

Chew Poh Kwan Margaret v Toh Hong Guan and Another
[2004] SGHC 280

Case Number : Suit 486/2003, NA 32/2004
Decision Date : 29 December 2004
Tribunal/Court : High Court
Coram : Lee Kee Yeng AR
Counsel Name(s) : Cosmas Gomez (Cosmas and Co) for plaintiff; Shabnam Arashan (B. Rao and K.S. Rajah) for second defendant; Mak Moo Theng (Lawrence Chua and Partners) for first defendant
Parties : Chew Poh Kwan Margaret — Toh Hong Guan; The personal representatives of Mohamed Noor Bin Mohamed Ali, deceased

29 December 2004

Assistant Registrar, Ms Lee Kee Yeng:

Background

1. The plaintiff was a rear seat passenger in a taxi driven by the first defendant when it collided with the motorcycle ridden by the second defendant. Subsequently, consent interlocutory judgment was entered on 5 November 2003, with the plaintiff bearing 5 % liability, and the first and second defendants bearing 57.5% and 37.5% respectively.

2. The assessment of damages came before me on 26 July 2004. On the first day of hearing, the parties agreed on the following items:

Special damages

- | | | |
|------|--------------------|----------|
| (i) | Medical expenses | \$915.05 |
| (ii) | Transport expenses | \$200 |

General damages

- | | | |
|-------|---------------------------|---------|
| (i) | Future medical expenses | \$3,100 |
| (ii) | Haematoma of the eye | \$1,000 |
| (iii) | Future transport expenses | \$100 |

3. In addition, the plaintiff dropped her claim for the membership fees paid for Amore fitness. In the event, the following items remained in dispute:

General Damages

- (i) Pain and suffering for the following injuries:
 - (a) Whiplash
 - (b) Post-traumatic headaches
 - (c) Meralgia parasthetica
 - (d) Exacerbation of depression
- (ii) Pre-trial loss of earnings
- (iii) Future loss of earnings/loss of earning capacity

Pain and suffering

(i) Whiplash, Headaches and Depression

4. I will deal with these 3 items together, as they are closely related. In essence, the plaintiff claims that she suffered a whiplash injury as a direct result of the accident. It was alleged that this whiplash injury gave rise to neck pain and stiffness for a period after the accident. It also gave rise to chronic tension-type headaches, which have persisted to this day. In the event, the onset of headaches exacerbated a pre-existing depression.

5. The defendants do not dispute that the plaintiff suffered a whiplash injury as a direct result of the accident, which caused neck pain and stiffness. The defendants are also not disputing that the plaintiff does suffer from chronic tension type headaches. However, their case is that it is not shown that the headaches were caused by the whiplash. In the alternative, they argued that even if the whiplash had caused the initial onset of headaches, it had been exacerbated by other factors such as medication overuse, and this should be taken into account in the award of damages.

6. I will first deal with the issue of headaches – both parties did not dispute that the plaintiff did suffer from chronic tension type headaches. The issue was whether the plaintiff was able to show that the headaches had (1) been caused by the whiplash; and (2) that there were no other significant contributory causes to the headaches.

7. On the evidence, I found that the plaintiff had shown that the headaches were caused by the whiplash injury. The defendants had argued that the plaintiff had failed to show this because her headaches did not come on until 7 days after the accident. However, the plaintiff stated clearly that she had been taking panadol for her headaches before going to see the GP, which was within the 7 day period. Also, I took into consideration the expert opinion of Dr Ho King Hee, the plaintiff's primary treating doctor. Under cross-examination as to why he had stated that the plaintiff had chronic tension type headaches, and not headaches caused by whiplash, Dr Ho explained that it was a matter of semantics that was no apparent at the time he made the diagnosis as that particular categorisation was not relevant at the time of the diagnosis. In the event, he stated categorically that, at all material times, he had held the opinion that the headaches were as a result of the whiplash.

8. As for her depression, Dr Ho testified that she was on the borderline between minimal depression and a normal score. I noted that she had previously sought treatment for depression, sometime before the accident but had been off medication for a period before the accident. I also

accepted the plaintiff's evidence that the intermittent headaches had now brought on her depression. As the defendants' expert noted, it is natural that someone who experiences regular bouts of pain would be depressed – and this would be even worse in a plaintiff who has a pre-disposition to depression. I therefore accepted that the accident and the attendant headaches had exacerbated her depression.

9. Given the overlapping nature of this injury, I found that a global award was appropriate and assessed a sum of \$18,000 for the whiplash and attendant effects. This was in line with the authorities cited by defendant counsel – in particular, that of *Doris Chia*, who was awarded \$15,000 for whiplash, which resulted in intermittent neck pain and loss of productivity.

(ii) Meralgia Parasthetica

10. Both parties are agreed that the proper diagnosis for the plaintiff's injury is meralgia parasthetica, and there is no issue as to causation.

