Man Mohan Singh s/o Jothirambal Singh and Another v Dilveer Singh Gill s/o Shokdarchan Singh and Another
[2007] SGHC 149

Case Number : Suit 137/2004, RA 126/2007, 127/2007

Decision Date : 27 September 2007

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Renuka d/o Karuppan Chettiar (Karuppan Chettiar & Partners) for the plaintiffs in Registrar's Appeal No 126 of 2007 and Registrar's Appeal No 127 of 2007; Ramasamy s/o Karuppan Chettiar (ACIES Law Corporation) for the co-defendant in Registrar's Appeal No 126 of 2007 and Registrar's Appeal No 127 of 2007

Parties : Man Mohan Singh s/o Jothirambal Singh; Jasbir Kaur — Dilveer Singh Gill s/o Shokdarchan Singh; Zurich Insurance (Singapore) Pte Ltd now known as Qbe Insurance

Tort – Negligence – Damages – Measure of damages – Parents' only children killed in road accident – Cross-appeals against award of damages – Whether claim for nervous shock should be allowed – Whether award for loss of dependency should be adjusted – Whether claim for cost of fertility treatment should be allowed

27 September 2007

Tan Lee Meng J:

1 This judgment relates to cross-appeals with respect to the award of damages by the Assistant Registrar to the parents of two children, Gurjiv Singh ("GS") and Pardip Singh ("PS"), who were killed in a road accident.

Background

2 On 2 December 2002, GS and PS, the only children of the plaintiffs, Mr Man Mohan Singh s/o Jothirambal Singh and Mdm Jasbir Kaur, went out with their cousin, who had rented a car. Unfortunately, there was an accident during the outing while the rented car was being driven by their cousin's friend, the first defendant, Mr Dilveer Singh Gill s/o Shokdarchan Singh ("Dilveer"). Both GS, who was then 17 years old, and PS, who was then 14 years old, were killed in the said accident. Dilveer cannot be traced and the co-defendant, Zurich Insurance (Singapore) Pte Ltd ("Zurich Insurance"), the first defendant's motor insurer, was left to defend the action instituted by the plaintiffs with regard to the loss of their children.

3 The plaintiffs claimed damages and consequential loss under the following heads:

(1) bereavement;

(2) funeral expenses;

(3) loss of dependency;

(4) post-traumatic shock and depression as a result of the loss of their children and

consequential transport expenses for medical consultation at Changi General Hospital; and

(5) the cost of fertility treatment undertaken in a failed attempt to conceive another child.

4 The Assistant Registrar awarded the plaintiffs $20,000 for bereavement pursuant to s 21 of the Civil Law Act (Cap 43, 1999 Rev Ed), $10,000 for funeral expenses, $68,508 for loss of dependency with respect to the death of GS and $78,165 for loss of dependency with respect to the death of PS. He also awarded the plaintiffs $32,847.90 for the cost of fertility treatment but rejected their claim for post-traumatic shock or depression: see *Man Mohan Singh s/o Jothirambal Singh and anor v Dilveer Singh Gill s/o Shokdarchan Singh and anor* [2007] SGHC 73 ("GD").

5 The plaintiffs and Zurich Insurance appealed against the Assistant Registrar's decision. In RA No 127 of 2007, the plaintiffs appealed against the Assistant Registrar's award for loss of dependency and his rejection of their claim for nervous shock.

6 In RA No 126 of 2007, Zurich Insurance appealed against the Assistant Registrar's award for funeral expenses, loss of dependency and fertility treatment.

7 At the hearing of the appeal, the parties reached a settlement in relation to the award of funeral expenses by agreeing to reduce the amount payable to the plaintiffs for this head of claim from $10,000 to $7,000.

8 I dismissed the plaintiffs' appeal in RA No 127 of 2007. As for Zurich Insurance's appeal in RA No 126 of 2007, I dismissed the appeal against the award for loss of dependency and allowed the appeal against the award for the fertility treatment. I now set out the reasons for my decision.

