Ng Chan Teng v Keppel Singmarine Dockyard Pte Ltd
[2007] SGHC 148

Case Number : DC Suit 4765/2002, RAS 62/2007

Decision Date : 07 September 2007

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Namasivayam Srinivasan (Hoh Law Corporation) for the plaintiff; Anparasan s/o Kamachi (KhattarWong) for the defendant

Parties : Ng Chan Teng — Keppel Singmarine Dockyard Pte Ltd

Courts and Jurisdiction – District court – Jurisdiction in actions of contract and tort – Statutory limit for damages – Tortfeasor accepting 70% liability in consent interlocutory judgment – Whether victim could recover 70% of damages assessed capped at statutory limit or only 70% of statutory limit – Section 20 Subordinate Courts Act (Cap 321, 2007 Rev Ed)

7 September 2007 Judgment reserved.

Choo Han Teck J:

1 This was an appeal by the plaintiff against the decision of the District Court. The issue was straightforward, but it is best to set out the background to this appeal. The plaintiff sued the defendant for damages for injuries suffered by him in an industrial accident on 13 November 2001. He filed his writ on 8 November 2002 in the District Court and subsequently, on 7 May 2004, obtained an interlocutory judgment based on 70% liability on the part of the defendant, with damages to be assessed. The plaintiff failed to reach an amicable settlement on the quantum of damages with the defendant. He had claimed the sum of $923,790.04 as the amount he would be entitled on the basis of 100% liability, but after taking into account his contributory negligence agreed previously at 30%, the quantified claim would be $646,653.03. The proceedings for the assessment of damages were adjourned on the application of the plaintiff to determine a preliminary point, which is the subject of this appeal. The point posed to the court was drafted in the following terms: "Whether the Plaintiff can recover a sum of $250,000.00 or a sum of $175,000.00 when a consent Interlocutory Judgment has been entered, wherein the Defendant has accepted 70% liability." What it meant was whether the damages that the defendant has to pay would be 70% of the amount assessed or 70% of $250,000, which is the statutory limit imposed upon a District Court so that it has no jurisdiction to award damages amounting to more than $250,000. 70% of $250,000 is thus $175,000. The matter is actually academic because the assessment proceedings were adjourned. The parties ought to have proceeded with the assessment and argued this issue at the assessment itself. In short, this matter was not suitable for an application under O 14 r 12 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed). The reason will be apparent in my grounds below.

2 The District Judge ruled that by reason of s 20 of the Subordinate Courts Act (Cap 321, 2007 Rev Ed), when interlocutory judgment has been entered with an apportioned contributory negligence, the defendant is liable for his share of the blame calculated from the $250,000 limit as defined in s 2 of the Subordinate Courts Act, and not from the total sum determined at the assessment. Sections 2 and 20 are set out for ease of reference:

Interpretation

2. In this Act, unless the context otherwise requires —

"action" means a civil proceeding commenced by summons or in such other manner as may be prescribed by Rules of Court;

"commissioner for oaths" means a commissioner for oaths appointed under section 68 of the Supreme Court of Judicature Act (Cap. 322);

"District Court limit" means —

(a) in sections 26 (*a*) and 27, $3 million or such other amount as may be specified by an order under section 30; and

(b) in any other section, $250,000* or such other amount as may be specified by an order under section 30;

* O1 (S 333/97) — Subordinate Courts (Variation of District Court Limit) Order.

"judicial officer" means a District Judge, Magistrate, Coroner or registrar;

"Magistrate's Court limit" means $60,000* or such other amount as may be specified by an order under section 52 (3);

*O 2 (S 263/99) — Subordinate Courts (Variation of Magistrate's Court Limit) Order

"prescribed" means prescribed by Rules of Court;

"Public Prosecutor" includes a Deputy Public Prosecutor;

"registrar" means the registrar of the subordinate courts and includes a deputy registrar;

"Rules of Court" means Rules of Court made under this Act and includes forms;

"seal" includes stamp.

Jurisdiction in actions of contract and tort

20. —(1) A District Court shall have jurisdiction to hear and try any action founded on contract or tort where —

(a) the debt, demand or damage claimed does not exceed the District Court limit, whether on balance of account or otherwise; or

(b) there is no claim for money, and the remedy or relief sought in the action is in respect of a subject-matter the value of which does not exceed the District Court limit.

(2) A District Court shall have jurisdiction to hear and try any action where the debt or demand claimed consists of a balance not exceeding the District Court limit after a set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, being a set-off admitted by the plaintiff in the particulars of his claim or demand.

