Yap Boon Sim (intended administration of the estate of Goh Jik Lian, deceased) v Dr Lee Meng Kuan and Another
[2000] SGHC 255

Case Number : Suit 600218/2000 (RA 600313/2000)

Decision Date : 29 November 2000

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Kuah Boon Theng and Suji Sasidharan (Tan & Lim) for the plaintiff; Karuppan Chettiar, Renuka Chettiar and Prasana (Karuppan Chettiar & Partners) for the first defendant; Tan Tian Luh (Helen Yeo & Partners) for the second defendant

Parties : Yap Boon Sim (intended administration of the estate of Goh Jik Lian, deceased) — Dr Lee Meng Kuan; Another

Civil Procedure – Parties – Locus standi – Action by dependant of deceased – Action commenced within six months of deceased's death – No executor or administrator appointed yet – Whether action premature – Whether action should be dismissed – s 20(4) Civil Law Act (Cap 43)

Statutory Interpretation – Construction of statute – Whether limbs of provision read disjunctively or conjunctively – s 20(4) Civil Law Act (Cap 43)

: This case arose from the alleged medical negligence of the first and second defendants. Goh Jik Lian (the deceased) was admitted into the second defendant`s hospital for a routine thyroid operation, which was performed on 18 October 1999. After the operation, the deceased`s wound showed signs of post-operative bleeding which required him to undergo further surgery. The first defendant, who was then the attendant anaesthetist, decided to intubate the deceased. This involved inserting a tube into the deceased`s airway to deliver oxygen to the deceased once he was unconscious. Due to the inexperience of the operating theatre staff, a plastic cap was affixed to one of the pieces of equipment used for the intubation; the resulting blockage caused the deceased to receive insufficient oxygen until the obstruction was discovered and removed, by which time it was too late. The deceased suffered irreversible brain damage and died a week later.

On 28 February 2000, the plaintiff in this case (who was the wife of the deceased) commenced these proceedings against the first and second defendants, alleging medical negligence and claiming damages. However, the plaintiff had yet to extract letters of administration at that date. On 29 September 2000, the first defendant`s lawyers applied, by way of SIC 603982/2000 (the application) for certain preliminary issues to be determined under O 14 r 12 of the Rules of Court. The preliminary issues, which pertained to the plaintiff`s locus standi to commence and maintain these proceedings, were as follows:

(i) whether the plaintiff was entitled to maintain the proceedings when they were commenced before the expiration of six months from the date of the death of the deceased;

(ii) whether the plaintiff was entitled to commence the proceedings before the extraction of the grant of letters of administration

Just before the hearing of the application, both defendants admitted liability to the claim. Consequently, the only issue left for determination in these proceedings related to the quantum of damages to be awarded.

On 9 October 2000, the application was dismissed by the assistant registrar, who held that the plaintiff did have locus standi to commence these proceedings. Being dissatisfied with her decision,

the defendants appealed to a judge-in-chambers by way of RA 600313/2000 (the appeal). I dismissed the appeal although I directed counsel for the plaintiff to amend the title to the action, the endorsement of claim as well as the statement of claim to make it clear that her client`s claim was as a dependant and not as an administrator, of the deceased`s estate.

Being dissatisfied with my decision, counsel for the defendants wrote in for further arguments which request I acceded to. Having reviewed the matter after hearing counsel`s further submissions, I now affirm my earlier decision and I set out my reasons for so doing.

Section 20(4) of the Civil Law Act (Cap 43, 1999 Ed) (`the Act`)

Section 20(4) of the Act (1999 Ed) reads as follows:

> *If -*
>
> *(a) there is no executor or administrator of the deceased; or*
>
> *(b) no action is brought within six months after the death by and in the name of an executor or administrator of the deceased,*
>
> *the action may be brought by and in the name of all or any of the persons for whose benefit an executor or administrator could have brought it.*

In support of their case that the plaintiff had no locus standi to bring this action, the defendants argued that limbs (a) and (b) of s 20(4) should be given a conjunctive interpretation. In other words, the defendants are saying that the plaintiff can bring an action under s 20(4) only if there is no executor/administrator ***and*** no action has been brought within six months of the death of the deceased. In the present case, limb (a) was satisfied, in that no administrator had been appointed at the time the proceedings were commenced. However, it was argued for the defendants that the proceedings ran foul of limb (b) as, they were commenced within six months of death. The defendants contended that in order for limb (b) to have been satisfied, the plaintiff had to wait for six months to lapse before commencing these proceedings. Hence, the defendants submitted, this claim should be dismissed and a fresh action started. In support of this proposition, counsel for the defendants cited **Ling Kee Ling v Leow Leng Siong** [1992] 2 SLR 725 , which authority counsel for the plaintiff sought to distinguish.

