

Kim Anseok and another (personal representatives of the estate of Kim Miseon, deceased) v
Shi Sool Hee
[2010] SGHC 124

Case Number : Suit No 926 of 2008
Decision Date : 28 April 2010
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Lynette Chew Mei Lin and Yvonne Foo Wan Ling (Inca Law LLC) for the plaintiffs; Chua Tong Nung Edwin (Lawrence Chua & Partners) for the defendant.
Parties : Kim Anseok and another (personal representatives of the estate of Kim Miseon, deceased) — Shi Sool Hee

Tort

Damages

28 April 2010

Judgment reserved.

Kan Ting Chiu J:

1 A most unfortunate road accident took the life of a young Korean girl Kim Miseon ("the deceased"), a badminton player of promise and member of the Korean national junior team. She was in Singapore to represent her country in the Cheers Youth International Badminton Tournament, and was 15 years 6 months old, having been born on 12 May 1990.

2 The accident took place on 13 December 2005 along Guillemard Road outside the Singapore Badminton Hall. Guillemard Road was divided into six lanes, with three lanes in each direction. The three lanes immediately in front of the Singapore badminton hall were for traffic travelling from the direction of Geylang towards Nicoll Highway. These three lanes were separated from the other three lanes by a central divider. On the other side of the road, there were three lanes for traffic going from the direction of Nicoll Highway towards Geylang. [\[note: 11\]](#) Lorong 22 Geylang connected with this stretch of Guillemard Road to form a T-junction which was controlled by traffic lights, and there were two pedestrian crossings which were controlled by pedestrian lights, at each side of the mouth of Lorong 22 Geylang for pedestrians to cross Guillemard Road. The accident took place whilst the deceased was crossing Guillemard Road along the pedestrian crossing in front of the badminton hall to go to the hall. She had crossed the half of the road for traffic going from the direction of Nicoll Highway towards Geylang, and was crossing the second half of the road when she met with the accident which took her life.

3 The accident happened at about 11.51 am. At that time, the deceased was in the company of her two friends and team mates, Bang Eun Hye ("Bang") and Yoo Hyewon Yeong ("Yoo"). They were older than the deceased at the time of the accident, being 16 years 6 months and 16 years 11 months old respectively.

4 Naturally, these two girls were important witnesses. They made signed statements which were tendered in the Coroner's Inquiry into the deceased's death. In her statement, Bang recounted that when the three of them walked towards the pedestrian crossing, the blinking green man was on. They

did not stop but continued to walk along the pedestrian crossing at a faster pace, with Yoo in front of her, the deceased behind her with the earpiece of her MP3 player in one ear. She thought that they had looked to the right before getting onto the second half of the pedestrian crossing because vehicles travel along the right side of the road in Korea. After they had gone past the centre of the road and had reached the first lane of the second half of the road, the pedestrian crossing light changed from the blinking green man to red. She pulled Yoo and stopped her from crossing further, but the deceased continued to go ahead and ran towards the badminton hall. Suddenly, she saw a car (the defendant's car SDU 153 J) coming from her left, and the collision happened. She did not hear any horning or braking sound and could not remember if she saw the car collide with the deceased or hear a collision sound, and she could not tell which lane the collision took place on. Yoo's statement was largely similar to Bang's, except that she noticed that the deceased was looking to her right when she ran forward.

5 In the proceedings before me, both girls deposed affidavits of evidence-in-chief. The contents of their affidavits were very much similar with their earlier statements. However, they both corrected their statements and deposed that the pedestrian crossing light changed from the blinking green man to red when they had crossed the first lane of the second half of the road.

6 There were independent eye-witnesses to the accident. One of them was Chan Yoke Heng ("Chan"), who was in a car SDA 335 G driven by his friend Stanley Mok travelling in the same direction as the defendant's car. [\[note: 2\]](#) He had also given a written statement to the police for use in the Coroner's Inquiry. He stated that he was travelling in the middle lane of the road, and the defendant's car was on his left. As his car (ie the car he was travelling in) entered into the T-junction with Lorong 22 Geylang he saw three girls in blue uniforms and shorts walking along the pedestrian crossing from his right to his left, in the lane of his car, two to three car lengths from the car. He noticed that the girls were looking ahead and were not looking at the oncoming traffic, and Stanley Mok sounded the horn of his car twice at them.