Post-traumatic shock or depression

9 The plaintiffs, who had made a claim for $10,000 for post-traumatic shock or depression and $200 for consequential transport charges, appealed against the Assistant Registrar's rejection of their claim.

10 In cases such as the present, a person can claim damages for nervous shock only if he or she was present at the accident or at its immediate aftermath. In *McLoughlin v O'Brian and others* [1983] 1 AC 410 ("*McLoughlin*"), Lord Wilberforce said that there is a real need for the law to place some limitation on the extent of admissible claims for nervous shock, which is in its nature capable of affecting a wide range of people. His Lordship explained at pp 422 and 423 what must be proven in such a claim in the following terms:

> It is necessary to consider three elements inherent in any claim: the class of persons whose claims should be recognised; *the proximity of such persons to the accident*; and the means by which the shock is caused…. As regards proximity to the accident, it is obvious that this must be close in both time and space. It is, after all, the fact and consequence of the defendant's negligence that must be proved to have caused the "nervous shock". Experience has shown that to insist on direct and immediate sight or hearing would be impractical and unjust and that *under what may be called the "aftermath" doctrine, one who, from close proximity, comes very soon upon the scene should not be excluded….* Lastly, as regards communication, there is no case in which the law has compensated shock brought about by communication by a third party…. The shock must come through sight or hearing of the event or of its immediate aftermath.
>
> [emphasis added]

11 Although the parents of GS and PS are within the class of persons who are entitled to make a claim for nervous shock, the Assistant Registrar thought that they did not satisfy the test of physical proximity. He explained in his GD at [32] as follows:

> For example, while the plaintiff in *McLoughlin* was not at the scene of the accident, she succeeded in her claim because she was at the hospital soon after, where she saw her injured husband and her son who was screaming in pain, and where she was told that her youngest daughter had died. In a similar vein, in [*Pang*] *Koi Fa*, the plaintiff was present in the hospital as her daughter suffered from the effects of a negligent operation and died after much pain and suffering caused by leaking brain fluid and meningitis. These cases are a far cry from the present facts. The [plaintiffs] had received information that their sons had met with an accident at 8.50 pm and rushed to the hospital soon after. By that time, [PS] had already died and [GS] was pronounced dead soon after at 11 pm. There was no evidence to suggest that the [plaintiffs] saw their mangled bodies, or witnessed their pain and suffering.

12 What appeared to matter in *McLoughlin* ([10] supra) was that the victims were in the same condition in the hospital as at the accident. They were covered with oil and mud, and distraught with pain. In contrast, in *Alcock v Chief Constable of South Yorkshire* [1992] 1 AC 310 ("*Alcock*"), it was held that relatives who did not witness the tragic accident that caused the death of the victims but had merely identified their bodies in the mortuary some nine or more hours after the event were not entitled to damages for nervous shock.

13 In *Hevican v Ruane* [1991] 3 All ER 65 ("*Hevican*"), Mantell J held that the plaintiff, whose favourite son was killed when the school minibus that he was in collided with a lorry because of the minibus driver's negligence, was entitled to damages for continuing reactive depression which prevented him from returning to work even though his son was already dead by the time he reached the mortuary. This case was relied upon by the plaintiffs in the present case but it is not really helpful as both Lord Keith and Lord Ackner said in *Alcock* ([12] supra) that the decision in *Hevican* was open to serious doubt.

