Ng Ah Lek v The Personal Representatives of Low Keng Suang @ Low Tai Kheng, deceased [2003] SGHC 310

Case Number : Suit 1451/2001

Decision Date : 23 December 2003

Tribunal/Court : High Court

Coram : Joyce Low Wei Lin AR

Counsel Name(s) : Jason Toh (Ho, Wong & Partners) for plaintiff; Ramesh and Nagarajah (Just Law LLC) for defendant

Parties : Ng Ah Lek — The Personal Representatives of Low Keng Suang @ Low Tai Kheng, deceased

Undisputed facts

1. On 14 October 2000, the plaintiff, Ng Ah Lek ('Ng') was the pillion rider on a motorcycle that her husband, one Low Keng Suang, rode. The motorcycle skidded and crashed into the road divider, killing her husband instantly and causing her to sustain severe injuries. Ng sued her husband's estate for the losses suffered as a result of the accident and obtained interlocutory judgment in her favour for 100% of the damages to be assessed. She made five broad areas of claims:

(1) general damages for pain and suffering;

(2) future medical expenses;

(3) loss of earning capacity;

(4) future salary for a maid; and

(5) special damages consisting primarily of pre-trial expenditure relating to the treatment of her injuries and the hiring of a maid.

2. The parties had agreed that the balance amount of special damages should be assessed at **$38,802.11**, after deducting the interim payment of $73,662.20 that the defendant had made.

Assessment of each claim

General damages for pain and suffering

3. Dr Adela Tow ('Dr Tow'), a consultant in the department of rehabilitation medicine at Tan Tock Seng Hospital was the only medical witness who testified at the assessment hearing. She gave the following evidence on Ng's injuries that the defendant did not dispute: First, Ng suffered from a fracture of her T 9-10 vertebrae that resulted in lower limb weakness and paralysis. Her condition has since improved through rehabilitation. She now has 70% of the power of her lower limbs and can walk with the assistance of one person. Secondly, she fractured her left humerus. The fracture united without complication save that there was an infection to her left arm and some residual weakness in her left wrist. Thirdly, Ng suffered from chest inflammation (pneumo-mediastinum) and collection of blood in her lung membrane (haemothorax). Both these developments also resolved without complications. Finally, she developed facial swelling and an infection of her back wound during the course of the medical treatment for her injuries.

4. I awarded Ng a sum of **$80,000** as damages for pain and suffering for her lower limb

weakness and paralysis. I considered that Ng's condition has improved, that the fracture was to the lower end of her thoracic vertebrae at the T 9-10 vertebrae and therefore she is not completely paralysed and that she cannot move about without the help of at least one other person due her injuries. I referred to the case of *Au Kee Tuang v Lightweight Concrete Pte Ltd* [1984] 2 MLJ xxix in which the plaintiff who suffered from a fracture of the T 8 vertebrae causing paralysis, haemothorax, fractures of two ribs and sternum and some injury to the scalp, skin and buttocks, was awarded a lump sum of $105,000.

5. As for the fracture of Ng's left humerus, the infection to her left arm and the residual weakness of her left wrist, I was of the view that she was entitled to damages of **$ 13,000**. It was not disputed that Ng is right-handed. I took into account the decisions of *Ravi Rai & Anor v Wang Yuen Chow* (unreported, Suit No. 470 of 1996) and *Er Chong Kwi & Anor v Singapore Bus Services (1978) Ltd & Anor* (unreported, DC Suit No 2739 of 1994). In the first case, the court awarded $ 12,000 to the plaintiff on account of the fracture of his humerus but in the second case, a lower award of $ 8,000 was given for the same injury. I disregarded the cases of *Jee Jia Gian v Low Chan Chin* (unreported, DC Suit No. 2603 of 1997), *Hari Singh v Chua Kaw Leong* (DC Suit No. 4031 of 1997), *Lim Ka Seng v Low Kim Leng* (DC Suit No. 3384 of 1997) and *Sazali bin Nainabi v Ang See Ghee* (DC Suit No. 2210 of 1996) cited by Ng's counsel. Those cases related to the assessment of damages for a more serious condition of a fractured wrist. In the present case, however, there was no evidence of a fracture in Ng's wrist. There was only some residual weakness which may be due to the injury to the radial nerve [NE 9].

