Karuppiah Nirmala v Singapore Bus Services Ltd
[2002] SGHC 99

Case Number : Suit 69/2000, RA 258/2001

Decision Date : 02 May 2002

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Karuppan Chettiar and Renuka Chettiar (Karuppan Chettiar & Partners) for the plaintiff/respondent; Benedict Chan and Martin Lee (Goh Poh & Partners) for the defendants/appellants

Parties : Karuppiah Nirmala — Singapore Bus Services Ltd

Damages – Measure of damages – Personal injuries cases – Future medical expenses – Surgery, hospitalisation and treatment – Whether to compute such expenses on A or B class ward basis

Damages – Measure of damages – Personal injuries cases – Pre-trial loss of earnings – Duty to mitigate loss – Appropriate multiplier

Damages – Measure of damages – Personal injuries cases – Loss of future earnings – Injuries causing plaintiff to quit full-time job – Accident adversely affecting earning ability – Accident not affecting plaintiff's skills as professional – Whether award for loss of earning capacity more appropriate

bus company on 14 July 1998. She obtained an interlocutory judgment against the defendants in July 2000 for damages to be assessed. After the assessment of damages by the assistant registrar, the defendants appealed against the awards only in respect of future medical expenses, pre-trial loss of earnings and loss of future earnings.

The award for future medical expenses of $14,000 was supposed to cover surgery of the plaintiff's shoulder and treatment for her neck. Medical experts were called by both the plaintiff and the defendants to give their opinions on the medical condition of the plaintiff, the need for surgery and the costs of surgery needed and of hospitalisation.

As for the pre-trial earnings, the assistant registrar awarded $1,500 per month for 33 months from the period between April 1999 to October 2001. At the time of the accident, the plaintiff was holding down two jobs. She was working as a part-time lecturer with Kinderland Learning Centre and as an editor with Federal Publications. She had to resign from her job with Federal Publications because her job involved extensive typing, editing, proof-reading of manuscripts and working on a computer and she was unable to meet deadlines due to pain in her neck and shoulder. However, she carried on with her work as a part-time lecturer and took on an additional role as a practicum supervisor. Even in these occupations nevertheless, she would develop pain in her shoulders and neck. As an editor with Federal Publications, she was earning $4,300 a month and after the accident, her average monthly earnings for the years ending 1999 and 2000 were $2,500 and $2,460 respectively. The defendants argued that notwithstanding her injuries, she was not operating at optimum capacity. The evidence tendered by the plaintiff showed that she worked only 10 days a month and each session was 3 hours long. They further argued that her real reason for leaving Federal Publications was not because of her medical condition. Her letter of resignation had not mentioned her medical condition, instead it stated that she was leaving in order to spend more time with her children.

With respect to post-trial earnings, the issue was whether the plaintiff should have been awarded future loss of earnings or whether the correct award would have been one for loss of earning capacity. The plaintiff argued that she was entitled to future loss of earnings because she could no

longer work as a full-time editor due to her medical condition. The defendants submitted that the editorial work only took up a period of one and a half years out of a total career period of 15 years and since the accident, she had gone back to what she had been doing before her stint in editing. It was argued that the plaintiff was not disabled from pursuing her vocation in which she had adequate training and plenty of experience and in fact, was now carrying on. It was further argued that that work would pay comparably to her editor's work once she was able to take on additional assignments.

Held,

allowing the appeal :

(1) The evidence did not support any award for future surgery on the plaintiff's cervical spine. The evidence of her expert was that he could not predict whether this would be required. Possibilities are not, however probabilities, and the court works on the balance of probabilities. The evidence did, however, support an award for the cost of a shoulder operation since this has been recommended by both doctors as the plaintiff continues to experience symptoms in her right shoulder. The present cost of a shoulder operation would be in the vicinity of $8,000 if the plaintiff goes to an A class ward in Singapore General Hospital. There is no evidence as to cost of other medical treatment such as physiotherapy and traction and drugs, as such it is not considered that the award could take these costs into account. The award for future medical expenses is hence varied from $14,000 to $8,000.

