xiu Chun (alias Myint Myint Kyi) v Rockwill Trustee Ltd (administrators of the estate of and on behalf of the dependants of Heng Ang Tee, Franklin, deceased) and other appeals* [2016] 5 SLR 412 (“*Zhu Xiu Chun*”), the Court of Appeal endorsed the view of the authors of *Assessment of Damages, Personal Injuries and Fatal Accidents* (LexisNexis, 2nd Ed, 2015) (at para 9-46) that the loss attributable to the cessation of contributions to the CPF forms part of a dependency claim. In fact, the Court of Appeal went so far as to refer [at [115]] to the view of the Singapore Academy of Law Reform Committee's report on *Loss of Inheritance and Savings* in April 2008 that contributions to the CPF may be included in the figure of annual dependency to be multiplied by the multiplier or excluded from the figure of annual dependency and a separate and additional sum awarded in respect of them. Chao Hick Tin JA, who delivered the judgment of the Court of Appeal, stressed [at [149]] that the focus is still entirely on the “reasonable expectation” of the dependant in question.

65 When considering whether Mdm Sulastri has a reasonable expectation of benefiting from the increase in the deceased's CPF funds during the multiplier period, the fact that Singaporeans are living much longer nowadays must be borne in mind. In their Retirement Booklet, ([www.cpf.gov.sg/Assets/members/Document/CPF_Retirement Booklet](http://www.cpf.gov.sg/Assets/members/Document/CPF_Retirement_Booklet)), the CPF Board stated as follows (at p 8):

About half of Singaporeans who are 65 years old today are expected to live beyond the age of 85 and a third of them will live beyond 90 years old.

66 The deceased was only aged 51 years and 11 months when he passed away and Mdm Sulastri was then around 44 years old. With the above-mentioned life expectancy figures for Singaporeans, there is force in Mdm Sulastri's argument that she has a reasonable expectation of enjoying the benefit of the increases in the deceased's CPF account during the multiplier period.

67 Mdm Sulastri contended that her share of the amount that the deceased could have withdrawn from his account at the age of 55 and of the CPF contributions during the multiplier period should be assessed on the basis that their two adult children have no share in the said funds. It is worth nothing that in *Zhu Xiu Chun*, Chao Hick Tin JA stated (at [148]) that with respect to claiming for loss of CPF contributions, the fact that a dependant would cease to be a dependant at the time the monies can be withdrawn is not fatal to the said dependant's claim. He added that the fact that the child would no longer have been dependent on the deceased by the time the CPF monies can be withdrawn is only one factor which the court will take into account in determining whether that child is entitled to a share of the CPF funds in question.

68 In *Gul Chandiram Mahtani and another (administrators of the estate of Harbajan Kaur, deceased) v Chain Singh and another* [1998] 2 SLR(R) 801 (“*Gul Chandiram Mahtani*”), Rajendran J did not award the deceased’s daughter, who was almost 8 years old at the time her mother was killed in an accident, a share of her lost CPF contributions. He explained his decision (at [32] and [33]) as follows:

32 The question that has to be asked is whether it can be said that the daughter, at the time the deceased would have withdrawn the CPF moneys, would have a reasonable expectation of benefitting from these funds.

33. In this case, it is highly unlikely that the daughter would be financially dependent on the contributor at the time the moneys are withdrawn. It is therefore difficult to say that the daughter had a reasonable expectation of benefitting from the CPF funds. Considering the income bracket that the deceased was in and considering that she had hardly any savings to show for the years she had worked, it also seems unlikely that any part of the CPF moneys would remain to constitute part of her estate or indeed that the deceased would have had very much other assets in her estate. In the circumstances of the present appeal, I find that the likelihood of the daughter getting a pecuniary benefit from the moneys in the deceased’s CPF account either when the moneys were withdrawn or by inheritance to be a matter that is too speculative and too remote for any award of damages to be made.

