

Azizah bte Chalan Hassan v Chan Poh Teong
[2009] SGHC 22

Case Number : Suit 752/2006, RA 388/2008
Decision Date : 20 January 2009
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : B Ganeshamoorthy (Colin Ng & Partners LLP) for the plaintiff/ appellant; Loh Jen Wei (Rodyk & Davidson LLP) for the defendant/respondent
Parties : Azizah bte Chalan Hassan — Chan Poh Teong

Damages

20 January 2009

Judgment reserved.

Choo Han Teck J:

1 On 22 April 2005 at 4 pm, the plaintiff and her friend Zaiton were in a taxi licensed as SH9441J and driven by the defendant. The taxi collided into the rear of a military vehicle along Mandai Road. Both passengers were injured. The plaintiff commenced this action against the taxi driver and interlocutory judgment was entered against the defendant on 7 February 2007. The assessment of damages was carried out on 27 and 28 November 2007 and continued on 28 January 2008, concluding on 30 January 2008.

2 The plaintiff suffered the following injuries. First, multiple abrasions over the chest, abdomen, neck, and left leg. Secondly, she also experienced some soft tissue sprain mainly to the right shoulder and chest. Thirdly, she was diagnosed with post traumatic stress disorder. She was awarded \$6,000 for the abrasions and contusion injuries; \$3,000 for the soft tissue sprain; and \$5,000 for the post traumatic stress disorder. She claimed a number of items by way of special damages. The assistant registrar allowed a total of \$37,937.70. The plaintiff appealed against two items, namely, the sum of \$24,080 being pre-trial loss of earning, and the refusal to award loss of future earnings. She also appealed against the award of interests for special damages at the rate of 2.67% which was half the rate awarded for the interests for general damages. Finally, she appealed against the award of costs at the Magistrate Courts' scale. The total damages awarded was \$51,937.70. The defendants made an offer to settle on 19 November 2007 at \$72,656.72. The plaintiff was ordered to pay costs to the defendant at the High Court scale from 19 November 2007.

3 Counsel for the plaintiff argued that the assistant registrar should have awarded her \$4,100 a month as loss of monthly earnings instead of \$1,720. The income record adduced before the assistant registrar did not support the plaintiff's claim. She was a henna artist working as a junior partner to Zaiton. The assistant registrar was not wrong in the way she calculated the plaintiff's share. That was not the quarrel. The plaintiff's main basis for claiming the larger income was that she had a lucrative business in Japan, but the evidence in support of that claim was sparse and the assistant registrar did not seem impressed by the oral testimony of either the plaintiff or Zaiton. I am in no position to find otherwise. Her claim for loss of future earnings was based substantially on the diagnosis of "post traumatic stress disorder" which prevented her from working. The accident had either given her or exacerbated the condition which led to the plaintiff developing "carpel tunnel syndrome" which made her hand twitch. The medical evidence which the assistant registrar appeared to accept was that this condition could easily be corrected by a minor day-surgery. Till this date the plaintiff had not had that corrected, and counsel submitted that it was her post traumatic stress disorder that made her fearful of surgery. That was more a legal submission than a medical opinion.

The psychiatric evidence did not go so far. In any event, the defendant's expert differed from the plaintiff's expert in the psychiatric assessment. It is possible that the plaintiff might have developed some form of depression after the accident, but how much of that can one attribute to the defendant's tortious act? There are no impeccable principles to apply, no sure way of determining an exact co-relation, and no use focusing on one aspect (post traumatic stress disorder) and ignoring the overall circumstances of the case which would have required the assistant registrar to take into account (as she seemed to have done) the relatively minor physical injuries, the optimistic prognosis, cure, and corrective treatment. In an assessment of damages proceedings, the assistant registrar was duty bound to apply the principles of compensation; she was not evaluating the computation of the plaintiff's pension. A plaintiff in the circumstances such as this plaintiff must make the effort to carry on with her life. The medical evidence indicated that she could if she would. There was no reason for me to allow her appeal in respect of either head of damages.

4 Counsel thought that the plaintiff was being penalized for sloth by the reduction of interests by 50% on her special damages. The award of 2.67%, however, in my view, was not unconventional for special damages under current practice. There was no reason to hold otherwise.

5 Counsel submitted that the award of costs should be set aside and that the plaintiff be entitled to costs at the High Court scale. One will always sympathise with a litigant who is not wealthy and finding herself in such circumstances. The misfortune of this alone is, however, no ground for a court to disregard the rule that follows from a successful offer to settle. The evidence in this case indicated in any event that the claim should not even have been brought in the High Court, even if there were no offer to settle. As it turned out, there was an offer to settle at a sum substantially higher than the amount awarded. In such circumstances, the orders on costs should not be disturbed. This appeal is therefore dismissed.