

Zhu Shan Fu v China Construction Builders Pte Ltd
[2012] SGHC 54

Case Number : District Court Suit No 2009 of 2009 (RAS No 9 of 2012)
Decision Date : 15 March 2012
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Renganathan Shankar and Liew Hwee Tong Eric (Gabriel Law Corporation) for the appellant/plaintiff; Ramesh Appoo (Just Law LLC) for the respondent/defendant.
Parties : Zhu Shan Fu — China Construction Builders Pte Ltd

Damages – Assessment – Appeal

Civil Procedure – Offer to settle

15 March 2012

Judgment reserved.

Choo Han Teck J:

1 A plank fell on the appellant's back while he was working as a construction worker employed by the respondent. Interlocutory judgment was entered with liability resolved at 70% in the appellant's favour. Damages were assessed by a deputy registrar in the Subordinate Courts, who awarded 70% of the total damages amounting to \$12,285.35, comprising \$3,000 for the contusion on the appellant's lower back, \$40.50 for medical expenses in Singapore, and \$14,510 for pre-trial loss of earnings. Prior to the hearing before the deputy registrar, the respondent made an offer to settle for \$14,880 to the appellant, which was not accepted. The deputy registrar ordered costs to be payable by the respondent to the appellant on a standard basis from the date of the writ to the date of the offer to settle, and by the appellant to the respondent on an indemnity basis from the date of the offer to settle onwards. Both parties appealed to a district judge who only reduced the damages awarded for pre-trial loss of earnings to \$8,250, such that the appellant was awarded \$11,290.50 in total.

2 Mr Shankar, counsel for the appellant, is now here before me praying for an increase in the damages assessed and awarded. Specifically, Mr Shankar prays for \$10,000 for the injury to the appellant's upper back, \$20,000 for the injury to the appellant's lower back, \$1,500 for the abrasion to the appellant's upper back resulting in a scar, \$57,330 for loss of future earnings, \$10,2000 for loss of future medical expenses, \$27,762.30 for pre-trial loss of earnings, \$867.90 for medical expenses in Singapore and China, and \$240 for transport expenses, which amounts to a total of \$89,530.14 calculated on a 70% basis. Mr Shankar also asks for the deputy registrar's costs order to be set aside.

3 Mr Shankar says that the appellant suffered more than a contusion to his upper lumbar spine and that his lower lumbar spine was injured by the plank. Alternatively, the contusion on his upper lumbar spine aggravated pre-existing degenerative changes in his lower lumbar spine. In addition to the damages for the alleged lower back injuries, Mr Shankar also submits that damages should be awarded for the abrasion on the upper lumbar region of the appellant's spine. Upon reviewing the evidence, I am unable to agree with Mr Shankar. The appellant's claim for the abrasion is easily disposed of: the abrasion and the contusion on the appellant's upper lumbar spine are simply the same injury and the appellant should not recover twice for the same injury.

4 Regarding the alleged injury to the lower lumbar spine, the medical reports do not support Mr Shankar's case. The appellant's X-ray report made on the day after the plank fell on him states that the "upper lumbar area [was] hit by [a] wooden plank yesterday". The MRI scan of the appellant's spine showed that "there is no MR evidence of marrow oedema suggestive of bony injury" and concluded that there was no injury in the lower lumbar spine except for a "loss of lumbar lordosis". There was no mention of any injury caused to the lower lumbar spine in these reports. Dr Tan Mann Hong, who was a doctor at the Singapore General Hospital where the appellant sought medical treatment the immediate day after the plank fell on him, produced a medical report on the appellant, in which he noted that "[t]here was a 2cm X 1cm superficial abrasion noted at the upper lumbar region of the L2 lumbar spine" and stated that "[his] impression is that [the appellant] suffered a contusion of his spine especially involving the upper lumbar region". This report suggests that the only injury was a contusion at the lower lumbar spine and does not favour the appellant's case. It was important for the appellant in the assessment hearing below to call Dr Tan Mann Hong as a witness but he was not called.

5 Instead, the appellant produced a report by one Dr Tan Mak Yong from My Orthopaedic Clinic at Gleneagles Medical Centre, who only examined the appellant about six months after his accident and opined that the appellant "probably sustained hyperflexion injury of [his lumbar] spine with exacerbation of degenerated [lower lumbar spine discs]" when his back was hit by the plank. It is not disputed that the appellant already has a pre-existing degeneration of his lower lumbar spine. The question is whether the injury caused by the falling plank aggravated this. If the injury to the upper lumbar spine was serious enough to cause injury to the lower lumbar spine, it would have been clearly evident in the firsthand reports for the various scans done on the appellant. Yet there is no such evidence. Even the doctors who treated the appellant the immediate day after his accident did not say that the contusion sustained on the upper lumbar spine aggravated any pre-existing condition. Dr Tan Mak Yong's report is not contemporaneous, and at any rate, as already noted by the deputy registrar, is based on certain assumptions made regarding the weight of plank and the way it fell on the appellant, facts that Dr Tan Mak Yong was not personally acquainted with. In response, the respondent produced a medical report made by one Dr Lee Soon Tai after he had conducted a clinical examination of the appellant and considered the various medical reports noted above. The report states that the only injury was the contusion, there was no objective evidence of any severe injury to the lumbar spine and the appellant showed clinical signs of exaggeration of his physical disabilities.

