Teo Cher Teck v Goh Suan Hee
[2008] SGHC 194

Case Number : DC Suit 1070/2008, RAS 105/2008

Decision Date : 04 November 2008

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Tiwary Anuradha (Vision Law LLC) for the plaintiff; Lynette Chew and Sue-Anne Lim (Harry Elias Partnership) for the defendant

Parties : Teo Cher Teck — Goh Suan Hee

Conflict of Laws – Choice of jurisdiction – Stay of proceedings – Accident in Malaysia – Defendant's car hit the rear of plaintiff's car – Plaintiff resident in Singapore – Whether Singapore or Malaysia the more appropriate forum

4 November 2008 Judgment reserved.

Choo Han Teck J:

1 This was an action commenced in the District Courts for a claim for damages for personal injury caused by the defendant's negligence that resulted in the collision between the defendant's and the plaintiff's motor-vehicles on a road in Johor Bahru, Malaysia on 21 January 2007. Miss Anuradha represented the plaintiff and Miss Chew represented the defendant. The defendant in the present action was in fact the insurer, Pacific & Orient Insurance Co who had taken over the conduct of legal proceedings as is usually the case in such matters.

2 Miss Chew applied to the District Court to stay this action on the ground of *forum non conveniens*. The court below accepted her submission that since the accident took place in Malaysia and the defendant driver was a Malaysian resident, Malaysia, not Singapore, was the proper forum. Miss Chew reiterated the same arguments before me, and emphasized the point that the place where the tort occurred is, prima facie, the proper forum. Counsel relied on *Rickshaw Investments Ltd and Anor v Nicolai Baron Von Uexkull* [2007] 1 SLR 377. There was no dispute on the law in this regard as Miss Anuradha also relied on the same authority. The principle enunciated generally was that the court ought to first determine whether there was some other forum that was more appropriate to try the case, and if so, whether there was any reason which required the court not to order a stay of proceedings.

3 Miss Anuradha submitted that the defendant driver's car collided with the rear of the plaintiff's car and liability is unlikely to be of a major concern at trial. The plaintiff, a Singapore resident suffered personal injuries and was attended to by doctors in Singapore. She argued that the main aspect of this action would be the nature and extent of the plaintiff's injuries and the loss of earnings as well as the cost of repairs to his vehicle. The plaintiff's vehicle was repaired in Singapore. She said that the plaintiff has five witnesses, including two doctors, the repair mechanic, the surveyor and the plaintiff himself. The defendant driver appears to have no witnesses other than himself.

4 The court below stated that –

> I find that after weighing all the relevant factors there is a distinctly more appropriate forum that of Malaysia. The factors relevant and which favour the Defendants at stage I of the inquiry are –

a. The Defendant is a Malaysian b. The tort took place in Malaysia. c. The application law would likely be Malaysian law (moreover rules governing traffic accidents would be clearly be those of Malaysia). The natural expectation of a person would be that the law of the place of the wrong would govern his rights and duties – see Ang Chuang Ming. As to stage II – I can find no reason to refuse stay. The argument put forward on behalf of the Plaintiff with respect to the expense and inconvenience placed on the Plaintiff if he had to litigate in Malaysia is not sufficient to deny the stay which ought to be granted based on the fact that Malaysia is a more appropriate forum. While the Plaintiff may have decided for good reason, to receive medical treatment in Singapore, being his home country, it does not follow that he must necessarily litigate here as well or that he would be placed in any disadvantage having to litigate in Malaysia. No such assertion was made, apart from the convenience and expense issues.

5 It is accepted that as a general rule, the *lex loci delicti* determines the rights and liabilities of the parties but this was not an inflexible rule. Sometimes the default *lex fori* could be overshadowed by other factors, as was the case in *Boys v Chaplin* [1971] AC 356 where the respondent was injured in a road accident in Malta. There, the House of Lords held that English law applied not only to quantum but also to the heads of damage.

6 There is a fine distinction between finding a forum to be "not inconvenient" to the plaintiff and one that was "not inconvenient" to the defendant. Where the inconvenience is roughly the same, I would prefer not to cause inconvenience to an injured plaintiff than the defendant tortfeasor, unless it appears that the plaintiff's claim was unlikely to succeed. I am confining my views on this point to road accident cases only and where the main issues and the principal dispute case would most likely concern only the quantum of damages, as in the present case.

7 In *Ismail bin Sukardi v Kamal bin Ikhwan* [2008] SGHC 191 ("*Ismail*"), the High Court expressed the view at [23] that "[t]he law relating to negligence on the roads in both jurisdictions is essentially the same". Although the facts in *Ismail* could be distinguished on the basis that the victim therein was a passenger and no contributory negligence could attach to her, the above observations expressed in *Ismail* would still apply. In any event, I was of the view that the mere possibility of contributory negligence being raised was not a decisive factor, especially in a case where liability on the part of the defendant could not be totally avoided. After all, this was a case where the plaintiff's vehicle was hit from the rear by the defendant.

8 The plaintiff should be compensated for what he had lost, and what he would lose in Singapore, and in this regard, there is also a subtle but appreciable difference between getting an award in Malaysian currency after having taken the cost of living in Singapore into account, and an award that is made directly in Singapore. Finally, the availability and convenience of witnesses is a significant factor although video transmission is one way to overcome the particular inconvenience of itinerant witnesses, the personal appearance of witnesses is still the preferred form of witness testimony.

9 Finally, counsel informed me that apart from *Ismail*, in which the High Court here refused a stay application in similar circumstances (but note the slight factual difference as mentioned at [7] above), there had been no other similar reported cases for a stay of proceedings on the ground of *forum non conveniens* in respect of traffic accidents. If that were so, then it would seem strange that the Singapore courts should now be considered *forum non conveniens*.

10 Comparing the factors that the court below had taken into account and the additional aspects that I mentioned above, it seems that there was not all that much to choose from. In my view, the balance indicated that Singapore and not Malaysia was the more appropriate forum on the facts of this case. I think that the best that can be said is that the factors were evenly balanced. In that

event, I am bound to say that the defendant had failed to discharge the burden of showing that the Malaysian court was the more appropriate forum to try this case. Furthermore, even if the Malaysian court were to be the more appropriate forum *vis-à-vis* liability, the defendant (by subrogation) was unlikely to be troubled beyond instructing solicitors here. It is possible, but unlikely, on the facts, that the question of contributory negligence could be a contentious issue. However, there has been no indication that any Malaysian witness (which is essentially the defendant only) would be unduly troubled. On the other hand, any contrary expert opinions are likely to be from Singapore. If the plaintiff was required to be examined by the defendant's doctors, it should be by a doctor in Singapore. As Tay J said in *Ismail* at [26], it would be more inconvenient for expert witnesses "to leave their normal routine to travel outside Singapore and to incur hotel and other expenses". This is another reason why I am not inclined to order a stay of proceedings in this case.

11 For these reasons I would allow the appeal. I will hear the question of costs at a later date if parties are unable to agree costs.