Ong Bin Wah v Quek Teng Pong and Another
[2003] SGHC 279

Case Number : Suit 131/2003, NA 50/2003

Decision Date : 17 November 2003

Tribunal/Court : High Court

Coram : Ho Su Ching AR

Counsel Name(s) : Benedict Chan (Benedict Chan and Co) for plaintiff; Toh Kok Seng and Sofeen Thaker (Lee and Lee) for defendant

Parties : Ong Bin Wah — Quek Teng Pong; Ng Chor Tiam

1 The plaintiff, Ong Bin Wah, is presently 48 years old. She was a passenger in a lorry driven by her husband, the 1st Defendant, when it collided with another lorry driven by the 2nd Defendant on 1 June 2001. As a result of the accident, the plaintiff sustained injuries to her right ankle and foot. Both defendants admitted liability and interlocutory judgment was entered against the 1st and 2nd defendants at 20% and 80% respectively. The plaintiff made five broad areas of claims:

(i) General Damages for pain and suffering

(ii) Pre-trial loss of earnings

(iii) Future loss of earnings

(iv) Special damages i.e. for transport, clothing and medical expenses, including pre-trial cost of treatments at a sinseh

(v) Future Medical expenses (including treatments at a sinseh)

General Damages for Pain and Suffering

2 The two medical reports provided by Tan Tock Seng Hospital ('TTSH'), stated that the plaintiff suffered an open fracture to her right ankle, a 10 cm transverse heel laceration with complete transection of the right tendo-achilles and a right 2nd toe tuft fracture with nail bed laceration.

3 At the assessment hearing, Dr Naidu, a Registrar with the Department of Orthopaedic Surgery at TTSH, elaborated on the ankle fracture. He explained that the main injury to the ankle was the fracture of the lateral malleolus (bone on the outside of he ankle). He noted from the X-rays that there was also a chip fracture of the naviculum (bones on the top of the foot) and the anterior portion of the right calcaneum (in the front of the ankle). According to Dr Naidu, no treatment was required for the calcaneum fracture as it showed minimal displacement and the bone had healed. He also testified that there was no evidence of any arthritic changes in any of the fracture sites, save for the calcaneum fracture where there were mild changes. In his opinion, the fracture at the malleolus would not increase the likelihood of arthritis developing in the future. As regards the heel laceration, Dr Naidu stated that this was a severe open wound as the tendo-achilles was completely severed.

4 Dr Naidu gave evidence that as a result of these injuries, the plaintiff had a decreased range of motion in dorsiflexion of the ankle. This would result in her having difficulties when squatting or climbing stairs and she would experience swelling in her ankle with prolonged standing (between 6 – 8 hours). According to Dr Naidu, the plaintiff will also experience a dull pain "on and off" in her ankle.

5 The medical evidence of the defendants' expert witness, Dr WC Chang, an orthopaedic surgeon, was largely in agreement with that of Dr Naidu. In his opinion, the injuries had healed but the plaintiff was left with some residual stiffness in the ankle joint which affected her range of motion and it would be reasonable to expect her to experience intermittent pain in her ankle. However, the plaintiff could walk normally. Dr Chang also reported some slight wasting of the quadriceps and calf muscles, arising from the cut tendon, but stated that it was not serious as the power in her leg was normal. As for the toe tuft fracture, Dr Chang reported that the flexion of some of the toes would be reduced but that this was of no functional significance.

6 The plaintiff claimed a separate amount for pain and suffering for each of these component injuries described by the doctors. This included a $ 20,000 claim for the fracture of the right calcaneum which had healed and showed minimal displacement.

7 Based on the medical evidence, it was clear that the open fracture of the lateral malleolus was the most significant of the ankle injuries. Bearing this in mind and taking into account the occurrence of mild arthritic changes at the calcaneum, I was of the view that $14,000 for pain and suffering for the injuries to the ankle as a whole would be appropriate. In doing so, I considered the case of *Tan Swee Khoon v Balu a/l Sinnathamby* (unreported, DC Suit No. 225 of 1998) where the court awarded $12,000 for an open fracture of the medial malleolus of the right ankle. The disabilities suffered by plaintiff in this case are similar to that suffered by the plaintiff in the present case.

8 As for the heel laceration, I awarded the sum of $ 8000. I considered this to be reasonable in light of the decision in *Swaran Singh v Lim Soon Lee* (unreported, HC Suit 2409 of 1996) where an award of $ 10,000 was made for a laceration of the right heel with exposure of the tendo-achilles. Unlike the present case where there is an element of overlap, the laceration of the heel was the only injury sustained by the plaintiff in that case to his ankle region.

