

Zhao Feng Guo v Tan Hong Soon trading as Sole Proprietor in the name and style of Intense Engineering Construction
[2003] SGHC 128

Case Number : Suit 958/2001
Decision Date : 17 June 2003
Tribunal/Court : High Court
Coram : Toh Han Li SAR
Counsel Name(s) : Michael Yap Hiang Hwa (Hoh Law Corporation) for the plaintiff; N Srinivasan (Hoh Law Corporation) for the plaintiff; Mahendra S Segeram (Segeram & Co) for the defendant
Parties : Zhao Feng Guo — Tan Hong Soon trading as Sole Proprietor in the name and style of Intense Engineering Construction

The facts

1 On 15 January 2001, the plaintiff, a Chinese national, was injured in the course of the defendant's employment by a power cutter. The accident resulted in two fingers of his left hand being amputated with a cut tendon on a third finger. Interlocutory judgment was entered on 2 October 2001 in default of the defendant's appearance.

2 On 28 February 2003 the defendant took out an application to set aside the interlocutory judgment. One of the grounds relied on by the defendant was that the plaintiff had allegedly made a false statement in his application for an employment pass to the Ministry of Manpower (MOM). On 4 March 2003, I dismissed the defendant's application. The defendant's appeal (RA 80 of 2003) against my decision was dismissed by Choo Han Teck J. The case proceeded to full assessment. The plaintiff was the only witness for the assessment. Parties agreed to use the respective medical reports without the need for cross-examination and no officer from MOM was called.

Special Damages

3 The plaintiff claims transport expenses at \$100. The defendant contended that no transport receipts were produced, but I note that the plaintiff's appointment card showed that he did attend on 10 occasions at the Singapore General Hospital for treatment. As such, I allowed him \$80 for transport expenses.

4 The plaintiff also claimed 2000 RMB (\$418.15^[1]) for therapy he had paid for in Da Lian, China. Although no receipts were produced to back this up, it should be noted that Dr Thiagarajan did state in his medical report that the plaintiff would have been required to go for occupational therapy three sessions a week for the next four to six months at approximately \$80 per session. I was thus prepared to allow the plaintiff to claim \$418.15.

Pre-trial loss of earnings

5 The plaintiff is only claiming for loss of earnings for the period after 19 July 2001 as his wages had already been paid up to that date. He was repatriated from Singapore to China on 26 July 2001. The reason for the plaintiff's repatriation was stated by MOM in a letter dated 20 December 2002 as follows:

Please be informed that the [plaintiff] was involved in an investigation for contravening provision of Section 57(1)(k) of the Immigration Act (Cap 133). The investigation has been successfully concluded

and as part administrative action we have revoked [the plaintiff's] Employment Pass on 26 July 2001.

6 Section 57(1)(k) of the Immigration Act (Cap 133) provides:

Any person who by making a false statement obtains or attempts to obtain an entry or re-entry permit, pass or certificate for himself or for any other person; shall be guilty of an offence...

7 In a further letter of 14 February 2003, MOM clarified that the investigation on the plaintiff was in respect to documents submitted by the plaintiff in his Employment Pass application pertaining to his educational qualifications.

8 The defendant now submits that he is not contractually bound to pay the plaintiff as the plaintiff had breached his employment contract with him by virtue of the fact of his Employment Pass being revoked by MOM. This was one of the grounds unsuccessfully relied on by the defendant before myself and before Choo J in trying to set aside the interlocutory judgment. In his Grounds of Decision in RA 80 of 2003 Choo J stated at paragraph 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 represented his qualifications, he would not have 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 be sued.

9 In other words, the plaintiff's repatriation to China was not occasioned by the accident but by an administrative act of MOM. This also means that the plaintiff can claim Singapore pay only up to the time of his repatriation to China. In the circumstances, the plaintiff's pre-trial loss of earnings will be his Singapore pay (at \$66.67 per day) from 20 July 2001 to 25 July 2001 and thereafter it will be what he could have earned in China. His loss of pre-trial earnings for the Singapore segment would therefore be $6 \times \$66.67 = \400 (rounded off).

10 The plaintiff's evidence was that he earned 1200 RMB as a senior technician and then 2000 RMB per month as mechanical engineer in China before he came to Singapore in 1997. His evidence that a senior technician in China can presently command 5000 RMB was not substantiated by any documentary evidence. However, I was prepared to accept that given the experience he had gained working in Singapore, he would be able to command a higher salary than the 2000 RMB he was earning in China before he came in 1997. I would therefore use a multiplicand of 3000 RMB per month.

11 The plaintiff submitted that he has to date not been able to secure a job and wanted the full loss of earnings for the pre-trial period. Defendant's counsel submitted that he had a duty to mitigate by seeking alternative employment and should not be allowed the full amount.

12 The plaintiff was given medical leave until 31 July 2001. Dr Thiagarajan stated in his medical report dated 13 July 2001 that the plaintiff would require three sessions of occupational therapy for the next four to six months thereafter. The medical evidence was that the plaintiff would no longer be able to carry on in his present job which required the use of both his hands. This would be a major change in job scope as the plaintiff had always used both hands in his work. I was thus prepared to give him a recovery and adjustment period of up till 25 July 2002. I thus divided the pre-trial loss of earning into two periods. The first period is from 20 July 2001 to 25 July 2002 for which the plaintiff shall be entitled to fully recover loss of earnings. The second period of 26 July 2002 to 4 March 2003 would be to allow the plaintiff to recover his pre-trial loss of earnings after taking into account the

defendant's submission on his duty to mitigate by seeking alternative employment.

