

Noor Mohammed Bin Yusoff Ali v Tan Chee Ning
[2004] SGHC 82

Case Number : Suit 1068/2002
Decision Date : 28 April 2004
Tribunal/Court : High Court
Coram : Ho Su Ching AR
Counsel Name(s) : Ramasamy K Chettiar (ACIES Law Corporation) for the Plaintiff; K Jayabalan (Madhavan Partnership) for the Defendant
Parties : Noor Mohammed Bin Yusoff Ali — Tan Chee Ning

28 April 2004

Assistant Registrar Ho Su Ching:

The plaintiff, Noor Mohammed Bin Yusoff Ali, is presently 27 years old. He was injured in a road traffic accident on 29 December 1999 when a taxi driven by the defendant collided into the motorcycle that he was riding. On 27 December 2002, interlocutory judgment was entered against the defendant for 95% of the damages to be assessed. The plaintiff made four broad areas of claims:

- (i) General Damages for pain and suffering and loss of amenities;
- (ii) Loss of earning capacity;
- (iii) Future medical expenses (including medicine and transport expenses); and
- (iv) Special damages

General Damages for Pain and Suffering

2 As a result of the accident, the plaintiff sustained a fracture dislocation of his right hip and lacerations to his right knee.

3 Dr Lee Lian Am, an orthopaedic consultant currently based at Raffles Hospital, was called to give evidence on behalf of the plaintiff. He testified that the both the MRI and CT scan done in 2003 showed that the head of the femoral had healed and that the CT scan also showed post-traumatic arthritis in the hip joint. Dr Lim stated that while the MRI did not show avascular necrosis, one cannot completely rule it out. However, Dr Lim considered the risk of the plaintiff developing avascular necrosis to be low and explained that the risk would diminish with time as one moves further away from the initial injury and that in most reported cases, avascular necrosis happens within 2 years of the initial injury.

4 Dr Lim also gave evidence that as a consequence of the injury, the plaintiff's range of movement in his hip is limited to about 90% of the normal range and that tests conducted indicates pathology affecting the hip articulation. In his view, the plaintiff who now walks with an antalgic limp (a limp caused by the pain in his hip), will not be able to stand or walk for long periods or run. As such, Dr Lim recommended that the plaintiff be permanently exempted from physical proficient tests like IPPT.

5 Dr Lim also gave evidence, that since the episode of the plaintiff's hip giving way on 14 February 2003 for which he was hospitalised for 5 days and treated conservatively, the hip condition has deteriorated because post-traumatic arthritis in his right hip that has set in. In his view, once this occurs it is very likely that the plaintiff would suffer another episode of this hip

giving way.

6 Overall, Dr Lim opined that the prognosis of the plaintiff's hip condition is not good and that it is almost inevitable that the plaintiff would require at least two hip replacements. When pressed to give an estimation of the number of hip replacement he expects the plaintiff to have, Dr Lim stated that assuming that the plaintiff has his first operation at age 40, he may possibly need 3 to 4 such operations to last him until his 80s. This is because while medical literature shows that each hip replacement has a 90 to 95% survival of about 10 years, this takes into account all ages, and studies have shown that hip replacements would last for a shorter period in the young, especially in cases where post-traumatic arthritis occurs.

7 The defendant's medical expert, Dr Pillay, an orthopaedic surgeon in private practice, agreed with Dr Lim that the bone fracture of the femoral head has united and that the possibility of avascular necrosis occurring is remote. Dr Pillay was also of the view that the hip giving way suddenly is consistent with the injury. However, he was of the opinion that although recurrence is possible, it is a rare event. He reasoned that this was because the hip giving way was not due to the presence of bony fragments (which would have been picked up by the MRIs) but probably caused by a loose piece of cartilage 'catching' the hip. He explained that had the MRIs demonstrated the presence of bony fragments which is evidence of fragmentation, then the hip giving way can recur and it calls for treatment to remove the fragments. A loose piece of cartilage on the other hand will eventually wear off and disappear on its own.

8 Dr Pillay also agreed with Dr Lim that the plaintiff would require hip replacement surgery. However, he was of the view that Dr Lim's recommendation of 3 to 4 hip replacements would "be stretching it a bit far" as the fracture to the femoral head was to a non-weight bearing area. Furthermore, there are no loose bodies and the osteoarthritis will only get worse gradually. According to Dr Pillay, two hip replacements would be a fair estimate.

9 The plaintiff claimed a total of \$40,000 for the hip injury, osteoarthritis and \$8,000 for scars and lacerations to the right knee. Two cases were cited in support of this claim. *Ravi Rai v Wang Yuen Chow* (Suit 470 of 1996) where \$43,200 was awarded for a hip injury and *Lee Woon Chee v Chang Tuck Heng* September 1991 BLD 1032 where an award of \$30,000 was made.