6. I assessed the rest of Ng's relatively minor injuries, i.e. chest inflammation, haemothorax, facial swelling, infection to her back wound, the aggravation of osteoarthritis of her knee joint and depression together and awarded a lump sum of **$ 12,000**. In doing so, I found that her depression was attributable both to the trauma of witnessing the accident that resulted in the death of her husband and his death itself. I also accepted Dr Tow's evidence that her condition of osteoarthritis was not caused directly by the accident but the accident could have aggravated it because the weakness of Ng's lower limbs might cause her to have a tendency to put more weight on one limb [NE 17]. I considered the decisions of *Hasan bin Ismail v Singapore Bus Services (1978) Pte Ltd* (unreported, DC Suit No. 4926 of 1997) and *Koh Lu Kwang v Abdul Jalil bin Kader Hussein* (unreported, DC Suit No. 4293 of 1998), cited by the defendant. In both these cases, the court awarded a sum of $ 3,000 to the respective plaintiffs for pain and suffering due to osteoarthritis. I also referred to the decision of *Fauziyah bte Mansor v Abu Bakar bin Hussin* (unreported, HC Suit No 1685 of 1989) in which a sum of $7,000 was awarded to the plaintiff on account of pain and suffering due to haemothorax and pneumothorax.

7. Accordingly, the total award for general damages for pain and suffering was $ 12,000 + $ 13,000 + $ 80,000 = **$ 105,000**. In making this award, I factored in the fact that Ng's life expectancy has been reduced by the injuries and she was aware of that.

Future medical expenses

8. In her report dated 12 November 2002, Dr Tow had stated that future medical complications could cost up to $100,000. During cross-examination, she elaborated that Ng would be more prone to getting infections, falls, spascity of her legs, skin complications and pain in her back and knee. These costs were estimated based on the charges of a paying class ward [NE 14]. I accepted Dr Tow's evidence, which went unchallenged by the defence. However, in my judgment, a reduction of $20,000 from the figure of $100,000 was necessary. This was to take into account the fact that the figure was the maximum estimate of costs that may be incurred. The estimate was likely to be too high as it was based on fees chargeable to a paying class ward while Ng had previously used a subsidised class

ward, as evidenced by her medical bills (pp 19-337 of her AEIC). Accordingly, I awarded her a sum of **$ 80,000** under this head of claim.

Loss of earning capacity

9. The defendant submitted that Ng was not entitled to an award for loss of earning capacity as there was no evidence that she was "in employment" before the accident. An award for loss of earning capacity is generally made in the case where there is no evidence of the plaintiff's earnings to enable the court to properly calculate future earnings. This was stated in the Court of Appeal decision of *Teo Sing Keng v Sim Ban Kiat* [1994] 1 SLR 634 at 646.

10. It was not disputed that Ng was helping her late husband run their egg stall business. The stall had been in operation for only two months prior to the accident and before it opened, Ng was a housewife. I had no evidence to calculate Ng's future earnings since the stall was in operation for such a short time before the accident. Due to her injuries, Ng lost her ability to work. The present case was thus an appropriate one for an award of loss of earning capacity. In my view, a sum of **$12,000** was a fair compensation under this head considering that she had the ability to work as a cleaner or an egg stall assistant prior to the accident and that she was already 55 years old at the time of the assessment.

Future salary of maid

11. In relation to this head of claim, the parties agreed that a multiplier of four was reasonable. It was not disputed that the government levy for the maid was $345 per month and her salary was $350 per month. The defendant submitted that there should be a one third reduction from the wages of the maid to take into account that the maid helped out in the household chores apart from caring for Ng. He also objected to the inclusion of the cost of the government levy for the maid in the computation of the multiplicand.

12. I was of the view that both submissions of the defendant were untenable. While it was true that the maid did help out in the household chores, it was also undisputed that prior to the accident, Ng did those chores herself (see para 27 of her AEIC). The need for the maid to do the household chores that she used to do herself was a direct consequence of the injuries she suffered as a result of the accident. It was also clear that the cost of hiring a maid includes both the salary of the maid and the government levy as it is mandatory to pay such a levy to hire a maid. Accordingly, I agreed with counsel for Ng that the award should be [$695 x 12 months] x 4 years = **$33, 360**.

Conclusion

13. In conclusion, I assessed the damages suffered by Ng to be:

(a)	General damages for pain and suffering	$105,000
(b)	Future medical expenses	$80,000
(c)	Loss of earning capacity	$12,000
(d)	Future expenses in relation to employing a maid	$33,360
(e)	Special damages as agreed by the parties	$38,802.11

Grand total	**$269,162.11**

14. I awarded interest on all general damages, at 6% per annum from date of service of writ to date of judgment. Interest on special damages incurred before the date of judgment was awarded at 3% per annum from the date of the accident to the date of the judgment.

15. The usual consequential orders will apply. I will hear the parties on costs.

Copyright © Government of Singapore.