IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1991] SGHC 171

Suit No 11143/85

Between

Teoh Mee Sun also known as
Teoh Mei Song (widow)
Lau Lim Kiat also known as
Lau Kim Kiat, the
administratrix and co-
administrator of the estate of
Low Lim Sua, deceased

… *Plaintiff*

And

Asia-Pacific Shipyard Private
Limited
Boo Kuain Long
Koh Nay Yung
Siong Yew Hoi (the 2nd, 3rd
and 4th Defendants trading
under the firm name of
Express Engineering Works)

… *Defendant*

GROUNDS OF DECISION

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Teoh Mee Sun also known as Teoh Mei Song (widow) and Another v Asia-Pacific Shipyard Private Limited and Others

[1991] SGHC 171

Suit No 11143/85
Warren Khoo L H J
27 November 1991

1 **Judgment:**

2 1 Low Lim Sua, a welder, was electrocuted while welding a pipe on board a vessel under construction at a shipyard in Jurong on 28th April, 1983. His widow and his brother, as administrators of his estate, brought this suit for damages for the benefit of his estate, and for the benefit of the widow and children and his father as dependants.

3 2 The action was brought against the 1st Defendant as owners and occupiers of the shipyard and against the 2nd, 3rd and 4th Defendants, who were partners of Express Engineering Works, as the employers. Liability was agreed before the hearing on 23rd August, on the basis that the deceased was 5% to blame, the 1st Defendant 80% and the 2nd, 3rd and 4th Defendants jointly 15%, to blame.

4 3 The following damages for the estate were also agreed, i.e. loss of expectation of life at $7,000, funeral expenses at $3,500, and cost of letters of administration at $1,000.

5 4 Hearings on the dependency claims and the remaining estate claims took place on 23rd August and 3rd September. I reserved judgment.

6 The task and the methodology

7 5 The deceased was 38 years old when he died in the accident some 8 years ago. He left his wife, two sons and a daughter, and his aged father. His wife was 32 years old. The two boys were 11 and 7 and the daughter was 9. The father was 79.

8 6 The task of the court is to try to arrive at a fair assessment of the benefit which each dependant could reasonably expect to have received from the deceased if he had not died.

9 7 Basically, as Lord Pearson said in his speech in the leading case of Taylor v. O'Connor 1971 A.C. 115, there are three stages in the process, namely:

10 (i) to estimate the lost earnings, i.e. the sums which the deceased probably would have earned but for the fatal accident; (ii) to estimate the lost benefit, i.e. the pecuniary benefit which the dependants would have derived from the lost earnings, and to express the lost benefit as an annual sum over the period of the lost earnings; and (iii)to choose the appropriate multiplier which, when applied to the lost benefit expressed as an annual sum, gives the amount of the damages in a lump sum.

11 The basic data

12 8 To enable the above process to be carried out, it is necessary to know, as basic data, how much the deceased was earning at the time of death, and to

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have an informed view of how much he would, if alive, have been earning at the date of the trial.

13 9 It is also necessary to know the extent of the dependency of each dependant at the time of death, and to have an informed view of the extent of dependency of each dependant at the date of trial.

14 Deceased's earning capacity

15 10 The deceased was a welder. A person has to pass tests before he is allowed to work as a welder. The welder's is thus a skilled vocation. The deceased had 10 years of experience as a welder. There is no serious dispute that he was eaning about $950 to $1,000 a month at the time of his death.

16 11 There was, and there still is, a shortage of welders in Singapore. Welders have to be imported from overseas. As a result of the shortage, and no doubt as a result also of the general rise in wage levels in Singapore over the years, a welder of the deceased's experience would earn much more today than 8 years ago, when the deceased died.

17 12 There is some dispute as to how much the deceased could have expected to earn today. Three witnesses gave evidence. Mr Lau Kim Kiat, a younger brother of the deceased (the co- administrator) is also a welder. He in fact worked on the same vessel in the shipyard doing the same kind of work as the deceased when the deceased met with the accident. He also had a similar length of experience as the deceased. He still works as a welder on shipyards.

18 13 Mr Lau Kim Kiat says he earns about $2,500 a month now as a welder on shipyards. He is paid by the day, at least $100 a day including over-time. At

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the time of the accident, he was earning about $1,300 a month, about $300 to $350 more than the deceased. This was because he moved around from one employer to another, whenever and wherever his services were required. The deceased, on the other hand, was on the regular payroll of Express Engineering, on a fixed annual increment.