The District Judge held in his grounds of decision at [7] that "the language of section 20 is plain and

obvious, and the answer was clear. As the District Court limit is set at $250,000, 70% of $250,000 must mean that the Plaintiff's claim is now limited to $175,000. In my view, to adopt the Plaintiff's interpretation would lead to uncertainty as to whether such civil claims ought to be commenced in the High Court or District Court." The judge then cited *Abdul Rahman bin Shariff v Abdul Salim bin Syed* [1999] 4 SLR 716 in support of its interpretation of s 20 of the Subordinate Courts Act. That case, however, concerned the question whether, in determining a right to appeal under s 21 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), interests and costs should be included in calculating the cut-off limit. Section 21 of the Supreme Court of Judicature Act provides as follows:

> **21.** —(1) Subject to the provisions of this Act or any other written law, an appeal shall lie to the High Court from a decision of a District Court or Magistrate's Court in any suit or action for the recovery of immovable property or in any civil cause or matter where the amount in dispute or the value of the subject-matter exceeds $50,000 or such other amount as may be specified by an order made under subsection (3) or with the leave of a District Court, a Magistrate's Court or the High Court if under that amount.

The Court there ruled at [24] that the phrase "amount in dispute" in s 21 did not include non-contractual interests and costs. Hence, apart from the point that the two provisions in question (*viz,* s 20 of the Subordinate Courts Act and s 21 of the Supreme Court of Judicature Act) are different, nonetheless, the High Court in *Abdul Rahman bin Shariff* considered the amount actually awarded, as opposed to the statutory limit, as the relevant subject matter.

3 Reverting to the appeal before me, I am of the opinion that the sequence of the proceedings is important. In an action such as the present, the questions of liability and damages are ordinarily heard at the trial of the action. Such trials in both the Supreme Court and the Subordinate courts are often split so that the question of liability is determined separately from the assessment of damages, which would not be necessary if liability was not established at all. Often, the parties consent to an interlocutory judgment with damages to be assessed. Such was the case presently. At that point, the amount of damages is not known. It might be less than the District Court statutory limit of $250,000 as stipulated by s 20 of the Subordinate Courts Act read with s 2 of the same, or it might be more. If it was less, the District Court would not only determine the quantum but also have the authority to order it to be paid. However, if the quantum assessed exceeded $250,000, the District Court would not have the power to order the full amount to be paid. Its order would be limited to the sum of $250,000. When a defendant consents to an interlocutory judgment at 70% liability (as in the present case) with damages to be assessed, he is taken to have accepted responsibility and bound to pay 70% of the damages that he would have to pay had he been found entirely liable (*ie*, 100%). It is only after damages have been assessed that the court needs to know whether there are any other rules that prevent the plaintiff from fully recovering the amount assessed. It is then that s 20 of the Subordinate Courts Act applies, and the court cannot make an order that is more than $250,000 although the amount assessed was more. If 70% of the assessed amount is less than $250,000, no issue arises as to what order the court should make. The amount liable and the amount ordered would be the same.

4 It is the plaintiff's prerogative to elect where he wishes to commence the action. If he elects to commence his action in the District Court, he does so with the knowledge that, should the damages be assessed at an amount higher than $250,000, the court would be prevented by s 20 of the Subordinate Courts Act from ordering the higher sum against the defendant. In many cases, the plaintiff may be advised that even if the court were to assess the damages to be higher than $250,000, the excess may not be very much, and after taking into account other factors such as costs and convenience, the plaintiff might decide to forgo that potential excess. Section 22 of the Subordinate Courts Act permits a plaintiff to abandon any sum in his favour which exceeds the District

Court limit. In this case, it was a mystery why the plaintiff quantified his damages at $923,790.04 for purposes of the assessment because the excess that the plaintiff has to abandon is a huge amount. Counsel for the defendant, Mr Anparasan, informed me that the plaintiff's previous solicitors had varied his claim variously from that sum to $700,000 and then to $646,653.03. The reason or motive for that may be mysterious but it is not a question relevant to this appeal (or the hearing below), and it may even be misleading.

5 The view of the District Court below was consonant with that of the English Court of Appeal in *Kelly v Stockport Corporation* [1949] 1 All ER 893 ("*Kelly*"). It has to be noted that in *Kelly*, the amount actually claimed by the plaintiff was £200 in the county court, the precise limit that the county court might order. However, the court found the defendant liable but assessed the damages to be £300 and deducted one third off this sum on account of the infant plaintiff's contributory negligence. It was in that context that the English Court of Appeal held at p 894 that "it [was] clear that £200 was the sum which the plaintiffs were seeking to recover in the county court" and then went on to conclude at p 895 that it "is therefore, the £200 which has to be reduced". In other words, where the plaintiffs have limited their claim at the outset to £200 or $250,000 as the case may be, then any apportionment of liability and consequent assessment of damages will have to be based on that amount. When parties agree to accept 70% and 30% liability as the case may be, they must mean that they agree to pay up to 70% and 30% of the amount of damages, respectively. If the quantum is not in dispute from the outset as in *Kelly*, then one might reasonably conclude that the 70% and 30% are in reference to that identified sum. Where, as in this case, the amount claimed had not been determined before or at judgment, the amount of damages must thus be assessed, and the apportionment applies – to the assessed sum, being the damages – only after the assessment has been completed. Otherwise, the parties will have to stipulate in advance that if the assessment determines a sum less than $250,000, the sum payable by the defendant would be the lesser of the two, namely the amount assessed below $250,000 and the statutory limit of $250,000 itself.

