Wong Chong Hui and another *v* Lim Siong Hoe Lawrence
[2019] SGHC 85

Case Number : HC/District Court Appeal No 29 of 2018

Decision Date : 29 March 2019

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Tan Seng Chew Richard and Peh Siqi Michelle (Tan Chin Hoe & Co) for the appellants; Ramesh s/o Varathappan (Tito Isaac & Co LLP) for the respondent.

Parties : Wong Chong Hui — Heng Hong Development Pte Ltd — Lim Siong Hoe Lawrence

Contract – Mistake – Unilateral mistake

29 March 2019 Judgment reserved.

Choo Han Teck J:

1 On 15 October 2011 at about 1.10pm, the respondent was involved in a road accident – a chain collision involving seven vehicles ("the Accident"). The respondent's vehicle, SGP 7332D was the third vehicle in the Accident. The second appellant's vehicle, GBB 6328G, knocked into the respondent's vehicle, and was the fourth vehicle in the Accident. The first appellant is the driver of GBB 6328G and is the employee of the second appellant. NTUC Income Insurance Co-Operative Limited ("NTUC Income") is the appellants' insurer.

2 After the Accident, the respondent sent his vehicle to Poon Poong Motors Pte Ltd ("the Workshop") to have his vehicle repaired. The respondent said in his evidence-in-chief that the Workshop represented that it would do the needful to claim for property damage against NTUC Income, and the respondent authorised the Workshop to do so. On 18 October 2011, the respondent consulted one Dr Tan Chong Tien ("Dr Tan") at Orthopaedics International where he underwent a magnetic resonance imaging, was referred for physiotherapy treatment, and was given five days' medical leave. In the respondent's accident report dated 4 November 2011, the respondent stated that he "felt numbness in [his] left arm and went to see a doctor and was given 5 days MC" ("the Accident Report").

3 On 27 February 2012, the Workshop lodged a claim with NTUC Income for the sum of $9,052.20, which included repair costs of $6741 and loss of use at $2311.20. The claim was settled and the Workshop asked the respondent to go to its premises to sign a discharge voucher ("DV") issued by NTUC Income. The Workshop representatives did not explain the terms of the DV to the respondent nor did they provide any further details apart from the fact that they had settled the claim with NTUC Income. The DV was signed by the respondent on 1 March 2012, and witnessed by one Robin Poon Joo King, presumably a representative of the Workshop. It was undisputed that the respondent was not privy to the negotiations between the Workshop and NTUC Income, and that the settlement sum of $9,052.20 was paid directly to the Workshop. The essential terms of the DV are as follows:

> "[The Respondent] … hereby acknowledge and agree that payment by [NTUC Income] of the sum of S$9,052.20 to [the Workshop] shall be full satisfaction liquidation and discharge of all claims whatsoever competent upon [the appellants] in respect of all loss injury or damage whether now

or hereafter to become manifest arising directly or indirectly from the [Accident] …"

4 Approximately two years later, on 2 July 2014, the respondent sent a letter of demand to the first appellant claiming for personal injury, including $25,000 for pain and suffering. The respondent relied on Dr Tan's specialist medical report dated 17 March 2014 where Dr Tan opined that the respondent suffered a Grade 3 whiplash injury from the Accident, and a physiotherapy report dated 13 March 2014 from Parkway East Hospital which confirmed that the respondent received two sessions of physiotherapy treatment. On 9 July 2014, NTUC Income (on behalf of the appellants) rejected the respondent's claim on the basis that the DV fully discharged all claims that the respondent had against the appellants in relation to the Accident.

5 On 10 October 2014, the respondent commenced Magistrate's Court Suit No 19075 of 2014 ("MC 19075") to claim for personal damages arising from the Accident. Counsel for the respondent, Mr Ramesh s/o Varathappan, submitted that the respondent executed the DV on the mistaken assumption that it settled only his property damage claim, and not his personal injury claim. District Judge Lee Li Choon ("Lee DJ") found that notwithstanding the clear and unambiguous terms of the DV, the respondent operated under a unilateral mistake, and hence, the DV was void. In her grounds of decision Lee DJ gave her reasons as:

(a) First, NTUC Income did not deal with the respondent directly, and it was apparent to NTUC Income that the settlement related only to property damage claim since the settlement sum of $9,052.20 was paid directly to the Workshop.

(b) Secondly, NTUC Income knew that the respondent was not legally represented, and that the terms of the DV was not explained to him. In addition, as the Workshop did not have the legal authority to claim for personal injuries on behalf of the respondent, it was reasonable for NTUC Income to expect that the scope of release in the DV pertains only to the property damage claim.

(c) Thirdly, NTUC Income was aware that the respondent's Accident Report indicated that he went for medical examination and was given five days' medical leave. As such, NTUC Income approached the possibility of the existence of the respondent's personal injury claim with wilful blindness.

6 On 23 November 2018, the appellants appealed against Lee DJ's decision in MC 19075, which is the subject of this hearing. Contrary to Lee DJ's finding, I am of the view that the DV fully discharged all claims that the respondent had against NTUC Income, and that it was not void on the ground of unilateral mistake.