19 14 Mr Chia See Yeou, another witness, was the Express Engineering's foreman in charge of the welders at the shipyard when the accident happened. He is an open, straightforward sort of a chap, and gave evidence in an honest, straightforward manner.

20 15 Mr Chia is not tied to any employer. He says he earns $80 - $90 a day as a foreman, excluding overtime. He says that a person of the deceased's experience working on shipyards should now earn about $70 a day. With overtime he should get $90 - $100 a day or $2,500 - $3,000 a month, or more. There is a lot of work for welders, and overtime is commonplace. The hourly rate for overtime is 1+ times the normal rate.

21 16 The 2nd Defendant, Mr Koh Nay Yung, gave evidence for the defence. He is one of the directors of Express Engineering. He does not know how much welders earn nowadays working on shipyards. It is a different kind of work from his firm's normal line of work. He knows that welders earn more on shipyards because it is a more hazardous sort of work. He says that a welder today in his firm's line of work with the deceased's skill and experience would be paid $54 a day or $70 including overtime. He confirms that there is a shortage of welders, and there is plenty of overtime work.

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22 17 He concludes by saying that a person with the deceased's skill and experience working in his firm's line of work could easily earn $2,000 to $2,500 a month.

23 18 It seems fair to conclude from the evidence of these three gentlemen that if alive to-day the deceased could expect to earn a minimum of $2,000 if he were to remain as an employee of Express Engineering doing non-shipyard work. With a bit more effort, particularly if he was prepared to move around and to work on shipyards, $2,500 to $3,000 a month would be well within reach. The deceased was qualified to work on shipyards as elsewhere. There is no reason to think that as his children grew and more money was needed, he would not have made the effort, and, like his brother, worked on shipyards. I would therefore use $2,500, the lower and more conservative figure, as the working figure for the deceased's present-day earnings if he had not died.

24 19 I also proceed on the basis that the deceased earned between $950 and $1,000 a month at the time of the accident.

25 The Multiplier 20 It will be convenient before I deal with the dependency claims in respect of each dependant if I were to try to fix an appropriate multiplier.

26 21 Counsel for the Defendants suggested a multiplier of 12 years. Counsel for the Plaintiffs urged me to accept 15 years. If I understood him correctly, he contended that a distinction should be drawn in this respect between estate claims and dependency claims. He said that courts would give a shorter span for estate claims, whereas in dependency claims courts would bear

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in mind the obligation to provide maintenance until the dependents became independent.

27 22 I am unable to accept the submission of Plaintiffs' counsel. The purpose of the multiplier is to estimate the outside limit of time during which the deceased would have been able to provide benefits to a dependant, the probable length of the deceased's remunerative working life. I cannot see how this could depend on whether one is considering an estate claim or a dependency claim.

28 23 I take into account the fact that the deceased was 38 years old, and that he was in good health. I also take into account the more hazardous nature of work on shipyards, since the $2,500 per month earnings which I use as the basis of the multiplicand contemplates the deceased working on shipyards at least part of the time.

29 24 Taking all these factors into consideration, and allowing for the vagaries and contingencies of life, I think a multiplier of 12 years, as suggested by defence counsel, is appropriate. 25 The 12-year multiplier, as I said, is the outside limit. In the case of the aged father, who is now already 87, it will be less.

30 Merger of estate and dependency claims 26 I must dispose of another general matter. This is the merger of the estate and dependency claims. If a particular dependant's share in the estate claim is more than his dependency claim, then the award as a beneficiary of the estate will stand. Conversely, if the dependency claim award is greater than the apportionment as a beneficiary, the dependency claim award will stand.

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31 27 This consideration affects only the wife and children. It does not affect the aged father, since he is not a beneficiary of the estate under the intestate succession rules.

32 28 However, I was informed by counsel for both parties that in this case the dependency award in the case of each person entitled to the estate award is invariably greater than his or her share of the estate award. I need not therefore carry out any comparison. I can simply proceed to consider and award dependency claims. However, the special damages for the estate (funeral and administration expenses) at the agreed figures set out above remain. The loss of expectation of life claim, however, merges in the dependency claims and need not be separately dealt with. Central Provident Fund Contributions 29 Another general matter concerns the loss of contributions to the Central Provident Fund which both the deceased and his employers could be expected to have continued to make had the deceased not died. In Singapore Bus Service (1978) Ltd v. Lim Soon Yong 1985 2 M.L.J. 267, the Privy Council affirmed the principle that a dependency claim should include any loss from this source which the dependants may have sustained.