14 In truth, while the distinction between the claims in *McLoughlin* ([10] supra) and *Alcock* ([12] supra) may be defensible, the distinctions in some of the other cases on proximity to the accident are rather unconvincing. It was thus not surprising that in 1998, the English Law Commission recommended in its *Report on Liability for Psychiatric Illness* (Law Com No 149, 1998) that physical proximity to an accident should no longer have to be proven to succeed in an action for nervous shock. More recently, the English Court of Appeal adopted a less restrictive approach towards the aftermath doctrine in *Galli-Atkinson v Seghal* [2003] EWCA Civ 697 ("*Galli-Atkinson*"). In this case, the appellant witnessed a police cordon at the scene of an accident, in which her daughter was killed. She was informed that her daughter had been killed, became hysterical and did not view her daughter's body at that time. She was still in a state of denial when she visited the mortuary where her daughter's body was kept around two hours later. She was extremely distraught when she finally saw the disfigured face and upper part of her daughter's badly injured body and she suffered a psychiatric condition as a result of her daughter's death. The English Court of Appeal rejected the ruling below that the deceased's mother had failed to prove that her psychiatric condition had been caused by witnessing the fatal accident or its aftermath. Latham LJ explained that the deceased's mother's visit to the mortuary could not be excluded from the events regarded as a part of the aftermath of the accident. These events stretched from "the moment of the accident until the moment [the mother] left the mortuary". Her visit to the mortuary was distinguished from that of the relatives in *Alcock* ([12] supra), who had visited the mortuary to identify the bodies of the victims. In *Galli-Atkinson*, the deceased's mother was not at the mortuary for the purpose of identifying her daughter's body but "to complete the story" as she had not wanted to believe that her daughter was

dead.

15 In the present case, I would rather not reject the plaintiffs' claim for damages for nervous shock on the basis of the aftermath doctrine. Instead, their claim may be dismissed on another ground, namely, that they had failed to meet a fundamental requirement for a claim for nervous shock, which is that it must be established that they suffered a *recognisable psychiatric illness* after the shock. In *McLoughlin* ([10] supra), Lord Bridge explained at p 431 that "the *first* hurdle which a plaintiff claiming damages of the kind in question must surmount is to establish that he is suffering, not merely grief, distress or any other normal emotion, but a positive psychiatric illness". He added that the common law gives no damages for the emotional distress which any normal person experiences when someone he loves is killed or injured because anxiety and depression are normal human emotions.

16 That grief alone is insufficient for a claim for damages for nervous shock was also stressed in *Pang Koi Fa v Lim Djoe Phing* [1993] 3 SLR 317 by Amarjeet Singh JC, who stated as follows at [62]:

> Perilously close are also the situations in which the claim in nervous shock may be confused with the claim for grief, sorrow, deprivation and suffering which arises out of necessity for caring for those who may be near and dear who have suffered injury from a distressing event. This category of claim is clearly untenable.

17 Admittedly, the plaintiffs suffered intense grief. In her medical report, the consultant psychiatrist, Dr Angelina Chan ("Dr Chan"), summed up the plaintiffs' condition as follows:

> In my opinion, Mr Singh and his wife suffered a great loss when their sons died tragically in the road traffic accident. As their relationship with their sons were extremely close, it is not uncommon for their *grief reactions* to be protracted especially since there may not be a closure to the incident as the driver has yet to be arrested.

18 Dr Chan, who focussed on the plaintiffs' grief, did not explain in her report whether or not the grieving parents had suffered from any recognisable psychiatric illness. Unless a psychiatrist makes it very clear that the claimants are suffering from a recognisable psychiatric illness as a result of the accident, the court is in no position to speculate whether or not the prolonged grief suffered by the plaintiffs has led to such an illness. After all, the plaintiffs' counsel, Ms Renuka Chettiar, who also focussed on their grief, went so far as to attribute part of the reason for their protracted grief not to shock that is within the ambit of the "aftermath doctrine" enunciated in *McLoughlin* ([10] supra) but to the plaintiffs' outrage that, among other things, the ill-fated car had been driven not by their nephew, as they had expected, but by their nephew's friend, who was allegedly drunk at the material time and who has, to date, not been apprehended by the police. In her written submissions, she stated as follows at [54] to [56]:

> 54 From the medical report dated 28th April 2005 by Dr Angelina Chan,… it would be noted that both [plaintiffs] were referred to Dr Chan for *grief therapy* on 2nd January 200[3]. The report confirms that [the plaintiffs] were devastated by the death of their sons whom they loved dearly and *outraged when they found out that the driver of the rented car in which their sons were travelling was not their cousin (with whom they had gone out on that day) but the cousin's friend and who was apparently under the influence of alcohol*. Dr Chan also states in her report that [the plaintiffs] were *angry that their nephew had refused to accept any responsibility for the accident and deaths of their sons*. To compound matters, the [*driver of the car] had absconded* and the police have not been able to locate him.

