Ang Kuang Hoe v Chia Chor Yew
[2004] SGHC 229

Case Number : Suit 549/2003, NA 26/2004

Decision Date : 13 October 2004

Tribunal/Court : High Court

Coram : Vincent Leow AR

Counsel Name(s) : Liew Teck Huat and D Vivekananda (Niru and Co) for plaintiff; P E Ashokan (Khattar Wong and Partners) for defendant

Parties : Ang Kuang Hoe — Chia Chor Yew

13 October 2004

Assistant Registrar Vincent Leow:

Introduction

1 The plaintiff, a third year engineering student at the National University of Singapore, was crossing South Buona Vista road when he was knocked down by a Mercedes-Benz car driven by the defendant. At trial, Belinda Ang J held that the plaintiff should have judgment for 50% of the damages. The assessment for damages came before me and I made certain awards. I now release my grounds.

The claim

2 Mr Liew, counsel for the plaintiff, grouped the claim for damages into five categories. For convenience, I adopted a similar grouping. They were: (1) pain and suffering; (2) loss of earnings or earning capacity; (3) pre-trial loss of earnings; (4) costs of future surgery; and (5) special damages. As parties were unable to agree on any item, I considered each in turn.

(1) Pain and suffering

3 This category of claim was further divided into (i) injuries to the lower limbs; (ii) fracture of the humerus; (iii) scars; (iv) knee laxity; and (v) loss of consciousness.

(i) Injuries to the Lower limbs

4 In respect of the lower limb, it was undisputed that the plaintiff suffered closed bilateral fractures of the left and right tibia and the right fibula. This can be seen clearly from Dr Hee Hwan Tak's (the treating doctor's) medical report. In making my award, I took into account three considerations. First, the fractures were all closed with no open wound. Additionally, the fractures on the right fibula and left tibia were simple fractures, while the fracture to the right tibia had some comminution (see pages 16-17 of the Notes of Evidence of 9 June 2004). Further, I did not accept that these injuries were more severe simply because the plaintiff was wheelchair-bound for 3-4 months as that was a natural consequence of the operation (see page 8 of the Notes of Evidence of 15 July 2004). However, I accepted that the court should take into consideration the loss of amenities over the three months especially since there was no dispute that the proper treatment was given.

5 Second, I found that there was a shortening of the plaintiff's left leg by 0.2cm. I should note that this was a highly disputed matter. Dr Pillay, the expert witness for the plaintiff, had

insisted that there was a shortening of the plaintiff's right leg by 0.5cm. In contrast, Dr Lee, the expert witness for the defendant, stated that there was only a shortening of 0.2cm to the plaintiff's left thigh. I would highlight that both doctors found different legs to be shorter. Having heard both doctors, I preferred the evidence of Dr Lee to Dr Pillay as I felt that Dr Lee's methodology was more accurate.

6 Let me explain. Dr Pillay had reached his measurement of 0.5cm by physically measuring the plaintiff's leg. In contrast, Dr Lee's measurement was obtained via an x-ray of the plaintiff's leg. It was clear to me that Dr Lee's method was preferable. The advantage in determination the length of the legs from an examination of the x-rays can be seen from the fact that when Dr Pillay had initially measured the plaintiff's leg, he had found that the leg had shortened by 1cm because the swellings had made the landmarks of the leg indistinct. Further, Dr Lee had sent the plaintiff to a trained radiologist, Dr Ng to do the measurement.

7 Third, while the plaintiff complained that there was residual pain, I found it significant that he received no prescription for painkillers nor did he find it necessary to consult doctors as to the pain. Further, I found this portion of the plaintiff's testimony very telling as to the degree of pain suffered:

DC: No problems sitting crossed legged?

A: I was used to sitting that way. I am trying to kick the habit.

DC: Does it not hurt?

A: I feel pain, but I cannot within a short period kick the habit.

…

DC: You do not feel problems sitting crossed legged?

A: Yes, but this is one of my old habits.

DC: Through out the lunch, you were sitting cross legged despite the pain?

A: Yes.