33 30 For this purpose, I think it is right to assume that the deceased would most likely not have made any nomination under the Act, or if he were to make it he would have made it in favour of the wife and children, although it would be too speculative to say in what proportions. The probability is that he would not make one in favour of the father, since the father would in the normal course die long before him.

34 31 Plaintiffs' counsel's calculation for the pre-trial CPF loss basically consists of arriving at a sum by applying the percentage rates of contribution

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over the period to the average of estimated earnings over the period. He then adds a sum for the post-trial loss arrived at in a similar fashion, and based on a post-trial period of 8 years. He totals up the two sums and then divides the total among the dependants according to the rules of intestate succession, i.e. one-half to the widow, and one-half to the children equally.

35 32 I would adopt counsel's method, but I differ from him in the matter of the length of the post-trial period and the average earnings for the pre-trial period.

36 33 Having regard to the 12-year multiplier which I have found to be appropriate, the post-trial period should be 3 years 8 months, not 8 years.

37 34 On the other hand, I am of the view that a monthly figure of $2,500 as the deceased's present-day earnings, instead of $2,000, is well justified by the evidence, as I indicated earlier. So for the average earnings during the pre-trial period, I would use the average of $2,500 and $950, or $1,725.

38 35 For the post-trial loss, I would use $2,500 per month as the basis for assessment.

39 36 Then, as stated by Yong, J (as he then was) in Lee Wee Hiong v Victor Koh Ah Sai (1990)1 M.L.J. 340, what is arrived at is the accelerated receipt of a lump sum, and it has to be discounted.

40 37 On the basis of these factors, and doing the best I can, I would estimate the CPF loss as follows: (1) Pre-trial CPF Loss I take the average rate of contribution over the period as 42%. I apply the average monthly earnings of

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$1,725. On the basis of 81/3 years, or 100 months, between date of accident and date of trial, the pre-trial loss before discount is 100 x 42% x 1725 = $72,450.

41 (2) Post-trial CPF Loss I would use 40% as the rate of contribution. This is the current rate or near it. I use the monthly figure of $2500, over a post-trial period of 44 months. The post-trial CPF loss before discount is then: 44 x 40% x $2,500 = $44,000 The total pre-trial and post-trial CPF loss before discount is $72,450 + $44,000 = $116,450. Having regard to the fact that this would be an accelerated payment, and allowing for uncertainties, I would estimate the total CPF loss as $85,000. On the basis of intestate sucession rules, I would estimate the CPF loss sustained by the dependants as follows: Wife (+) : $42,500 Each of the 3 children (1/6) : $14,150 Interest on pre-trial dependency loss 38 The Plaintiffs claim in respect of each dependant interest at 6% per annum on the pre-trial dependency loss. They also claim in respect of the wife and children only, not the father, interest at 6% p.a. on the pre-trial loss of CPF contributions.

42 39 With regard to interest on the pre-trial dependency loss other than the pre-trial loss of CPF contributions, I would follow the guidelines laid down by the House of Lords in Cookson vs Knowles, 1978 2 W.L.R. 978 and accepted by our Court of Appeal in Hitachi Zosen Rolin Dockyard Pte Ltd vs Lee Pui Keng 1988 2 MLJ 473. I would award 3% per annum from the date of the accident (28 April 1983) to the date of judgment. The 3% is half the conventional 6% which our courts appear to have adopted as the full rate for damages which accrue on the date of the accident. It is necessary to halve the rate because the losses that make up the pre- trial dependency loss were incurred over a period from the date of the accident to date of judgment and not all at the date of accident.

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43 Interest on lost CPF contributions 40 For the loss of CPF contributions, I have some difficulty in seeing how an award of interest could be justified. The CPF losses, although based on the estimated lost earnings, do not actually accrue during the multiplier period. The benefits would have been available only if and when the deceased reached the age of 55 or died before then. None of the dependants sustained a present loss from the loss of the CPF contributions in the way each of them sustained loss from the loss of deceased's earnings. They depended on the deceased's earnings for their support; not on the deceased's CPF contributions, which would have been held in the deceased's account with the Fund, and would not have been available to them if at all until he reached age 55. It seems to me that it is a contingent or future loss, not an actual, present loss.

