Zubaida Binte Hussain and Others v Tan Sze Joo
[2004] SGHC 207

Case Number : Suit 577/2003

Decision Date : 15 September 2004

Tribunal/Court : High Court

Coram : Ching Sann AR

Counsel Name(s) : Sankaran Karthikeyan, George John (Karthikeyan and Co) for plaintiffs; Ramesh Appoo, Nagaraja S Maniam (Just Law LLC) for defendant

Parties : Zubaida Binte Hussain; Abdul Kadir Bin Salleh Talib; Abdul Rahman Bin Mohamed Hussain; Maryam Zai Adabi BT Al-Mansor Adabi; Ana Mariani Siswadi — Tan Sze Joo

15 September 2004 :

AR Ching Sann

Background

The first Plaintiff (the 'Plaintiff') was 54 years of age at the time of the accident on 30 September 2000 and had been a teacher for 37 years. Interlocutory judgment was entered for the Plaintiff at 77.5% liability against the Defendant on 23 October 2003.

2 The facts of the case bear some repeating as they are somewhat unique and causation has been disputed by the Defendant. The Plaintiff was in a car driven by her husband, the second Plaintiff, when it was involved in an accident with the Defendant's vehicle. Although the accident was serious in that the vehicle overturned, the Plaintiff's injuries (which are discussed in greater detail from paragraph 11 below onwards) were relatively minor in that she was given outpatient treatment only.

3 At the time of the accident, the Plaintiff's mother had been hospitalized in the Intensive Care Unit, and indeed the Plaintiff had been on the way to visit her mother in hospital when the accident occurred. The Plaintiff's mother subsequently passed away approximately a week after the accident, from causes unrelated to the accident.

The Plaintiff's claim

4 The Plaintiff claimed that as a result of the accident, she suffered from nightmares and intrusive recollections of the accident, fear and flashbacks when traveling in a car, depression, difficulty sleeping, inability to concentrate or cope at work, a loss of interest in doing things and feeling miserable, and mild post-traumatic symptoms. The injuries and depression resulted in the Plaintiff taking early retirement in December 2001.

5 The Plaintiff's claim fell under the following heads:

(a) Pain, suffering and loss of amenities $38,950

(b) Pre-trial loss of earnings $221,773.12

(c)	Loss of future earnings	$415,825
(d)	Loss of earning capacity	$50,000
(e)	Special damages	$41,738.65
(f)	Future medical expenses	$15,000

The claim under item (a) was further subdivided into the following:

(i)	1cm superficial laceration on the right lower lip	$1,200
(ii)	1 x 3cm haematoma over the left iliac spine	$6,000
(iii)	Tenderness over the left trapezius muscles	$750
(iv)	Slight limitation of neck movement	$1,000
(v)	8 x 15 cm swelling below the left elbow joint	$1,000
(vi)	Loss of lordosis on c-spine	$4,000
(vii)	Nightmares, flashbacks, etc	$25,000

Causation

6 The Defendant disputed that the large part of the Plaintiff's claim was attributable to the accident. Instead, counsel contended that the real cause of the Plaintiff's depression was her mother's death, which was unrelated to the accident, and hence only those parts of the claim that resulted from injuries suffered in the accident, such as items (a) (i) to (vi), were recoverable. Counsel for the Plaintiff for his part pointed out that the Plaintiff's expert witness, Dr Angelina Chan, had testified that the Plaintiff had already suffered nightmares and intrusive recollections of the accident before her mother passed away.

7 I accepted that the Plaintiff would have suffered some distress as a result of the accident, but otherwise agreed with the submission made by counsel for the Defendant that the true cause of the Plaintiff's depression was the death of her mother, and not the accident. The overall impression received from both Dr Chan's and the Plaintiff's testimonies was that the Plaintiff's mother played a very central role in the Plaintiff's life, to the extent that she spent almost all her free time with her mother, such that the depression the Plaintiff suffered would have occurred whether or not the accident had taken place. In so deciding, I was mindful that Dr Chan had stated that while the post-traumatic stress the Plaintiff had suffered from the accident did not contribute directly to her ability to continue with her teaching career, this post-traumatic stress had exacerbated her depression and grief. However, I was not convinced that the post-traumatic stress from the accident was in any way so severe that it could be said to have caused the Plaintiff's depression, as Dr Chan had also stated

in her affidavit of evidence-in-chief that the mild post-traumatic stress symptoms resulting from the accident "were not disabling in nature and she was not unduly distressed by them". Finally, the closing exchange from Dr Chan's cross-examination is instructive in this respect:

Q: At the end of the day, even if the accident had not taken place at all, it is highly likely she would be in her current condition as a result of her mother's and aunt's demise in September 2000 and September 2003?