69 In *Zhu Xiu Chun*, the Court of Appeal noted that in *Gul Chandiram Mahtani*, Rajendran J had focussed on the reasonable expectation of the daughter. The court further noted (at [149]) that the deceased in that case had hardly any savings and that it was unlikely that her CPF monies would constitute part of her estate.

70 In the present case, the argument against awarding any part of the deceased’s lost CPF contributions to his two children is even stronger.

Unlike the daughter in *Gul Chandiram Mahtani*, who was denied a share of her deceased mother's lost CPF contributions even though she was 8 years old when her mother passed away, the two children of the deceased in the present case, Nur Fatin and Mohamed Iskandar, were already adults when he passed away. Furthermore, as was the case in *Gul Chandiram Mahtani*, there is no evidence that the deceased in the present case had much savings when he died. In fact, he withdrew his monthly salaries from his bank account as soon as he received them. In these circumstances, the deceased's children have no reasonable expectation that they would benefit from the deceased's CPF funds. As such, for the purpose of the dependency claim, the amount that the deceased could have withdrawn from his CPF account if he had lived to the age of 55 and the CPF contributions during the multiplier period is to be divided between the deceased and Mdm Sulastri. In line with my decision to award Mdm Sulastri 60% of the deceased's monthly income, I award her 60% of the monthly addition to his CPF account.

71 In line with my findings on the multiplier, the monthly additions to the deceased's CPF account are to be computed on the basis that had he not been involved in the accident, he would have worked for another nine years at Trend Singapore. As regards CPF contributions in relation to the deceased's part-time job as a deliveryman for McDonald's food products, it must be borne in mind that the deceased was not an employee of Niche Courier. As such, this company was not obliged to pay monies in the form of employer's contributions to his CPF account. Despite this, Niche Courier encouraged him, and other employees who had been associated with it for a long time, to make a monthly contribution to their CPF accounts from the amounts paid to them for delivery services. If they did so, Niche Courier, to its credit, was prepared to contribute an amount equal to the employer's contribution had such persons been employed by it.

72 The deceased opted to contribute part of his earnings from Niche Courier to his CPF account. His CPF Statement of Accounts showed that in 2014, shortly before he passed away in February 2015, both he and Niche Courier made contributions to his CPF account every month. There is no reason to assume that had he continued to work as a part-time delivery man, this arrangement would not have continued. The relevant question here is not whether Niche Courier is or is not required to make a monthly contribution to the deceased's CPF account. Instead, the focus should be on determining his reasonably expected remuneration for his work in delivering food and this includes all financial incentives given to him by Niche Courier, whose director, Ms Chan, characterised her company's monthly contribution to the deceased's CPF account as an "incentive" given to him.¹⁷ She added that had the deceased been alive, her company would have encouraged him to continue to contribute to his CPF account. This would have benefited the deceased as the amount in his CPF account would have grown faster with Niche Courier's contributions. The total remuneration that the deceased received from Niche Courier should thus include the monies paid by that company into his CPF account. I thus find that the monthly voluntary contribution by Niche Courier to the deceased's CPF account should be taken into account for the purpose of determining the damages to which Mdm Sulastri is entitled for loss of dependency.

73 It should be noted that had the deceased been alive, he would have had to service the housing loan for his HDB flat with monthly repayments of \$819 from his CPF account. As such, his monthly housing loan repayment of \$819 for his HDB flat has to be taken into account in computing the monthly additions to the deceased's CPF account.

¹⁷ Notes of Evidence, Day 1, 29 March 2016, p 6, line 21.

Interest and costs

74 Mdm Sulastri claimed interest on all special damages at the rate of 3% per annum from the date of the accident to the date of the trial. I order that such interest is to run from the date of the deceased's death to the date of the trial.

75 I will hear the parties on costs.

Tan Lee Meng
Senior Judge

Andrew Hanam (Andrew LLC) for the plaintiff;
Patrick Yeo Kim Hai, Lim Hui Ying and Neo Eng Hong
(KhattarWong LLP) for the defendants.