7 The DV was not merely a receipt simpliciter (see *Ter Yin Wei v Lim Leet Fang* [2012] 3 SLR 172 at [16] ("*Ter Yin Wei*")). The DV was clear and unequivocal and left no room for a subsequent and separate claim for personal injury arising from the Accident. The respondent is a literate man and can also read the clear terms himself. If the Workshop thought that the DV only covered the repair costs and costs for the loss of use, it ought to have reminded the respondent to show the DV to his solicitors before the respondent signs it. As such, the only issue in dispute is whether the DV was void because the respondent was operating under a unilateral mistake.

8 To render the DV void on the common law ground of a unilateral mistake, the following three requirements have to be satisfied (See *Broadley Construction Pte Ltd v Alacran Design Pte Ltd* [2018] 2 SLR 110 ("*Broadley Construction*") at [42]; affirming *Chwee Kin Keong and others v Digilandmall.com Pte Ltd* [2005] 1 SLR(R) 502 ("*Digilandmall*")):

(a) The respondent must have made a mistake;

(b) This mistake must be a sufficiently important or fundamental mistake as to the terms of the DV; and

(c) The non-mistaken party, in this case, NTUC Income, must have actual knowledge of the respondent's mistake.

I am of the view that the respondent understood the terms of the DV and that the first requirement is not satisfied. Although the respondent was not privy to the negotiations between the Workshop and NTUC Income, the respondent is a literate man and ought to be able to understand the clear and unambiguous language of the DV. Although he sought medical treatment (including physiotherapy treatment) shortly after the Accident, he did not instruct solicitors for almost three years.

9 In relation to the third requirement, counsel for the appellants, Mr Richard Tan, submitted that NTUC Income had no actual knowledge of the respondent's mistake as the mere indication of an injury in the respondent's Accident Report did not necessarily mean that he would be making a personal injury claim. Further, that NTUC Income was under no obligation to explain the terms of the DV to the respondent if he was not legally represented. Mr Ramesh reminded the court to be slow to disturb Lee DJ's finding of fact. Mr Ramesh argued that since the respondent's Accident Report clearly made references to personal injuries, NTUC Income was wilfully blind to the existence of a personal injury claim. However, even if there were clear references to injury claim, the DV made clear that the acceptance of the settlement covers it all.

10 Further, I find that on the evidence before me, NTUC Income did not have actual knowledge of the respondent's mistake. First, the fact that NTUC Income dealt only with the Workshop, that their correspondence related only to the property damage claim, and that the settlement sum of $9,052.20 was paid directly to the Workshop, is insufficient to displace the clear and unequivocal effect of the DV in discharging all claims that the respondent had or may have against NTUC Income in relation to the Accident (See for example, *Ter Yin Wei* at [23]).

11 Secondly, the term 'wilful blindness' is not a principle of law, but a finding of fact. If one deliberately refuses to make an inquiry when he ought to do so, the inference is that he knew what it was or feared what he might find (see *Digilandmall* at [42]). The correspondence between NTUC Income and the Workshop, and the respondent's Accident Report which vaguely stated that he "felt numbness in [his] left arm … [saw] a doctor and was given 5 days MC", is insufficient to impose an obligation on NTUC Income to inquire as to whether the respondent intends to make a personal injury claim.

12 Thirdly, the respondent's lack of legal representation should not prejudice NTUC Income's legal position. NTUC Income was not obliged to explain the terms of the DV to the respondent. That is the job of the respondent's solicitors. Further, the Workshop has no business making or negotiating legal claims for the respondent (or any customer). That is also the job of the respondent's solicitors. The Workshop should have sent its bill only to the respondent, and let him and his solicitors take it from there. If the respondent relies on the Workshop and not his solicitors, he cannot hold anyone answerable for bad advice except the Workshop and himself. No personal injury claim was made known to NTUC Income until almost three years after the Accident.

13 For completeness, I will deal with Mr Ramesh's submission that NTUC Income's practice was unconscionable because NTUC Income did not provide for the deletion of relevant terms in the DV and did not advise executors of the DV of their right to seek legal advice before executing the DV.

Mr Ramesh relies on the doctrine of unilateral mistake in equity, where "knowledge falling short of actual knowledge coupled with some form of unconscionable conduct would be sufficient to render the [DV] voidable" (see *Broadley Construction* at [44]). I do not accept Mr Ramesh's argument. A contracting party has no obligation to inform the other party of their right to legal advice. Further, NTUC Income is not obliged to provide for the deletion of terms in the DV. If the respondent wished for certain terms in the DV to be deleted or amended, the respondent should have engaged legal counsel to act and negotiate on his behalf. The use of a discharge voucher has been the practice in personal injury and damage claims for far too long to try and interpret the rights and liabilities differently, especially in a case like this where the DV was not an unusual one. Claims in such traffic accident cases are often made in excess of the actual damage and injury. Many of the claims are eventually reduced or abandoned altogether and either the discharge voucher or a similarly worded letter is signed to record the full and final settlement so that claimants do not revive or add to their original claims.

14 For the reasons above, this appeal is allowed. I will hear arguments on costs at a later date.