A: That is correct. Her current condition is more likely to have been a result of her mother's death and her ongoing grief.

8 I noted in this connection that although the Plaintiff claimed that the accident had resulted in her being unable to visit her mother as often as she would have liked prior to her death, and hence causing feelings of guilt, Dr Chan had testified that the guilt would also have come from the Plaintiff not spending as much time with her mother before the accident. Indeed, Dr Chan had stated that the Plaintiff would have felt such guilty feelings even if she had spent all her time with her mother during the latter's illness. In any event, the Plaintiff's testimony was that apart from the day of the accident, she had managed to visit her mother every day until the day before she passed away.

9 I would add at this point that I had serious doubts as to whether the depression suffered by the Plaintiff was so serious as to have caused her early retirement. Dr Chan had clarified in re-examination that she had diagnosed the Plaintiff with post-traumatic stress symptoms, as opposed to post-traumatic stress disorder, as she was of the view that the Plaintiff did not meet the criteria for the latter, which referred to situations where the patient's symptoms were persistent, severe and disabling to the point where they were unable to function. Dr Chan also stated that she had not recommended to the Plaintiff that she take early retirement from her job, but that it had been the Plaintiff who raised the issue, and she had decided to support the Plaintiff after reviewing her case for several months. Finally, Dr Chan had also identified the Plaintiff's inability to cope with work, because of increased workload, as a source of stress for her. In this regard, I noted that in early 2001, the Plaintiff had been transferred from Mountbatten Primary, where she had worked since 1981, and which was relatively close to her home in Bedok, to Queenstown Primary.

10 In light of the foregoing, I was of the view that the Plaintiff was not entitled to claim in respect of items (b), (c), and (d) above. As item (f), future medical expenses, this claim was premised solely on the Plaintiff's depression and hence was also disallowed. As for items (a) and (e), I was of the view that those components which were attributable to the accident could be claimed.

Recoverable damages

Pain, suffering and loss of amenities – item (a)

11 Counsel were in agreement that the Plaintiff was able to claim for items (a) (i), (ii), (iii), (iv) and (v). In respect of item (i), counsel for the Defendant offered $800, as the Plaintiff had only suffered a superficial laceration, while in *Balbir Singh s/o Hira Singh v Chuang Woon Chin Olivia* (unreported) and *Yazid Bin Yakob v Ong Siong Chai* (unreported), the plaintiffs had recovered $1,000 and $1,200 for a laceration on the lip and a full thickness laceration of the upper lip respectively. I awarded $800 for item (i).

12 For item (ii), I agreed with the submission made by counsel for the Plaintiff that a haematoma over the spine was more serious than a haematoma over the forehead, for which the sum of $3,000 had been awarded in *Leong Mei Li Jaice v Low Mun Seng* (unreported). I awarded $4500 for item (ii).

13 For item (iii), the authorities cited by counsel were not helpful and in view of the small difference between the amount claimed by the Plaintiff and the amount offered by the Defendant of $500, awarded $750 for item (iii).

14 For item (iv), counsel for the Defendant submitted that $500 was reasonable as the Plaintiff did not suffer from a neck sprain, as was the case in *Wan Sum Wah v Singapore Bus Service* (unreported). However, I noted that counsel for the Plaintiff had already discounted the amount claimed and hence awarded $1,000 for item (iv).

15 Item (v) was agreed at $1,000.

16 Turning now to item (vi), counsel for the Defendant submitted that the Plaintiff was not entitled to recover for this purported injury as a certain degree of lordosis is normal in the lumbar and cervical regions of the spine. As the medical report from Changi General Hospital did not specify the extent of the lordosis or whether it was caused by the accident, there was no cervical spine tenderness, no doctor from Changi General Hospital was called to testify on this issue, and the Plaintiff did not remember receiving any treatment specifically for the condition, the Plaintiff had not proven that the loss of lordosis was caused by the accident. For his part, counsel for the Plaintiff submitted that the loss of lordosis had been included in the medical report detailing the injuries the Plaintiff suffered from the accident. He also pointed out that counsel for the Defendant had agreed that there was no need to call any medical expert apart from Dr Chan. In the circumstances, I was of the view that the loss of lordosis could be said to be attributable to the accident, but in the absence of any testimony as to the extent of the injury, awarded $1,000 for this item.