(2) It appears that the injuries which the plaintiff sustained did have an effect on her employment. Her complaints at work were consistent with those injuries. The plaintiff's explanation that she was trying to preserve the prospects of future employment by not disclosing her real reason for leaving Federal Publications is an acceptable one. Nevertheless, she had been advised by her doctor in March 2001 to undergo an operation to deal with her shoulder pain. The defence pointed out that the plaintiff had a duty to mitigate her losses. Accordingly, the award for pre-trial losses was $1,500 per month for 27 months, reduced from 33 months, for the period from April 1999 to March 2001

(3) Although the accident has meant that an editing career would be difficult for the plaintiff to maintain, it has not affected her main skills or her ability to exploit those skills profitably. Whilst her earning ability has been adversely affected by the accident the circumstances of the case make an award for loss of earnings capacity more appropriate than one for the loss of future earnings. The editing path was one that was new to the plaintiff and it is not possible to be certain that she would have continued in that line. There are other remunerative avenues still open to her. However, bearing in mind the fact that her ability to earn a good income may be limited from time to time by the after effects of the accidents, an award of $70,000 for the loss of earning capacity would be reasonable. The basis of this award is the sum of $500 a month for 11 years rounded upwards to reflect a fair estimation of the impact the accident has had on the plaintiff's earning capacity.

Judgment *Cur Adv Vult*

GROUNDS OF DECISION

1. The plaintiff, Madam Karuppiah Nirmala, was driving her motorcar on 14 July 1998 when it was hit by a bus driven by an employee of the defendant bus company. As a result, the plaintiff experienced acute pain in her neck, shoulders and arms. Subsequently, she was diagnosed as having sustained injuries in both her shoulders as well as her cervical spine.

2. The plaintiff obtained interlocutory judgment against the defendants in July 2000 for damages to be assessed. The assessment took place in December last year and she was awarded the following damages:

(1)	Pain and suffering and loss of amenities	
	(a) cervical spine injury (including prospect of osteoarthritis)	$ 14,000.00
	(b) shoulder injury	$ 10,000.00
(2)	Agreed special damages – medical expenses	$ 2,867.69
(3)	Agreed transport costs	$ 430.00
(4)	Pre-trial loss of earnings (33 x $1,500)	$ 49,500.00
(5)	Future medical expenses (surgery for shoulder & treatment for spine)	$ 14,000.00
(6)	Loss of future earnings ($1,500 x 11 x 12)	$198,000.00

The defendants appealed against the awards in respect of future medical expenses, pre-trial loss of earnings and loss of future earnings.

Future medical expenses

3. The award for future medical expenses of $14,000 covered surgery of the plaintiff's shoulder and treatment for her neck.

4. The medical evidence was provided by two doctors. The first was Dr A. K. Mitra, a senior consultant orthopaedic surgeon at Singapore General Hospital. He first saw the plaintiff the day after the accident when she had acute pain in her cervical spine associated with referred pain down both her shoulders. His examination of the cervical spine showed tenderness, restriction of rotation and minimum muscle spasm. In court Dr Mitra explained that this was a hyperextension injury: the ligament holding the front of the bone was tender and the joints at the back were injured and swollen and, as a result, had put pressure on the nerve and caused pain. Examination of her shoulders showed signs of impingement syndrome secondary to rotator cuff injury and restricted abduction on both her shoulders. An x-ray of her spine showed evidence of cervical spondylosis. The plaintiff was initially treated with muscle relaxant and neurobion (vitamin B).

5. Two days later, the plaintiff saw Dr Mitra again. By then she had started to experience right sided radiculopathy down to her upper right extremity. This meant that she had distribution of pain along the nerve root on that side. She also showed signs of diminished sensation in her right palm as well as tenderness over the right supraspinatous muscle (the muscle on the shoulder). She was treated with physiotherapy, analgesics and neurobion.

6. Dr Mitra reviewed the plaintiff in June 1999. By then she was showing signs of recovery. She had recovered from her acute pain from her cervical spine injury but it was his opinion that she would experience chronic pain secondary to disc degeneration. She might develop degenerated disc prolapse. Due to her cervical spine pathology she would find it painful to read, write and type and might develop facetal joint osteoarthritis in her cervical spine which may eventually lead to restricted movement of her cervical spine. Regarding her right shoulder, Dr Mitra opined that the tear of her supraspinatous muscle would be permanent and she would continue to suffer chronic pain in her right shoulder, though it might be intermittent. There was a possibility of extension of the tear and if so she would require surgical procedure to repair the torn muscle provided that conservative management failed.

7. In March 2001, Dr Mitra issued a letter in response to various queries from the plaintiff's solicitors. He stated there that it would be difficult for him to predict when the plaintiff would require surgery for her cervical spine and her shoulder. The period of hospitalisation would be between three and five days for each operation. The estimated cost of surgery would be about $10,000 for the cervical spine injury and $8,000 for the shoulder. There was a risk of complications with the cervical spine operation but none with the shoulder surgery.

