Chin Swey Min a patient suing by his wife and next friend Lim Siew Lee v Nor Nizar Bin Mohamed
[2004] SGHC 27

Case Number : Suit 174/2002, NA 78/2003

Decision Date : 13 February 2004

Tribunal/Court : High Court

Coram : Ching Sann AR

Counsel Name(s) : David Ling Koon Hean (Ling Das and Partners) for plaintiff; Karuppan Chettiar, Renuka Chettiar and Ganesh S Ramanathan (Karuppan Chettiar and Partners) for defendant

Parties : Chin Swey Min a patient suing by his wife and next friend Lim Siew Lee — Nor Nizar Bin Mohamed

13 February 2004

Ching Sann, Assistant Registrar:

Undisputed facts

1 The plaintiff was 38 years of age at the date of the accident on 5 March 1999. A Malaysian, he was then working in Singapore on a work permit and was employed as a supervisor with a construction company. Interlocutory judgment was entered for the plaintiff at 90% liability against the defendant on 7 June 2002.

The plaintiff's claim

2 The plaintiff claimed for damages under the following heads:

General damages

(i)	Pain and suffering	$ 284,000.00
(ii)	Loss of future earnings	$ 619,115.04
(iii)	Future medical care	$ 45,000.00
(iv)	Future home care	RM 202,149.60

Special damages

(v)	Pre-trial loss of earnings	$ 154,320.89
(vi)	Medical expenses in Singapore	$ 28,645.70
(vii)	Medical expenses in Malaysia	RM 5,591.75
(viii)	Accommodation expenses	$ 3,837.49

(ix) Transport and expenses $ 3,200.00

Decision

3 Having heard all the evidence and reviewed submissions from counsel for both parties, the following award is made:

General damages

Pain and suffering

4 The plaintiff's claim of $284,000.00 for pain and suffering was divided into the following heads:

(a)	Severe head injury	$ 120,000.00
(b)	Fractured right skull zygoma and lateral wall of right orbit	$ 25,000.00
(c)	Fracture of right clavicle and scapula	$ 22,000.00
(d)	Deep neck lacerations and abrasions/ scarring on face, chest, thigh, ankle, elbow	$ 20,000.00
(e)	Pulmonary (lung) contusion with right haemothorax	$ 15,000.00
(f)	Fracture of right 1st, 2nd and 3rd ribs	$ 7,000.00
(g)	Laceration of liver	$ 7,000.00
(h)	Degloving injury to right forearm	$ 10,000.00
(i)	Stable fracture of cervical C6, C7 spinous processes	$ 18,000.00
(j)	Brachial plexus injury	$ 20,000.00
(k)	Loss of amenities	$ 20,000.00

5 On item (a), defence counsel submitted that an appropriate award of damages would be $35,000.00. I was of the view that this amount was far too low in light of the fact that these injuries were very serious and had resulted in the plaintiff's general memory being assessed to be within the mental deficient range with erratic concentration, poor memory, poor new learning and personality changes. Indeed, the plaintiff had been declared by a court to be mentally unsound and his financial affairs were now being managed by his wife, Mdm Lim Siew Lee. Although defence counsel had cited several authorities in support of their submission on quantum for this item, I did not find these

authorities to be helpful as, at their worst, the injuries suffered by the plaintiffs in defence counsel's authorities did not come close to the degree of mental impairment suffered by the present plaintiff. For example, in *Er Hung Boon v Law Shyan En* (unreported), that plaintiff had suffered only from memory impairment, while in *Pang Koi Fa v Lim Djoe Phing* [1993] 3 SLR 317 that plaintiff had suffered from post-traumatic stress disorder resulting in nervous shock. By contrast, I found the authorities cited by plaintiff's counsel, such as *Peh Diana v Tan Miang Lee* [1991] SLR 341 to be more helpful in this regard. However, that said, and even after taking into account inflation, I completely failed to see the basis for plaintiff's counsel's submission of $120,000.00 for item (a), let alone a further $20,000.00 under item (k). This was especially so given that I was of the view that there was a large, if not complete, overlap between these two items. In the premises, I awarded $70,000.00 for items (a) and (k).

6 Moving on to item (b), I was of the view that plaintiff's counsel had not justified his claim of $25,000.00 for these injuries. The only authority cited by him for this item did not come close to the sum claimed. Defence counsel's submission of $6,000.00 was far closer to the mark and I hence awarded $6,000.00 for item (b).

