

Alam Jahangir v Mega Metal Pte Ltd
[2019] SGHC 148

Case Number : Suit No 388 of 2017
Decision Date : 19 June 2019
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Namasivayam Srinivasan (Hoh Law Corporation) for the plaintiff; Ramasamy s/o Karuppan Chettiar and Simone B Chettiar (Central Chambers Law Corporation) for the defendant.
Parties : Alam Jahangir — Mega Metal Pte Ltd

Damages – Assessment

[LawNet Editorial Note: The employer’s appeal in Civil Appeal No 143 of 2019 and the employee’s cross-appeal in Civil Appeal No 144 of 2019 were allowed in part by the Court of Appeal on 21 January 2020 with brief reasons rendered. The Court of Appeal affirmed the trial Judge’s findings on liability and contributory negligence on the part of the employer and employee respectively. In respect of the loss of future earnings, the Court of Appeal allowed a deduction of 10% from the multiplier of 6 years to factor in the accelerated payment and contingencies in life, and also pre-judgment interest on the general damages and special damages payable by the employer to the employee. All other orders of the trial Judge are to stand. The Court of Appeal also ordered each party to bear its own costs for the appeal.]

19 June 2019

Judgment reserved

Choo Han Teck J:

1 The background facts are set out in full in *Alam Jahangir v Mega Metal Pte Ltd* [2018] SGHC 198 (“*Alam Jahangir*”) and I will set out only the facts relevant for this assessment of damages hearing. The plaintiff is a 44-year-old Bangladeshi national who was employed by the defendant as a metal melter, caster and rolling mill operator. On 16 May 2016, the plaintiff operated a machine which separated waste metal cans and attempted to dislodge two cans that were stuck in the rollers of the machine. His arm was subsequently caught and pulled into the rollers.

2 The plaintiff was sent to Ng Teng Fong General Hospital for emergency treatment. He sustained a crush injury to his right arm, had a degloving near amputation of the mid-upper segment of the right arm with a concomitant open fracture of the right humerus, and underwent an arm reattachment procedure and a wrist fusion surgery. In *Alam Jahangir*, I held that the defendant had breached its duty of care owed to the plaintiff by not having sufficient fencing to stop workers from reaching into the rollers, and found that the plaintiff was 50% contributory negligent. The plaintiff returned to Bangladesh on 1 Jan 2017 and is currently a chicken farmer earning \$250 per month. This hearing before me is for the assessment of damages.

3 I will first deal with the general damages, which includes pain and suffering, future medical treatment, future transport expenses and the loss of future earning capacity. Subsequently, I will deal with the special damages, which includes pre-trial loss of earnings, medical expenses, transport expenses and the loss of future earnings.

4 I am of the view that an award of \$107,000 for pain and suffering is reasonable. I take into account the loss arising from each distinct injury, before considering the injuries to ensure that the overall award is reasonable (*Lua Bee Kiang (administrator of the estate of Chew Kong Seng, deceased) v Yeo Chee Siong* [2019] 1 SLR 145 ("*Lua Bee Kiang*") at [12]–[13]). I will explain how I arrived at this figure.

5 First, for the degloving near amputation of the mid-upper segment of the plaintiff's right arm ("Near Amputation"), Mr Srinivasan, counsel for the plaintiff, asserts that based on the *Guidelines for the Assessment of General Damages in Personal Injury Cases* (Academy Publishing, 2010) ("The 2010 Guidelines"), the court generally award damages in the range of \$70,000 to \$76,000 for the amputation of one arm above the elbow. Mr Srinivasan submits that a higher sum of \$120,000 should be awarded to account for inflation. Mr Ramasamy, counsel for the defendant, argues that since the plaintiff's arm was reattached, the appropriate category in The 2010 Guidelines should be for severe injuries and the court generally award damages in the range of \$45,000 to \$63,000. Mr Ramasamy submits that a sum of \$55,000 should be awarded. The plaintiff now has no natural movement of his arm, and even if it was reattached, it has limited use and function. I am of the view that Mr Srinivasan's claim regarding the impact of inflation is exaggerated, and I thus award a sum of \$75,000 for the Near Amputation.

6 Secondly, Mr Srinivasan submits that a sum of \$20,000 should be awarded for the concomitant open fracture of the right humerus ("Open Fracture"). Mr Srinivasan relied on the cases of *Ang Siam Hua v Teo Cheng Hoe* [2004] SGHC 147 and *Tan Shwu Leng v Singapore Airlines* [2001] SGCA 70 where the court awarded \$15,000 and \$13,000 respectively for the fracture of the humerus. Mr Ramasamy demurs and submits that general damages awarded for the loss of functional use of right arm above should encompass all other injuries, since they are all located on the upper right limb and making separate awards will lead to over compensation. There is no reason why the court cannot account for the loss arising from each distinct injury, so long as the overall award is proportionate to the injury suffered (*Lua Bee Kiang* at [10]–[13]), which is the case here. Since the plaintiff has suffered a severe crush injury and was required to go through numerous operations, I award him a sum of \$15,000 for the Open Fracture.