The headnotes and the relevant holdings in that case read as follows:

> *The appellant`s husband died as a result of a traffic accident in 1986 when the vehicle in which he was a passenger collided into a lorry. In 1989, the appellant sued the respondent, who was the driver of the vehicle, and the second defendant as the owner of the vehicle, claiming damages in respect of loss of support to herself and to the deceased`s daughter, and special damages. By 1 August 1989, pleadings were deemed to be closed, after the defence of the two defendants were filed. However, the appellant did not take out a summons for directions within one month after close of pleadings, that is, by 1 September 1989. The limitation period for bringing such an action expired on 18 December 1989. Five months later, the respondent applied for the action to be dismissed.*

The learned senior assistant registrar dismissed the application with costs fixed at $350. On appeal, the High Court allowed the appeal and dismissed the appellant`s claim, on the grounds that the appellant did not have the locus standi to bring the claim, and also decided that the claim should be struck out for want of prosecution. The appellant appealed:

***Held**, allowing the appeal:*

(1) Even before the 1987 amendments, s 12 of the Civil Law Act (Cap 30) (1970 Ed) permitted the dependants of a deceased person to bring an action for their own benefit in the circumstances set out in s 12(8). By virtue of s 12(8), the appellant was clearly entitled to bring the claim in the present case. The deceased had died intestate and no administrator had ever been appointed over his estate.

(2) An obvious distinction is drawn in the Civil Law Act between estate claims (under s 7) and dependency claims (under s 12). The submission by counsel for the respondent that the claim should have been brought for the benefit of the deceased`s widow and child as beneficiaries of the estate rather than as dependants of the deceased, was therefore clearly unfounded.

Counsel for the defendants had focussed on the following extract from Chua J`s judgment (at p 727) to buttress his submission that the plaintiff lacked locus standi:

> *By virtue of s 12(8), the appellant was clearly entitled to bring the claim in the present case. The deceased had died intestate and no administrator had ever been appointed over his estate. At any rate, the claim would have been well-founded even if there had been an administrator, since when the action was brought, more than a year had elapsed from the time of the deceased`s death and no action had been brought by the administrator.*

I am of the view that the defendants` argument for a conjunctive interpretation, relying on the extract from and the above, case is flawed. First and foremost, a plain interpretation shows that a ***disjunctive*** interpretation should be adopted, namely, a plaintiff can commence proceedings ***either*** when there is ***no*** executor/administrator or when, despite there being an executor/administrator, no action is commenced within the six month period following death. Such a disjunctive interpretation flows more naturally from the use of the word `or` between limbs (a) and (b) rather than the word `and`.

Secondly, while limb (a) refers to a situation where there is no executor/administrator, limb (b) contemplates a situation where no action is brought by an executor/administrator. Thus it seems that limb (b), in contradistinction to limb (a), presupposes the existence of an executor/administrator. Limb (b) should thus not prevent an action from being brought when there is no executor/administrator in existence at the time the action is commenced by the plaintiff. I am fortified in my conclusion by a consideration of the legislative history of s 20(4) of the Act. The predecessor of this section was s 12(8) of the Civil Law Act (1985 Ed) which reads where relevant as follows:

> *If there is no executor of the deceased person or **there being such executor**,*

> *no action as in this section mentioned has, within one year after the death of such deceased person, been brought by the executor, such action may be brought by all or any of the persons, if more than one, for whose benefit such action would have been brought if it had been brought by the executor ... [Emphasis added.]*

