Muhammad Shaun Eric Bin Abdullah alias De Silva Shaun Eric v Ng Ah Tee (Chua Seng Thye, Third Party)
[2004] SGHC 268

Case Number	: Suit 1373/2002, NA 79/2003
Decision Date	: 01 December 2004
Tribunal/Court	: High Court
Coram	: Vincent Leow AR
Counsel Name(s)	: Bernard Sahagar (Lee Bon Leong and Co) for plaintiff; Wee Jee Kin and S Sundaram (Bogaars and Din) for defendant; Anthony Wee (Rajah and Tann) for third party
Parties	: Muhammad Shaun Eric Bin Abdullah alias De Silva Shaun Eric — Ng Ah Tee — Chua Seng Thye

1 December 2004

Assistant Registrar, Mr Vincent Leow:

A. Introduction

1. The plaintiff, Mr Muhammad Shaun Eric Bin Abdullah was involved in a spate of accidents over the past few years. He was involved in so many accidents that the exact number of accidents is unclear. This suit relates to an accident that occurred on 21 November 1999 ("the accident"). On that day, the plaintiff had boarded a taxi driven by Mr Chua Seng Thye (the third party). He sat in the back seat. The taxi collided with another car driven by Mr Ng Ah Tee (the defendant). As the plaintiff was not wearing a seat belt, he was thrown forward and his legs were trapped under the front seat. The plaintiff suffered contusions to his knees. Subsequently, consent judgment was entered against the defendant with the plaintiff agreeing to bear 10% of the liability and the third party to indemnity the defendant for 15% of the damages that the defendant has to pay to the plaintiff. The matter then proceeded for assessment before me. I delivered judgment and now release my grounds.

B. Claims

2. The plaintiff's claim was for loss and damage arising out of the accident. In particular, he claimed under 5 general heads of damages: (1) pain and suffering; (2) future pain and suffering; (3) future medical care; (4) loss of earnings/earning capacity; and (5) special damages. These claims arose out of 6 types of injuries suffered by the plaintiff which his counsel, Mr Bernard Sahagar, had stated in his closing submissions as being: (1) chondronmalacia patella of both knees; (2) torn anterior cruciate ligament of the left knee; (3) reflex sympathetic dystrophy of both legs; (4) spinal cord stenosis; (5) possibility of osteoarthiritis in the future; and (6) swelling of the lower spine, knee and heels.

3. The main dispute surrounding the plaintiff's claims was on causation as both counsels for the defendant and the third party contended that the accident only caused the plaintiff to suffer knee contusions. In contrast, Mr Bernard submitted that all the injuries suffered were the direct consequence of the accident.

C. Facts

4. I will not elaborate on the accidents which occurred prior to 21 November 1999 save to state that there was at least 6 other accidents which resulted in the plaintiff suffering injuries to, *inter alia*,

his right knee and left leg. I turn now to the events that transpired after the accident, which I will list in some detail as they were fairly important. Immediately after the accident, the plaintiff took a taxi to the Singapore General Hospital. He queued up for about 5 hours and finally managed to see Dr Quek Lit Seng. The plaintiff complained to Dr Quek of pain and swelling over his right knee and shin. However, the plaintiff refused to let Dr Quek take X-rays and instead requested for consultation with Dr Howe Tet Sen, who had been treating the plaintiff for his injuries suffered in his previous accidents.

5. As Dr Howe was not free, the plaintiff was discharged with medication for pain. He was given medical leave from 21 November 1999 to 30 November 1999. The plaintiff returned to the Singapore General Hospital on 1 December 1999 and was attended to by Dr Low Seow Ping. This time, the plaintiff relented and allowed Dr Low to take X-rays of his left knee. The X-rays did not show any fractures. Dr Low noted that there was mild swelling and the plaintiff's knee had the full range of motion. The plaintiff was then discharged with medical leave from 1 December 1999 to 7 December 1999.

6. The plaintiff returned to the Singapore General Hospital on 7 December 1999 where Dr Howe saw him. Dr Howe conducted a detailed examination of the plaintiff's knee, including stressing the knee ligaments to test for damage, and did not find any significant injury to the knee. He then issued the plaintiff a 2 months "light duty" medical certificate and excused him from taking his individual physical proficiency test ("IPPT") for 4 months.

7. The next day, the plaintiff went to Ang Mo Kio Polyclinic and saw Dr Goh Khean Teik who issued him medical leave from 8 December 1999 to 9 December 1999. On 9 December 1999, the plaintiff lost his balance and fell. He went to the Singapore General Hospital and was attended to at the Department of Emergency Medicine. An X-ray of his left knee was taken, but it did not show any fracture or dislocation. He was given some medication for his pain and medical leave from 10 December 1999 to 14 December 1999.