7 He then described the events that followed in the next few seconds [\[note: 3\]](#):

4 At this time, the deceased turned her body and started to act as if she wanted to turn around and run back to the center divider but the other two girls were so close to her at an arm length distance away that they blocked her way. Seeing this, our car slowed down to avoid the girls. The [defendant's] car SDU153 G [sic] that was on the extreme left lane, overtook our car at this time and it was at about 1½ car length from the deceased when she turned her body to the back. The car SDU153 G [sic] was still driving ahead without slowing down. I did not notice if there was any brake light on the car as my attention was on the girls and the deceased. I did not hear any braking sound. Suddenly the deceased turned back in front and started to run across the pedestrian [sic], trying to get to the side of the badminton hall. The car SDU153 G [sic] was at only half a car length away from her when she started to take her steps forward and run [sic]. She barely ran a few steps before she reached the right side of the extreme left lane, still on the pedestrian crossing. The car SDU153 G [sic] came and collided onto her straightaway and the impact caused her to be flung into mid-air and her body somersaulted in mid-air. There was a collision sound that came with this impact.

8 He was called by the plaintiffs as a witness in the trial before me. He confirmed the truth of his written statement and added that his car entered the T-junction when the traffic lights were green in its favour, [\[note: 4\]](#) and stopped before it reached the pedestrian crossing in question. More importantly, he said that he saw one girl try to run back towards the centre of the road, but as her way was blocked by the other girls, she tried to sprint across the road instead, and she was hit by

the defendant's car.

9 Stanley Mok was not available to give evidence. Although he had also made a statement to the police for the Coroner's Inquiry, I will not refer to the statement because the parties had only agreed on its authenticity, but not its contents. For the same reason, I will not refer to the statement of another eye-witness, Ng Boon Kian, who made a statement tendered in the Coroner's Inquiry, but was not called as a witness at the trial.

10 The other independent eye-witness was Sanusi bin Masrop ("Sanusi"). Like Chan, he had given a statement to the police [\[note: 5\]](#) which was used in the Coroner's Inquiry. In the statement, Sanusi stated that his job was to drive his employer's car. On the day of the accident, he had driven his employer's car to the badminton hall and had parked it in a parking lot, and was waiting while his employer and his son played badminton inside the hall. Sanusi remained inside the car while he waited for them. He had a good view of Guillemard Road while he was in the car. At about 11.50am, he saw three girls in badminton attire on the opposite side of Guillemard Road walking onto the pedestrian crossing. He saw them hesitate for a while before stepping onto the pedestrian crossing in front of the badminton hall, and he could see very well that the pedestrian crossing light was red. Nevertheless, the girls walked along the pedestrian crossing. When they reached the central divider, he heard a long and loud continuous horn sound and he saw the defendant's car coming on the centre lane at a fast speed towards the direction of Nicoll Highway. He heard a shout from one of the girls and saw two of them stop on the first lane, but the third girl did not stop, and walked onto the second lane when the defendant's car was very near to her, and then the collision happened. He was called as a witness at the trial by the defence. In his affidavit of evidence-in-chief, he repeated his earlier statement with the addition that when there was a shout and two of the girls stopped, the third girl rushed forward and a car came along the middle lane and collided into her. Under cross-examination, he maintained that the girls stepped onto the pedestrian crossing when the pedestrian crossing light was red. [\[note: 6\]](#)

11 The defendant, Shi Sool Hee had also given an account of the accident to the police. In her police report made on the afternoon of the day of the accident, she stated: [\[note: 7\]](#)

On the 13/12/2005 at about 1150 hrs, I was driving along Guillemard Rd towards Nicoll Highway. While travelling to the junction of Guillemard Rd and Lor 22 Geylang, I noticed that the green light was changing to amber when I was one to two metres away from the junction. I was on the centre lane. When I noticed the change in traffic lights, I accelerated my vehicle a little. When I was out of the junction about five metres suddenly a girl ran into my lane from the right side. I tried to avoid her by turning to the left but as it was all so sudden I was unable to avoid and I hit into her.

The ambulance and traffic police came. The girl was conveyed to a hospital.

12 After the completion of the police investigations and the Coroner's Inquiry (where the coroner returned an open verdict on 12 April 2007), the defendant was charged with an offence under s 65(a) of the Road Traffic Act (Cap 65 2004 Rev Ed) that she:

on the 13th day of December 2005 at about 11.51 am, along Guillemard Road towards Nicoll Highway, in front of the Singapore Badminton Association Hall, Singapore, did drive motor car SDU153 J without due care and attention, to wit, by failing to give way to the pedestrian namely one Kim Miseon, female 15 years old who was crossing in front of [her], from the right to the left in [her] perspective on the signalised pedestrian crossing upon a red man signal light and thus

collided onto her and [she has] thereby committed an offence punishable under Section 65(a) of the Road Traffic Act, Chapter 276. [\[note: 8\]](#)