It is evident from its wording that the second limb of s 12(8) was clearly meant to apply to situations where a personal representative already existed. Section 12(8) was subsequently repealed by Act 11 of 1987, and substituted with a provision identical in wording to s 20(4) of (the current version of) the Act. In the second reading of the bill for Act 11 of 1987, the Minister of Law commented on several changes introduced by the amendments, but nothing was said about the amendment to s 12(8) [see Parliamentary Reports, 4 March 1987]. In fact, there was no indication whatsoever in the Parliamentary Reports that the legislature had, by replacing s 12(8) with the wording now found in s 20(4) of the Act, intended to bring about such a radical change that the provision should now be given the construction that the defendants are advocating. Rather, it appears that all Act 11 of 1987 did was to come up with a more concise provision, while shortening the moratorium period from one year to six months.

My conclusion therefore is, that s 20(8) should be read disjunctively. A dependent can bring an action so long as limb (a) is satisfied (when there is no executor/administrator). It matters not that the action is commenced within six months of death, since limb (b), which imposes the six month moratorium, only applies to situations where an executor/administrator exists at the time of commencement of the action. There was thus nothing in the present case which precluded the plaintiff from commencing her action within six months of her husband`s death.

Premature actions

Even if I am wrong in my construction of s 20(4), and the plaintiff is deemed to have commenced these proceedings prematurely, I see no reason why I should dismiss the action purely on that ground alone. I have found an authority directly on point, which neither counsel cited to me. The case is **Austin & Ors v Hart** [1983] 2 AC 640 which centred on s 8(2) of Trinidad & Tobago`s Compensation for Injuries Ordinance. The provision, which is ***in pari materia*** with our s 20(4), reads:

> *If there be no executor or administrator of the person deceased, or if although there be such executor or administrator no such action shall, within six months after the death of such deceased person, have been brought by and in the name of his executor or administrator, then and in every such case such action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit such action would have been if it had been brought by and in the name of such executor or administrator.*

In that case, the plaintiff`s husband died on 4 May 1974 as a result of a car accident. The plaintiff sued the defendant in August 1974 (ie only about three months after the death of her husband). When she commenced the action, there already was an executor in existence. After the one year time-bar for commencing an action had commenced, the defendant amended his defence, and pleaded that the plaintiff had no locus standi to maintain the action by virtue of s 8(2) of the Trinidad and Tobago Ordinance. Lord Templeman, delivering the judgment of the Privy Council, held (at p 647):

> *Section 8(2) of the Ordinance does not expressly invalidate any action by a*

dependant within six months of the death if at the date of the writ there exists an executor or administrator. By 4 November 1974, it was certain that the dependants were entitled to bring proceedings, because it was certain that no executor or administrator had brought an action within that period of six months. Their Lordships are not convinced that a premature action is irregular although it may be stayed or dismissed if within six months of the death another action is brought by the executor or administrator. Their Lordships are satisfied that, if a premature action is irregular and the irregularity is of a kind, which, as in the instant case, was cured without amendment by the mere lapse of time and which causes no prejudice to the defendant, there is no reason for the court to insist that the irregularity nullifies and invalidates the whole proceedings. The modern approach is to treat an irregularity as a nullifying factor only if it causes substantial injustice: see ***Marsh v Marsh*** *[1945] AC 271, 284. The premature issue of the writ in the present case did not cause any injustice at all. A bizarre and unjust result would follow if a writ issued on 2 November 1974, and served on 4 November 1974, were held to be a nullity whereas a write issued and served on 4 November 1974, would plainly have been effective.*

I agree with this reasoning entirely. Applying it to the present case, s 20(4) of the Act does not expressly invalidate any action brought prematurely. Furthermore, no prejudice has been caused to the defendants by the plaintiff bringing the proceedings within the six month period. If the plaintiff`s action had indeed been premature, the irregularity should be regarded as having been cured by lapse of time. Her action should thus be allowed to stand.

Conclusion

The defendants` attempts to impugn the plaintiff`s locus standi would only result in a delay in the plaintiff having her day in court. It would serve no useful purpose for me to strike out this claim as the plaintiff could start a fresh dependency action immediately, the claim not being time-barred. There was no merit therefore in the defendant`s application. I therefore dismiss the appeal with costs and uphold the decision of the assistant registrar below.

Outcome:

Appeal dismissed.