8. On 13 December 1999, the plaintiff went to the Family Doctor, Clinic & Surgery and was seen by Dr Daniel Chia, a doctor that he had seen previously in September 1999 for pain and swelling of his left knee. At this visit, the plaintiff complained that he was still in great pain even though he had been treated by the doctors from the Singapore General Hospital, and asked for a second opinion. As such, Dr Chia referred the plaintiff to Dr Low Chee Kwang at Tan Tock Seng Hospital. It is crucial to note that the plaintiff did not inform Dr Chia of his fall on 9 December 1999.

9. Dr Low saw the plaintiff on 20 December 1999. Again, it is noteworthy that the plaintiff did not inform Dr Low of his fall of 9 December 1999. Instead, he only informed Dr Low of the accident of 21 November 1999. At that examination, Dr Low noted that there was pain in the plaintiff's left knee, effusion in the joints and that the plaintiff was unable to fully straighten his leg. He did not note any problems with the right knee. Dr Low prescribed medication and physiotherapy for the plaintiff, and gave him medical leave for 3 weeks. On 10 January 2000, the plaintiff returned to Dr Low for a follow-up examination. The plaintiff complained that he still experienced much pain in his left knee as there was little improvement. Dr Low arranged an MRI to assess the plaintiff's knee condition. On 24 January 2000, Dr Low examined the plaintiff's MRI result, which revealed that there was no fracture to the left knee. However, Dr Low's clinical examination revealed fluid inside the knee joint and tenderness over the medial joint line. As such, he proceeded to conduct an arthroscopy on 18 February 2000.

10. The arthroscopy revealed an attenuation of the plaintiff's left anterior cruciate ligament and synovitis of the left joint. The synovitis was treated during the arthroscopy. On 6 March 2000, the plaintiff returned to Dr Low for a follow up and Dr Low noted that there was no infection on the left knee wound. He issued the plaintiff a medical certificate permanently excusing him from IPPT and

riding a motor cycle. Subsequently, on 8 January 2001, the plaintiff went to visit Dr Low again. The plaintiff complained of left heel pain which Dr Low treated with shockwave therapy. The pain did not go away. By 18 September 2001, the plaintiff complained that the other heel was also painful and both heels were treated with shockwave therapy. On 16 October 2001, the plaintiff complained that both knees were now painful and that the left heel pain persisted.

11. On 6 November 2001, the plaintiff returned again to Dr Low and Dr Low's examination of the left knee confirmed tenderness of the medial joint line. Hence, Dr Low conducted a second arthroscopy on 7 December 2001. He noted that there was chondronmalacia patella over the left knee and that the patella had lateral impingement (tilted towards the outer side). Dr Low subsequently explained that the plaintiff was more prone to suffering from chondronmalacia patella because his knee cap was not centralised.

12. In view of the injuries, Dr Low prescribed treatment of shockwave therapy, acupuncture and injections. On 21 January 2002, Dr Low reviewed the plaintiff's condition and noted that there was still pain in both knees. On 23 January 2002, the plaintiff was sent for another MRI which revealed that there was knee effusion (fluid in the joints) in both knees. The plaintiff continued to complain of pain in both knees. Thus, Dr Low suspected that the plaintiff suffered from neuroma and referred him to Dr N V Ramani on 18 February 2002. On the same day, Dr Low also wrote a letter at the plaintiff's request recommending him for early retirement.

13. On 6 March 2002, the plaintiff saw Dr Ramani. Dr Ramni noted that the neurological examination was normal and the X-rays and MRI of the lumbar spine were normal. The plaintiff then returned to see Dr Low for follow-up treatment. On 2 July 2002, the plaintiff went back to see Dr Low as he needed a medical report to be written. The report was written on 10 September 2002 (PD 112) and it stated that the plaintiff could only do very light duties starting 1 January 2003. On the same day, Dr Low, along with his colleague Dr Lai Choon Hin, filled up the form sent to him by the Police Force to summerise the plaintiff's medical history. They stated in the Medical Board Report that the plaintiff suffers from (1) reflex sympathetic dystrophy of both legs with multiple trigger points; (2) instability of both knees from anterior cruciate ligament injuries; (3) backache; and (4) neck pain. The plaintiff was subsequently allowed to retire early from the Police Force by the Medical Board.

14. On 6 January 2003, the plaintiff returned to see Dr Low and complained of back pain. Dr Low advised the plaintiff to go for physiotherapy and medication. Another review was conducted on 11 November 2003 where the plaintiff claimed that his right knee was more painful than the left and that he had backache. Similar complaints were made to Dr Low during the subsequent reviews on 23 December 2003 and 26 January 2003. No other significant developments occurred, but it should be mentioned that the plaintiff saw Dr Chang Wei Chun for the purposes of putting up a specialist medical report on 6 December 2001 and 12 June 2003.