7 Defence counsel's submission for item (c) was $9,600.00 for these injuries. I found the main reason for the disparity between the submissions made by respective counsel on this item stemmed from their taking the extreme ends of the range of awards made by the courts in relation to such injuries. Defence counsel had, in arriving at their submission, also applied a discount on the basis that the two injuries comprising this item overlapped. I disagreed that there was an overlap and, in the absence of any evidence showing that the injuries in question were particularly serious or particularly trivial, awarded $17,000.00 for item (c), being $10,000.00 for the clavicle fracture and $7,000.00 for the scapular fracture.

8 Turning to item (d), defence counsel's submission for this item was $1,500.00. This was far too low in light of the widespread and severe scarring which the plaintiff had suffered, and which still remained, as shown by recent photographs submitted to the court at defence counsel's request. At the same time, plaintiff's counsel's submission of $20,000.00 was unacceptably high. I was of the view that $8,000.00 was a suitable award for item (d).

9 For item (e), defence counsel submitted that it should be considered together with item (f), and that the total damages awarded for items (e) and (f) should be $7,000.00. While I agreed that the two items ought to be considered together, I was of the view that the amount submitted by defence counsel was far too low. After taking into account the authorities cited, such as *Cheong Kok Leong v Teo Yam Hock* (unreported) and *Heng Kim Eng v Singapore Bus Service (1978) Ltd* (unreported), as well as Dr Chou Ning's testimony that the fracture of the plaintiff's 1st rib implied that he had suffered severe trauma, I awarded $15,000.00 for items (e) and (f).

10 On item (g), defence counsel submitted $1,500.00 but did not provide any authorities in support of their submission. At the same time, I took the view that plaintiff's counsel's authorities did not even come close to supporting his claim of $7,000.00 for this item, and awarded $2,500.00.

11 Item (h) was agreed between the parties at $10,000.00.

12 For item (i), defence counsel submitted that it should be considered together with item (j), and that the award for both items should be $7,000.00. I disagreed that the two items should be considered together. I also noted that the awards given in both authorities cited by defence counsel for this item far exceeded their own submission, without any reason given for the departure. In view of the authorities cited by both counsel, such as *See Gim Tin v Gopalan Chandran* [1996] MD para

992, I awarded $10,000.00 for item (i).

13 Finally, as to item (j), in the absence of any evidence showing that the injury had caused long-lasting damage to the plaintiff, plaintiff's counsel's submission of $20,000.00 was too high, and I was of the view that $10,000.00 was appropriate in the circumstances.

14 The total award to the plaintiff for pain and suffering was hence **$148,500.00.**

Loss of future earnings

15 The plaintiff's claim of $619,115.04 for loss of future earnings was arrived at by using a multiplier of 12 years and a multiplicand of $4,299.41 per month. The multiplicand was obtained by using a mean salary of $2,150.00 per month (derived from the plaintiff's last drawn salary in 1999), and then applying a yearly 5% increment in salary and an annual bonus of 1.5 months. On this basis, plaintiff's counsel submitted that the plaintiff would then have been earning $3,087.00 per month by the time of the assessment in 2004. From there, plaintiff's counsel applied a further 5% yearly increment to arrive at a mean salary of $4,299.41 per month over 12 years.

16 By contrast, defence counsel submitted that a multiplier of nine years was appropriate in the circumstances. They further submitted that since the plaintiff was working in Singapore on a work permit he would not necessarily work in Singapore for the entire period of his working life. Their submission of $126,000.00 for this head of claim was hence obtained by applying a multiplicand of $1,500.000 per month for three years (being the salary earned by the plaintiff in Singapore) and a multiplicand of $1,000.00 per month for six years (being the salary earned by the plaintiff when he returned to Malaysia on the expiry of his work permit).

17 I had serious misgivings about plaintiff's counsel's submissions on the salary the plaintiff could have earned if he had not been injured. The same method of computation which had enabled plaintiff's counsel to arrive at a mean salary estimate of $4,299.41 for the purposes of calculating loss of future earnings had also resulted in the monthly salary figure of $5,543.81 per month in 2016. All other considerations aside, both amounts were wholly improbable given the evidence of Ms Chua Siok Hong, the representative of the plaintiff's employer, that the highest possible position the plaintiff could have risen to with the company was that of senior supervisor, as it was accepted that the salary range for such persons was between $3,000.00 and $3,700.00 per month.

18 There was also the question of whether the plaintiff could even have been promoted to senior supervisor in the first place. Although Ms Chua had testified that the plaintiff had good promotional opportunities with his last employers, I did not find her testimony to be of much assistance for the purposes of the inquiry. As was made patently clear during cross-examination, Ms Chua had no personal knowledge of material issues such as the plaintiff's working ability or promotional prospects, as she was neither his supervisor nor from the company's human resource department. Instead, she had obtained the facts upon which she based her testimony upon inquiry with the plaintiff's former supervisor who was not called as a witness. Given Ms Chua's lack of qualification to testify on the topic at hand and the absence of any documentary evaluation which could be safely relied on, I was of the view that any calculation of the plaintiff's future earnings which were predicated on his promotion to senior supervisor were unduly speculative and unsafe.