7 Thirdly, Mr Srinivasan submits that a sum of \$25,000 ought to be awarded for the plaintiff's multiple scars. Mr Srinivasan relied on The 2010 Guidelines where the courts generally award damages in the range of \$5,000 to \$15,000 for multiple scars, and the case of *Chiam Kim Loke v Lee Wing Hoong & Anor* [2004] SGHC 37 ("*Chiam Kim Loke*") where the court awarded \$20,000 for a plaintiff who had over 25 scars on his leg, hip and hand. Mr Ramasamy argues that since the plaintiff has only six scars, he should not obtain any award above the \$20,000 in *Chiam Kim Loke*. The plaintiff has approximately 13 scars, with one measuring up to 26cm at the posterior aspect of his right shoulder. These scars are severe enough to justify an award of \$15,000 for multiple scars.

8 Lastly, Mr Srinivasan submits that a sum of \$5,000 ought to be awarded for the wasting of the plaintiff's right shoulder girdle muscles, and referred to *Shyam Sundar Yadav v Reganathan s/o Sammandham* in DC Suit No 3149 of 2000 ("*Shyam*") and *Shela Devi d/o Perumal v Rawi bin Nahwari* in HC Suit No 1191 of 1999 ("*Shela*") where a sum of \$2,000 for muscle wasting was awarded in both instances. I award the plaintiff \$2,000 for muscle wasting. There was no evidence suggesting that the plaintiff's condition here was worse than that in either *Shyam* or *Shela*.

9 In total, the plaintiff is awarded general damages in sum of \$107,000 for pain and suffering. In the light of the fact that the plaintiff no longer has any natural movement or feeling from his right shoulder to his hand, and that his right arm is no longer functional, an overall award of \$107,000 is proportionate to his injury suffered. I move on to the plaintiff's future medical treatment.

10 I award the plaintiff a sum of \$9,804.80 for his future medical expenses. This consists of the following:

(a) \$2,364.80 for consultations with a Hand & Reconstructive Microsurgery Specialist at the National University Hospital. Dr Lee Soon Tai, the plaintiff's expert witness, opines that follow-up consultations are necessary, as the plaintiff has undergone a traumatising reconstruction surgery and it is necessary to monitor the pain and discomfort the plaintiff is experiencing. On the contrary, Dr Chang Wei Chun, the defendant's expert witness, believes that the plaintiff does not require any further consultation since he has undergone all the necessary procedures. After a reconstruction surgery, it may be in the plaintiff's best interest to periodically monitor the pain and numbness in his arm. I observed at the hearing on 20 March 2019, that the plaintiff was constantly clutching his right arm, seemingly in pain. I accept Dr Lee's proposal of two consultations per year for a period of ten years at an average cost of \$118.24 per visit.

(b) \$1,000 for analgesia. Dr Lee opines that the plaintiff needs analgesia for a total of five years at an average cost of \$30 to \$60 per month. Dr Chang agreed that the plaintiff requires analgesia, but only at \$100 per year for five years from when he returned to Bangladesh. The plaintiff is now living in Bangladesh and will likely be purchasing analgesia there. I award the plaintiff a sum of \$1,000 calculated at an annual cost of \$100 for ten years.

(c) Dr Lee is of the view that the plaintiff requires Gabapentin, Tramadol and Warfarin for 24 years at an average cost of \$3.50 per day. Dr Chang opines that these medications are unnecessary since they fall into the same category as analgesia. I accept Dr Chang's opinion that there is no necessity for these other painkillers.

(d) \$1,760 for hand occupational therapy. Dr Lee opines that the plaintiff requires twenty sessions (at ten sessions per course) of hand occupational therapy at \$105.90 per session for the next five years, while Dr Chang demurs and states that the plaintiff only requires ten sessions (one course) at \$70 per session. I am of the view that it is in the plaintiff's best interest to undergo two courses of hand occupational therapy, and award the plaintiff a sum of \$1,760 calculated at an average cost of \$88 per session for 20 sessions.

(e) \$4,680 for the removal of deep implants from the plaintiff's upper limb and post-operative hand occupational therapy. Dr Lee believes that the plaintiff's deep implants should be removed to allow the bones to heal and strengthen over time. On the contrary, Dr Chang asserts that such a removal may result in another fracture, and the deep implants should remain to strengthen the bone. In the light of the contradicting expert opinions, it may perhaps be best to err on the safe side and I award the plaintiff a sum of \$4,680 for the removal of his implants and post-operative hand occupational therapy.

11 The next claim is for future transport expenses. Mr Srinivasan and Mr Ramasamy submits a sum of \$1,000 and \$100 respectively. It is expected that transport expenses will be incurred, but the mode and frequency, not to mention the exact charges are not easy to determine. I think that \$1000 is probably too high, and \$100, too low. Accordingly, I award the plaintiff a sum of \$500 for his future transport expenses.