6 In the light of this lack of evidence, the proposition that the injury to the upper lumbar spine somehow aggravated the pre-existing problems with the lower lumbar spine is speculative. It is undisputed that the appellant suffered a contusion on the upper lumbar spine. It is hard to believe that what is otherwise a bruise, which Dr Tan Mak Yong himself testified would heal within six weeks, could lead to such injuries in the lower lumbar spine.

7 The surveillance evidence produced by the respondent confirms this view. The respondent hired private investigators to conduct surveillance on the appellant to see whether his daily activities and movements were consistent with his alleged injuries. This surveillance was conducted on the appellant on the day he visited Dr Lee and the day after. A video and a report were produced. The deputy registrar considers this to be the best objective evidence. After watching the video and reading the report, I agree with the deputy registrar's view that the appellant did not exhibit any signs of discomfort or pain which would be telling of a man who claimed he had been experiencing constant pain in his back since the accident until now. The video shows that the appellant could walk with a normal gait, ascend and descend stairs without any apparent difficulty, walk for considerable distances carrying a load, remain on his feet for a sustained period of time, squat down and remain squatting for over 10 minutes, stoop forward, bend downward, squat, turn his neck and crouch in

various positions while trying to charge his mobile phone, and get up from squatting and stooping positions without any signs of difficulty. Mr Shankar's explanation for this was that the appellant's pain from the alleged injuries recurred periodically and was not constant, such that "there will be good days and bad days", as noted by Dr Tan Mak Yong in his testimony in court. Mr Shankar points to the parts of the video where the appellant occasionally placed his hands on his back, which signifies that he had lower back pain. I do not accept Mr Shankar's explanation. From my assessment of the appellant's behaviour in the video, the appellant seems to be merely occasionally placing his hand on his lower back and was not holding it in pain. Apart from this, the appellant was walking normally and his behaviour as a whole did not suggest that he was suffering from such lower back pain. The surveillance evidence suggests that the appellant had only good days. There is no concrete evidence of the alleged bad days, apart from Dr Tan Mak Yong's evidence which in any event should be given little weight. Hence, I agree with the deputy registrar that the appellant has exaggerated his injuries. Furthermore, the deputy registrar had the benefit of seeing and hearing the various witnesses give their testimony before finding that the appellant had clearly exaggerated his disabilities and only sustained a contusion at his upper lumbar spine which would have healed within six weeks. I am not inclined to disturb the deputy registrar's findings given that I have not had the same benefit and those evidence that I was able to evaluate I find that they support the lower court's findings.

8 As a result, I will not increase the damages awarded for the injury to the appellant's upper back and will not award damages for any supposed injury to the appellant's lower back. Since I agree with the deputy registrar's finding that the appellant only suffered a contusion on his upper back which would have healed within six weeks, the appellant's claim for additional damages representing further medical expenses, loss of future earnings, medical expenses in Singapore and China must be dismissed. The claim for transport expenses is not supported by receipts and must also be dismissed. The damages awarded for pre-trial loss of earnings amounting to \$8,250 is already very generous, considering that the district judge made this award on the basis that the appellant could not find work for roughly eight months after his injury, even though the appellant only suffered the contusion on his upper back which should have healed in about six weeks.

9 The appellant should have accepted the respondent's offer to settle. I am not inclined to disturb the costs orders below. The purpose behind the rules regarding the offer to settle is to ensure that parties do not exaggerate their respective cases. If the courts do not enforce the usual cost consequences of offers to settle under O 59 r 9 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), litigants like the appellant will have no incentive to accept reasonable offers. The fact that the appellant's failure to do so here has led to the appellant having virtually no compensation should be a reminder to lawyers and litigants that the court's discretion not to enforce the usual cost consequences of offers to settle will not be exercised lightly. The circumstances of this case do not merit intervention. On the contrary, it follows very shortly after a similar case before me, District Court Suit No 1999 of 2009, *Jin Ye Shao v China Construction (South Pacific) Development Co Pte Ltd*. In that case, another worker from the People's Republic of China, who was also represented by Mr Shankar and worked for a construction company at the material time, also rejected what appeared to be a reasonable offer to settle. That plaintiff also exaggerated his injuries, and did not call a material orthopaedic surgeon from the Singapore General Hospital who actually treated him and instead chose to rely on an opinion of the same Dr Tan Mak Yong.

10 For the reasons above, I dismiss the appeal. I will hear the question of costs of this appeal on another date if parties are unable to agree costs.

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