17 Finally, the claim under item (vii) was contested by counsel for the Defendant on the basis that the Plaintiff appeared to have only suffered from post-traumatic stress symptoms after the death of her mother. I disagreed with this submission to the extent that, as already noted in paragraph 7 above, Dr Chan had in fact referred to the Plaintiff suffering from mild symptoms as a result of the accident itself. In the premises, I was of the view that the Plaintiff was entitled to limited recovery under this head, and awarded her $6,000.

18 The total amount awarded to the Plaintiff under item (a) was hence $15,050.

Special damages – item (e)

19 The Plaintiff claimed special damages under seven categories:

(i)	Medical and related expenses	$193
(ii)	Car rental and transportation	$5071.74
(iii)	Towing expenses	$210
(iv)	Document fees	$331
(v)	Damage and loss to property	$150
(vi)	Liquidated damages – unserved bond	$11,651.26
(vii)	Loss of performance bonus	$24,131.65

20 Counsel for the Defendant agreed to most of the medical expenses claimed by the Plaintiff, save for those expenses attributable to Dr Angelina Chan, a Healthcrest Medical Centre receipt, and the ambulance fee. In relation to Dr Chan's bills, I was of the view that since the Plaintiff had suffered some post-traumatic stress symptoms from the accident, she was entitled to make some claims in that respect. However, she had only begun seeing Dr Chan from 13 June 2001, well after the accident. Taking into account Dr Chan's testimony that, normally speaking, post-traumatic stress symptoms would begin to fade after four weeks, it could not be said that the treatment received from Dr Chan was properly attributable to the accident. In any event, I noted that the Plaintiff had received treatment for depression from one Dr Christopher Chen before she was referred to Dr Chan, and that the receipts from Dr Chen had already been agreed to by the Defendants.

21 As for the Healthcrest Medical Centre receipt, the Plaintiff had acknowledged in cross-examination that she could not actually remember whether the treatment for which this receipt was incurred had been in respect of the injuries she had suffered in the accident. Finally, counsel for the Defendants made no submission in respect of the ambulance fee. In this regard, I accepted the Plaintiff's evidence that each person involved in the accident had been billed separately for their share of the ambulance fee.

22 The total awarded to the Plaintiff under item (i) was hence $141.50.

23 For car rental and transportation, the Plaintiff's evidence was that although her daughter had paid first for car rental, she had reimbursed her daughter for it subsequently. I accepted her evidence. No evidence was adduced in support of the Plaintiff's transport claims, but I accepted that such expenses would certainly have been incurred. In view of the many trips to the doctors she had made, I was of the view that the $151 claimed was a reasonable sum and hence awarded the full amount of $5071.74 claimed under item (ii).

24 It was the Plaintiff's testimony that it was the second Plaintiff who had paid for the towing expenses. The sum should properly be claimed by the second Plaintiff and item (iii) was hence not allowed. Although counsel for the Plaintiff argued that the second Plaintiff had not made the claim and hence the Plaintiff should be allowed to claim on his behalf, I noted that the second Plaintiff, unlike the Plaintiff's daughter, was a party in this action. It was open to him to amend his claim to include the towing expenses if he so wished.

25 Counsel for the Defendants agreed to have item (iv), document fees, included under disbursements and hence no award was made under this head.

26 Counsel for the Plaintiff referred to the entire Bundle of Documents as evidence in support of item (v), which was for damage to clothes, bags and shoes. There was nothing in the Bundle of Documents, however, that supported a claim for damage and loss to clothes, bags. However, I accepted that some damage must have occurred and made a nominal award of $50 under item (v).

27 Items (vi) and (vii) were not allowed for the same reasons given in at paragraphs 7 to 10 above.

28 It followed from the above that the total amount allowed under item (e) was $5,263.24.

Conclusion

29 In summary, the Plaintiff was awarded general damages at $15,050, and special damages at $5,263.24, leading to a total award, at a 100% basis, of $20,313.24. I also awarded her interest at

3% on $5,263.24 from the date of the writ to the date of judgment, and at 6% on $20,313.24 from the date of judgment to the date of payment.