8. In court, Dr Mitra explained that as far as the shoulder surgery was concerned, usually a doctor would wait for six months after the injury was sustained to see whether symptoms continued. Only then would surgery be recommended to repair the muscle. His estimated cost of $8,000 was based on the Singapore General Hospital's rate and he agreed that it would cost more in a private hospital. As for the neck, he repeated that it was not necessary to do surgery at this stage and that it is unpredictable when the plaintiff would need surgery. It would depend on whether she took care of her neck.

9. Under cross-examination, Dr Mitra confirmed that the estimate of $10,000 for the spinal procedure was based on A class rates. If the plaintiff was treated in class B2 the cost would be about $3,000 to $4,000. There would also be an additional cost of $2,000 to $3,000 for monitoring the spinal cord. This would be incurred regardless of class. The $10,000 reflected only the surgical fees and not the hospitalisation cost.

10. The defendants called their own expert, Dr Ngian Kite Seng, a consultant orthopaedic surgeon in private practice. Dr Ngian saw the plaintiff in November 2000. He then issued a medical report.

11. Dealing with the cervical spine injury, Dr Ngian noted that the plaintiff had complained of neck-ache with associated numbness of the right arm on and off. She told him that she was unable to tolerate editorial work for more than ten minutes because of neck pain. Dr Ngian's physical examination of the plaintiff showed that she had no objective neurological deficits. His diagnosis was that she had a whiplash type injury to her cervical spine and this had aggravated her then existing cervical spondylosis.

12. In Dr Ngian's opinion, the plaintiff was likely to continue to have chronic neck-ache and episode radiculopathy. Her injury would have aggravated her cervical spondylosis and accelerated its deterioration and that might in the long term lead to sufficient pain or neurological compromise so as to require surgery.

13. As regards the plaintiff's right shoulder, her complaint was of pain in the shoulder when she undertook lifting overhead activities. On examination, Dr Ngian found that her right shoulder motion was limited in active flexion to 140, abduction to 120 and internal rotation to 40. In his opinion, these findings were consistent with impingement syndrome from rotator cuff injury. These may continue to cause her pain and stiffness. There was an option of surgical debridement and repair of the rotator cuff and this may improve her function and lessen the symptoms. Finally, as regards the left shoulder Dr Ngian stated that the plaintiff had no complaints about it and he had not found any problem on examination.

14. In court, Dr Ngian elaborated that surgery to the cervical spine would only be necessary if there was spinal cord compression or neurological changes resulting in significant of power or sensation or disabling pain. There was a risk of cord injury or paralysis if such surgery was undertaken.

15. Under cross-examination, Dr Ngian confirmed that he had agreed generally with Dr Mitra's opinion. It was possible that the plaintiff's condition would deteriorate in the future. As regards the cost of

surgery, in a private hospital, the cost of the cervical spine surgery would be between $10,000 and $20,000 and for the shoulder, $8,000. This could include hospitalisation. If the hospitalisation was for a period of between three and five days, then at Mount Alvernia Hospital the cost would be between $8,000 and $10,000 in a B1 ward and at Gleneagles and Mount Elizabeth hospitals, the cost would be 30% more. Dr Ngian also agreed with Dr Mitra's suggestion that the plaintiff should take more rest and go for physiotherapy.

16. The submission made by the defendants was that it was unlikely that an operation to her neck would ever be undertaken and therefore no award should be made. At present there was no indication that any operation was required. The medical evidence was that if over time a compression of the spinal cord occurs then operation would be needed. It was submitted that there was no evidence on how great a likelihood there was that such a condition would develop. In fact the evidence was that it was completely unpredictable that such neck surgery would be required. As regards the shoulder operation, it would cost only $4,000 for both hospitalisation and surgeon's fees if the plaintiff was treated in a B2 ward and the award of $14,000 should be reduced to $4,000.

17. The plaintiff's submission on this point was that although the cost of both operations including the cost of paraphernalia would come to more than $20,000, the Assistant Registrar had made an award of $14,000 for the cost of surgery to the shoulder and for treatment to the spine as there was evidence from both medical experts that the plaintiff would require conservative treatment such as painkillers, muscle relaxant, intermittent physiotherapy and traction, which would minimise symptom for the neck but would not cure. Having regard to the evidence of the medical experts and authorities recognising that in future medical costs would increase, the plaintiff submitted that the award was reasonable.