6 The natural meaning of parties who say that they agree to interlocutory judgment based on 70% liability with damages to be assessed must mean that the defendant agrees to pay 70% of the damages assessed. That would be the meaning in such a judgment entered in the High Court. It cannot have a different meaning in the District Court. It is more rational and consistent to adopt the same meaning, and after which, look to s 20 of the Subordinate Courts Act read with s 2 of the same to cap the amount that is eventually ordered. In *Artt v WG & T Greer* [1954] NI 112, Lord MacDermott reviewed *Kelly* and disagreed with it. Lord MacDermott held at p 117 that:

> … Tucker L.J. (as he then was) says [in *Kelly*]: "In the present action the damages recoverable were limited, by reason of the provisions dealing with the jurisdiction of the county court, to £200. It is, therefore, the £200 which has to be reduced. In other words, it is not the damage sustained, in fact, by the plaintiff, but the damages recoverable in respect thereof which must be taken into consideration in this connection".
>
> The other members of the court were of the same opinion and the decision, though not in strictness binding upon me, is that of a court of high persuasive authority. But with great respect to the learned and distinguished judges who constituted it, I am unable to share their conclusion. I am not satisfied that the words "damages recoverable" in subsection (1) [of s 3 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland), 1948] were intended to mean one thing in one court and a different thing in another court according to the limits of jurisdiction. The expression is not a very happy one because whatever else may be in doubt it is clear that the damages described as "recoverable" are just the damages which the claimant, on the hypothesis of the subsection, cannot and never could recover. A strictly literal interpretation of this expression must, therefore, be rejected. One must consult the purpose and policy of the section

and seek a construction conforming thereto and, at the same time, compatible with the language of the text.

Another relevant and important passage from Lord MacDermott's judgment states as follows (at p 120 – 121):

> Thus, Tucker L.J. says in [*Kelly*] : "If counsel for the plaintiffs is right, the result of this sub-section would be to require the county court judge to record, as the sum which would have been recoverable, a sum in excess of that which would have been recoverable, a sum in excess of that which he had jurisdiction to award. In my opinion, £200 was the sum which had to be apportioned in this case, and the result is that the maximum sum recoverable by the plaintiffs is £133 6s. 8d.". And Singleton L.J. adds this: "Despite the argument of counsel for the plaintiffs I feel it was not within the contemplation of the legislature that, in a case of this nature, if, perchance, the plaintiff was found four-fifths to blame, the county court judge should have jurisdiction up to £1,000 damages in order that the plaintiff could recover £200." In this country, at any rate, there is nothing anomalous about these results. The limits of the county court jurisdiction are fixed, as respects claims in tort, with reference to the amount which may be claimed and not with reference to the computations and findings which may be requisite in order to ascertain what may be awarded. Where a claimant abandons the excess over £100 it may still be necessary to ascertain what would be recoverable if the jurisdiction had no limits, in order to determine the claim. A, for instance, sues B by civil bill on a promissory note for £150, abandoning the excess over £100. B alleges discharge by payment. The county court judge may have to find that £150 is due in order to give a decree for the sum claimed, but he does not need to invoke a jurisdiction up to £150 to do that. And cases may also arise where, without any question of the excess being abandoned, the court must consider liabilities beyond the maximum demand in order to give effect to some special defence. It seems to me that the County Court would be doing nothing essentially different from this or be exceeding its jurisdiction if it recorded the actual loss sustained whatever its amount. As I have said, I see nothing anomalous about a claimant proving a loss of, say, £1,000 in the County Court in order to get a decree for £100 or less. But if there is anything strange about this it is, to my mind, more than offset by the odd results which would flow from following the decision in *Kelly v. Stockport Corporation*. In this connection I may refer, by way of example, to the case of *Barry v. Winter* recently tried before Sheil J. There the jury found for the plaintiff in the sum of £25 because, though the total damages suffered were £500, they held him 95 per cent. responsible for the accident. It would indeed be startling if, in the circumstances, this measure of relief could only have been obtained in the High Court. Yet that is the conclusion to which *Kelly v. Stockport Corporation* necessarily leads.

7 For the reasons above, the appeal is allowed. There will be no order as to costs.