19 I also noted that although plaintiff's counsel's calculations were based on a 5% increment in salary every year, Ms Chua had admitted under cross-examination that the company had not given any increments in salary in the three years since 1999. Finally, I did not accept plaintiff's counsel's submission that no deduction should be made for expenses incurred by the plaintiff in earning his

income. The basis for this submission was that the company provided free accommodation for their workers, such that there would be a set-off between such expenses and other benefits not included in the computation such as overtime allowance and the benefit of a company car. However, Mdm Lim had stated in cross-examination that the plaintiff did not stay in the company's free accommodation but in a hostel in Pasir Panjang. Furthermore, the use of a company car was predicated on the plaintiff being promoted to senior supervisor, an assumption which, as explained above, could not be reliably made. As for any overtime allowance, this issue had not been raised at the hearing nor had any evidence been led in respect of it, such that it was not a proper factor to be taken into consideration.

20 In the premises, I was of the view that a multiplicand of $2,100.00 per month was appropriate in calculating loss of future earnings. In so deciding, I declined defence counsel's invitation to make a further deduction to the multiplicand on the basis that the plaintiff could, despite being mentally unsound, still earn a salary. Both Dr Robert Don and Dr Chou Ning were of the opinion that it was impossible for the plaintiff to work in a competitive working environment. Although Dr Don was of the view that the plaintiff could work in a special needs workshop, he had testified that such arrangements were probably not suitable as the nearest workshop, if any, would be in Johor Bahru, while the plaintiff lived a distance away in Kluang. Any earning prospects were hence predicated on the plaintiff obtaining some sort of home-based work or as an assistant in a coffee shop. As to this last option, Dr Don too expressed his doubts, on the basis that most employers would not be willing to accept a worker with the plaintiff's disabilities.

21 As for the issue of the applicable multiplier, I followed the decision of Prakash J in *Karuppiah Nirmala v Singapore Bus Services Ltd* [2002] 3 SLR 415, which concerned a plaintiff of similar age to the present plaintiff both at the time of the accident and at the time of the assessment, and used a multiplier of 11 years. At the same time, I accepted defence counsel's submission that the same multiplicand should not be applied across the board. Although plaintiff's counsel submitted that the plaintiff was a skilled worker who would always be in demand in Singapore, no evidence was in fact led as to whether he was in fact a skilled worker, save for Ms Chua stating that he had a Certificate of Lifting Supervisor (Safety). She was, in any event, unable to shed any light on the significance of such a qualification. Furthermore, although Ms Chua claimed that the company employed persons up to the age of 62, she was only able to provide one example of a person "coming to 60" who was still working with the company. This person was in any event not a suitable example as he was in fact a shareholder of the company, not a common employee like the plaintiff. In the premises, I divided the applicable multiplier of 11 years into eight years for Singapore, and the remaining three years for Malaysia. The amount arrived at for the plaintiff's loss of future earnings from employment in Singapore was hence $201,600.00.

22 As for the applicable multiplicand for the plaintiff's employment in Malaysia, Mdm Lim pleaded total ignorance as to how much the plaintiff had earned during the time he had worked in Malaysia, or the current comparable salaries, nor was any evidence led which might shed light on the matter. In the face of such uncertainty, I was of the view that an award for loss of earning capacity for this part of the inquiry was appropriate. However, defence counsel were willing to concede a salary of $1,000.00 per month, which I accepted. The amount arrived at for the plaintiff's loss of future earnings from employment in Malaysia was hence $36,000.00.

23 The total award for loss of future earnings was hence **$237,600.00**.

Future medical expenses

24 The plaintiff's claim of $45,000.00 for future medical expenses was based on a quotation by

Dr Martin Huang of $50,000.00 for three procedures: steroid injections to the keloid scars, surgical scar revision to the neck scar, and flap reconstruction to the right forearm defect. Plaintiff's counsel then applied a discount of 10% to this quote on the basis that the plaintiff ought to have obtained quotations from restructured hospitals without any applicable subsidy. Defence counsel for their part submitted that no damages were recoverable as it had not been proven that the procedures were necessary.