55 Dr Chan further confirms that at the time when she examined both [plaintiffs] they were both "tearful, depressed and preoccupied with the loss of [their] children as well as the events surrounding their deaths". As they were a close-knit family, both [plaintiffs] found it extremely difficult to cope with adjusting to the change at home and family life as a result of the death of the loss of their sons….

56 …. Dr Chan is of the opinion that it is not uncommon for their *grief reactions* to be protracted especially since [there] may not be closure to the incident *as the driver has yet to be arrested*. It is clear from Dr Chan's report that both [plaintiffs] were shocked and outraged by their sons' deaths….

[emphasis added]

19 As it appears from the plaintiffs' counsel's submissions and Dr Chan's report that the focus was on the plaintiffs' pain and grief, there is insufficient evidence to support a claim for damages for nervous shock. The plaintiffs' appeal against the Assistant Registrar's dismissal of their claim for nervous shock must thus be dismissed.

Loss of Dependency

20 The Assistant Registrar's award for loss of dependency was criticised by both parties. While the plaintiffs asserted that a higher award would be more appropriate, Zurich Insurance complained that the award was far too generous. As is often the case, the disagreement between the parties concerned both the multiplicand and the multiplier.

The multiplicand

21 The multiplicand in GS' case will first be considered. GS was aged 17 when he died. He was a Secondary 5 (normal stream) student and was an average to below-average student. He obtained a Grade 6 or better in only two of his six subjects in the GCE "O" Level Examinations. On the positive side, he had been a class monitor and his geography teacher, Ms Helen Ng, thought that it was likely that he would have qualified for a place at the Institute of Technical Education ("ITE") although it was unlikely that he would have qualified for admission to a polytechnic. In the face of such evidence, Zurich Insurance's assertion that the dependency claim with respect to GS was in the realm of speculation could not be countenanced. The Assistant Registrar thus held that it was more likely than not that GS would have entered and graduated from the ITE had he not been killed in the accident. This finding cannot be faulted.

22 As for PS, he was only 14 years old when he was killed. He was a Secondary 2 (express stream) student and his form teacher, Mr Brian Koh, regarded him as an intelligent student even though he was playful, less hardworking and talkative. PS had scored 55.2% in his Secondary 2 examinations even though he had failed in five of the 10 subjects in that examination. He had been promoted to Secondary 3 express stream. It was confirmed that all the pupils in his class had completed Secondary 4 and had secured places in the polytechnics or in other higher institutions of learning. The school's vice-principal, Mrs Grace Chua, testified that 97.4% of the school's class of 2004 qualified for admission to polytechnics. The Assistant Registrar rightly found that had PS lived, he would, in all likelihood, have qualified for admission to a polytechnic.

23 The insurer's counsel, Mr Ramasamy Chettiar, who emphasized that PS was aged 14 when he was killed, asserted that, as a matter of policy, a dependency claim should not be made in respect of a child below the age of 16. Admittedly, in *Barnett v Cohen* [1921] 2 KB 461, where the plaintiff's

deceased son was not even four years old when he was killed in an accident, McCardie J said at p 472 that the plaintiff's claim had "been pressed to extinction by the weight of multiplied contingencies". Apart from the fact that the deceased was aged less than four, the claimant, his father, was in poor health and might not have survived his son. However, what must be noted is that the plaintiff had failed in his claim only because he had failed to prove either actual or prospective loss. In fact, McCardie J added at p 471 that the only way to distinguish the cases where a plaintiff had failed in a claim for loss of dependency from those where he had succeeded "is to say that in the former there is a mere speculative possibility of benefit whereas in the latter there is a reasonable probability of pecuniary advantage". In *Taff Vale Railway Co v Jenkins* [1913] AC 1, Lord Atkinson pointed out at p 7 that "it has long been established by authority that all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues". There is thus no rule that a dependency claim cannot be made with respect to the death of a person aged 14. In the present case, there was sufficient evidence to show that PS' parents had a reasonable expectation of pecuniary benefit had he not been killed in the accident. This distinguishes the present case from *Barnett v Cohen.*

24 The plaintiffs' counsel, Ms Chettiar, submitted that the salaries that would have been earned by GS and PS had they lived should be based on the Ministry of Manpower's Report of Wages 2005. Based on the figures therein, she said that the median salaries for computing the dependency claim are $1,730.00 for GS and $2,412.50 for PS.