44 41 I, therefore, decline to award interest on the pre-trial or post-trial loss of CPF contributions.

45 Individual claims - arithmetics and reasonableness 42 I now proceed to deal with the individual claims. I shall be engaging in some arithmetics. I use these as an aid to arriving at fair and reasonable estimates of loss. I am conscious of the fact that damages in such cases are not susceptible of precise mathematical calculations. The results obtained from the calculations must always be tested, in a broad and global way, against the yardstick of fairness and reasonableness. I think, and I hope, that the figures I have arrived at are indeed fair and reasonable.

46 Widow's claim 43 As stated earlier, the widow was 32 at the time of the accident. She is now 40.

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47 44 I accept her evidence that her husband gave her $500 a month for her own maintenance and that of the children. He paid for household expenses like conservancy charges, PUB bills, telephone, property tax, newspapers and so on.

48 45 Out of the $500, she had to take care of the 3 children's daily needs. She estimates that the children would take up $170, leaving her $330 per month. This is the measure of her loss as of the date of the accident.

49 46 She went through some very difficult times after her husband's death. From being a full-time housewife taking care of the young children, she was thrown on to the job market as a waitress at a coffee shop, earning $350 p.m. This was not enough, especially when Kwang Yong, the oldest child, started secondary school. She then had to take on another job in the evening at another coffee shop to supplement her income. She worked so hard she fell sick. The children had to fend for themselves at home when she was out at work.

50 47 Kwang Yong decided to stop schooling when he was in Secondary III. He wanted to help so that the younger ones could continue with their studies.

51 48 This lady still holds down these two jobs. The day job pays $650 a month. It was $350 at the beginning. The night job pays $350 a month.

52 49 She estimates that her present monthly expenses amount to about $820. Although this estimate was not seriously or successfully challenged, I have to treat it with some caution as a measure of her loss as a result of the deceased's death, having regard to the limit of the earning capacity of the deceased and his obligation to support the children as well as the wife.

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53 50 Taking these factors into account, and on a progressive scale from the date of the accident, I would estimate her pre-trial dependency loss as follows:- For 2 years after date of accident say at $330 p.m. x 24= $ 7,920

54 For next 2 years say at $450 x 24 = 10,800

55 For next 2 years say at $600 x 24 = 14,400

56 For remaining 21/3 yrs to date of trial say at $750 x 28 = 21,000

57 Total $54,120

58 51 For the post-trial loss, I would base my award on $750 p.m. for the first 44 months. This gives a figure of $33,000. The position for the widow in summary therefore is as follows: (a) Pre-trial dependency loss : 54,120 (b) Post-trial ... ...: 33,000 (c) CPF element : 42,500

59 129,620

60 52 In addition, I award simple interest at 3% per annum on the sum of $54,120 from the date of the accident (28 April, 1983) to date of judgment.

61 Childrens' claims 53 The elder son, Kwang Yong, was 9 years old at the time of the father's accident. He is now 17. He was in Primary school when the father died. He went to Secondary School when he was 12. He continued until Secondary III when he decided to stop to work to help the mother when he saw that she was single-handedly carrying such a heavy burden of taking care of the family.

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62 54 However, he only managed at first to get a job as an apprentice on a construction job. He did not have regular work, or regular income. He paid his own meals and transport. But he did not earn enough and sometimes had to ask his mother for money. He recently started to work as a trainee waiter.

63 55 This boy has suffered the greatest misfortune of the three children as a result of the father's untimely death. I am sure that if the father had not died in the accident, this boy, as the eldest of the family, would have gone on to finish secondary school, if not beyond. The evidence shows that the children's education was a matter of course in this family.

64 56 For the purpose of assessing his loss, the fact that he did not continue through secondary school is, in my view, irrelevant. What is relevant is the benefit which he would have derived from the continuation of the father's earnings and which he lost by the father's untimely death.

65 57 The second child, Sok Leng, is a daughter. She was 8 when the father died. She was already in Primary school. She is now 16, and is preparing for her 'O' level examinations. If she does well, the mother intends to send her for post-secondary education or training.

66 58 The youngest child, Kwang Liang, is a son. He was 5 and in kindergarten when the father died. He is now 13 and in secondary school. He does well. The mother expects to send him for tertiary education eventually.

