Chua Jia Yan Emily (by her next friend Chua Kiaw Swan) v See Mun Li [2009] SGHC 26

Case Number : Suit 62/2007, RA 354/2008

Decision Date : 02 February 2009

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : N Srinivasan (Hoh Law Corporation) for the plaintiff; Willy Tay (Ari, Goh & Partners) for the defendant

Parties : Chua Jia Yan Emily (by her next friend Chua Kiaw Swan) — See Mun Li

Damages – Assessment

Civil Procedure

2 February 2009

Lai Siu Chiu J:

1 In this action, 10 year old Chua Jia Yan Emily ("the plaintiff") by her father and next friend Chua Kiaw Swan ("the father") sued See Mun Li ("the defendant") for head injuries and loss arising from a road accident on 17 August 2004, when she was six years of age. One consequence of the accident was that the plaintiff suffered and continues to suffer from growth hormone deficiency.

2 On 25 September 2008, I dismissed Registrar's Appeal No. 354 of 2008 ("the Appeal") wherein the plaintiff appealed against the decision of the court below in refusing to allow her to adduce further evidence of her medical condition through clarificatory medical reports. The plaintiff has now appealed against my decision in Civil Appeal No. 174 of 2008.

The facts

3 The plaintiff's action against the defendant was initially commenced by the father in the Subordinate Courts as DC Suit 408 of 2005. On 12 December 2006, the plaintiff applied by way of Originating Summons No 2067 of 2006 to transfer the action to the High Court and it was so transferred on 30 January 2007.

4 On 26 March 2007, the plaintiff applied by summons to amend her writ of summons to include a claim for provisional damages. After three pre-trial conferences ("PTCs"), the plaintiff applied again on 2 July 2007 to amend her pleadings.

5 On 22 August 2007, consent interlocutory judgment was entered against the defendant before this court with apportionment of 65% liability to the defendant. Further PTCs followed between 16 October 2007 and 18 March 2008. On 11 March 2008, one of the plaintiff's medical witnesses Dr Goh Siok Ying ("Dr Goh"), who is a consultant endocrinologist in the Department of Paediatrics at National University Hospital ("NUH"), filed her affidavit of evidence-in-chief ("AEIC"). In her AEIC, Dr Goh deposed that the plaintiff had developed Central Diabetes Insipidus ("CDI") as a result of the accident. Dr Goh had prescribed oral Minirin desmopression at the time the plaintiff was admitted to NUH in August 2004 and in follow-up treatment, she was given oral hydrocortisone and growth hormone injections when it was discovered that she suffered from cortisol deficiency and growth

hormone deficiency. A consequence of CDI is a deficiency of anti-diuretic hormone whereby patients are unable to concentrate their urine and pass excessive quantities of urine as a result. Dr Goh opined that the plaintiff would require growth hormone until at least the age of 14 while she was likely to require the other medication for the rest of her life.

6 The assessment of damages was fixed for hearing on 27-28 April 2008. Before the hearing, the defendant's solicitors wrote to the plaintiff's solicitors to say they did not require the attendance of two of the plaintiff's doctors. This was confirmed at the assessment hearing, where the evidence of a neuropsychologist was also admitted. The assessment was then adjourned to 6 May 2008 for the plaintiff to update the court if a neuropsychological assessment was necessary.

7 At the PTC on 6 May 2008, the court directed the plaintiff to file and serve her AEIC by 11 June 2008 limited to the issue of whether the plaintiff had any subtle cognitive or memory problems following the accident. A further PTC followed on 24 June 2008 at which the assessment of damages was fixed for 25 August 2008.

8 At the assessment hearing on 25 August 2008, counsel for the plaintiff informed the court he wanted to introduce a second medical report from Dr Goh dated 18 August 2008 to confirm the plaintiff's medical condition. Counsel for the defendant objected to the lateness of the application which objection was upheld by the Assistant Registrar; hence the Appeal.

The Appeal

9 The father had filed an affidavit for the hearing of the Appeal wherein he deposed that between 28 April and 25 August 2008, he had been forwarding medical receipts to the plaintiff's solicitors and had informed the solicitors of the increase in dosage of the plaintiff's medication. Consequently, the plaintiff's solicitors wrote to NUH on 10 July 2008 for the plaintiff's current dosage. Dr Goh's reply on behalf of NUH was dated 18 August 2008.

10 The father deposed that prior to the hearing on 25 August 2008, the plaintiff's solicitors had conducted their research on the extent of CDI in a child and on 20 August 2008 they had forwarded a set of questions to Dr Goh for her verification. Dr Goh's reply dated 26 August 2008 addressing the queries of the plaintiff's solicitors was received just before the second assessment. The father deposed that it was necessary to put forward a clearer picture of the plaintiff's condition and future needs in view of the nature of provisional damages. The father pointed out that Dr Goh's report dated 18 August 2008 highlighted the increase in dosage of the plaintiff's growth hormone treatment while her second report dated 26 August 2008 further explored and explained the complications of CDI. (Hereinafter the two reports of Dr Goh will be referred to collectively as "Dr Goh's medical reports".) As the doctors were not and would not be called to give evidence at the assessment, the father felt that Dr Goh's medical reports would help paint a clearer picture on CDI to enable the court to make the appropriate assessment and order. As the two reports were clarificatory in nature, the father felt there was no irretrievable prejudice caused to the defendant for the preparation of the assessment. He added that the prejudice (if any) incurred by the defendant would be outweighed by the needs of the plaintiff for a just and equitable assessment of her damages and needs.

