Tan Woei Jinn v Thapjang Amorthap and Another
[2005] SGHC 53

Case Number : Suit 343/2003, RA 239/2004

Decision Date : 16 March 2005

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Namasivayam Srinivasan and See Hui Hui (Hoh Law Corporation) for the plaintiff / respondent; Patrick Yeo and Lim Hui Ying (Khattar Wong and Partners) for the defendants / appellants

Parties : Tan Woei Jinn — Thapjang Amorthap; Enbee Contractor Pte Ltd

Damages – Assessment – Plaintiff foreign worker injured in traffic accident – Defendants appealing against quantum of assistant registrar's award of damages for future loss of earnings – Plaintiff foreign worker might not spend entire working life in Singapore – Whether multiplier of 15 years for future loss of earnings appropriate – Whether two multiplicands applicable to reflect plaintiff's earnings in Singapore and in home country

Damages – Assessment – Plaintiff foreign worker injured in traffic accident – Defendants appealing against quantum of assistant registrar's award of damages for pre-trial loss of earnings – Whether assistant registrar's award for pre-trial loss of earnings correct

16 March 2005 *Judgment reserved.*

Kan Ting Chiu J:

1 This is an appeal by the defendants against awards made to the plaintiff for pre-trial loss of earnings of $37,870.77, and loss of future earnings of $320,400.

2 The awards arose out of personal injuries sustained in a motor accident between the plaintiff's motorcycle and a motor lorry on 27 April 2002. The first and second defendants were the driver of the lorry and his employer respectively.

3 The parties consented to interlocutory judgment being entered whereby the defendants were to pay the plaintiff 85% of the damages to be assessed. In the event, the parties also agreed on the damages except for the damages under appeal, which were assessed by an assistant registrar.

4 The plaintiff is a Malaysian born on 7 September 1982.[1] He left school when he was about 15 to 16 years old and worked at different jobs before coming to Singapore to work in 2000. His first job in Singapore was with a company known as Vision Design and Contracts Pte Ltd as a wooden products finisher from 12 August 2000. He left the company and worked for Chuan Fa Interior Design in December 2001. At this job in which he was described as a carpenter, his work actually involved spray-painting and varnishing finished articles. At the time when he met with the accident, he had worked in Singapore for one year and eight and a half months.

5 The injuries the plaintiff suffered were quite serious. After a period of hospitalisation and treatment in Singapore, he returned to Malaysia and did not seek employment in Singapore again. He did not work again till July 2003, when he secured employment with a relative in Malaysia repairing telephones.

6 At the assessment of damages, the assistant registrar found that the plaintiff suffered the

following disabilities:

(i) Persistent giddiness;

(ii) Poor balance;

(iii) Impairment of short-term and long-term memory;

(iv) Right ataxie hemiparesis;

(v) Right upper motor neuron facial nerve palsy;

(vi) Expressive dysphasis;

(vii) Left-right disorientation;

(viii) Inability to calculate;

(ix) Significant retrograde amnesia;

(x) Hesitancy in speech and word finding difficulties;

(xi) Intellectual deterioration;

(xii) Aggressive behaviour with hyperphagia;

(xiii) Right-sided weakness;

(xiv) Focal motor seizures involving right side of the face. [2]

7 The defendants took issue with the assistant registrar's finding that the plaintiff suffered right-sided weakness and focal motor seizures involving the right side of the face as a result of his injuries (disabilities (xiii) and (xiv) in the foregoing paragraph).

8 As the parties have agreed to a global award of $100,000 for pain and suffering, and the appeals relate to the awards pertaining to the plaintiff's earnings, the complaint over the finding on the facial seizures in relation to the damages for the loss of earnings was misconceived, because there was no connection between the facial seizures and the plaintiff's ability to work as a carpenter. It was not the plaintiff's case that he could not resume work as a carpenter because of the facial seizures.

9 Neurologist Dr Ho King Hee noted the right-sided weakness in his neurological assessment of the plaintiff on 13 February 2003. The plaintiff had complained that he could not sustain carrying loads greater than about 5kg with the right hand, and from his clinical examination, Dr Ho found mild right weakness in the right arm and right leg.