8 With these three considerations in mind, I turned to the various authorities cited. Counsel for the plaintiff relied on the case of *Suresh Kumari a/l Munusamy v Tan Sai Guay* (DC Suit No 1270 of 1997) where the plaintiff suffered a fracture to his right and left tibia and fibula and recovered fully (except for the possibility of early osteoarthritis of both knee joints) and he was awarded a global award of $30,000 for his lower limb injuries. Mr Ashokan, counsel for the defendant cited the case of *Kok Kim Kim v Loh Thiam Sam and others* (Suit No 60034 of 1997) where $20,000 was awarded for an open fracture of the tibia and fibula which resulted in the shortening of the left leg, muscle wasting of the left thigh, pain and suffering and other residual problems. I noted that this case involved an injury to only the left leg. Having examined these authorities and considered the nature of the injuries as well as the residual problems suffered by the plaintiff, I felt that $30,000 would be a fair sum to award.

(ii) Fracture of the humerus

9 It was not disputed that the plaintiff suffered a fracture of the humerus with radial nerve palsy. The plaintiff recovered fully except for a slight residual numbness and weakness, which Dr

Pillay said can be overcome with some exercise (see page 8 of the Notes of Evidence dated 9 June 2004). Counsel for the plaintiff submitted that the sum of $18,000 would be fair using the authority of *Siva Subramaniam a/l Kanapathy v Keng Ho Trading & Transport and another* (Suit No 437 of 1997) where $12,000 was agreed for the fracture of the humerus which resulted in the plaintiff being unable to carry heavy loads. Counsel for the defendant submitted that $8,500 would be equitable given the case of *Koh Lu Kuang v Abdul Jalil Kader Hussien* (DC Suit No 4293 of 1998) where $9,000 was awarded for a fracture of the neck of the humerus. I felt that the facts of this case fell in between these two cases and awarded $11,000.

(iii) Scars

10 It was not disputed that the plaintiff suffered from a large number of scars including in particular an 18cm by 1.2cm scar with keloid formation over his right upper arm. Counsel for the plaintiff asked that an award of $6,500 be awarded. He relied on *Koh Lu Kuang v Abdul Jalil Kader Hussien* (DC Suit No 4293 of 1998) where $4,000 was awarded to the plaintiff who had a 19cm surgical scar over the left shin and three other smaller scars. In contrast, counsel for the defendant said that was too high and relied on *Natesam Baskar v Chang Mum Cheong* (DC Suit No 5584 of 1997) where the plaintiff had multiple scars ranging from 4cm to 9cm and was awarded $3,000. I noted that neither of these cases involved keloid formations and given the nature and number of scars sustained, I awarded $5,000.

(iv) Knee laxity

11 I held that the plaintiff had not met his burden of proof in showing that this injury was caused by the accident. In particular, it is germane to note that no mention was made of this injury for almost two years after the accident. In fact, Dr Pillay had only detected it a few days before the assessment hearing. Further, even Dr Pillay opined that there was only a 40% chance that the laxity was caused by the accident (see page 28 of the Notes of Evidence dated 9 June 2004). I did not see how it could be said that the plaintiff had shown that this injury (if it even existed) was caused by the accident. Given my finding, there was no basis for me to make an award.

(v) Loss of consciousness

12 I found that it was not shown that the plaintiff had lost consciousness. It was pertinent to note that the only evidence cited in support was Dr Pillay's report, which was based on what the plaintiff had told Dr Pillay during the examination. This was clearly hearsay. I saw no reason why this evidence should be relied upon to show that the plaintiff lost consciousness, especially since the plaintiff had himself testified in court. It was even more telling that the plaintiff not only did not testify that he lost consciousness, but had actually cited in his affidavit his friend's testimony that "although [the plaintiff] appeared conscious, he was evidently in a state of shock." Similarly, the treating doctor, Dr Hee made no mention of the plaintiff arriving at the hospital in an unconscious state. As such, I declined to make an award for this head of claim.