12 The last claim for general damages is for the loss of earning capacity. As enunciated by the Court of Appeal in *Mykytowych, Pamela Jane v V I P Hotel* [2016] 4 SLR 829 ("*Pamela Jane*") at [139] and [140]:

[139] ... [T]he test to be applied in determining whether to make any award for loss of future

earning capacity is whether there is a real risk that the plaintiff will be at a disadvantage in the open employment market because of the injury sustained in the accident.

[140] ... An award for loss of future earning capacity is given as part of general damages in order to compensate a plaintiff for the weakening of his competitive position in the open labour market ...

Mr Srinivasan submits that a sum of \$220,000 should be awarded since the plaintiff is unable to continue his employment in his pre-accident vocation. Mr Ramasamy demurs and submits that no award should be made since the plaintiff has failed to adduce any evidence as to how he would be handicapped or forced into the labour market in Bangladesh. The plaintiff was a skilled worker in the manufacturing industry until the accident where he lost the function and mobility of his right arm, and continues to suffer from a deformed, angulated and shortened dominant right arm. It is clear that the plaintiff is no longer able to meet the physical demands required as a skilled manual labour, and is at a disadvantage in the labour market in Bangladesh. Both Dr Lee and Dr Chang also agreed that the plaintiff is not fit for employment for any manual work. I therefore award the plaintiff a sum of \$36,000 for his loss of future earning capacity in Bangladesh. This is calculated at a rate of \$500 per month over a period of six years. I will subsequently deal with the plaintiff's claim for his loss of future income in Singapore, which is a claim under special damages.

13 The first claim under special damages is the plaintiff's pre-trial loss of earnings. The plaintiff was earning \$1,991.22 per month at the time of the accident. From the date of the accident, 16 May 2016, till the date of the assessment of damages hearing on 20 and 21 March 2019, the plaintiff would have earned approximately \$69,692.70 (\$1,991.22 x 35 months) in wages had it not been for the accident. The plaintiff has received medical leave wages amounting to \$12,383.61 from the defendant. Between January 2017 to March 2019, the plaintiff has earned a total of \$6,750 calculated at \$250 per month from his chicken farming business in Bangladesh. Therefore, I award the plaintiff a sum of \$50,559.09 (\$69,692.70 - \$12,383.61 - \$6,750) for his pre-trial loss of earnings.

14 The next claim is for medical expenses for painkillers in Bangladesh. Mr Srinivasan submits that the plaintiff has incurred \$1,200 for the purchase of painkillers in Bangladesh, but was unable to provide any receipts of such payment. Special damages are awarded only for real assessable loss proved by evidence (see *Pamela Jane* at [140]). Absent documentary proof, I decline to make any award in this regard.

15 The third claim is for transport expenses. This is agreed at \$300 between parties.

16 The last claim is for the loss of future earnings. Mr Srinivasan submits that the plaintiff should be awarded a total sum of \$242,347.68. This includes a sum of \$167,262.48 calculated at a rate of \$1991.22 per month for seven years in Singapore, and another \$75,085.20 calculated at a rate of \$1,251.42 a month for five years in United Arab Emirates. Mr Ramasamy submits that the plaintiff should only be awarded a total of \$57,740.52. This includes a sum of \$48,283.92 calculated at a rate of \$1,341.22 per month for three years in Singapore, and another \$9,465.60 calculated at a rate of \$157.76 per month for five years in Bangladesh.

17 The plaintiff has worked for 12 years in Singapore, and parties accept that the maximum number of years that the plaintiff could have worked in Singapore is 22 years, till May 2025. Any possible extension beyond May 2025 is purely speculative. I am of the view that had it not been for the accident, the plaintiff would reasonably have continued working in Singapore for another nine years, till May 2025. I also acknowledge that the plaintiff earns \$250 per month from his chicken farming business in Bangladesh, and have awarded the plaintiff a sum of \$50,559.09 for his pre-trial

loss of income between May 2016 and March 2019. I therefore award the plaintiff a further sum of \$125,367.84 calculated at \$1,741.22 (\$1,991.22 – \$250) per month for an approximate six years, between April 2019 to May 2025, for his loss of future earnings in Singapore.

18 I held that the plaintiff was 50% contributory negligent and he is hence entitled to a total sum of \$164,765.87 (50% x \$329,531.73). I recapitulate my findings below:

- (a) \$107,000 for pain and suffering;
- (b) \$9,804.80 for future medical expenses;
- (c) \$500 for future transport expenses;
- (d) \$36,000 for loss of future earning capacity;
- (e) \$50,559.09 for pre-trial loss of earnings;
- (f) \$300 for transport expenses; and
- (g) \$125,367.84 for loss of future earnings.

19 The defendant has paid the plaintiff a total of \$166,345.51 for his medical expenses, as well as medical leave wages of \$12,083.61. The latter has already been taken into account at [13] above. In *Alam Jahangir*, I allowed the defendant to have 50% of the medical expenses paid to be set-off against its outstanding liability to the plaintiff. This amounts to \$83,172.76. Therefore, I order that the defendant pay the plaintiff the sum of \$81,593.11 (\$164,765.87 – \$83,172.76). The defendant is to pay the plaintiff costs at 50% to be taxed if not agreed.