10 The defendants contended that the plaintiff did not suffer right-sided weakness because that was not noted by other medical specialists who had examined the plaintiff. As the assistant registrar had the benefit of listening to and observing all the medical witnesses, which opportunity I did not have, I will be slow to differ from her acceptance that there was right-sided weakness. In any event, the weakness was not crucial to the finding that the plaintiff could not resume his former occupation. The defendants themselves made clear in submissions that:

> It is not the Appellants' [defendants'] contention that the Respondent [plaintiff] is completely unaffected by the serious injuries sustained as a result of the accident. To the contrary, *the Appellants admit that the Respondent had suffered serious injuries with residual disabilities*. What is disputed is the extent of these disabilities, and in this regard, the Appellants submit that the Respondent's functional ability, though *decreased markedly by the accident*, was not decreased to the extent that the Respondent is unable to perform any "meaningful work" or to prevent the Respondent to participate fruitfully in society again.[3] [emphasis added]

11 Again, I would point out that when it is accepted that the plaintiff's functional ability has decreased markedly (and the 12 undisputed disabilities listed in [6] above are evidence of that), it is clear that the plaintiff cannot resume work as a carpenter, painter or varnisher.

12 The assistant registrar noted when she made the awards "that the Plaintiff is presently 20 years of age and I therefore adopted a multiplier of 15".[4] She was wrong on the age because the plaintiff was born on 7 September 1982[5] and was, in fact, about 22 years old when the awards were made.

13 In arriving at a multiplier to be applied, the approach to be taken is that if a person were older, the multiplier would be shorter, because a 50-year-old person would be expected to have a shorter remaining working life than a 20-year-old person. However, the difference of two years in the age noted is not significant when one takes into account the vagaries inherent in establishing multipliers, and I accept that 15 years is a proper multiplier to be applied.

Pre-trial loss of earnings

14 The award for $37,870.77 was set out in the Final Judgment as follows:

> Pre trial loss of earnings : S$ 37,870.77
>
> - 14 months 4 days (27.04.02 to 30.06.03)
>
> = S$21,230.77
>
> - 13 months (01.07.2003 to 01.08.2004)
> ($1,500.00 – $220.00) x 13 months
>
> = S$16,640.00

15 The figure $1,500 represents the assistant registrar's finding on the plaintiff's pre-accident earnings in Singapore and $220 is the equivalent of the RM500 that the parties agree he is presently earning in Malaysia.[6] The date 27 April 2002 is the date of the accident and 1 July 2003 is the date on which the plaintiff commenced his post-accident employment, while 1 August 2004 probably represents the date of the assessment of damages.

16 This part of the assistant registrar's findings presents no difficulty that I can see. The defendants' counsel confirmed that:

> The Appellants are not disputing the finding of the Lower Court that the Respondent had earned about $1,500 a month at Chuan Fa at the time of the accident. The Appellants are also not disputing that the Respondent's current wage in Malaysia is RM500 a month (about S$220).

Hence, there is no dispute that the Singapore multiplicand should be $1,280.[7]

17 When the $1,500 and $220 and the multiplicand of $1,280 were accepted, that left only the 1 July 2003 date for the commencement of employment in Malaysia that was not agreed to, and no issue was raised over that date in the cross-examination of the plaintiff or in the submissions.

18 In view of the agreement on 85% liability, the award is set at $32,190.15.

Loss of future earnings

19 The assistant registrar divided the award for lost future earnings into two components. She used 15 years as the multiplier, and applied two multiplicands, *ie*, $1,280 ($1,500 – $220) for the first ten years and $2,780 ($3,000 – $220) for the next five years. She did not explain why the 15 years were split into ten years and five years, or why two multiplicands were used.

20 When damages for the loss of future earnings are assessed, a projection has to be made of the length of the person's remaining working life if he had not been injured. In a case where there is a significant number of working years remaining, the earnings/multiplicand can include increases to reflect the normal increments to a workman's earnings. This is particularly so when the workman is young, and is likely to acquire increased skill, productivity and seniority as he continues to work.

21 There is another factor to be considered. Foreign workers like the plaintiff may not spend their entire working lives in Singapore. They may return home to be with, or start, their families. They may return with their savings from their earnings to start their own businesses. They may also be replaced by cheaper and younger workers, or their work permits may not be renewed. When they leave, they will not continue to get earnings at Singapore levels, and any award for lost future earnings should take this into account.

22 In principle, the multiplier may also be adjusted because social conditions and employment legislation differ among countries, and the length of the working life of a worker in Malaysia, Thailand or Bangladesh may differ from that of a worker in Singapore. This point was not brought up to or considered by the assistant registrar. Consequently, there was no material before her to make any adjustment. In any event, the defendants have accepted the multiplier of 15 years, and the plaintiff has not appealed against it even though counsel submitted that a period of 16 to 18 years was more appropriate.[8]

23 Should the multiplier be split? It should, if the worker is likely to return home before the end of his working life, and if on returning home, his anticipated earnings are different from his anticipated Singapore earnings. In that event, the multiplier will consist of a Singapore part and a "home" part.

24 The plaintiff had not stated in his affidavit of evidence-in-chief or his evidence at the assessment hearing that it was his intention to work in Singapore for a long term or for as long as he was allowed to. His evidence was that after he recovered from his injuries, he did not look for another job in Singapore.