13 On 16 April 2008, the defendant pleaded guilty to the charge and admitted the Statement of Facts which disclosed, *inter alia*, that:

3 Investigation revealed that on 13th December 2005 at about 11.51am, the defendant was driving her own motor car SDU 153 J along the center lane of Guillemard Road towards Nicoll Highway (three lanes carriageway of road speed limit of 60kmph. As she was coming to the signalised pedestrian crossing in front of the Singapore Badminton Association Hall at the signalised junction of Lorong 22 Geylang, she did drive motor car SDU 153 J without due care and attention, by failing to give way to the deceased namely Kim Miseon, female 15 years old, who was then crossing on the designated pedestrian crossing from the right to the left in her perspective, upon a red man signal light. As a result, she drove across the pedestrian crossing upon amber signal light and caused the front right portion of the motor car SDU 153 J to collide onto the deceased. Upon impact, the deceased was being flung forward where she landed on the center lane after the pedestrian crossing. [\[note: 9\]](#)

She was convicted on the charge and disqualified from driving all classes of vehicles for six months and fined \$1000.

14 The defendant gave evidence at the trial before me. The defendant was also a South Korean, but she was not a visitor like the deceased and her two team mates but has resided in Singapore for over 20 years. She deposed in her affidavit of evidence-in-chief that:

3 On the 13th December 2005, at about 11.50 am, I was driving my car SDU 153 J along Guillemard Road towards Nicoll Highway. Guillemard Road is a 6-lane carriageway, with 3 lanes in the direction of Nicoll Highway and 3 lanes in the direction of Paya Lebar. I was travelling in the centre lane. I was going to Mandarin Hotel to meet my cousin and have lunch with her.

4 When I was approaching the junction of Guillemard Road and Lorong 22 Geylang ("the T-junction"), the traffic light was showing green. The traffic lights turn to amber lights when my car was just 1 metre from the junction. I proceeded to enter the T-junction. I travelled at the normal speed. In my estimate my car travelled no faster than 60kmph.

5 When my car was in the T-junction I saw three girls on the right side of the signalized pedestrian crossing located just outside the Singapore Badminton Association Hall.

6 Two girls were walking side by side and a 3rd girl was walking behind them. The two girls who were walking in front were talking. The 3rd girl who was behind them worn earphones.

7 The first two girls stood still at the middle divider but the third girl (the deceased) walked briskly passed her 2 friends and suddenly ran across the road towards the Singapore Badminton Association Hall.

8 The 3rd girl was in the path of my car. My car was already close to her. I could only swerve my car to the left. The appearance of the pedestrian into my path was so sudden that I was unable to avoid the accident. I was in a state of shock after the collision and remained in the car. Later a Korean coach advised me to shift my vehicle due to traffic congestion along

Guillemard Road.

9 I pleaded guilty to the charge of "inconsiderate driving" because I felt bad that an accident happened which resulted in death to the pedestrian. Since the accident involved my vehicle paying a fine seem like the right thing to do.

15 When she gave evidence in court, the defendant corrected her affidavit of evidence-in-chief and said that when the traffic light changed to amber her car was not one metre from the junction, but was already somewhere midway in the junction, as marked "X" by her on the sketch plan. She added in cross-examination that when she first saw the three girls, the traffic lights were in her favour, and she expected the girls to stop at the central divider. [\[note: 10\]](#)

16 A report on the traffic light system at the junction [\[note: 11\]](#) was produced at the trial before me. However, as the maker of the report was not called as a witness, counsel and I did not have the opportunity to seek clarifications on the report and its application of it to the witnesses' evidence. [\[note: 12\]](#) Consequently, the report was of limited assistance.

17 The evidence before me showed that the three girls were inattentive when they went onto the pedestrian crossing without looking left for oncoming vehicles. In particular, the deceased was probably listening to her MP3 player and did not stop even when her two friends did, but had tried to run across the road instead.

18 There was an issue whether the blinking green man light or the red light was on when they attempted to cross the second half of Guillemard Road. Whilst Bang and Yoo's evidence was that they started when the blinking green man light was on, the independent eye-witness, Sanusi, who had a good view of the events, was sure that the pedestrian crossing light was red.

19 The undisputed evidence of Chan and the defendant was that the traffic lights were green when their cars had entered the junction. In that situation, the pedestrian crossing lights in question must have been red to stop pedestrians from crossing whilst the cars were travelling across the junction. When the time comes for the pedestrians to cross, these lights would change from red to green, and when it is about time for vehicles to cross the junction again, the blinking green man will come on again, and then the red light will follow to complete the light cycle. This was the lighting sequence described in the traffic light system report. On this basis, it was unlikely that the blinking green man was on at the time the girls went onto the pedestrian crossing at the second half of the road.