D. Causation

15. Counsels for the defendant and third party both took the position that the plaintiff had not discharged his burden of proving that his injuries were caused by the accident – except for the contusion to the knees. In particular, they contended that it was more likely that these injuries were either pre-existing, caused by the fall of 9 December 1999 (which itself was the result of a pre-existing injury), or the result of pre-existing injuries. They submitted that this was consistent with the testimony of the various medical doctors.

16. Having reviewed the evidence, I found myself in agreement with them. With respect to the anterior cruciate ligament injury, the symptoms shown by the plaintiff, as recorded by the doctors, did not appear to support his contention that it had been caused by the accident. Instead, it

appeared that the first few doctors who had treated the plaintiff had viewed his injuries as relatively minor. All their earlier findings were consistent with a mere contusion to the knees. I did not think that so many doctors would have overlooked such an injury. This was especially so for Dr Howe, who had conducted a detailed examination of the plaintiff's left knee including stressing the ligament to test for injuries to the anterior cruciate ligament. Dr Howe's appraisal of the plaintiff's condition as minor can be seen from the fact that Dr Howe only issued the plaintiff a light duty medical certificate despite the numerous previous injuries that the plaintiff had suffered to his knee. I saw no reason to doubt his examination especially since he was most familiar with the plaintiff's medical condition, having treated the plaintiff over the past few years.

17. Furthermore, the medical experts that Mr Bernard called to testify on his client's behalf had, to a greater or lesser degree, retracted in cross-examination their general averments contained in their reports that the injury to the anterior cruciate ligament was caused by the accident. By way of illustration, I refer to Dr Chang's testimony. He had in his report stated that the injury to the anterior cruciate ligament was a result of the accident. However, upon cross examination, it was revealed that he was unaware of the fall of 9 December 1999 and when counsel had informed him, he retracted his earlier report. Dr Chang stated:

> Q : … Let me put it to you that your conclusion that the attenuation of the left ACL was caused only by the accident was incorrect?
>
> A : I would agree.

18. Likewise, the plaintiff's other expert witness, Dr Low also agreed after counsels for the defendant and third party had informed him of the accident of 9 December 1999 that he could no longer stand by his statements in his reports that the injuries were caused by the accident. He stated:

> Q : Would you still be comfortable maintaining that stand [that the injury was caused by the accident] given the knowledge that we have pointed to you?
>
> A : Given the notes and that we always trust the patient and our impression at that time, but you have shown me all the previous documents, it is very difficult for me to pin point whether the disability was due to any specific accident.

19. As for the chondromalacia patella, I did not think that the evidence showed on a balance of probabilities that it must have been caused by the accident. The doctors had all stated that there were multiple reasons why chondromalacia patella could have occurred, including the fact that the plaintiff was already suffering from a degenerate medial meniscus and had an irregular tracking of the patellae, and the fall of 9 December 1999.

20. I would also add that having listened to and observed the plaintiff in court, I found the plaintiff to be evasive and flippant when questioned. He was cavalier with the truth when it suited his interests. For example, when questioned as to who had initiated the letter to the medical board for his early retirement, the plaintiff stated:

> Q : So did you request for [Dr Low] to refer you to the medical board?
>
> A : No. He in fact suggested earlier on to refer me to the medical board and I had in fact said no until the day I got this letter.

21. The truth however was revealed when Dr Low was cross-examined. Dr Low stated:

> Q : You mentioned that it was [the plaintiff's] request that you write the letter?
>
> A : Yes.

22. In the same way, other discrepancies appeared in his testimony, in relation, *inter alia*, to his employment status and claims for reimbursements. I further found his behaviour to be irrational. In particular, I did not understand why he had suddenly decided to switch doctors immediately after his fall of 9 December 1999 and I was curious why he did not return to see Dr Howe after that fall given his earlier insistence on 21 November 2004 of not letting any other doctor even conduct an X-ray of his knee. This indicated to me that the plaintiff may have had a hidden agenda behind the change of doctors.

23. As for the other injuries, except for the possibility of osteoarthiritis in the future, Mr Bernard did not address them in his closing submissions. As such, I could only assume that the plaintiff was no longer pursuing them. In any event, I did not think that he would have succeeded in claiming for these injuries. The evidence in respect of the reflex symphatetic dystrophy of both legs showed that this injury predated the accident. As for the spinal canal stenosis, even the plaintiff's expert witness, Dr Chang, stated that the spinal canal stenosis was not caused by the accident. As for the heel pain, there was no evidence that linked this to the accident. Lastly, I did not think that it was shown that the increased possibility of osteoarthiritis in the future was a result of the accident.

E. Awards

Pain and suffering

24. In view of the above, the only injury that the plaintiff could claim for successfully was the contusions to both knees as it was not disputed that this was caused by the accident. I considered the case of *Sim Siew Yen June v Benfort Enterprise Pte Ltd & Ors* [MC Suit No 21729 of 1997] where $5,000 was awarded to a plaintiff who suffered contusion of the right knee alone, and awarded the plaintiff $11,000.

