

Lee Kwan Kok and Another v Wong Chan Tong
[2004] SGHC 211

Case Number : Suit 1075/2003
Decision Date : 21 September 2004
Tribunal/Court : High Court
Coram : Vincent Leow AR
Counsel Name(s) : Tan Lye Huat (Paul Tan and Partners) for both plaintiffs; Michael Eu Hai Meng (Comlaw LLC) for defendant
Parties : Lee Kwan Kok; Tan Chun Siong — Wong Chan Tong

21 September 2004

Assistant Registrar, Vincent Leow

A. Introduction

1 The facts of this case are simple and undisputed. The deceased was riding a motorcycle, no. FL 3928L, when he was involved in a collision with a van, no. GR 8895D, driven by the defendant. The deceased passed away within one hour from the injuries suffered as a result of the accident. The 1st plaintiff is the administrator of the Estate of the deceased and he commenced this action against the defendant for the benefit of the Estate and the dependants of the deceased, namely his father, mother and younger sister. The 2nd plaintiff is the owner of the motorcycle and his claim is against the defendant for damages in relation to the motorcycle. At trial, liability was settled at 80% to the defendant and the matter proceeded for assessment. After hearing the evidence, I made certain awards and my grounds are as follows.

B. Claims

2 There are five categories of claims – (i) general damages for pain and suffering; (ii) general damages for loss of dependency; (iii) special damages; (iv) damage to the motorcycle; and (v) bereavement. I will deal with them sequentially.

(i) General damages for pain and suffering

3 This head of claim was predicated on the fact that the deceased, if conscious after the accident, would be in great pain. It was clear from the evidence of PW 5 Mr Tan Chan Hua, who witnessed the accident, that the deceased was conscious for at least 20 minutes after the accident and that he was in pain. In particular, the relevant extract from my notes of evidence read:

“DC: During this 20 minutes before the arrival of the ambulance, was the deceased conscious throughout?

W: Yes.

...

DC: In this case, can you recall whether the deceased died before he was fetched by the ambulance to the hospital or was he dead on arrival?

W: That time when the accident happened, I rushed to him and he was moaning in pain. I was trying to figure out what he was saying..."

4 Counsel for the 1st plaintiff asked that I award the sum of \$15,000 and cited as authority the case of *Anto Anthony Fedric Palamoothi* (Unreported decision in DC Suit No 561 of 1996) in which the trial judge awarded \$10,000. However, the case summary tendered does not elaborate on how long the deceased was conscious for. As such, I think that the decision of Lai Kew Chai J in *See Ah Haw v Ong Hock Thian* [1984 – 1985] SLR 442, the facts of which are stated by Woo Bih Li J in *Tan Harry v Teo Chee Yeow* [2004] 1 SLR 513, was more relevant. In that case, the deceased lived for a day before he died. Lai Kew Chai J had awarded \$1,000 for pain and suffering. Given the circumstances here and allowing for inflation, I felt that a sum of \$3,000 for pain and suffering would be appropriate.

(ii) General damages for loss of dependency

5 The issue here was as to the appropriate award to be made for the loss of dependency. Hence, the 1st plaintiff must show that the dependants have sustained some pecuniary loss as a result of the death of the deceased. The main complication here was that the deceased was a young man who had started a new job in the navy before his untimely death. As such, there was little evidence as to how much he would give to his dependants each month. However, it was clear over the past two years, the deceased was employed in a factory and he gave each of his parents \$200 every month.

6 The deceased's father (PW2) gave evidence that his son told him that he intended to give \$300 to each of his parents after he started working in the navy. The relevant extract from my notes read:

"DC: Refer to para 15. Does he physically give you the \$300?

W: At that time, he had just started working in the navy, but he got into the accident only after he started work for ½ month. But when he joined the navy, he had the intention of giving us \$300 per month.

DC: Did he physically give you the \$300?

W: Before he joined the navy, he was working in a factory and he would give us money. After he joined the navy, he had the intention of giving us \$300 each per month after he got his pay.

DC: Was your wife aware of this intention?

W: He interacted with my wife and I do [sic] am not aware whether he informed my wife or not.

DC: Did your son expressly tell you that he intended to give you \$300?

W: He did tell me, but I do not know about my wife."

7 Having carefully observed PW2's demeanor in court, I saw no reason to doubt his testimony. He was clear and frank. His testimony was unshaken by cross-examination and I believed him when he told the court of the conversation that he had had with the deceased. Furthermore, I noted that an increase in the monthly payment to his parents was likely as the deceased was drawing a higher

salary than before and his personal expenses were low since the Navy provided him with his meals while he was in training. Lastly, his salary would be increased after he finished the training,

8 Similarly, I saw no reason to doubt that the deceased gave \$175 to his mother (PW3) for household expenses and \$150 per month to his sister (PW4). This can be seen from PW3's testimony (whom I also found to be a credible witness) where she stated:

"DC: Before he passed away, how much money would he give to you in total?