20 Bang and Yoo, however described in their affidavits of evidence-in-chief that the pedestrian crossing light turned red only when they had already crossed the first lane in the second half of the road, although they had said in their earlier statements that the light changed when they reached the first lane.

21 It is also noteworthy that the charge against the defendant and the Statement of Facts stated that the deceased was crossing the road when the red light was on, with no mention of any blinking green man light.

22 Against the background of the facts and evidence, I find that the deceased and her friends had gone onto the pedestrian crossing to cross the second half of Guillemard Road when the pedestrian crossing light was red against them. I also find that they were not paying attention to vehicles coming from the left and were startled when they heard the horning from Chan's car, and that at that

moment the deceased ran forward into the path of the defendant's car in the middle lane.

Finding on liability

23 The defendant's conviction on her own plea for the offence of driving without due care and attention, and the Statement of Facts that she admitted to, were relevant facts before me. They were relevant under s 45A of the Evidence Act (Cap 97, 1997 Rev Ed) which states that:

(1) ... the fact that a person has been convicted or acquitted of an offence by or before any court in Singapore shall be admissible in evidence for the purpose of proving, where relevant to any issue in the proceedings, that he committed (or, as the case may be, did not commit) that offence, whether or not he is a party to the proceedings; and where he was convicted, whether he was so convicted upon a plea of guilty or otherwise.

24 In her evidence the defendant described the careless way in which the three girls tried to cross the road, but she did not go back on her previous admission or deny that she had driven her car without due care and attention. Although she was entitled to explain her plea, all that she said was that she had pleaded guilty because she felt bad that the accident happened.

25 At the trial, the defendant said that she first saw the three girls when they were in the centre lane of the first half of the pedestrian crossing [\[note: 13\]](#) and she thought that they were going to stop at the centre of the road, but they continued to cross over to the second half of the pedestrian crossing [\[note: 14\]](#) and when she saw them crossing, she thought she could drive pass them by accelerating her car [\[note: 15\]](#) instead of slowing down or stopping her car.

26 The duty on a motorist who is approaching a junction was examined in *Ong Bee Nah v Won Siew Wan (Yong Tian Choy, third party)* [2005] 2 SLR(R) 455 where Andrew Phang Boon Leong JC stated (at [95]):

... It seems to me that there is - in the absence of clear and compelling circumstances to the contrary - no legal duty on a driver to slow down automatically each time he or she approaches a junction if there is no stop sign or (as is the case here) the lights are in his or her favour at a junction where traffic lights are present.

[emphasis in original]

and cited Lord Dunedin's statement in *Fardon v Harcourt-Rivington* (1932) 146 LT 391 at 392 that:

... If the possibility of the danger emerging is reasonably apparent, then to take no precautions is negligence; but if the possibility of danger emerging is only a mere possibility which would never occur to the mind of a reasonable man, then there is no negligence in not having taken extraordinary precautions.

27 I find the defendant negligent on her evidence that she saw the girls trying to cross the pedestrian crossing. She should have realised the possibility of danger and slowed down her car, but she did not do that because she was driving without due care and attention.

28 That leaves the question of contributory negligence by the deceased. On the evidence, she had contributed to the accident. She had not only ignored the red pedestrian crossing light, but was running across the path of the defendant's car when the collision took place.

29 Counsel for the plaintiffs had contended that "Whether the traffic lights was [sic] showing "red man" or "blinking green man" at the time of the accident is irrelevant." [\[note: 16\]](#) That assertion was made in reliance on r 7 of the Road Traffic (Pedestrian Crossings) Rules 1982 (S 295/1982):

Precedence for pedestrian at controlled crossing.

7. Wherever there is a pedestrian crossing at a road intersection or junction where traffic is controlled by a police officer or by light signals, every pedestrian who is about to enter or has entered such crossing shall be permitted free and uninterrupted passage over the crossing by all drivers of vehicles who are approaching the crossing notwithstanding that such drivers may have already received a signal to proceed either from the light signals or the police officer, as the case may be.

30 The effect of the rule was misunderstood. While the rule confers on pedestrians at pedestrian crossings the right of way, it is a serious error to take that to mean that the pedestrian can cross with impunity without regard to the state of the lights, or that the pedestrian does not owe a duty to himself or herself, and to other road-users, to abide by the lights.