25 I noted that Dr Huang had testified that there was no medical need for the flap reconstruction to the right forearm defect. Neither was there any cosmetic need, in light of the plaintiff's mental disabilities. As for the two remaining treatments, the need for them would depend on whether he had any problems relating to those scars, yet no evidence was in fact led as to the plaintiff suffering any complications from them. Nevertheless, I was of the view that some provision ought to be made for them, as, from the most recent photographs tendered, the scars were thick, and Dr Huang had suggested that the neck scar, for example, could be restrictive of neck movement. In view of Dr Huang's quotation of $1,000.00 to $2,000.00 for the steroid injections, $3,000.00 to $4,000.00 for the surgical scar revision to the neck scar, plaintiff's counsel's concession of a 10% discount and a further discount based on the fact that the plaintiff might only possibly require such treatment, I awarded **$1,500.00** for future medical expenses.

Future care

26 The plaintiff's claim of RM 202,149.60 for the cost of future care was based on the cost of a maid being RM 842.29 per month and a multiplier of 20 years. Defence counsel for their part noted that Mdm Lim often went out, leaving the plaintiff alone at home, yet could only point to one incident whereby the plaintiff had been locked out of the house and left water boiling on the stove. As such, the only possible amount claimable was for the cost of a part-time helper to keep an eye on the plaintiff during those times when Mdm Lim was away at work. However, no evidence had been adduced as to the cost of such part-time help, such that no award should be made.

27 I agreed for the large part with defence counsel's submission. Mdm Lim's own testimony was that she worked three times a week for about 3 hours a time, ie 9 hours a week. Although no evidence was adduced as to the cost of such part-time care, I was nevertheless minded to make a nominal award of RM 50.00 per month. In view of the plaintiff's age, a multiplier of 16 years was appropriate for this item, and the award under this head was hence **RM 9,600.00**.

Special damages

Pre-trial loss of earnings

28 As noted in paragraph 15, plaintiff's counsel submitted that by the time of the assessment in January 2004, the plaintiff would be earning $4,299.41 per month. By the same reasoning, given the plaintiff's monthly salary of $2,418.75 in 1999, this led to a mean salary of $2,742.02 per month for the applicable 57-month period, and thence to the claim of $154,320.89 for pre-trial loss of earnings.

29 I have already stated in paragraphs 17 to 19 above my reasons for rejecting plaintiff's counsel's mode of calculation of the plaintiff's salary. For the same reasons, I assessed the plaintiff's net monthly salary for this period at $1,700.00 per month which, when applied to the 57 months between the last time the plaintiff was paid in April 1999 and the date of assessment in January 2004, came to **$96,900.00**.

Medical expenses

30 The main dispute in relation to medical expenses related to those incurred by the plaintiff in Singapore as defence counsel argued that the plaintiff was not entitled to claim for them since his employer had already paid the bills. I disagreed with defence counsel's submission. Although it was true that the company had in fact paid for the large majority of the bills, it was Ms Chua's testimony that the payments had been made as the company was under the impression that it could claim for reimbursement under workmen's compensation. However, it had since been informed by the insurers that it was not entitled to make such claims in respect of the plaintiff. Although the company had not yet demanded repayment by the plaintiff of the amounts paid, the fact remained that the plaintiff was under an obligation to repay these sums. As such, I allowed the full amount claimed for the Singapore medical expenses of **$28,645.70.**

31 As for the amount claimed by the plaintiff for medical expenses incurred in Malaysia, this amount was agreed to by defence counsel save for one bill for RM 85.00 which was stated as being for an "insurance form". Given that defence counsel had not chosen to cross-examine Mdm Lim on the exact nature of this bill, I was of the view that it was too late in the day to object to its inclusion, and hence allowed the full claim of **RM 5,951.75.**

Accommodation expenses

32 Although receipts were submitted for accommodation expenses, no such claim was in fact made in the Statement of Special Damages. Plaintiff's counsel nevertheless submitted that this item ought to be included in the assessment since the defendant would not have been taken by surprise, and applied for leave to include it in his written submissions. I disagreed. The whole point of requiring special damages to be explicitly claimed is so that the defendant would have notice that such items of damage would be claimed. Although it could be argued that defence counsel in the present case had notice that such expenses had been incurred, the fact remained that they had relied only on those heads of claim stated in the Statement of Special Damages when making their submissions. More importantly, no evidence had been led on the issue at trial. In the premises, the claim for accommodation expenses was not allowed.

Transport and food expenses

33 Finally, as to this head of claim, no evidence was adduced to support the amount claimed. However, I accepted that expenses would necessarily have to be incurred and hence made a nominal award of **$500.00.**

Summary

34 In summary, the total award made to the plaintiff is as follows:

Special damages:	$126,045.70 and RM 5,951.75
General damages:	$387,600.00 and RM 9,600.00
Total award:	**$513,645.70 and RM 15,551.75**

And interest on $126,045.70 and RM 5,951.75 at 3% from the date of accident to the date of trial, and on $148,500.00 at 6% from that date of service of the writ to the date of trial. Usual consequential orders.