9 I agreed with the Defendant's quantum of $ 2,500 and $ 3,000 for the toe tuft fracture and for scarring respectively. I made no award for muscle wasting of the thigh and calf as based on the medical evidence, the power in the leg was not affected.

10 Consequently, the total award for general damages for pain and suffering for the right ankle and foot was **$ 27, 500**.

Pre-trial loss of earnings

11 At the time of the accident, the plaintiff was running a wet-market stall selling fish. In her Affidavit of Evidence-in-Chief ('AEIC'), the plaintiff claimed that her average income was $ 2,500 a month. However, this was inconsistent with her Income Tax Assessment Notice which indicates that the profits from the stall for the year 2000 was $ 24,904 i.e. $ 2,075 per month. This was a discrepancy that the plaintiff was unable to explain. In light of this, I took $ 2,075 to be the true representation of the pre-accident monthly earnings from the stall.

12 Furthermore, as the defendants have aptly pointed out, although the licence for the fish stall was registered in the plaintiff's sole name, the fish stall was in reality jointly managed by the plaintiff and her husband. By her own admission, the plaintiff stated in her AEIC that before the accident, she was 'able to share the work with [her] husband equally'. In this connection, she gave evidence that prior to the accident, her husband would collect the stall's supply of fish from the Punggol Fish Market every morning and help her with the heavy tasks when she closes the stall. She also stated that while she was the only one tending to the stall during its business hours, her husband would help out whenever he was free. In the circumstances, I agreed with the defendants

that the pre-accident earnings of the plaintiff should only be in the region of $ 1,037.50.

13 The plaintiff gave evidence that her stall was closed for about 3 months after the accident on 1 June 2001 and that she returned to work thereafter. This was notwithstanding that the plaintiff was certified medically unfit for work from the date of the accident until 12 October 2001. In light of her evidence, the defendants offered $ 6,225 for the three month period during which the stall was closed ($ 2075 x 3 months) and $ 1556.25 for period thereafter until 12 October 2001 ($ 1037.50 (being her share of the stall's profits) x 1.5 months). I found the defendants' offer to be reasonable and accordingly awarded **$ 7781.25** for pre-trial loss of earnings over this period.

14 I agreed with the defendants that there was no basis for making any award after 12 October 2001 for the following reasons. First, the medical evidence from her own doctor was that she was fit for employment by 12 October 2001. Secondly, the plaintiff has since returned to her former job and was still working at the stall at the date of the assessment hearing. Thirdly, while I accept that the plaintiff's disability would affect her earning capacity, I did not agree with counsel's submission that the reduction in the stall's profit for 2002 (as compared with 2000) was due in part to the plaintiff's disabilities. By her own evidence, the plaintiff's husband had been helping her tend the stall since the accident. In my view, her husband's assistance during this period would have more than adequately compensated for any loss of earning capacity on the plaintiff's part. As such, any loss in sales suffered by the stall after 12 October 2001 must be due to the exigencies of the business economy, which would likewise affect her fellow fish stall vendors.

15 The plaintiff also claimed her husband's loss of earnings of $ 1,000 per month as part of her pre-trial loss of earnings. This was on the basis that he had to give up, what the plaintiff refers to as his "second job" which pays $ 1,000 per month, to help her at the stall. I found this claim to be wholly lacking in any merit whatsoever. In any event, her husband's Income Tax Return form showed that he continued to earn about $ 1,000 in 2001 as well as 2002.

Future loss of earnings or loss of earning capacity

16 The plaintiff has since returned to running her former business of selling fish. As with most businesses, earnings are dependent on various factors and would inevitably fluctuate. In the circumstances, it is my view that this was a case for loss of earning capacity rather than loss of future earnings.

17 Based on the medical evidence, although the plaintiff's injuries have long healed and she can walk normally, she is left with residual stiffness of her ankle which causes her difficulties in squatting and climbing stairs. She will also experience swelling in her ankle with prolonged standing (between 6 – 8 hours) and difficulty in carrying boxes of fish to and from the lorry to her stall.

18 Bearing in mind that the even before the accident, her husband would collect the fish supplies from Punggol Fish Market every morning as well as assist her in closing the stall, I was of the view that a rough measure of her loss of earning capacity would be the cost to hire a help to tend the stall with her in her husband's absence. A fair value for such help would be about $ 400 per month given that such work does not require any educational qualifications. Taking this into consideration along with the authorities cited by the parties, I awarded the sum of **$ 30,000** for loss of earning capacity.