31 That duty was clearly established in *Ng Weng Cheong v Soh Oh Loo and another* [1993] 1 SLR(R) 532 ("Ng Weng Cheong") which arose out of a somewhat similar fact situation. In that case, a pedestrian tried to cross a road at a pedestrian crossing when the red man was on, and he was knocked down by a bus. The trial court found that the bus driver was not negligent and the pedestrian's appeal to the High Court was dismissed on the ground that the bus driver had a right to presume when the pedestrian crossing light was red that his way was clear. The Court of Appeal disagreed with the appellate judge and held (at [39]) that:

39 ... [T]he fact that it is an offence for a pedestrian to cross a controlled crossing against light signals, in our view, does make a difference in this way. The fact that it is an offence means that drivers of vehicles in general have less reason to anticipate such occurrences, although, as we pointed out earlier, such occurrences cannot in reality be ruled out altogether. For the pedestrian, it also means that the danger inherent in such behaviour is that much greater. *A person who crosses a light-controlled crossing in disobedience of a light signal applicable to him thus assumes a high degree of contributory negligence.*

[emphasis added]

and apportioned liability for the accident at 70% for the pedestrian and 30% for the bus driver.

32 There are differences in the facts of that case and the facts of the present case. Firstly, the defendant had not said that her view of the deceased was obstructed. Secondly, whereas the deceased ran across the road after Chan's car had sounded its horn, the pedestrian in *Ng Weng Cheong* was walking across the crossing, and there was no horning.

33 In apportioning liability in an accident case, a court has to take into account all the relevant facts and the precedent apportionments. Having done that, I find the defendant to be 30% responsible for the collision and the deceased to be 70% responsible.

Findings on damages

34 After having decided on the question of liability, the damages have to be addressed. As there was no agreement on any of the heads of damages. I shall consider each head separately.

Dependency claims

35 Dependency claims were made by the deceased's father Kim Anseok and mother Jeon Sangsun, who are the first and second plaintiffs, and for her younger brother. When the deceased died at the age of 15 in 2005, the ages of her dependants were:

Father – 42 years

Mother – 39 years

Brother – 8 years

36 The two elements to such claims, the multipliers and the multiplicands have to be dealt with.

Multipliers

37 The plaintiffs submitted that the multipliers should be [\[note: 17\]](#):

Father – 12 years

Mother – 13 years

Brother – 5 years

from the time the deceased would have completed her High School education in 2010 and have started playing badminton professionally.

38 Counsel for the defendant submitted that a uniform multiplier of 10 years be applied for all the dependents. The defendants' proposal is incorrect in principle because it failed to consider the differences in the relationship between the dependents and the deceased, and the circumstances of each dependent – see *Ling Kee Ling and another v Leow Leng Siong and others* [1994] 3 SLR(R) 395 at [8]. A person like the deceased may support a brother until he is able to support himself, but she may support her parents during their lifetimes or for so long as she is able to do that.

39 The deceased's father was working as a construction worker after his small business in kitchen sinks failed. Her mother had worked as a kitchen assistant, but could not continue after her daughter's death, and her brother was schooling.

40 On the plaintiffs' proposed multipliers, the deceased would have supported her parents and brother from the time she starts working in 2010 up to the time they reached the following ages:

Father – 59 years

Mother – 57 years

Brother – 18 years

in the year 2023, when the deceased would have been 33 years old.

41 Although there was no evidence adduced on the life expectancy of South Koreans, there is no reason to suppose that the parents are not expected to reach these ages, or that the brother would

not need financial support before he reached 18 years old.

42 The question is whether the deceased can reasonably be expected to support them up to the time she was 33 years old. I find this probable, as she would have the means to support them.

43 The plaintiff had also apportioned the deceased's projected family contributions between the dependants as:

Father – 40%

Mother – 40%

Brother – 20%

44 The apportionment was unexceptional. However, the plaintiffs went on to set out the dependents' entitlements as: [\[note: 18\]](#)

- (a) 40% of the Deceased's multiplicand for the first 5 years of the [father's] dependency and 50% of the Deceased's multiplicand for the next 7 years of the [father's] dependency;
- (b) 40% of the Deceased's multiplicand for the first 5 years of the [mother's] dependency and 50% of the Deceased's multiplicand for the next 8 years of the [mother's] dependency; and
- (c) 20% of the Deceased's multiplicand for the 5 years of [the brother's] dependency.

The effect of that formulation is that when the brother's 20% dependency entitlement ends, that is to be transferred to each of his parents equally. (But when the father's dependency entitlement ends, it is not transferred to the mother.) The plaintiffs did not explain why they think that the brother's entitlement is to be transferred but not the father's entitlement.