25 The insurer's counsel, Mr Chettiar, disagreed with the plaintiffs' calculations. He also submitted that had PS entered the job market, he could also have fallen under the category of clerical workers, whose commencing salaries were at a lower level. He thus submitted that for the purpose of assessing loss of dependency in the case of PS, the relevant figure for his monthly salary was $1,200.00. In my view, the Assistant Registrar rightly accepted the plaintiffs' estimate of the median gross salaries for GS and PS for the purpose of assessing the award to the plaintiffs for loss of dependency.

26 The Assistant Registrar next considered the amount GS and PS might have given to their parents every month from their projected salaries. For this purpose, he considered a number of cases on claims for loss of dependency. The first was *Ho Yeow Kim v Lai Hai Kuen & Anor* [1999] 2 SLR 246 ("*Ho Yeow Kim*"), which concerned the death in a motor accident of an ITE student, aged 17, who was likely to have graduated from the ITE. The deceased's parents were both 49 years old and he had a younger brother whom he was likely to have helped to support and educate. The Court of Appeal apportioned 40% of his average prospective salary of $1,784.50 for the dependency claim.

27 In another case, *Tan Ngo Hwa & Anor v Siew Mun Phui* [1998] SGHC 376, the deceased, the only child of her parents, was only 16 years old when she was killed in a motor accident. She had not yet taken her GCE "O" Level Examinations. The court accepted that the deceased could have graduated from an overseas university and that although she would have earned less than $2,000 when she first started work, the median salary was $2,000 as the deceased's salary would have increased with the passage of time. The court added that as she was an only child, her obligation to support her parents would have been stronger. As such, the multiplicand was fixed at $900 for the first 2½ years and $1,000 for the next 7½ years.

28 The plaintiffs' counsel, Ms Chettiar, thought that 40% of the estimated income of GS and PS should be taken into account to determine the multiplicand. However, it is relevant to note that there were two children who were expected to support the plaintiffs and that the plaintiffs were not in pressing need of money as the father of the deceased children was earning around $4,500 per month. In these circumstances, the Assistant Registrar thought that only 30% of the estimated income of GS

and PS should be taken into account for the purpose of computing the dependency claim. On this basis, he held that the multiplicand for GS was $519 and that for PS was $723.75. I see no reason to disagree with his decision.

The multiplier

29 As for the multiplier, the Assistant Registrar adopted a broad-brush approach. He pointed out in his GD at [26] that a quick scan of the cases cited by the plaintiffs indicate that the multiplier adopted ranged from 8-12 years for parents between the ages of 34 and 57. It may be noted that in *Ho Yeow Kim* ([26] *supra*), the Court of Appeal pointed out at [32] that important factors in selecting the multiplier are the age and expected working life of the deceased as well as the age and expected life span of the dependent. In that case, where the accident victim was aged 17 when he was killed and his father was in his late forties, the Court of Appeal adopted a multiplier of 10 years.

30 In the present case, GS and PS were aged 17 and 14 respectively when they were killed and their father and mother are now aged 51 and 48 respectively. After considering the difference in age between GS and PS and the vicissitudes of life, the Assistant Registrar adopted a multiplier of 11 years for GS and 9 years for PS. This fell midway between the range of 8 to 12 years in most of the cited authorities.

Conclusion on the award for loss of dependency

31 After taking into account the multiplicand and multiplier, the Assistant Registrar awarded the plaintiffs $68,508 with respect to the death of GS and $78,165 with respect to the death of PS.