Special Damages

19 The plaintiff made three claims under this head:

(i) Medical and Treatment expenses at $ 4185.59

(ii) Chinese Sinseh Treatment (including transport cost) at $ 5,000

(iii) Transport and clothing which had been agreed at **$ 300**.

(i) Medical and Treatment Expenses

20 The defendants did not dispute the figure of $ 4,185.69. Their only objection is to the sum of $800 which was not paid by the plaintiff but by MediShield. According to the defendants the principle in *Bradburn v G. W Railway* (1874) LR 10 Exch I, that a sum received by a plaintiff under an insurance policy cannot be taken into account in reduction of damages, does not apply to the present case. This is because MediShield, unlike a personal accident policy, is a contract of indemnity. This means that an insurer, having made payment, has a right of subrogation to make a claim against the tortfeasor to recover the monies paid. The plaintiff cannot, therefore, make another claim for the same monies in his own capacity.

21 In this connection it would be helpful to refer to the Central Provident Fund (MediShield Scheme) Regulations (Cap 36, Section 57). Regulation 20 reads:

(1) Where another person is under an obligation, contractual or otherwise, to pay or reimburse an insured person for charges incurred in respect of any medical treatment in an approved hospital received by an insured person, there shall become due and payable to the MediShield Fund, on the date the insured person receives such payment or reimbursement from that other person, the total amount received by the insured person from the Board under the Scheme in Division 2 or 3, as the case may be, of Part II for such treatment or the prescribed balance, whichever is the lower.

(2) For the purposes of paragraph (1), the prescribed balance shall be ascertained in accordance with the formula X + Y - Z —

where X is the total sum received by the insured person from that other person as payment or reimbursement of any medical treatment received by the insured person;

Y is the total amount of payment received from the Board by an insured person under the Scheme in Division 2 or 3, as the case may be, of Part II; and

Z is the total amount of the medical expenses incurred by an insured person in respect of the medical treatment in an approved hospital.

22 In light of this provision, I awarded the full sum of **$ 4,185.59** to the plaintiff under this claim.

(ii) Medical Cost for Chinese Sinseh Treatment

23 In her AEIC, the plaintiff stated that she attended therapy and massage sessions at a sinseh twice a week. No receipts were produced to substantiate this claim. Notwithstanding that, I saw no reason to doubt that the plaintiff, given her background, would have attended such sessions. I also saw no reason to disbelieve her evidence that the cost of each session was $ 20 and would be $ 50 - $ 60 when the cost of medication was included. While I accept that there was a lack of documentary proof as to the frequency of such visits, I find that it would be reasonable for her to seek treatment

at least once a week. This was especially in light of Dr Chang's evidence that "in most cases, people do go to a sinseh for some sort of massage" and that such visits would usually provide relief from pain although of a transient nature. However, in the absence of any medical evidence as to the effectiveness of the chinese herbs prescribed by the sinseh, I saw no basis to substantiate her claim for medication. I also found the claim for transport expenses under this item to be unreasonable.

24 Consequently, I awarded the sum of **$ 2,000** ($ 80 x 25 months being the period between the expiry of the medical leave and the assessment date).

Future Medical Expenses

25 The plaintiff claimed $ 24,000 for the cost of future therapy at the sinseh and $600 for the cost of future surgery to remove the steel implants in her ankle. I found no basis for making this award. Both doctors had given evidence that in the plaintiff's case, it would be advisable for the steel implants to be left in her ankle permanently. In fact, the plaintiff herself stated that she had decided to follow the doctor's advice and not remove the steel implants. More importantly, Dr Chang's expert medical opinion was that the plaintiff's injury had "plateaued" and that further treatment would probably have no benefit.

26 However, given that the defendants had offered $100 to cover the consultation and transport costs for one or two reviews, should the plaintiff decide to do so, I will, accordingly, award the sum of **$100** under this item.

Conclusion

27 In conclusion, I assessed damages suffered by the plaintiff to be:

General Damages for Pain and Suffering	$ 27,500.00
Pre-trial Loss of earnings	$ 7,781.25
Loss of earning capacity	$ 30,000.00
Medical Expenses	$ 4186.59
Pre-trial Medical Expenses (sinseh)	$ 2,000.00
Future Medical Expenses	$ 100.00
Transport and Clothing	$ 300.00 (agreed)
Grand Total	**$ 71,867.84**

28 I awarded interest at 6% per annum from the date of service of writ to the date of judgment on general damages for pain and suffering. Interest on special damages incurred before the date of judgment was awarded at 3% per annum from the date of the accident to the date of the judgment.

29 The usual consequential orders will apply. I will hear parties on costs.