Future medical care

25. In view of my findings on causation, the plaintiff's claim in respect of future medical care for knee replacement and physiotherapy had to be dismissed as these did not arise out of the contusions to his knees.

Loss of future earnings

26. The fact that the Singapore Police Force Medical Board had allowed the plaintiff to retire early from the Force did not mean that he had to succeed in his claim for loss of future earnings. At the very least, it must be shown first that the Medical Board had done so as a result of the injuries sustained in or arising from the accident. I had already stated at [13] the injuries that the Medical Board had allowed the plaintiff to retire early for I had also held at [16] to [18] and [23] that these injuries were not caused by the accident. Hence, I did not think that the plaintiff had shown that he had suffered a loss of future earnings as a result of the accident.

27. Further, while I had considered whether an award for loss of earning capacity should be made because of the knee contusions, I ultimately declined to do so because Mr Bernard did not submit on the matter and, more importantly, because there was no evidence as to how the knee contusions would have affected the plaintiff's earning capacity.

Special damages

28. As for special damages, I encountered some difficulties because I could not distinguish between the medical receipts arising from the knee contusions and the medical receipts arising from the other injuries. However, as a rough estimation, I allowed recovery for all the medical receipts

incurred before 9 December 1999 and not the rest. As for the transport costs, Mr Bernard asked that I award $4,000 being $50 per round trip at 80 trips. No evidence was adduced as to why $50 was an appropriate amount. Again, I adopted a rough estimation and allowed claims for all the trips at $20 per round trip incurred before 9 December 1999 where medical receipts were produced as evidence of a consultation. This worked out to $109 in total.

F. Closing observations

29. Although the above is sufficient to dispose of all of the plaintiff's claims, I should add three observations since substantial evidence had been taken in respect of the loss of future earnings.

30. First, I would note that I was not convinced that the plaintiff had a glowing future ahead of him in the police force. The evidence did not paint the plaintiff in the best of light. He had already suffered numerous injuries from the other accidents and was constantly on medical leave. This was a significant handicap in an organisation that required physical fitness. Furthermore, he was gently put 'not a star performer'. In fact, in over ten years of service in the police force, the plaintiff had only been promoted once (from Constable to Corporal) and re-designated once (from Corporal to Sergeant under a force wide exercise), although I would note that there was evidence to suggest that the plaintiff had joined the Force as a Corporal and hence, had not even been promoted once. His performance can be seen from his staff appraisal reports over the past ten years where he had received a mixture of 'D's and 'C's. It was only in his last posting that he received a higher grade. Further, while his last supervisor was impressed with the plaintiff's performance, the same could not be said for the past eight or so supervisors, whose assessments were less than flattering of the plaintiff's performance. As such, I did not think that the plaintiff had much of a future in the Police Force even if the accident of 21 November 1999 never occurred.

31. Second, I found it intriguing how the plaintiff made such a significant recovery from his injuries within 6 months without any medication or treatment other than painkillers. This can be seen from the fact that in March 2003 (as testified by the doctors and seen on the video surveillance), he had recovered 70 - 80% of his injuries suffered in September 2002, which was when Dr Low had written the letter requesting for the plaintiff to be discharged from the Police Force. This indicated to me that something was not entirely kosher with the injuries that the plaintiff claimed he suffered from.

32. Third, I would comment that if the plaintiff can show that he did lose his job as a result of the accident, then as a matter of principle, he should succeed in his claim for the loss of returns under the INVEST scheme. However, I did not agree with the suggested method of quantification. It must be noted that the INVEST scheme is ultimately an investment scheme. The rates of return differ based on the yearly rates of return, which in turn are determined by the investment policies adopted as well as the market conditions. Further, the quantification method advocated by Mr Bernard added in the uncertainty of the potential rank that he would hold (i.e. his current estimated potential ("CEP")). Hence, if I were to make an award, I would have used a much lower CEP (as opposed to the rank of Station Inspector used by Mr Bernard) and further discount the amount significantly to account for the present value of money, the vicissitudes of life and the risk inherent in any investment.

G. Conclusion

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

(1)	Pain and suffering	:	$11,000.00
(2)	Special damages	:	$109.00

Total	:	$11,109.00

34. For the avoidance of doubt, I should state that these amounts are made on a 100% liability basis. In addition, since the amount that I awarded was less than the amount obtained as interim payment, I awarded interest at 6% per annum from the date of the service of the writ to the date of interim payment on the general damages of pain and suffering and 3% per annum from the date of the accident to the date of interim payment on the special damages. Further, given all the circumstances of the case and the amount ultimately recovered, I also made no order as to costs.