(2) Loss of future earnings or earning capacity

13 In respect of this part of the claim, counsel for the plaintiff in his closing submissions sought an award for loss of future earnings or in the alternative loss of earning capacity. I agreed with counsel for the defendant that the claim for loss of future earnings was never pleaded at any stage prior to the closing submissions. In particular, it was noteworthy that the plaintiff in his own affidavit only sought to claim for loss of earning capacity. The cross-examination had proceeded on that basis. As such, there was no reason to allow the plaintiff to switch horses mid-race. In any case, I

did not think that this was a proper case for an award for loss of future earnings as there was simply insufficient data to determine with any accuracy an award for loss of future earnings which must be a real assessable loss provable by evidence: see *Chang Ah Lek and Others v Lim Ah Koon* [1999] 1 SLR 82 at 25 and *Teo Sing Keng and Another v Sim Ban Kiat* [1994] 1 SLR 634 at 646.

14 On the evidence, I should mention that it was not sufficient to rely on a National University of Singapore Graduate Employment Survey 2003 as proof of the plaintiff's earnings. All that the survey showed was the average salary of a mechanical engineer, who graduated in mid-2003 and worked in the private sector. There was no correlation between that hypothetical salary and what the plaintiff would have earned, but for the accident.

15 I turned then to examine the loss of earning capacity. I was guided by the words of Goh Joon Seng J, who in delivering the decision of the Court of Appeal in *Teo Sing Keng and Another v Sim Ban Kiat* [1994] 1 SLR 634 stated at [40] that:

> An award for loss of earning capacity, as opposed to an award for loss of earnings, is generally made in the following cases:
>
> (1) where, at the time of trial, the plaintiff is in employment and has suffered no loss of earnings, but there is a risk that he may lose that employment at some time in the future, and may then, as a result of his injury, be at a disadvantage in getting another job or an equally well paid job;
>
> (2) where there is no available evidence of the plaintiff's earnings to enable the court to properly calculate future earnings, for example, young children who have no earnings on which to base an assessment for loss of future earnings.

16 The instant case clearly did not fall within the first situation. However, it fell squarely within the second situation. Counsel for the plaintiff submitted that the plaintiff's ability to work had been adversely affected by the disabilities that he suffers from. He enumerated these disabilities as:

(i) Pain in right shoulder;

(ii) Pain in both legs;

(iii) Difficulty in running, squatting and unable to climb stairs easily;

(iv) Unable to carry heavy loads;

(v) 0.5cm shortening of the right leg; and

(vi) Laxity of the knee.

17 I should note on the onset that given my earlier finding on (vi) the laxity, I disregarded any possible effect it had. Further, I did not accept that (i), (iv) and (v) affected the plaintiff's ability to work. In relation to the right arm, Dr Pillay had stated that the plaintiff had fully recovered from the injuries to his arm and any residual weakness could be recovered with some exercise. Similarly, Dr Pillay had stated in relation to the shortening that it created a slight limp which did not affect the plaintiff's ability to work or carry out his daily routine (see page 22 of the Notes of Evidence dated 9 June 2004).

18 As such, the only relevant issue to my mind was how (ii) and (iii) affected the plaintiff's

ability to work. On this, Dr Pillay stated that while the plaintiff would have no difficulty if he works in an office environment, it would affect him if he had to climb or squat (see page 29 of the Notes of Evidence of 9 June 2004). Dr Lee's view was that the injuries would not affect the plaintiff's ability to work in any kind of job as the plaintiff was able to squat and sit down with legs crossed (see page 6 and page 13 of the Notes of Evidence of 15 July 2004).

19 Having considered the views of these two doctors as well as viewing the video tapes of the plaintiff's normal movements in public, I formed the view that even if the plaintiff suffered from these various pains, they did not radically affect his ability to work.

