Chua Ser Kenon *v* Karuppiah Jai Sankar and another
[2015] SGHC 127

Case Number : Suit No 394 of 2012 (HC/Registrar's Appeal No 84 of 2015)

Decision Date : 08 May 2015

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Anparasan s/o Kamachi (KhattarWong LLP) for the plaintiff; Cecilia Lee Thomas (Bogaars & Din) for the defendants.

Parties : Chua Ser Kenon — Karuppiah Jai Sankar and another

Tort – Negligence – Damages

8 May 2015 Judgment reserved.

Choo Han Teck J:

1 The plaintiff was knocked down by a lorry on 21 August 2009 and was injured. He was then 29 years old and was a doctor. He obtained interlocutory judgment on 4 February 2013 at 75% liability against the defendants. The assessment of damages was heard in August 2014 before the learned Assistant Registrar Wong Baochen ("the learned AR"). On 6 March 2015, the learned AR awarded the plaintiff $39,384.24 (at 75%) plus interests and costs against the defendants.

2 The plaintiff appealed before me against the learned AR's dismissal of his claim for loss of earning capacity, as well as her award of a nominal sum of $1,000 for loss of future earnings.

3 There was no dispute as to the injuries suffered by the plaintiff. The most serious one was a fracture of the right acetabulum (the right hip bone). The plaintiff had two surgical operations to insert pins for stabilising the hip region. He was discharged from hospital on 23 September 2009 and within three months thereafter he was walking again.

4 The learned AR awarded the plaintiff $22,000 as general damages for the fractured hip. The plaintiff also claimed costs of future hip replacement but the learned AR found on the evidence that there was no sufficient likelihood that the plaintiff would require a total hip replacement in the future. Against this finding the plaintiff did not appeal.

5 He appealed only against the dismissal of his claim for loss of earning capacity and the award of a nominal sum for his claim for loss of future earnings. These two heads of claim cover different types of loss. An award for loss of future earnings is an award to make good any real assessable loss of income as a result of the accident. This is income that the plaintiff would have earned if not for the accident. For example, a man earning $1,000 a month after the accident instead of $2,000 a month before the accident, would be compensated with an amount based on that difference in income. A claim for loss of future earnings is a claim for specific damages, and must be pleaded as such. An award for loss of earning capacity on the other hand is an award for the loss of the plaintiff's competitive position in the job market as a result of his injuries and is awarded as part of general damages.

6 The plaintiff was already a doctor working at the National University Hospital when he was

injured in the accident with the lorry. That was August 2009. In 2011 he applied for a Residency Programme under SingHealth with a view of qualifying as an orthopaedic specialist. It is a seven year programme. When the assessment took place before the learned AR the plaintiff was 34 years old and in the third year of the Residency Programme.

7 It was not disputed that this is a prestigious programme and the plaintiff was the only one in his cohort admitted to it. There is no dispute that if the plaintiff completes the programme he will be a qualified orthopaedic surgeon. The dispute is over the amount of income he would receive. The plaintiff's claim for loss of future earnings and loss of earning capacity was made in the alternative, but is based on his claim that as a result of his injury, he would not earn as much as a surgeon than he would have had he not been injured.

8 The plaintiff claims that an orthopaedic surgeon in the public sector would earn about $24,000 a month from surgery work. He claims that based on a 10% loss over 12 years, the loss of future earnings by reason of the accident would be $345,600. He also claims that a round figure of $200,000 would be the fair amount for his loss of earning capacity. There is, however, absolutely no evidence that he cannot earn what an orthopaedic surgeon would earn. Eventually, he might earn a few thousand dollars less or a few thousand dollars more, but too many factors would have played a part in that. Those factors may have nothing to do with a hip fractured years before.

9 Since a claim for loss of future earnings is a claim for special damages, it must be proved, not only as to the probability of the income but also the loss. The court must be satisfied that the loss was reasonable and probable. Having been admitted into the Residency Programme in spite of his declared injuries, the plaintiff has not adduced any evidence that he would probably be earning less. His claim would be as speculative as a claim that he would be brilliant enough to invent a new surgical technique and earn ten times more than his peers. What is reasonable and probable is that he will be an orthopaedic surgeon, perhaps one with an early onset of osteoarthritis – but that will not stop him working as an orthopaedic surgeon. He might need to find a couple of Panadol from time to time as suggested by Dr Lee Soon Tai, the defendant's expert, but he will manage. There was no evidence given by any of his supervisors in his department to show that as a result of his injury which has completely healed, he would be unable to carry out the duties required of him as a surgeon, and that in turn, would lead to him earning a lower income. In fact, it seems that his department was fully aware of his hip injury at the time when they accepted him into the Residency Programme and must have found him fit to qualify as an orthopaedic surgeon and perform well in the profession. Consequently, I am of the view that the learned AR's award of $1,000 as a nominal sum is correct.

10 I also agree with the finding by the learned AR that the alternative claim for loss of earning capacity must clearly fail. There is no evidence that the plaintiff would lose his job. The evidence is to the contrary – that he would eventually improve his position. The claim for a loss of earning capacity was rightfully dismissed.

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