

Choong Peng Kong v Koh Hong Son
[2003] SGHC 136

Case Number : Suit 142/2002, RA 317/2002, 323/2002
Decision Date : 23 June 2003
Tribunal/Court : High Court
Coram : Lai Kew Chai J
Counsel Name(s) : Lalita Chelliah (Rayney Wong & Eric Ng) for the plaintiff; M Ramasamy (William Chai & Rama) for the defendant; Robert Leslie Gregory (William Chai & Rama) for the defendant
Parties : Choong Peng Kong — Koh Hong Son

Damages – Measure of damages – Personal injuries cases – Whether award should be made for loss of future earnings

1 The defendant, who was the driver of a cement-mixer, agreed that he was 95% responsible for a traffic collision with the plaintiff ("the claimant") who was riding a motor cycle. Interlocutory judgment was entered. Damages were assessed by the Assistant Registrar and she assessed, among other items, that the pre-trial loss, inclusive of CPF, was \$39,325.53, the loss of future earnings inclusive of CPF at 16% was \$339,081.60, and the sum of \$20,000 as loss of earning capacity. The details of the assessment of Special and General Damages were set out by the Assistant Registrar in an Annexure which is annexed to this judgment.

2 Both parties were dissatisfied with the decisions and appealed to the High Court. The claimant contended that his pre-trial loss totalled \$47,853.66. In relation to the injury to his right hand, counsel for the claimant submitted that there should be an award of \$70,000.00 relying on *Samsudin bin Amir v Mui Siew Kong* 1990 Mallal's Dist para 520 and *Mukhitar Singh v Balwint Daljit Singh* [1993] 3SLR 741. The biggest item of the claimant's appeal was of course for the loss of future earnings. Based on his loss of promotions, which he on the evidence would have unquestionably achieved, the claimant's counsel submitted that the loss of future earnings should be \$655,877.82. The claimant relied on the following matters. First, by reason of the injuries to his right hand, he would not get the promotions and increments. Secondly, he had no hope of any increment for long service in the future. Thirdly, he would not get any overtime for the rest of his life.

3 Counsel for the defendant, on the other hand, submitted that the pre-trial loss should only be \$4,200.00. Counsel strongly urged the court not to award anything for loss of future earnings. It was pointed out that the claimant was on medical leave from March 2000 to September 2000. During his medical leave he still received his pay. From October 2000 he once again received overtime pay. Counsel for the defendant submitted that in July 2000 the claimant had an increment from \$2,413.00 to \$2,534.00. In the result, it was emphasised that despite his injury to his right hand, he is still employed by the same firm, earning a higher salary. His claim for overtime is unpredictable; it depends on the performance of his employer.

4 At the conclusion of both appeals, I dismissed both of them and ordered the claimant to pay costs of \$2,500 of the appeals to the defendant, seeing that the claimant had lost on his substantial claim for future loss of earnings.

5 On 25 March 2003 the defendant filed Notice of Appeal against part of my decision. He appeals against three aspects of my decision, namely the pre-trial loss of earnings, the loss of future earnings and the loss of earning capacity.

6 I dismissed the appeals because there was ample evidence before the Assistant Registrar to justify the findings and the assessments she made. I summarise the evidence briefly. The claimant, then 35 year old, was hospitalised on 25 February 2000 after the traffic accident. He, a right hander, sustained crushed injury to his right hand involving the 1st, 2nd, 3rd, 4th and 5th metacarpal bone with muscles and tendon injury. By February 2002 the fractures had united but there remained stiffness and restriction of movements of the 1st, 2nd, 3rd, 4th and 5th fingers. There is hypoesthesia of the right hand and reduced power in his hand grip.

7 According to Dr Chew Peng Cher, the crushed injury of the right hand involving the 1st, 2nd and 3rd metacarpal bone had now united with degenerative and restriction of movements. This is permanent. The weakness of the right hand grip was also noted. It is again permanent and will reduce the efficiency work-rate of his right hand. The total loss of his right hand is 45%.

8 At the time of the accident, the claimant was earning, including overtime, the total of \$36,734.75 for the year or about \$3,061.23 per month. In year 2000 he received the total salary of \$37,558.34. As a result of the accident, he was unable to work for a few months. He was paid during his medical leave.

9 As a Senior Associate Engineer, his duties included maintaining of equipment, equipment conversion package to package, modifying and adapting parts of use in the equipment, replacing parts so that the equipment could be used to produce different products, training of staff in maintaining of equipment including training of staff for the purposes of adapting the equipment to produce different products. Prior to the injuries, he used to work overtime on weekdays, weekends and public holidays. Overtime pay was calculated on a higher basis. In a month, he could earn as much as \$1,661.50 per month just on overtime. The claimant produced his pay-slips which showed his loss of overtime.