18. In my judgment, the evidence did not support any award for future surgery on the plaintiff's cervical spine. The evidence of her expert was that he could not predict whether this would be required. It was a possibility. Possibilities are not, however, probabilities and the court works on the balance of probabilities. The evidence did support an award for the cost of a shoulder operation since this has been recommended by both doctors as the plaintiff continues to experience symptoms in her right shoulder. The present cost of a shoulder operation would be in the vicinity of $8,000 if the plaintiff goes to an A class ward in Singapore General Hospital. The plaintiff's medical expenses up to the time of trial were incurred on an A class basis and there is no reason to require her to go to a B class ward. Although in the future medical costs may increase, there is no reason for the plaintiff to delay her surgery indefinitely since it can result in an immediate benefit to her and should be undertaken early. Accordingly, I consider that the plaintiff should be awarded $8,000 for the cost of surgery to her shoulder. I do not see any evidence as to the cost of other medical treatment such as physiotherapy and traction and drugs and accordingly do not consider that an award can take these costs into account. I would therefore vary the Assistant Registrar's award from $14,000 to $8,000.

Loss of earnings: (a) Pre-trial

19. The plaintiff is now 42 years old. At the time of the accident, she was 38 and was married with two young children. She holds a Bachelor of Arts Degree from the National University of Singapore and a Master of Science in Child Development from Wheelock College in the United States.

20. Since obtaining her masters degree, the plaintiff has worked in areas relating to children. She was with the People's Association for ten years, spending the second five years as a childcare inspector. She then worked as an educational strategist with a company called Times Learning System for about one year. This job involved the production of CD-ROMS for children. In 1997, she joined Federal

Publications as an editor of children's books. At the same time, she was also a part-time lecturer with the Kinderland Learning Centre.

21. At the time of the accident, the plaintiff was holding down two jobs. As an editor, she was earning $4,300 a month and her duties involved extensive typing, editing, proof-reading of manuscripts and working on a computer. After completing the ten days medical leave she was given after the accident, the plaintiff went back to work as an editor. She stated, however, that she faced a lot of difficulty in coping with her work and meeting her deadlines because of the pain in her neck and shoulder. The plaintiff resigned from Federal Publications in March 1999. She informed the court that this was because she could not cope with the job anymore. Her letter of resignation did not, however, mention her medical condition. Instead, it stated that she was leaving in order to spend more time with her children.

22. Thereafter, the plaintiff carried on with her work as a part-time lecturer in Kinderland. She also took on an additional role as a practicum supervisor. She was able to cope with these jobs she said as her duties were less strenuous and there was flexibility in the hours that she was required to work. Further, she was able to turn down an assignment if she was unable to do it. However, even in these occupations, the plaintiff would develop pain in her shoulders and neck whenever she had a hectic work day.

23. The plaintiff's evidence was that after resigning from Federal Publications, her average monthly earnings for the years ending 1999 and 2000 were $2,500 and $2,460 respectively. She had therefore suffered a loss of about $1,900 a month. She asked the court to award her a reasonable sum for her pre-trial loss of earnings. The award made by the Assistant Registrar was $1,500 per month for 33 months in respect of pre-trial loss of earnings. The same multiplicand was used for post-trial loss of earnings with a multiplier of 11 years based on the plaintiff's present age.

24. The submission made by the defendants was that from the evidence tendered by the plaintiff for a three month period, it appears that she works only ten days a month and that each session is three hours long. Notwithstanding her injuries, and even if it is true that she cannot do a 9 to 5 job, she is not operating at optimum capacity. Further, the letter of resignation the plaintiff submitted to her employers was telling. She did not need to give her employers a reason for her resignation but she chose to tell them that she wanted to spend more time with her children. The defendants submitted that this was the real reason why she left Federal Publications and it made sense because the children were then aged five and nine and the elder child was headed towards the streaming examination.

25. The plaintiff had said that her real reason for resigning was that she could not hold the job because of the pain and that working a full day was too stressful for her. Supporting her stand on this was the evidence of a former colleague who confirmed that the plaintiff had complained of pain and difficulty coping after the accident. The defendants were not impressed. They said that she managed to work for seven months and had only had physiotherapy for three or four months after the accident. This showed that the injury was not as serious as the plaintiff complained.

26. The plaintiff's explanation for not giving the real reason for her resignation to her employers was that she did not want to jeopardise her chances of re-employment or of part-time work by revealing her medical condition. She also said that she had done her best to keep the job but had simply not been able to cope because the work involved movement of the neck and shoulder and this caused her pain. She was supported in this by Dr Mitra who testified that the plaintiff's movements were still restricted and that reading, writing and other activities of daily living could cause her pain. He stated that when she saw him in March 2001, he had advised her to consider surgery. Dr Ngian also testified

that the combination of disabilities arising from both the shoulder and neck injuries could affect the plaintiff's work as a full-time editor.