45 This raised the question whether dependency entitlements are transferrable. The plaintiffs did not cite any authority to show that they are. I do not see any basis to suppose that when the deceased stopped supporting her brother, she would pay his entitlement to her parents. Similarly, when one parent dies, there is no reason to pay the deceased parent's share to the surviving parent. The dependency claims should be computed on each dependent's entitlement, and the entitlements are not transferrable.

The multiplicand

46 As the deceased died before she had started working, the fixing of the multiplicand will involve a significant element of projection.

47 The plaintiffs put forth the multiplicand on the premise that the deceased would continue to play badminton and make that her profession if she had not died. The defendant, on the other hand, put forward its computation based on published reports on the earning prospects of fresh college graduates, although there was no suggestion that the deceased would have enrolled into college.

48 The plaintiffs' approach is more appropriate. While there may be less data on the earnings of professional badminton players than on the earning powers of college students, it is preferable to rely on the relevant information that is available, than to refer to a greater pool of information which has no relation to the deceased's circumstances.

49 The plaintiffs called several witnesses who knew the deceased and were able to give evidence on her projected earnings. Kim Bum Sik ("Kim") was the head badminton coach in the deceased's school, Sung Ji Girls' Middle School. He had coached the deceased personally. He confirmed that the deceased had been a national junior team player in 2004 and 2005, and he was convinced that she would have been a national player at the time of the trial in 2009 if she were alive, and may qualify for the 2012 Olympic Games.

50 On the professional outlook for a young badminton player like the deceased, Kim deposed that it was likely that the deceased upon leaving school, would have joined a company as a badminton player. Kim stated that two contemporaries of the deceased had received signing-on payments of 70m won ("KRW") and 100m KRW, and received starting annual salaries in the range of 40m KRW (if the player was not a national player) and at least 50m KRW for a national player. On top of that, national players would receive 30,000 KRW a day for training at the National Athletes Village. He added that female national players may remain as national players till they are about 32 years old when they get married if they are winning medals consistently, but on the average female national players marry between 28 and 29, and some will remain on the national team even after marriage.

51 Hwang Hye Young, the badminton coach at the deceased's school, also believed that the deceased would have been in the national team if she were alive and may be shortlisted for the 2012 Olympic Games.

52 Lee Deuk Choon, the head coach and team manager for the Korean national junior team, believed that the deceased would have been a national player at the time of the trial in 2009 if she had not died. He confirmed that national players received a daily allowance of 30,000 KRW during training, and that a national player will receive a starting annual salary of at least 50m KRW. He did not say when a female player would stop being a national player, but he stated that most female players continue playing professionally until they are about 36, when most of them would become professional badminton coaches. A coach for junior players in a school would earn between 50m KRW and 60m KRW a year.

53 On the evidence, the deceased would have turned professional in 2010. She would have been a national player at that stage. She would have received a sign-on payment of 100m KRW and a starting salary of 50m KRW when she was 20 years old. On the evidence that the average national player would marry at the age of 28 or 29, and only some of them will continue with the national team after marriage, I allow eight years as the period in which the deceased would have played and earned as a national player, *ie*, up to the age of 28 in 2018, and that she would play professionally until she is 36 years old, *ie*, for another period of eight years.

54 The evidence on the earnings of 40m KRW and 50m KRW did not make clear if those figures were gross figures or nett figures. A wage earner is unlikely to be able to spend the full amount he earns. There may be income tax to pay and enforced savings (eg, Central Provident Fund payments in Singapore) to make. The taxes and enforced savings will reduce his disposable income. In the absence of the relevant information, I take the disposable income of a professional player to be 40m KRW and that of a national player to be 50m KRW, and the signing-on payment to be 70m KRW. The figures at the lower ends of the ranges are also used because the dependency awards are payable in a lump sum, instead of being spread out over years. There was also evidence that a player may receive additional payments for winning competitions but I find such earnings conjectural and too uncertain to be taken into consideration.

55 On this basis, the deceased would have earned a one-time payment of 70m KRW in 2010, and annual salaries of 50m KRW, a daily training allowance of 30,000 KRW a day for year-round training

with one month off, [\[note: 19\]](#) which would amount to 9.9m KRW a year, from 2010 to 2018, and annual salaries of 40m KRW from 2019 to 2023.

