Teo Chee Yeow Aloysius and Another v Tan Harry and Another
[2004] SGCA 31

Case Number : CA 136/2003

Decision Date : 14 July 2004

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Judith Prakash J; Yong Pung How CJ

Counsel Name(s) : Myint Soe and Deepak Raja (MyintSoe and Selvaraj) for first appellant; Lek Siang Pheng and Christopher Chong (Rodyk and Davidson) for second appellant; Daniel John and Marc Wang (John Tan and Chan) for respondent

Parties : Teo Chee Yeow Aloysius; Gleneagles Hospital Ltd — Tan Harry; Yeo Kwee Cheng Veronica

Civil Procedure – Appeals – Appeals from Registrar to judge in chambers – Whether co-appellants required to identify specific issues appealed against in respective notices of appeal to obtain benefit of each other's successful appeal – Orders 56 r 1, 57 r 3(2) Rules of Court (Cap 322, R 5, 2004 Rev Ed)

14 July 2004

Chao Hick Tin JA (delivering the judgment of the court):

1 This appeal raised the important question as to whether two separate defendants (in this case, "the appellants"), who appeal against different heads of damages assessed by the assistant registrar and who succeed in respect of their separate appeals, are entitled to the benefits of each other's success. In this case, the judge who heard the appeals in chambers held that they were not so entitled. On their further appeal to this court, we affirmed the decision below for the reasons that follow.

The background

2 The plaintiffs, the respondents herein, were the dependants and administrators of the estate of one Philip Tan Kok Leong ("the deceased") who died while undergoing surgery at the Gleneagles Hospital ("the second appellant"). Dr Aloysius Teo Chee Yeow ("the first appellant") was the anaesthetist in attendance during the operation. The deceased was the son of the respondents.

3 The respondents instituted proceedings against the appellants claiming, *inter alia*, for loss of dependency and special damages for the death of their son.

4 Liability was admitted by the appellants and interlocutory judgment was entered in favour of the respondents. The assessment of damages came before the assistant registrar, who made the following awards:

Dependency loss	$180,580.80
Special damages	$37,513.90
Pain and suffering	$2,500.00
Bereavement pursuant to the Civil Law Act (Cap 43, 1999 Rev Ed)	$10,000.00

5 The amount awarded for special damages consisted of the following components:

(a)	Legal costs incurred by the respondents	$20,000.00

in attending the coroner's inquiry into their son's death

(b) Medical expenses $5,335.63

(c) Costs of obtaining letters of administration for the deceased's estate $3,407.40

(d) Funeral expenses $8,770.87

6 All the parties appealed against various aspects of the assessment. The first appellant, by way of Registrar's Appeal No 164 of 2003, appealed only in respect of the award of $180,580.80 for loss of dependency. By Registrar's Appeal No 162 of 2003, the second appellant appealed only against the award of $20,000 in respect of the legal costs incurred by the respondents for attending the coroner's inquiry. The respondents also appealed against several of the awards, including the quantum given for their dependency claim. The respondents also asked for aggravated damages.

7 Woo Bih Li J rejected the respondents' appeal: see *Tan Harry v Teo Chee Yeow Aloysius* [2004] 1 SLR 513. However, as regards the first appellant's appeal, the judge held that the respondents were not entitled to any award for loss of dependency because the respondents had already inherited a sum (consisting of, *inter alia*, cash in the deceased's bank account, publicly-listed shares and a car), in excess of their loss of dependency, as beneficiaries of the deceased's estate.

8 As regards the second appellant's appeal, Woo J also ruled that the respondents were not entitled to claim for the legal costs incurred by them in attending the coroner's inquiry as this head of claim was not only not pleaded by the respondents, it was withdrawn at the commencement of the assessment of damages.