27. It appears to me that the injuries that the plaintiff sustained did have an effect on her employment. Her complaints were consistent with those injuries and those complaints were of such a nature as to make it very difficult for her to endure the prolonged computer usage that editing work involves. The plaintiff's explanation for not leaving her job as an editor for seven months was a reasonable one. She did her best to carry on and then found it was not possible. I also accept that the plaintiff was trying to preserve the prospects of future employment by not disclosing her real reason for leaving Federal Publications.

28. In my judgment, the plaintiff is entitled to compensation for loss of earnings prior to the trial. The question is as to the period. The period of 33 months awarded by the Assistant Registrar stretched from April 1999 to October 2001. The plaintiff, however, had been advised by Dr Mitra in March 2001 that she could go for an operation to deal with her shoulder pain. It is reasonable to assume that if she had taken his advice and acted fairly expeditiously she would have recovered from the operation by the end of June 2001 by which time she would have been much better. The defendants pointed out that the plaintiff had a duty to mitigate her loss. I agree. Accordingly, I am reducing the multiplier from 33 months to 27 months. This means that the award for pre-trial loss of earnings is reduced from $49,500 to $40,500.

(b) Post-trial loss of earnings

29. The issue here is whether the plaintiff should have been awarded future loss of earnings or whether the correct award would have been one for loss of earning capacity. The plaintiff's submission below was that she was entitled to future loss of earnings because she was no longer able to work as a full-time editor due to her medical condition. This argument was accepted below.

30. On appeal, the defendants submitted that the editorial work on the basis of which the plaintiff claimed the loss of future earnings, took up a period of one and a half years out of a total career period of 15 years. Since the accident, she had gone back to what she had been doing before her stint in editing. They submitted that the plaintiff was not disabled from pursuing her vocation in which she had adequate training and plenty of experience and in fact was now carrying on. That work would pay comparably to her editor's work once she was able to take on additional assignments. At the time of the hearing she was giving two or three lectures a week and working as a practicum supervisor between one and three times a week. She had quite a number of free hours a week and it would not be difficult for her to work up to three hours a day and there would be reasonable opportunities for her to take up work assignments for up to five days a week. This would be particularly so if her shoulder injury is corrected.

31. I accept the defendants' submissions. In my opinion, although the accident has meant that an editing career would be difficult for the plaintiff to maintain, it has not affected her main skills or her ability to exploit those skills profitably. At the same time, there may be some restriction on her ability to work long hours on a continuous basis even after the shoulder operation since she has to take care of her neck in order to avoid complications in that area. Whilst her earning ability has been adversely affected by the accident the circumstances of the case make an award for loss of earnings capacity more appropriate than one for the loss of future earnings. The editing path was one that was new to the plaintiff and it is not possible to be certain that she would have continued in that line. There are other remunerative avenues still open to her.

32. The submission made by the defendants was that an award of $50,000 would be sufficient to compensate the plaintiff for medical problems that might prevent her, from time to time, from working five days in a week. Before the Assistant Registrar the plaintiff's solicitors had cited various cases to serve as a guide in case an award was made for a loss of earning capacity. In those cases, an oil rigger was awarded $180,000, a Mr Atkinson was awarded $350,000 (it was not clear from the report given to me what the plaintiff's previous occupation was), a mechanic was given an award of $25,000 for loss of earning capacity in addition to an award for loss of future earnings, and a carpenter was awarded $25,000. None of those cases is, with respect, of much assistance in the present instance.

33. The plaintiff here is a professional and a person with her qualifications can command reasonably good remuneration whether she works on a full or part-time basis. She now earns approximately $2,500 a month lecturing two to three times a week and doing her practicum duties one to three times a week. She should be able to earn at least another $1,000 a month even if she is unable to work five days a week (even on a part-time basis) because of the need to safeguard her physical condition. Bearing in mind the fact that her ability to earn a good income may thus be limited from time to time by the after effects of the accident I think that an award of $70,000 for loss of earning capacity would be reasonable. The basis of this award is the sum of $500 a month for 11 years rounded upwards to reflect what I consider a fair estimation of the impact the accident has had on the plaintiff's earning capacity.

Conclusion

34. In conclusion, the appeal will be allowed and the awards made below will be set aside and replaced by the awards made in this judgment. I will see the parties on costs.

Sgd:

JUDITH PRAKASH
JUDGE

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