W: About \$500 plus.

DC: This \$500 would be for the bills, your allowance and your daughter's allowance?

W: Yes, that's right."

9 What I found difficult to accept was counsel for the 1st plaintiff's contention that the Court should award a higher multiplicand, as the deceased's salary would increase significantly over the years. In particular, at paragraph 18 of his written submission, he stated that:

"Page 37 of PBOD, the documentary evidence which clearly stipulates the career advancement of a Navy Specialist who is under the SAF-ITE Sponsorship Scheme, the Deceased's estimated monthly salary range would be in the region between S\$4,963 to S\$6,441 after serving his full 4 years of bond period."

10 The document that counsel referred to does not support this argument. What the document stated was that a 'SWO', which I understood to be a Senior Warrant Officer (the most senior non-commissioned officer rank in the Navy), would draw a salary of S\$4,963 to S\$6,441. I did not think it consonant with common sense to believe that the deceased would be promoted within four years of joining the Navy from the rank of lance corporal to the rank of Senior Warrant Officer, a jump of 10 ranks. Further, the evidence of PW 5 Tan Chan Hua and PW 6 Tan Chun Siong supported my view as they were recently promoted to the rank of 2nd Sergeant (seven ranks below Senior Warrant Officer) after serving two years of their bond period.

11 Hence, while I accepted that there would be an increase in the deceased's monthly salary over time, it would not be of the scale that the counsel for the 1st plaintiff contends. Furthermore, even if the deceased's salary did increase, this did not mean that he would necessarily have given more to his parents: on this, see Woo Bih Li J's decision in *Tan Harry* at [17]. Lastly, I took into account the possibility of the deceased eventually marrying and the consequent expectation of a reduction in his contribution to his dependants. As such, I saw no basis to adopt the multiplicand of \$700 suggested by counsel for the 1st plaintiff and preferred to adopt a multiplicand of \$300 for each of his parents, \$150 for the sister and \$175 for household expenses.

12 In relation to the appropriate multiplier to award, I followed the approach of Woo J in *Tan Harry* and Judith Prakash JC (as she then was) in *Lim Fook Lau & Anor v Kepdrill International Incorporated SA* [1993] 1 SLR 917 and calculated the multiplier from the date of death of the deceased. On that fateful day, the deceased was 25 years old, his father was 50 years old and his mother was 46 years old. The average life expectancy for a Singaporean male today is 77 years and 81 years for a female (see MOH's website at <http://www.moh.gov.sg/corp/publications/statistics/population.do>). I took into account the possibility that the deceased may eventually get married with the possible termination in his

contribution to his parents and further considered the decision of Yong Pung How CJ in *Hong Kong Bank Trustee (Singapore) Ltd v Rajinder Singh* [1992] 2 SLR 31 where Yong CJ used a multiplier of 8 in relation to a deceased who was single and 33 years old with a mother who was 56 years old at the time of the deceased's death. As such, I adopted a multiplier of 10 and 12 for the father and mother respectively. As I saw no reason to distinguish between the allowance paid directly to his mother and the money paid to his mother for household expenses, I adopted a multiplier of 12 for that as well.

13 As for the sister, she was 13 years old on the date of the death of the deceased. I accepted that the deceased would continue to provide her with an allowance until she reached 21 years of age and used a multiplier of 5 for her.

14 Thus, I made the following awards for dependency:

Lee Kwang Kok	$S\$300 \times 12 \times 10$	=	\$36,000
Koh Siew Geok	$S\$300 \times 12 \times 12$	=	\$43,200
Household expenses	$S\$175 \times 12 \times 12$	=	\$25,200
Vivien Lee Shi Hui	$S\$150 \times 12 \times 5$	=	<u>\$9,000</u>
Total			\$113,400

15 I should mention that counsel for the defendant's reliance on the case of *Tan Harry* for the proposition that the value for the flat (which has now been fully paid out from the housing loan insurance) must be deducted from the dependency claim was completely misconceived. The headnote of that case clearly states at [5] that "sums payable on the death of the deceased under any contract of assurance or insurance, sums payable as a result of the death under the Central Provident Fund Act (Cap 121) and any pension or gratuity which is paid as a result of the death are not to be taken into account in assessing general damages on a dependency claim." Furthermore, this case merely echoes the position stated in s 22(1)(a) Civil Law Act (Cap 43). As such, I failed to see how the case stood for the proposition that counsel sought to rely upon.

