Xie Weiwei *v* Long Hui Construction Pte Ltd and another and another appeal [2018] SGHC 185

Case Number	: HC/Registrar's Appeals from State Court Nos 18 and 19 of 2018
Decision Date	: 27 August 2018
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Belinder Kaur Nijar (Hoh Law Corporation) for the appellants/ plaintiffs; Charles Phua Cheng Sye and Herman Lee (ComLaw LLC) for the respondents/defendants.
Parties	: Xie Weiwei — Long Hui Construction Pte Ltd — Straits Construction Singapore Private Limited — Gao Weiqiang — Chip Eng Seng Contractors (1988) Pte Ltd

Civil Procedure – Order of medical examination

27 August 2018

Choo Han Teck J:

1 The two appeals, Registrar's Appeals from State Court Nos 18 and 19 of 2018 (respectively, "RAS 18" and "RAS 19") were fixed before me at the same hearing. The appellant in RAS 18, Xie Weiwei ("Xie"), was injured in the course of employment and he sued his employer for damages in DC Suit No 2386 of 2017. The parties entered interlocutory judgment at 85% against the respondents and the matter was proceeding to the assessment of damages.

2 The respondents were the direct employers and main contractors respectively. The appellant's accident occurred on 8 November 2016 when he was dismantling metal scaffoldings at work. A scaffolding fell on the appellant's hand, injuring it.

3 In his statement of claim, the appellant gave particulars of the damage caused to him as:

(a) Left hand injuries; and

(b) Not able to perform usual tasks.

The medical report dated 24 April 2017 and attached to the statement of claim tells us that the scaffolding fell on the appellant's non-dominant hand, that is, his left hand. There was swelling but "no wounds". The doctor's diagnosis was "a hand contusion". There were no fractures.

4 The medical examination was carried out on 9 November 2016, the day after the accident. By January 2017, the doctor reported that the appellant was able to make a full grip although there was still some aches and numbness which "could be a sequelae of the injury". The medical report also stated that the appellant was "treated with strong pain and nerve-relaxing medications. The aim of the treatment was to prevent Complex Regional Pain Syndrome ("CRPS"), a possible complication of hand contusions." More importantly, it reported that in the follow-up examination, there was nothing "to suggest the onset of CRPS".

5 The medical report, together with the appellant's special damages which he pleaded as about $130,000, was a relevant factor in this appeal. The appeal arose after the appellant was examined by

his medical expert, Dr Lee Soon Tai, on 25 October 2017. In this examination, Dr Lee concluded that the appellant had CRPS.

6 Dr Lee's report, if accepted, will obviously increase the amount of damages recoverable. Consequently, the respondents requested that the appellant be examined by an expert nominated by them. The appellant rejected this request on several grounds. First, Ms Belinder Kaur, counsel for the appellant, argued that the request was made on 13 March 2018, "a delay of almost five months". This argument was not entirely correct because the parties had a preliminary hearing on the indication of quantum only in February 2018, and after which an offer was made to the appellant. The appellant rejected that offer on 2 March 2018. From that point, it appeared that the question of damages had to be tried. The request for a medical examination by the respondents' expert was reasonable because there was no inordinate delay given these circumstances.

7 Ms Kaur then argued that the respondents' request ought to be denied because the appellant had offered to be examined by the respondents' expert when he was in Singapore being examined by Dr Lee. The appellant is from China and in his early 40s. Ms Kaur said that he should not be made to travel to Singapore a second time since the respondents rejected his earlier offer to be examined. Ms Kaur submitted that therefore it was perfectly reasonable for the appellant to have rejected the respondents' request. When the respondents applied for a court order compelling the appellant to undergo the medical examination proposed by the respondents, the deputy registrar of the State Court allowed the respondents' application. The appellant's appeal to District Judge Seah Chi-Ling was dismissed.

8 The appellant appealed to this court against the decision of DJ Seah. I was of the view that the decision of DJ Seah was correct. The learned judge was of the view that it was reasonable for the respondents to have the appellant medically examined. Until the examination by Dr Lee, the appellant's injury did not appear as serious as observed by Dr Lee. It was sensible and reasonable on the part of the respondents to avoid unnecessary costs. Given the report by Dr Lee, the respondents were entitled to have their expert examine the appellant for them to determine whether they will challenge the report by Dr Lee.

9 I agree entirely with DJ Seah. DJ Seah also noted that the respondents had offered to pay the appellant's expenses for the examination. That was a generous offer from the respondents in the circumstances of this case. A fairer offer would have been to pay the expenses of the appellant's medical examination (by the respondents' expert) upfront, subject to court's decision on costs at the end of the trial. Furthermore, before me, Ms Kaur conceded that the appellant is presently unemployed. There is therefore no impediment from an employer against the appellant's absence from work and thus, no prejudice would be occasioned against him in that regard.

10 RAS 19 involved very similar arguments. The appellant in RAS 19, Gao Weiqiang ("Gao"), sued in DC Suit No 2115 of 2016 for damages arising from an accident at work. He suffered a fracture of the 4th metacarpal (hand) and on follow-up, the examining doctor certified that the injury was recovering well and that the appellant's range of movement was improving. Two years later, the appellant (Gao) went for another medical examination. Similarly, his solicitors, the same ones who act for the appellant Xie in RAS 18, invited the respondent to have its expert examine the appellant (Gao) when he flies in for his medical examination. The respondent declined, but when it received the medical report by the appellant's doctor stating that the appellant now has residual disability and may require future surgery, the respondent requested that the appellant (Gao) be examined by its (the respondent's) doctor.

11 The appellant's solicitors rejected the request. On the respondent's application to the court, a

deputy registrar allowed the respondent's application for a further medical examination. His decision was upheld on appeal to a District Judge. Gao then appealed before me. Counsel for the appellant (Gao) submitted that the grounds are identical to that of the appellant Xie in RAS 18.

12 I accept that the grounds are the same, and I am also of the view that the decision below was right. The respondents (in both appeals) reasonably kept the medical and legal costs down. Once the circumstances changed, unexpectedly in both these appeals, the respondents were obliged to investigate further. Their request to have the appellants in both appeals subject themselves to a medical examination was fair and reasonable.

13 CRPS, it seems, is a diagnosis of last resort when there is no other medical explanation for a patient's constant and continuing complaint of pain. There are cases in which medical experts can explain why pain lingers in the patient long after it ought to have ceased, but it is increasingly common nowadays for an injured plaintiff to claim that he is still in pain even when the doctors cannot determine or justify the cause or reason for it. CRPS has become a useful way to close the medical file for such plaintiffs, but it shifts the burden of determining the true medical syndrome to the court.

14 This, therefore, is a difficult aspect in the assessment of damages. The court must be satisfied that it is indeed a genuine case and not a new melody of an old malingerer's tune. The court will therefore welcome additional medical opinions in such cases. Should the injured produce a diagnosis of CRPS when the original diagnosis does not indicate future complications, the opposing party must be given an opportunity to test that new diagnosis.

15 What I say above applies equally in the case of Gao, in the second appeal. When his initial injury was changed from "improving" to one that "may require future surgery", (a diagnosis made two years after the first report) the respondent is entitled to test that claim as to why the injury was worse than when the appellant was first examined.

16 For the reasons above, the appeals in RAS 18 and RAS 19 are both dismissed.