32 As I saw no reason to interfere with the Assistant Registrar's well- reasoned assessment of the award for the dependency claim, I dismissed both the appeals of the plaintiffs and Zurich Insurance in relation to this claim.

Cost of fertility treatment

33 The plaintiffs' claim for the cost of fertility treatment concerns a novel head of claim and invites a consideration of whether a motor insurer should be liable under a motor policy to indemnify bereaved parents for expenses incurred in their attempt to conceive a child after the death of their child in a motor accident.

34 Mdm Jasbir, who was 44 years old when she lost her two sons, did not succeed in conceiving a child by natural means. In 2003, she consulted a doctor at the National University Hospital and attempted intra-uterine insemination ("IUI") without success. She was then referred to Dr Foong Lian Chuan ("Dr Foong"), a consultant obstetrician and gynaecologist at Gleneagles Hospital. Dr Foong advised her to undergo in-vitro fertilisation ("IVF") instead.

35 Mdm Jasbir went through two IVF procedures. In May 2004, she had IVF treatment, using her own ovarian eggs. Dr Foong had estimated that there was only a 5% chance that conception would be successful and a 1% chance that there would be a successful delivery of a baby. After this attempt with her own ovarian eggs failed, Mdm Jasbir went through another IVF procedure, this time with ovarian eggs donated by her sister, aged 39. Dr Foong estimated that there was a 15% chance of a successful conception and a 3% chance of a successful delivery of a baby. Mdm Jasbir became pregnant but she lost the foetus after only 8 weeks.

36 The plaintiffs sought to recover the $32,847.90 that they had spent on the IUI and IVF

procedures. Their counsel, Ms Chettiar, conceded that she could not find any direct authority to support the claim for the cost of the fertility treatment but she managed to persuade the Assistant Registrar to uphold the claim.

37 The Assistant Registrar regarded the claim for the cost of the fertility treatment as a claim for pure economic loss and upheld the claim primarily on the basis that there was a duty of care owed to the plaintiffs. He put the position in his GD at [46] as follows:

> Are the parents of the victims of a motor vehicle accident the persons so closely and directly affected by the tortfeasor that he should have them in mind when he commits the wrong? Put another way, if one causes a vehicle accident, does one expect to be responsible for *reasonably foreseeable consequential losses that may arise on the part of the parents of the victim*?
>
> [emphasis added]

38 The plaintiffs' claim for the cost of fertility treatment does not concern consequential losses as they had not suffered any physical harm from which economic losses flowed. In my view, this claim fails because of the rule on remoteness of damage, which is another important control mechanism for negligence claims. *Clerk & Lindsell on Torts* (Sweet & Maxwell, 19th ed, 2006) explains the position at p 117 as follows:

> A line must be drawn to confine the responsibility of the defendant to those consequences of his wrongdoing which it is proper for him to shoulder. Thus, even when it is quite clear that the defendant's wrong *caused* the damage, it may be said that the damage was too remote if it is not of the same type as would normally be anticipated in similar circumstances, or if it occurred in an unusual way. Remoteness of damage places limits on the defendant's responsibility, and in the context of the tort of negligence, there is a significant overlap between the concepts of remoteness of damage and duty of care, which is also concerned with setting out the boundaries of liability for careless conduct.

39 The law already provides a measure of financial relief for the plaintiffs' suffering by allowing for an award to be made for bereavement and loss of dependency. Awarding them damages for the cost of fertility treatment smacks of double compensation and runs counter to the rule on remoteness of damage.

40 If the plaintiffs' claim for the cost of fertility treatment is allowed, persons whose adopted children are killed in an accident must also be compensated by the wrong-doer for the cost of adopting other children. Children who are orphaned can also expect to be paid the cost of finding new parents. The result of such widening of the scope of liability of a motor insurer will be an increase in motor insurance premiums as insurers are usually the real defendants in claims such as the one presently being considered.

41 To sum up, as the expenses for fertility treatment are too remote a consequence of the negligence in question, Zurich Insurance succeeded in its appeal against the award for these expenses.

Costs

42 As the parties wanted to submit further arguments on costs, the question of costs will be considered on another occasion.