56 How much of her income would the deceased have given over as family support? The first plaintiff claimed that traditionally in Korea, daughters gave 70% to 80% of their salary to their parents, but nothing was produced to support that. In the closing submissions, the plaintiffs claimed "at least 50%". [\[note: 20\]](#) The deceased's friends were questioned on the issue. Bang said she would like to give her parents 40% of her income [\[note: 21\]](#) whereas Yoo said that she would spend 400,000 KRW a month and she would save the rest of the money, which is sent to her mother. [\[note: 22\]](#) It was unclear whether she meant that the money was to be treated as her savings or her family contributions. Against the background of the evidence, I find that the deceased would have contributed 40% of her projected earnings to her family.

The dependency claims

57 There are three claims from the deceased's father, mother and brother. Each one has to be assessed on its own.

The brother's claim

58 His entitlement was for 5 years, from 2010 to 2015. During that period the deceased's earnings were the signing-on payment of 70m KRW, 5 years' salary at 50m KRW per annum amounting to 250m KRW, 5 years' training allowance of 9.9m KRW per annum, or 49.5m KRW. That makes a total of 369.5m KRW. The deceased would have contributed 40% of that, or 147.8m KRW to her dependents, and the brother is entitled to 20% of that, ie 29.56m KRW.

The father's claim

59 This is for the period 2010 to 2022. The deceased's projected earnings between 2010 and 2015 is 369.5m KRW. For the three years from 2016 to 2018 she would have received three years' further salaries as a national player as well as three years' training allowances. That would be 150m KRW in salaries and 29.7m KRW in training allowances, making a total of 179.7m KRW. After 2018, she would have ceased to be a national player, and she would have earned an annual salary of 40m KRW with no training allowances. For the four years from 2019 to 2022, she would have earned another 160m KRW. Her total income for 2010 to 2022 would be 709.2m KRW. The deceased would have contributed 40% of that, or 283.68m KRW to her dependents. The father's entitlement of 40% of that is 113.472m KRW.

The mother's claim

60 Her claim is for the period 2010 to 2023. The deceased's projected earnings would have increased by 40m KRW over the previous year to 749.2m KRW. The deceased would have contributed 40% of that, or 299.68m KRW to her dependents. The mother's share at 40% is 119.872m KRW.

61 The total dependency entitlement of the three persons is 262.904m KRW. To put that in Singapore currency at today's exchange rate of 1 KRW = \$0.00123282, it is \$324,113.30, and the amount recoverable on the 30% apportionment is \$97,233.99.

Pain and suffering

62 The plaintiffs made a claim for pain and suffering in respect of the injuries which the deceased suffered, including a contused brain, skull fractures, pelvic and sacral fractures, fracture of the left pneumothorax and fractures of the upper limb. They acknowledged that she only survived the accident for slightly more than five hours, and submitted that an award of \$2,500 should be made.

63 While the \$2,500 quantification was low for such serious injuries, there was no evidence that the deceased suffered any pain as a result of the injuries. Bang, who was with her at the scene of accident testified that the deceased was unconscious and unresponsive. The deceased arrived in hospital in a state of coma and she did not respond to resuscitation efforts. In the circumstances, the plaintiffs had not proved that the deceased experienced any pain and suffering, and the claim must fail – see *Low Yok Ying & Another v Sim Kok Lee & Others* [1990] 2 SLR(R) 713.

Special damages

64 The plaintiffs' claim for special damages in the Statement of Claim was made up of six items [\[note: 23\]](#) but in the closing submissions, there were seven items claimed [\[note: 24\]](#) which were grouped under four headings, namely, bereavement, expenses paid by the Korean Badminton Association ("KBA"), costs relating to the Coroner's Inquiry and expenses incurred in August 2007 and August 2008. [\[note: 25\]](#)

65 I shall deal with these claims in the same way. The first claim for bereavement was made under s 21 of the Civil Law Act (Cap 43, 1999 Rev Ed) which set damages for bereavement at \$10,000 (increased to \$15,000 for deaths occurring from 1 March 2009). Pursuant to the apportionment of liability, the plaintiffs are awarded 30% of that, or \$3,000.

66 The second claim was for expenses incurred for the plaintiffs' trip to Singapore immediately following the accident, the deceased's funeral expenses and the expenses for another trip by the first plaintiff and a representative of the KBA to Singapore to consult lawyers. These expenses were paid by the KBA. The plaintiffs' solicitors submitted that the KBA paid the expenses on the understanding that the plaintiffs will reimburse the KBA after they recover them from the defendant. [\[note: 26\]](#) However, that was not the evidence. All that was stated by the first plaintiff was that he and his wife intended to reimburse the KBA these expenses. There was no mention of undertaking or understanding, only their intention. The KBA had given financial assistance unconditionally to the plaintiffs in their time of need. These were not expenses which the plaintiffs have to repay to the KBA, and are not recoverable as special damages.