67 59 The mother estimates that at the time of the accident she spent about $70 a month on the eldest child and $50 a month on the second child and $20 to $30 a month on the youngest. She also estimates that the expenses required for a child when in primary school would be about $50 a month at the beginning

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and about $100 a month in the later years, The expenses when in secondary school would be about $260 a month. For the tertiary stage, her estimate is $400 a month.

68 60 One has to bear in mind that these are estimates, as families do not normally keep accounts of how much it costs to maintain a child. I accept these figures without hesitation as reasonable estimates, despite defence counsel's efforts at diluting them.

69 61 On this basis, I would assess the pecuniary loss of the children as follows:

70 (i) Elder Son, Low Kwang Yong

71 (a) Pre-trial dependency loss: First 2 years after death - in primary school at $70 per month : $70 x 12 x 2 ... $1,680 Next 4 years in secondary school at $260 per month : $260 x 12 x 4 ... 12,480 Next 21/3 years in post-secondary at $400 p.m.- $400 x 12 x 21/3 ... 11,200 Sub-total - $25,360

72 (b) CPF element ... 14,150

73 (c) Post-trial dependency loss 12/3 year in post-secondary at $400 per month $400 x 20 ... 8,000

74 Total (a) + (b) + (c) - $47,510

75 (d) Interest at 3% per annum from date of accident (28.4.83) to date of judgment on the sum of $25,360 - $ (To be

76 computed)

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77 (ii) Daughter Low Sok Leng

78 (a) Pre-trial dependency loss First 2 years after death - in primary school at $50 per month ... 1,200 Next 2 years in primary school at $100 per month ... 2,400 Next 41/3 years in secondary school at $260 per month ... 13,520 Sub-total - $17,120

79 (b) CPF element - 14,150

80 (c) Post-trial dependency loss: First year in secondary school at $260 p.m. ... 3,120 Next 22/3 years in tertiary at $400 p.m. ... 12,800 Sub-total - 15,920

81 Total (a) + (b) +(c)- $47,190

82 (d) Interest at 3% per annum from date of accident (28.4.83) to date of judgment on the sum of $17,120 $(To be computed)

83 (iii) Younger son Low Kwang Liang

84 (a) Pre-trial dependency loss 1st 2 years after death - in Kindergarten at $30 p.m. ... 720 Next 2 years in Primary School at $50 p.m. .. 1,200 Next 3 years in Primary School at $100 p.m. ... 3,600 Next 11/3 year in Secondary School at $260 p.m. ... 4,160 Sub-total 9,680

85 (b) CPF element - 14,150

86 (c) Post-trial dependency loss First 22/3 years in Secondary School at $260 p.m. ... 8,320 Next 1 year in tertiary at $400 p.m. ... 4,800 Sub-total - 13,120

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87 Total (a) + (b) + (c) - 36,950

88 (d) Interest at 3% per annum from date of accident (28.4.83) to date of judgment on the sum of $9,680... $(to be computed) The Father 62 I must not forget the father. He is already 87. There is some difficulty with the evidence as to how much the deceased contributed to the father's support. The original statement of claim puts this at $50 a month. But both the wife and the brother in evidence said the deceased gave the father $100 a month. I think only the wife would have anything close to personal knowledge, although she was not questioned on it. I would accept the $50 a month figure, but assume that as his earnings increased the deceased would have given the old man more.

89 63 Bearing in mind the vagaries of life, and his advanced age, I would award the father a lump sum of $10,000/-, of which $8,000 is my estimate of the pre-trial loss. I award interest at 3% per annum from the date of accident (28.4.83) to date of judgment on the $8,000. Awards 64 I award damages and interest for the widow and the three children, and the father, accordingly.I also award to the estate the damages agreed (except for loss of expectation of life) as set out at the beginning of this judgment, together with interest at 3% per annum from date of death (28.4.83) to date of judgment. The damages and interest are to be borne by the respective defendants according to the agreement on liability set out at the beginning of this judgment. The Plaintiffs shall have the whole of their taxed party-and-party costs, to be borne by the respective defendants in the ratio of 80 to 15.

90 65 Judgment will be entered accordingly.

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Warren Khoo L H J

Leong Wai Yin for the plaintiffs
Lee Yuk Lan for the 1st defendant
B R Rai for the 2nd, 3rd and 4th defendants

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