11 In his submissions, counsel for the plaintiff argued that Dr Goh's medical reports in [10] were relevant in clarifying the extent of the plaintiff's medical condition and to reflect her current state of affairs. Further, the plaintiff was claiming provisional damages to commensurate with her future disabilities and medical expenses. He then cited *Hurditch v Sheffield Health Authority* [1989] 2 WLR 827 and *Wilson v Ministry of Defence* [1991] 1 All ER 638 for the principles when provisional damages ought to be awarded. He relied on *Lee Chee Wei v Tan Hor Peow Victor* [2007] 3 SLR 537 and the

following extract [82] therefrom:

> ..The rules of court practice and procedure exist to provide a convenient framework to facilitate dispute resolution and to serve the ultimate and overriding objective of justice. Such an objective must never be eclipsed by blind or pretended fealty to rules of procedure. On the other hand, a pragmatic approach governed by justice as its overarching aim should not be viewed as a charter to ignore procedural requirement. In the ultimate analysis, each case involving procedural lapses or mishaps must be assessed in its proper factual matrix and calibrated by reference to the paramount rationale of dispensing even handed justice.

Counsel added that any alleged prejudice to the defendant could be compensated in costs.

12 Counsel for the defendant on the other hand contended that the Assistant Registrar was right to refuse the plaintiff's eleventh hour application. She pointed out that Dr Goh's medical reports were not new evidence. The two documents contained information which was largely to be found in existing reports.

13 Counsel then referred to Order 38 rule 2(3) of the Rules of Court (Cap 322, R 5 2006 Rev Ed) which states:

> Unless the Court otherwise orders, no deponent to an affidavit may at the trial or hearing of any cause or matter give evidence in chief, the substance of which is not contained in his affidavit except in relation to matters which have arisen after the filing of the affidavit.

14 While the court can depart from the above rule, adequate reasons and information must be given. Counsel for the defendant submitted that no reasons had been given save for that in the father's affidavit in [10] above, *viz* that the plaintiff's solicitors had conducted their own research on the extent of CDI in a child. However, the issue of CDI was not new – it had already been touched on in the medical reports of NUH dated 16 November 2005, 8 June 2006 and in Dr Ho King Hee's report dated 9 May 2006.

15 It was pointed out that one of the reasons cited for the transfer of the DC Suit to the High Court by way of Originating Summons No 2067 of 2006 in [3] was that the plaintiff suffered CDI and cortisol deficiency. Why did the plaintiff wait until 25 August 2008 to adduce further evidence of CDI?

The decision

16 In the court below, the Assistant Registrar in disallowing the application to adduce further medical evidence said:

> My view is that the plaintiff's attempt to put in another medical report is too late and should not be allowed. Accordingly, I would not adjourn today's hearing for another report to come in.

I share the sentiments of the Assistant Registrar and dismissed the Appeal for the same reason.

17 It was noteworthy that in the court below as well as before this court, neither his counsel nor the plaintiff's father's affidavit (at [9]) offered any satisfactory explanation for the lateness in obtaining Dr Goh's medical reports. From the commencement of these proceedings in the subordinate courts, the issue of the plaintiff's growth deficiency condition was a known fact, after she developed CDI as a result of the accident.

18 The plaintiff's counsel had conducted their research on the extent of CDI in a child (see [10]) only before the assessment on 25 August 2008. The question that arises is why was it not done earlier? The 25 August 2008 hearing was the third hearing after two previous adjournments, once on 27-28 April 2008 and again on 6 May 2008. It was incumbent on the plaintiff to have all the requisite evidence particularly the medical evidence, ready for the assessment hearing especially after two previous adjournments. The excuse that the plaintiff was claiming provisional damages is not acceptable – the application to amend the statement of claim to include this item of claim was filed on 26 March 2007, more than a year before the first assessment hearing.

19 I should add that the dictum from *Lee Chee Wei v Tan Hor Peow Victor* in [11] relied on by counsel for the plaintiff has no application. Even if it applied, it would be subject to O 38 r 2(3) of the Rules referred to in [13]. The Rules must be complied with by parties who seek the court's determination of their disputes/claims, particularly when no valid reasons have been given by the party that requests the court's leave to depart from the Rules.

20 No amount of costs in this case would have compensated the defendant for the plaintiff's non-compliance with O 38 r 2(3) and the prejudice occasioned thereby. The court below had earlier dispensed with the attendance of Dr Goh and the plaintiff's two other medical experts at the assessment. Had Dr Goh's medical reports been obtained before the first assessment hearings (27-28 April 2008), counsel for the defendant may not have agreed to dispense with cross-examination of the plaintiff's medical witnesses. How would costs address the issue of the defendant's loss of opportunity to cross-examine her if Dr Goh's medical reports were admitted into evidence?

21 For the above reasons, I upheld the decision made by the court below and dismissed the Appeal.