25 It cannot be assumed that every foreign worker wants to, or would be able to, work permanently in Singapore. They have their options and priorities, and they may have to leave against their wishes. Each case has to be looked at on its facts. If a person is 50 years old, and has been working here since he was 20 years old, it can be argued that his employment history indicates that he would stay on. In the plaintiff's case, where he is only 22 years old, and had worked here for less than two years, the same inference cannot be made.

26 When the assistant registrar apportioned the 15 years into ten and five years, it was not clear if that was based on the projected earning levels over 15 years in Singapore or the projected Singapore/Malaysian working periods.

27 A reasonable approach to this issue is to start by determining how long the plaintiff would have worked if he were not injured. As a carpenter, he may work up to the age of 60. As he was 22 years when the damages were assessed, he could have worked for another 38 years. How long more was he likely to work in Singapore before returning home? I think ten years would be reasonable. The plaintiff would be 32 years old and have savings from working in Singapore for 12 years, and he would be able to return to Malaysia and start his family and his business.

28 However, the full figures are not used in the assessment of damages for loss of future earnings. The contingencies of life (*eg*, illnesses, other injuries, retrenchment) as well as the fact that the damages are paid at once in one lump sum are taken into consideration, and the full length of projected years of employment is discounted for such contingencies. It is on this basis that although the plaintiff could have worked for 38 more years, the multiplier is set at 15 years, a reduction of 60%. Applying the same considerations, the ten years is scaled down proportionately to four years.

29 Consequently, the damages for lost future earnings should be based on four years' earnings at Singapore levels and 11 years' earnings at Malaysian levels.

30 The assistant registrar had worked out the lost Singapore earnings at $1,280 per month, and that was accepted by the defendants. Consequently, the damages for the first four lost years are $61,440 ($1,280 x 4 x 12), or $52,224 at 85%.

31 When the multiplier is split to deal with employment in two countries, two multiplicands should be applied to reflect the earning level of each country. However, the assistant registrar did not do that. She wrote:

> However, Mr Chai [counsel for the defendants] did not … lead any evidence as to whether a person working as a carpenter in Malaysia would earn a substantially different amount. As such, I proceeded on the basis that the plaintiff would be earning the Singapore equivalent, had he not met with the accident. Mr Chai also did not present any evidence on what a menial labourer in Malaysia could earn. The only figure before me was the $220 the plaintiff earned as a cashier in 2003.[9]

The assistant registrar then proceeded on the basis that the plaintiff would return to Malaysia and continue to earn at Singapore levels, and arrived at the multiplicand of $2,780 for the second period of loss.

32 I am afraid that the assistant registrar's approach was incorrect. The onus was on the plaintiff to prove his loss. When his counsel failed to produce evidence of the earnings of a carpenter in Malaysia, the defendants should not be prejudiced. There was no basis for assuming that earning levels in Singapore and Malaysia are the same.

33 Fortunately, some information became available to me in the course of the appeal, after counsel were directed to make further submissions on whether there should be the split multipliers and split multiplicands. The defendants produced a printout from the website of the Malaysian Industrial Development Authority dated 11 August 2004, which showed that the monthly salaries of non-executives (operators/technicians) in the manufacturing sector range from RM658 (for unskilled workers) to RM878 (for semi-skilled workers) to RM1,643 (for skilled workers/craftsmen).[10] The

plaintiff did not produce any Malaysian salary figures. I therefore relied on the information the defendants produced.

34 For the purpose of fixing the Malaysian multiplicand, I take the highest figure of RM1,643, which when converted at the agreed rate of S$1 to RM2.2, is $746.82, and I round it off to $750. While I do not think that the plaintiff was a skilled workman when he was injured, I am prepared to use the highest figure on the assumption that he would have improved his skills by the time of his projected return to Malaysia. His monthly loss for this period is therefore $530 ($750 – $220). On this basis, the loss of earnings for the second 11-year period is $69,960 ($530 x 11 x 12) or $59,466 at 85%. The total award for lost future earnings is therefore $111,690.

35 The defendants, having succeeded in getting the damages reduced, are to have the costs of the appeal.

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[1]Plaintiff's Bundle of Documents, page 18

[2]Notes of Evidence, page 81

[3]Defendants' Submissions, para 100

[4]Notes of Evidence, page 84

[5]Plaintiff's Bundle of Documents, para 18

[6]Defendants' Further Submissions, para 30

[7]Defendants' Further Submissions, para 30

[8]Plaintiff's Further Submissions, para 28

[9]Notes of Evidence, page 84

[10]Defendants' Further Submissions, Annexure A, page 4