10 As a consequence of the injuries to his right hand, the claimant has been unable to carry on working in the technical department of ST Assembly Test Services Ltd. He was only able to carry out administrative duties.

11 On the evidence, there was little doubt that the claimant would suffer loss of future earnings as his promotional prospects were blighted because of his injured right hand. I had little doubt that but for the accident and the injury the claimant would in September 2002 be holding the position of Engineer and his salary would be as high, if not higher, than his colleague, a Mr Lai Khai Teng, who joined the company at about the same time the claimant did. Mr Lai was promoted to be an Engineer. There was evidence that the performance of the claimant among five Associate Engineers was the best. Among the first group of 5 associate engineers, he was the first to be promoted Senior Associate Engineer. That promotion took place within the short period of 1 ½ year. His immediate boss, Mr Chang, told him that he was the best performer. It was recognised by the company and it must follow that his prospects would have been better than Mr Lai's, but for the injury.

12 The claimant's immediate superior, Mr Chang Weng Onn, gave evidence for the claimant. He said the claimant joined the company in 1996 and confirmed the job description given by the claimant. He said the claimant was unable to work in the technical section of ST Assembly and had to be reduced from technical to administrative duties. He confirmed that the claimant did not enjoy the upgrading to the next level which carried an average of 8% increment because of his long absence and non-contribution to the company. The claimant obtained a lower average increment in comparison with his cohorts, receiving only 5% increment while his contemporaries obtained increments of about 9.7%. Mr Chang said the claimant could have been promoted in 2001 to be an Engineer drawing a monthly gross salary of \$2,731.00.

13 Mr Chang testified that the claimant on the average would work 50 hours overtime per month. However, in respect of the administrative duties, overtime is not required. The claimant has therefore lost overtime, and CPF contributions. He also lost the benefit of share options which are given to all staff of the company based on work performance.

14 In the circumstances, there was evidence on which the Assistant Registrar could find that the claimant would suffer loss of future earnings. The figures were established by the salary scales and promotion schemes of the employers. The assessment on the basis of loss of future earnings by the Assistant Registrar was demonstrably supportable and there was no reason for me to disturb her assessments. She has also assessed loss of earning capacity at the sum of \$20,000. On the evidence, it was appropriate to award on the basis of the figures available a substantial loss of future earnings and a smaller sum for loss of earning capacity because in the competitive labour market which hopefully the claimant would not be thrown into, his disadvantage should be reflected by an award for loss of earning capacity: see *Teo Sing Keng v Sim Ban Kiat* [1994] 1 SLR 634, *Wee Sia Tian v Long Thik Boon* [1996] 3 SLR 513 and *Neo Kim Seng v Clough Petrosea Pte Ltd* [1996] 3 SLR 522.

15 For these reasons, both appeals before me were dismissed.

ANNEXU

Special damages

1 Claim for motorcycle

- (a) Repairs : \$3,300 (Agreed)
- (b) Loss of use : \$125 (5 days at \$25) (Agreed)

2 Medical expenses

- (a) Chinese medicine : RM1,190 (Agreed)
- (b) Nursing Care : \$242 (Agreed)
- c) Expendables : \$543.70 (Agreed)
- (d) Medical expenses : \$2,977.27 (Agreed)

3 Transport

- (a) Personal : \$1,530 (Agreed)
- (b) Plaintiff's wife : \$960 (Agreed)

4 Pre-trial loss of earnings $\$2,755 + \$5,496.32, + (\$950 \times 27 - \$25,650)$

$$= \$33,901.32 + \text{CPF}$$

$$= \$39,325.53$$

$$\$49,003.50 + \text{RM1,190}$$

General damages

- 1 Degloving injury $\$25,000 + \$1,500$ (cost of future surgery)
sigmoid colon $= \$26,500$
- 2 Knee injury : $\$8,000$
- 3 Fracture of the: $\$7,500$
right pubic ramus
- 4 Scars : $\$12,000$
- 5 Injury to right: $\$15,000$
hand
- 6 Compartment : $\$8,000$
syndrome
- 7 Loss of Amenities : $\$2,000$
- 8 Loss of future(21 mths x $\$305.32$) +
earnings (M of 14
years) $(39 \text{ mths} \times \$500) + (123 \text{ mths} \times \$800) +$

 $(168 \times \$1000) = \$6,411.72 + \$19,500$

 $+ \$98,400 + \$168,000 = \$292,311.72 + \text{CPF} =$

: $\$339,081.60$ (at 16%)
- 9 Loss of earning: $\$20,000$
capacity

10 Loss of stock: \$0
 options

Total	-----
	\$438,081.60

Grand total	\$487,085.10 + RM1,190

Interest at 6% pa on damages for pain and suffering from date of writ to date of judgment (15/11/02).

Interest at 3% pa on special damages from date of accident to date of judgment.

Costs to be taxed or agreed.

Both appeals are dismissed.

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