67 The third claim was for the plaintiffs' solicitors' bill for costs and disbursements for attending the Coroner's Inquiry on the deceased's death in March 2007 in the sum of \$5,350. The defendant did not dispute that such costs are recoverable, but disagreed on the amount to be paid. Instead of stating and producing evidence on the normal range of costs charged for attending Coroner's Inquiries, counsel for the defendant referred to the costs payable for applications for summary judgments set out in O 59 of the Rules of Court (Cap 322, R5, 2006 Rev Ed) (which are between \$2,000 and \$15,000) and for claims for up to \$20,000 in the Magistrates' Courts, where the costs are set between \$3,000 to \$6,000. The defendant could also have asked that the costs be taxed, but instead of doing that, her counsel argued that the costs should be \$1,000. Those scaled costs are not relevant to the issue in question. The amount billed did not appear to be manifestly unreasonable, and in the absence of evidence that they were excessive, I allow the amount claimed.

68 The fourth head of claim was for two trips the first plaintiff made to Singapore, in August 2007 and in August 2008. The first was to have a meeting with the Korean Embassy to seek assistance to

find out from the Attorney-General's Chambers why the defendant had not been charged, and the second trip was to consult his lawyers and finalise the filing of the action. While the first plaintiff produced documents on the expenses incurred, he did not say that he had incurred the expenses and counsel also did not state in the closing submissions that these expenses were borne by him. In fact the receipt for the air tickets and hotel charges for the second trip was issued to the KBA. It is axiomatic that the plaintiffs cannot recover as special damages expenses incurred but not paid by them which they do not have to repay. These expenses may have been borne by the KBA as further financial support to the plaintiffs following the accident. I find that the plaintiffs have not proved these claims.

Interest

69 The plaintiffs have claimed interest on the damages. Each head of damages have to be considered separately on this issue.

70 For the dependency claims, the deceased would not have made any contributions to her parents and brother until 2010, when she would have left school and turned professional. For this reason, when they receive the damages they have not been kept out of their money. Therefore no interest is payable on these awards.

71 The bereavement damages of \$3,000 accrued on the death of the deceased, so interest will be paid on this amount from 13 December 2005. Similarly, counsel's legal costs for the attendance at the Coroner's Inquiry are payable on the date of the bill, *ie* 9 September 2009, and interest shall be payable from that date. The interest will be paid at the rate of 5.33% per annum.

72 I will hear parties on the costs of the present proceedings.

[\[note: 1\]](#) See Sketch Plan PB2 and photographs PB21–29

[\[note: 2\]](#) PB59–61

[\[note: 3\]](#) PB60 para 4

[\[note: 4\]](#) Notes of Evidence 9 September 2009 p 51 lines 6–17

[\[note: 5\]](#) PB66–68

[\[note: 6\]](#) Notes of Evidence 10 September 2009 p 41 lines 24–30

[\[note: 7\]](#) PB19I

[\[note: 8\]](#) PB135

[\[note: 9\]](#) PB136

[\[note: 10\]](#) Notes of Evidence 10 September 2009 p 25 lines 11–26. The word "start" in line 13 should be "stop", as correctly recorded in line 24

[\[note: 11\]](#) PB3-7

[\[note: 12\]](#) see DCL pt 1 para 12

[\[note: 13\]](#) Notes of Evidence 10 September 2009 p 24 line 32 to p 25 line 2

[\[note: 14\]](#) Notes of Evidence 10 September 2009 p 25 lines 23-26

[\[note: 15\]](#) Notes of Evidence 10 September 2009 p 28 lines 14-15 and 20-22

[\[note: 16\]](#) Plaintiffs' Opening Statement p 10

[\[note: 17\]](#) Plaintiffs' Closing submissions para 199

[\[note: 18\]](#) Plaintiffs' Closing submissions para 201

[\[note: 19\]](#) Evidence of Yoo, Notes of Evidence 7 September 2009 p 53 line 27 to p 54 line 3

[\[note: 20\]](#) Plaintiffs' Closing Submissions para 169

[\[note: 21\]](#) Notes of Evidence 7 September 2009 p 36 lines 10-11

[\[note: 22\]](#) Notes of Evidence 7 September 2009 p 56 lines 5-12

[\[note: 23\]](#) Statement of Claim Annexure B

[\[note: 24\]](#) Plaintiffs' Closing Submissions Appendix 2

[\[note: 25\]](#) Plaintiffs' Closing Submissions paras 209 to 219

[\[note: 26\]](#) Plaintiffs' Closing Submissions para 210

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