9 It was after Woo J had made his rulings on the two appeals of the appellants and that of the respondents that the respective counsel for each appellant submitted that each appellant should be entitled to the benefits of the other's successful appeal. The judge rejected this submission, stating that each appellant had confined their appeal to a specific head. He said that while it was true that under the interlocutory judgment the appellants were jointly and severally liable to the respondents for damages, the ultimate total sum which each appellant would be liable for would depend on the awards made at the assessment together with any appeals therefrom. The judge felt that each appellant should be bound by what each had sought in his notice of appeal.

10 Thus the appellants appealed to this court against the judge's ruling which refused to accord to each appellant the benefits of the other's success.

Issues

11 Before us very much the same arguments were canvassed. They may be summarised under the following heads:

(a) Since an appeal to the judge in chambers was a rehearing, there was no need for each of the appellants to identify in his notice of appeal the specific issues or heads which he was challenging.

(b) In the light of the notices of appeal filed by the appellants, as well as those of the respondents, the whole assessment should, in fact, be open to review by the judge in chambers.

(c) The judge's ruling was inconsistent with the interlocutory judgment under which the appellants' liability was joint and several.

However, some authorities canvassed before the judge were not pursued before us.

12 Relying on the decision of this court in *Chang Ah Lek v Lim Ah Koon* [1999] 1 SLR 82, the appellants argued that Woo J should have dealt with their appeals as though the matter had come before him for the first time. Counsel submitted that the judge should have exercised original jurisdiction as opposed to appellate jurisdiction, notwithstanding that the exercise of the original jurisdiction was invoked by way of "notices of appeal". In any case, the appellants should not be required to formally appeal against every point when those very points were the subjects of the respondents' own appeal.

13 References were also made by the appellants' counsel to O 56 r 1 and O 57 r 3(2) of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) ("RC"). These two rules read:

O 56 r 1

(1) An appeal shall lie to a Judge in Chambers from any judgment, order or decision of the Registrar.

(2) The appeal shall be brought by serving on every other party to the proceedings in which the judgment, order or decision was given or made a notice in Form 114F to attend before the Judge on a day specified in the notice.

O 57 r 3

(2) Notice of appeal may be given either in respect of the whole or in respect of any specified part of the judgment or order of the Court below; and every such notice must state whether the whole or part only, and what part, of the judgment or order is complained of, contain an address for service, and be signed by the appellant or his solicitor.

For the avoidance of doubt, any party who desires to contend that the decision of the Court below should be varied in any event must file and serve a notice of appeal.

14 Order 57 r 3(2) relates to an appeal from a decision or judgment of the High Court to the Court of Appeal. Counsel stated that if the two rules were compared it was clear that, in respect of an appeal from the registrar to the judge in chambers, each defendant was required to specifically appeal on points which were already the subject of an appeal by the plaintiff. Counsel pointed out that, unlike in O 57 r 3(2), the following provision was missing in O 56 r 1:

For the avoidance of doubt, any party who desires to contend that the decision of the Court below should be varied in any event must file and serve a notice of appeal.

We shall hereinafter refer to this provision as "the rider".

Our consideration

15 As the three heads of argument of the appellants are really quite connected, we shall deal with them together. The nature of a hearing before the judge in chambers from a decision of the registrar was reviewed in the recent case of *Lassiter Ann Masters v To Keng Lam (alias Toh*

Jeanette) [2004] 2 SLR 392 where this court reiterated at [10] that when a judge in chambers hears an appeal from a decision of the Registrar, the judge is not exercising an appellate jurisdiction but a confirmatory jurisdiction. In such an appeal, there is a rehearing and the judge is entitled to exercise an unfettered discretion of his own.

16 However, the principle of rehearing does not mean that the judge in chambers should look at the issues all over again and/or determine the amount for each head of claim made by the plaintiff. All it means is that the judge is entitled, where an issue is raised before him on appeal, to determine the matter unfettered by the discretion exercised by the registrar. This is not to say that the judge should totally disregard the decision of the registrar, but that he is not fettered by any principle limiting his discretion and he is free to come to a conclusion that is different from that of the registrar. This situation should be contrasted with that of an appeal from a decision of the High Court to the Court of Appeal. In the latter case, this court may only upset a decision of the High Court judge if it is shown that the latter has erred on a matter of principle, or has taken irrelevant considerations into account, or that the decision is plainly wrong: see *The Vishva Apurva* [1992] 2 SLR 175.