10 In *Lee Woon Chee*, the plaintiff sustained a posterior dislocation of the right hip joint and a fracture of the posterior hip acetabulum. Unlike the present case, there was also the complication of established avascular necrosis of the right femoral head with secondary osteoarthritis. In *Ravi Rai v Wang Yuen Chow* (Suit 470 of 1996), the plaintiff suffered severe damage to the right hip that left him with a 30 degree flexion deformity in the right hip which resulted in very marked lordosis when standing and considerable stiffness in the right hip. As a result of the injury, the plaintiff also suffered from sexual dysfunction. In assessing damages, Kan J divided the injury into 5 components. He awarded \$20,000 for the fracture to the lip of the acetabulum which required one operation, \$15,000 for a fracture to the head and neck of the femur, \$3,000 for sexual dysfunction and \$5,000 each for the osteoarthritis and lordosis. Kan J then made a reduction of 10% of the total to take into account overlapping. In the more recent case of *Poon Chee Tat v Bay Chin Siew* [2001] Mallal's Digest Para 1138, \$42,000 was awarded for a fracture of left acetabulum and left ilium with dislocation of the left hip with osteoarthritis. In that case, the fracture of the left articulum and ilium had to be operated on and fixed with a metal plate.

11 In the present case, the fracture, which was to the non-weight bearing area of the femoral head, was treated conservatively with closed reduction. The plaintiff still retains about 90% of the normal range of hip movement and while osteoarthritis has set in, there is presently no evidence of avascular necrosis, the risk of which is remote. In the circumstances, I was of the view that **\$28,000** was fair compensation for pain and suffering due to the hip injury.

12 In relation to the lacerations on the knee, the medical reports show that the lacerations have healed well and the plaintiff has no swelling of the knee and a full range knee movements. A total of 4 scars were recorded over the anterior aspect of the right knee measuring 3 cm, 2 cm, 2cm and 4cm. In view of this, I awarded **\$1,000**.

Loss of Earning Capacity

13 The plaintiff is currently a police sergeant in the Singapore Police Force ("SPF"). At the time of the accident in December

1999, the plaintiff was a police corporal and he was promoted to police sergeant in December 2000.

14 Ms Wendy Koh, Head of the Personnel Management Unit in the Manpower Department of SPF, gave evidence on the nature of the plaintiff's work and his promotion prospects. She testified that as a result of the plaintiff's medical condition, the SPF has granted him permanent light duties and has exempted him from IPPT. Mr Koh explained that with regard to the plaintiff's current post, his division has actually made arrangements to allow him to work in a "more comfortable way". This includes exempting him from 24 hours shifts and patrol duties. However, he is still required to attend to crime scenes and do field work.

15 In relation to the plaintiff's promotional prospects, she stated that the plaintiff's performance has been very good and that his current estimated potential has actually improved since after the accident. She also gave evidence that the SPF currently has no plans to exit the plaintiff despite his medical condition.

16 In the circumstances and taking into account the plaintiff's age and disabilities, I considered the defendant's submission of **\$30,000** for loss of earning capacity to be reasonable and, accordingly, made an award for the said sum under this head.

Future medical expenses

17 Based on the medical evidence and taking in account that plaintiff's job, which involves field work and attending to crime scene, is not completely sedentary in nature, I was of the view that three hip operations would be fair. Based on the Dr Pillay's estimate of \$12,000 per hip operation plus \$500 to \$1,000 for post-operative care, I awarded the sum of **\$39,000** under this head.

18 In relation to the cost of future medication and transport expenses, the parties agreed to the sum of **\$10,000**.

Special damages

19 The plaintiff made a claim of \$15,614.77 for special damages. This includes the special damages as pleaded at **\$9,614.77 (agreed)** and \$5,854.17 for further medical expenses incurred since the date of writ rounded up to \$6,000 to take into account transport expenses. The hospital bills in support of the further medical expenses were exhibited in the plaintiff's supplementary Bundle of Documents.

20 In relation to the further medical expenses, the defendant is only willing to concede liability for the sum \$4,261.41 (i.e in relation to 4 hospital bills out of which \$1,500 was paid by Medisave). This was because all other hospital bills were paid for by the plaintiff's civil service medical benefits and not by the plaintiff himself. As such, the defendants submit that the plaintiff did not incur this loss. The defendant also submitted that the sum of \$1,500 in relation to one of the four hospital bills which was paid by Medisave, ought to be re-paid into the CPF Medisave account of the plaintiff and not paid to the plaintiff directly. The plaintiff's reply submissions were curiously silent on this point.

21 In the absence of any submissions or evidence to the contrary from the plaintiff, I was satisfied that the plaintiff was not out of pocket in relation to these hospital bills for which he ought to be compensated for. As such, I awarded the sum of **\$4,261.41** in relation to the further medical expenses, out of which the sum of \$1,500, which was paid by Medisave, ought to be paid by the defendant directly into the plaintiff's CPF Medisave account : see *Regulation 20, Central Provident Fund (Medisave Accounts Withdrawal) Regulations 2001*.

Conclusion

22 In conclusion, I assessed the damages on a 100% basis to the plaintiff as:

(i)	General damages for pain and suffering	\$29,000
(ii)	Loss of earning capacity	\$30,000
(iii)	Future medical expenses	\$49,000
(iv)	Special damages	\$13,876.18
Total		<u>\$ 121,876.18</u>

23 I awarded interest at 6% per annum from the date of service of writ to the date of judgment on general damages for pain and suffering. Interest on special damages incurred before the date of judgment was awarded at 3% per annum from the date of the accident to the date of the judgment.

24 The usual consequential orders will apply. I will hear parties on costs.

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