(iii) *Special Damages*

16 With regards to the special damages, these claims related to the funeral expenses, the letter of administration and the medical expenses. The 1st plaintiff claimed the sums of \$10,518.00, \$2,945 and \$100 respectively. Counsel for the defendant prayed that the sums of \$7,000, \$2,500 and \$0 respectively be awarded instead.

17 In respect of the funeral expenses, counsel for the 1st plaintiff stated in his written submissions that this amount was derived "by adding the receipts from pages 52 – 58 and 62 – 66 PBOD." Having looked at these receipts, I noted that they were almost all in Mandarin and the 1st plaintiff had not provided the Court with translated copies. As such, I did not know what these documents were for. Furthermore, even if I assumed that these were all receipts for the funeral expenses, I did not understand how the sum of \$10,518 was reached, for when I added up all the totals reflected on each receipt, I did not reach the sum of \$10,518. As such, with regret, I held that the claim for \$10,518 had not been proved and awarded the sum of \$7,000 instead.

18 As for the costs for the letter of administration, these amounts were stated on the receipts

and I awarded the sums accordingly. Lastly, with respect to the medical expenses, the 1st plaintiff had produced no proof. As the deceased had passed away even before the ambulance transported him to hospital, I saw no reason why there should be any claim to medical expenses and awarded \$0.

(iv) Damage to the Motorcycle

19 This was the 2nd plaintiff's claim. For convenience, I set out below, in full, counsel for the 2nd plaintiff's written submissions on this issue.

"33 The 2nd plaintiff submits that the amount S\$6,300 was the actual repair cost relating to the damage of his motorcycle FL 3982 L. The amount of S\$6,300, being the repair costs and repairs was carried out after the damage to the motor cycle was surveyed by an appointed surveyor"

20 I had problems with these submissions. First, there was no proof that the 2nd plaintiff had incurred this loss. All the documents tendered in support at PBOD 44 - 47 were marked attention to Mr Tan Chun Siong (the 2nd plaintiff). Yet, he denied making payment. This can be seen from the exchange recorded in my notes that:

"DC: Did you pay the \$6300 charged?

W: No."

21 Similarly, there was no evidence that the payment was made by any other party on behalf of the 2nd plaintiff as both his affidavit and his evidence in court were silent on this matter. As such, there was no proof that this cost of \$6,300 was incurred. Second, even if it could be proved, there was a further difficulty as to whether this damage was reasonably incurred. The motorcycle, as I understood it, was worth far less than the \$6,300 claimed for. It was in fact sold for very little. This can be seen from the 2nd plaintiff's testimony that:

"W: There were 1-2 months of the installment left. There is almost negligible value... ."

22 As such, I did not think that it was reasonable for the 2nd plaintiff to have incurred this cost of \$6,300 when any reasonable person would have sold off the damaged bike and claimed the difference in market value. The 2nd plaintiff could not be said to have mitigated his losses reasonably. Further, since no evidence was led as to the difference in market value of the motorcycle, I could not award damages on that either.

23 Additionally, counsel for the 2nd plaintiff did not address his claims for the survey fee and loss of use in his written submissions. I was not sure whether the 2nd plaintiff had abandoned his claim in this respect. In any event, I did not know what proof the 2nd plaintiff was relying on to show these losses especially since the only receipt that I could find on the survey fee (at PBOD 44) was again addressed to the 2nd plaintiff whom as I had mentioned earlier had denied paying anything. Similarly, counsel did not refer me to any proof that there was a loss of use of eight days beside an estimate at PBOD 45 that the estimated time for repair was 8 days. The 2nd plaintiff's affidavit was completely silent on this point. Neither did counsel for the 2nd plaintiff explain why \$30 per day would be the appropriate sum for me to award. Moreover, since I had held that it would not have been reasonable

for the 2nd plaintiff to send his bike for repair, there was no reason to award him for the loss of use based on the number of days that the bike was being repaired. As such, since these claims was claimed as special damages and they had not been proved, I could not award anything to the 2nd plaintiff for the survey fees and his loss of use.

(v) Bereavement

24 Lastly, I awarded the 1st plaintiff, by consent, a bereavement claim of \$10,000 per s 21 of the Civil Law Act (Cap 43).

C. Conclusion

25 In summary, I made the following awards in respect of the 1st plaintiff:

1)	Pain and suffering	:	\$3,000.00
2)	Dependency	:	\$113,400.00
3)	Special damages	:	\$9,945.00
4)	Bereavement	:	<u>\$10,000.00</u>
Total		:	\$136,345.00

26. For the avoidance of doubt, I should add that these sums have not yet taken into account the fact that the defendant is only liable for 80% of the claim. I awarded interest at 6% per annum from the date of service of the writ to the date of judgment for the general damages for pain and suffering and interest at 3% per annum from the date of the accident to the date of judgment for the special damages. I also made consequential orders and orders as to costs.

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