11. According to the plaintiff's expert, Dr W C Chang, the condition presents itself in the plaintiff as a burning sensation on the lateral part of the thigh, with decreased sensation over that area of the thigh. Plaintiff counsel submitted (at page 35 of his submissions) that the condition caused the plaintiff great pain and caused her to walk with 'an anthralgic gait'. In the circumstances, he submitted that an appropriate award under this head should be \$10,000, citing the case of *Fauziyah Bte Mansor v Abu Bakar Bin Hussin (Suit 1685 of 1989)*.

12. On the evidence, the plaintiff seemed to have little residual effects from the condition. When questioned on whether the numbness in her thigh affected her gait, the plaintiff's answer was that it did not (NE 26 July, page 21, line 11-12). Similarly, when Dr Chang was asked by the first defendant, whether the condition affected the plaintiff's walking ability, Dr Chang replied that it did not (NE 26 July, page 46 line 24-25). In addition, she appeared to have no problems in the video performing day to day activities.

13. On the evidence, it was not shown that the condition was so debilitating as to cause the plaintiff great difficulty in walking. It appeared that the condition largely manifested itself at intermittent intervals, in the form of a burning sensation with some numbness on 2/3 of the upper thigh.

14. The defendants submitted that a quantum of \$500 was appropriate for this injury. In support, they cited case of *Koh Lu Kuang v Abdul Jalil bin Kader Hussein*. In that case, the injury involved was right nerve palsy with facial asymmetry. However, the case note stated that the injury had fully recovered at the time of assessment. In contrast, in our present case, the plaintiff's condition is subsisting, and it is Dr Chang's opinion that it is not likely to improve without surgical intervention, given that it has already been more than 6 months since the onset.

15. I was not able to find any precedents relating to a similar injury. However, I noted that in the case of *Chia Yeow Tiong v Toshio Watanabe (S1348/1995 HC)*, the court awarded \$3,000 for a left ulna nerve palsy, and in *Sit Rabiah bte Ahmad (S 1328/1997 HC)*, \$10,000 was awarded (agreed damages) for both diplopia and nerve palsy.

16. In the circumstances, and taking into consideration the fact that the condition did not appear to have large impact on the plaintiff's walk, I awarded the sum of \$3,000 for this injury.

Loss of Earnings

(i) Pre-trial loss of earnings

17. Special damages are subject to strict proof. In this case, it was not shown that the plaintiff suffered a drop in earnings due to the accident. I agreed with the defendants that as her income fluctuated from year to year, and due to the fact that the fall was not substantial, I was not able to attribute this to her decreased productivity, if any. Her IRAS statements from 1996 to 2003 showed a fluctuation of income. More importantly, it appeared that her income was on a down-trend from 1997 onwards. Mr Gomez suggested that I disregard the exceptional year of \$79,000. However, Mr Gomez did not explain further on why there was such a significant drop in that year, or why it should be disregarded .

18. The range of income shown on her IRAS statements clearly showed that the plaintiff's income was very much affected by factors beyond her control or at least, by factors not related to the accident. In 2002, (i.e. the year where the plaintiff suffered her accident in November), the firm had only pulled in \$449,734.15 for the whole year. In 2003, when the plaintiff had already suffered her accident, the firm's revenue actually increased to \$654,664.87. As regards the billings for her firm in 2004, I noted that the firm had brought in total revenue of \$318,309.77 by June 2004. I noted that there are 2 active partners and it could be that the other partner contributed to the rise. That notwithstanding, I was not privy to the breakdown of billings, and was not able to determine whether the plaintiff had suffered a loss in earnings, and if so, whether it was due to loss of productivity as a result of her condition.

19. In the circumstances, I found that the plaintiff had failed to show that she suffered pre-trial loss of earnings for 2002, 2003 and 2004.

(ii) Future loss of earnings/Loss of earning capacity

20. That notwithstanding, there was evidence that plaintiff was less productive than before. Both the plaintiff, as well as her partner at work gave evidence that the headaches had an impact on her ability to work. However, given the difficulties in quantifying her future loss of earnings, I was of the opinion that the approach taken in *Nirumalan V Kanapathi Pillay v Teo Eng Chuan* [2003] SGHC 96 should be followed and an award for loss of earning capacity was more appropriate. I took into account the fact that the plaintiff currently earns an average of \$150,000 a year (as opposed to \$360,000 per annum in *Nirumalan*), her age, the fact that she had an unrelated medical condition which was likely to affect her ability to work, and assessed her loss of earning capacity at \$60,000.

21. In the event, the following awards were made:

Special damages

(i)	Medical expenses	\$915.05
(ii)	Transport expenses	\$300
(iii)	Pre-trial loss of earnings	\$Nil

General damages

(i)	Future medical expenses	\$3,100
(ii)	Haematoma of the eye	\$1,000
(iii)	Whiplash, Headaches and Depression	\$18,000 (global)
(iv)	Meralgia Parasthetica	\$3,000
(iv)	Loss of earning capacity	\$60,000

Interest on special damages at 3% from date of accident to date of judgment. Interest on general damages for pain and suffering at 6% from date of writ to date of judgment. Interest at 6% on all damages assessed from date of judgment thereon. I also gave the usual consequential orders and made orders as to costs.

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