17 In this connection, it is important not to lose sight of the fact that what we have here in Singapore, as indeed in all common law countries, is an adversarial system of litigation. It is not for the court to raise issues but for the parties. A party should give notice to the opposing party if he wishes to challenge any decision or part of a decision of the court and has to bear the costs consequences in relation to any matter which he has unsuccessfully raised.

18 What the appellants here wanted were the benefits of the appeal of a co-defendant without raising the relevant issues on appeal and bearing all the attendant risks. Suppose for a moment that in that case at hand only the first appellant had appealed, but not the second, and that the first appellant had succeeded in the way he did. Could the second appellant have come to court after the event to say that since the appellant's liabilities were joint and several, the amount of damages which the second appellant should pay to the respondents should be the same as the reduced amount which the first appellant was liable to pay? The answer is obviously not. Hence the second appellant, having not appealed against the quantum assessed for dependency loss for whatever reason, must accept the consequences of its own choice. While ordinarily the damages which joint tortfeasors are liable to pay will be the same, it does not follow that the amount must be the same. The principle of joint liability necessarily means that a tortfeasor may only be able to ask a joint tortfeasor to contribute in relation to a head of damages which both are held to be liable for.

19 For the same reason, the respondents' appeal against the award for dependency loss is irrelevant and it cannot improve the appellants' position. Moreover, the basis of the respondents' appeal was not that the quantum of the award in respect of each of the items appealed against was excessive (which was the contention of the appellants) but that it was inadequate.

20 At this juncture, we should mention that, in the court below, the appellants relied on three authorities to augment their argument that it did not matter that in each of their notices of appeal the point raised by the other appellant's notice of appeal was not included, namely, *Europa Property and Finance Services Ltd v Stubbert* [1991] TLR 533; *Silverlink (Hong Kong) Finance Ltd v Zhang Sabine Soi Fan* (1999) 85 HKCU 1; and *Shade v The Compton Partnership* [2000] PNLR 218. These cases were considered and distinguished by the judge. As the appellants no longer relied on these cases before us, we need not dwell upon them any further.

21 Turning to the RC, it is true that O 56 r 1(2) does not have the rider. But we should not lose sight of the fact that the rider begins with the qualification "for the avoidance of doubt". We were

unable to see how the absence of these words, which were clearly added to O 57 r 3(2) out of an abundance of caution, should require us to construe O 56 r 1(2) in a manner which is out of line with a basic tenet of the administration of civil justice, that is, that a party who is dissatisfied with an order of the registrar or a judge should appeal against that order. Indeed, that was precisely what the two appellants did. The first appellant was dissatisfied only with the award for dependency and the second appellant with the legal costs for attending the inquiry. They were separately represented and made their separate submissions to the judge. At no time until after Woo J made his orders on all the appeals did either appellant state that they would like to associate themselves with the appeal of the other appellant. Before this court, the appellants made a joint submission.

22 Moreover, it must be noted that Form 114F of the RC expressly requires a party who intends to appeal against an order to state in full the order he is appealing against and the order sought to be obtained on appeal, *ie*, the relief. Of course, if before or at the time of the hearing of the appeals the appellants had indicated to the judge that they would like to enlarge their notices of appeal to include the head of appeal under each other's notice, the judge would have had discretion to allow the oral amendments. In that event, if the court had thought that, in view of the amendments, time should be given to the respondents to consider the enlarged notices of appeal, it could have granted time. But no such indication was given, or application made, by the appellants.

23 In the premises, we dismissed the appeal with costs, with the usual consequential orders.