20 However, I accepted that the plaintiff did suffer from some residual disabilities that affected his ability to squat for long periods. This conclusion was consistent even with Dr Lee's testimony because Dr Lee did not test the plaintiff for his ability to squat for long periods. However, this did not mean that a suitable award was, as suggested by counsel for the plaintiff, $150,000. All the cases that he cited to me dealt with much more severe injuries and involved clear evidence of the effect that these disabilities had on his work. For example, in the case of *Gary Louis Powell v Ng Cheng Tee* (Suit No 2664 of 1976), this involved a plaintiff who suffered permanent disabilities such that he was unable to do the physical work that was required of an ordinary workman in the oil rigging industry. In comparison, the evidence here did not show that the plaintiff was unable to do the work of an ordinary mechanical engineer. In fact, I should add that the plaintiff had even been offered jobs as a mechanical engineer, but he had rejected them without trying. I did not think that the Court should condone such an attitude. Further, I noted that there was no evidence that the plaintiff, if he lost his job, would be unable to find a similar paying job.

21 As such, I felt that an appropriate amount to be awarded here would be $2,000. I was guided in coming to this conclusion by the case of *Ang Ee Kwang (a minor) suing by his mother and next friend Ong Ah Moy v Tan Ah Chiak & Another* (DC Suit No 12 of 1996) where $2,000 was awarded to a plaintiff who had pain in the right knee during walking, difficulty in carrying heavy objects in both hands, 0.5cm wasting of the right quadriceps and loss of last 5% of flexion of the right knee.

(3) Quantum for pre-trial loss of earnings

22 The plaintiff claimed for the loss of earnings suffered as a result of graduating six months later. In principle, I felt that this was a fair claim and disagreed with counsel for the defendant that this was a speculative claim as it was clear to me that the plaintiff had been able to find a job within two months of graduation. I did not think that it was unlikely that the plaintiff would not have similarly found a job within two months if he had graduated six months earlier. However, I accepted that as the plaintiff was Malaysian, it was likely that he would have gone back to Malaysia immediately after graduation (like he had during the holidays) before returning to Singapore to look for a job. Hence, I felt that an appropriate award here would be five months times $1,800 (his current salary) or $9,000.

(4) Quantum for costs of future surgery

23 Having considered all the arguments and factors, I held that a sum of $5,000 would be fair for the costs of future surgery.

(5) Quantum for special damages

24 Given the various claims set out at paragraph 38 of the plaintiff's affidavit affirmed on 26 April 2004, I awarded a total of $16,261.25 and RM 75. In making this award, I had disallowed two items

(3) and (4). I disallowed item (3) on the simple basis that the plaintiff could not explain what this claim was for. It is hornbook law that special damages can only be recovered if they are strictly proved. There was hence no basis for the Court to make this award. Secondly, I disallowed item (4) - the plaintiff's brother's air ticket from Malaysia to Singapore. I reached this decision on the basis of the Court of Appeal decision in *Teng Ching Sin & Another v Leong Kwong Sun* [1994] 1 SLR 758 which stated that transport expenses incurred by family members in visiting an injured plaintiff should not be recoverable without evidence that those visits were important and necessary in the plaintiff's recovery. No evidence of this nature was adduced. Hence, I did not think it would be fair to allow the plaintiff to claim for his brother's flight back from Malaysia with him.

25 I should mention that in relation to item (1) – the medical expenses amounting to $15,120.05, while I had ordered this amount be awarded to the plaintiff, I had further directed the Public Trustee pay out this money only after resolving whether the insurer were entitled to the money under the doctrine of subrogation.

Conclusion

26 Given the above, I made the following awards in favour of the plaintiff:

(1)	pain and suffering	:	$46,000
(2)	loss of earning capacity	:	$2,000
(3)	pre-trial loss of earnings	:	$9,000
(4)	costs of future surgery	:	$5,000
(5)	quantum for special damages	:	$16,261.25 & RM 75
	Total	:	$78,261.25 & RM 75

27 For the avoidance of doubt, I should state that these amounts have not taken into account the fact that the defendant is only entitled to 50% of the damages. I further awarded interest at 6% per annum from the date of the service of the writ to the date of judgment on the general damages of pain and suffering and 3% per annum from the date of the accident to the date of judgment on the special damages and the pre-trial loss of earnings. I also made the usual consequential orders and orders as to costs.