13 His pre-trial loss from 20 July 2001 to 25 July 2001 (Singapore) has been calculated above at \$400. For his pre-trial loss of earning from 26 July 2001 to 25 July 2002 (China), the plaintiff would be entitled to $12 \times 3000 \text{ RMB } (\$627.22) = \$7526.65$

20 July 2001 to 25 July 2001 (Singapore)	\$ 400.00
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26 July 2001 to 25 July 2002 (China)	\$7526.65
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Total	\$7926.65
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14 The plaintiff contended that his case officer at MOM had informed him that he could return to work in Singapore after two years. However no MOM officer was called to substantiate this comment. Also, the plaintiff's self-serving assertion that he could get a job in the United Kingdom to earn 20,000 pounds a year was unsubstantiated by any evidence at all. I therefore continued to assess the loss of earnings based on what he would earn in China.

15 The plaintiff said that he had attempted unsuccessfully to find jobs relating to mechanical work, food and beverage industry and repairs of machinery and took the position that he would be permanently unable to find a job. It was the plaintiff's evidence that he has a Degree in Economics Management which made him the equivalent of an Associate Professor in China with only 400 to 500 people in China qualifying for this degree each year. Further, the plaintiff had tendered an impressive list of testimonials and citations including being the "Leading Star" of the "One Hundred Leading Stars" contest organised by the Da Lian City Federation of Trade Unions. He had also passed the National University Examination for Quality Management. With all these impeccable credentials, I agreed with the defendant's contention that the plaintiff had a duty to mitigate. The plaintiff should be able to find some managerial or instructional jobs (perhaps at a lower pay than a full healthy person) which did not require the use of both his hands - it should be noted that the plaintiff is right handed whilst the injuries were sustained to his left hand. After deducting an amount for alternative employment, I use a multiplicand of 1500 RMB per month or \$10.45 per day.

16 For the second period from 26 July 2002 to 4 March 2003 (222 days) the plaintiff would be entitled to $\$10.45 \times 222 = \$2,319.90$.

17 In the circumstances, I assessed his pre-trial loss of earnings as follows:

1 st Period (20 July 2001 to 25 July 2002)	\$ 7,926.65
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2 nd Period (26 July 2002 to 4 March 2003)	\$ 2,319.90
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Total	\$ 10,246.55
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General Damages

Pain & Suffering and Loss of Amenity

18 The plaintiff suffered amputational injuries to the left middle and ring fingers and a cut tendon to the left index finger. There were multiple healed scars over these three fingers but not beyond the fingers. In *Ong Moh Chong v Hitachi Chemical (S) Pte Ltd* [1987] 1 MLJ 450 an amount of \$30,000 was awarded for pain and suffering for the amputation of three fingers. As the present case involved the amputation of two fingers and a cut tendon of the left index finger, I award the plaintiff \$20,000. In doing so, I also took into account Dr Thiagarajan's report which stated that the incidence of developing osteoarthritis is moderately high.

19 On scarring, the plaintiff's cited precedents all involved extensive scarring whilst in the present case scarring was confined to the fingers. I award an amount of \$1,500 for scarring.

20 The total award for pain and suffering and loss of amenity is $\$20,000 + \$1,500 = \$21,500$.

Future loss of earnings

21 The plaintiff was born on 18 July 1958. That would make him 44 years old at the time of the assessment. In *Wee Sia Tian v Kong Thik Boon* [1996] 3 SLR 513 the plaintiff was a carpenter aged 48 at the time of the hearing. Prakash J affirmed the assistant registrar's using a multiplier of eight. In the circumstances, I will apply a multiplier of nine in the present case.

22 I have used a multiplicand of 1500 RMB for the period of 26 July 2002 to 4 March 2003 for pre-trial loss of earnings after taking into account the plaintiff's duty to mitigate by seeking alternative employment. For loss of future earnings, I use the same multiplicand of 1500 RMB per month.

23 As such the loss of future earnings would be $9 \times 12 \times 1500 \text{ RMB } (\$313.61) = \$33,870$ (rounded off).

Future medical expenses

24 Dr Thiagarajan opined that the plaintiff may require tenolysis (release of scar tissue) and the total cost of this surgery is estimated by Dr Thiagarajan at \$8000 to \$10,000. This is the cost of having the operation in Singapore. The plaintiff's counsel conceded that since he was claiming for future surgery he would not be claiming for the future cost of occupational therapy.

25 The plaintiff testified that there are equivalent medical facilities in Da Lian, China but no figure was given as to how much such surgery would cost. In *Xu Jin Long v Nian Chuan Construction Pte Ltd* [2001] 4 SLR 214 where no figures for the equivalent cost of medical treatment in China were available, Choo JC (as he then was) applied a 50% discount. I would thus award an amount of \$3000 to cater for the cost of this future surgery after discounting for the probability that it might not be required.

Conclusion

26 The total amount awarded to the plaintiff is as follows:

Special Damages

Transport	80.00
Therapy	418.15

Pre-trial loss of earnings	10,246.55
Total	10,744.70

General Damages

Pain Suffering and Loss of Amenity	21,500
Loss of Future Earnings	33,870
Future Medical expenses	4,000

Total

Grand Total (10,744.70 + 59,370)	70,114.70
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27 I award interest at 3% pa on the \$10,744.70 awarded for special damages from the date of the accident to the date of today's judgment. I award interest at 6% pa on the \$21,500 awarded for pain and suffering and loss of amenity from the date of service of the writ to the date of today's judgment. No interest is awarded for the loss of future earnings or future medical expenses.

28 I shall now hear the parties on costs.

[\[1\]](#) Parties agreed at an exchange rate of 4.783 RMB to SGD\$1

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