

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 144

S2614/1987

Between

John Thorkildsen

... Plaintiff

And

Bocotra Construction Pte Ltd

... Defendant

GROUND OF DECISION

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John Thorkildsen v Bocotra Construction Pte Ltd

[1993] SGHC 144

S2614/1987
T S Sinnathuray J
29 June 1993

1 **Judgment:**

2 Coram: T S Sinnathuray, J

3 J U D G M E N T

4 This is an action for negligence arising from an industrial accident.

5 Briefly, there was an accident on 11 of January 1986 in the MRT tunnel at Orchard Road. Between 1.00am and 2.00am that day, the plaintiff who was employed as a tunnel boss by the defendants was working in the tunnel. The accident happened when the rib expander situated behind the tunnel boring machine fell and hit the plaintiff's back as he was bending down to pick a spanner. From the accident, the plaintiff suffered injuries and permanent disabilities, the details of which are in the statement of claim under the heading "Particulars of Personal Injuries"; simply put, the plaintiff had suffered a back injury, he had to undergo surgery for a disc to be removed at the level of the 4th and 5th vertebrae. As a result, the plaintiff has been unable to continue with the

kind of work he had been engaged in prior to the accident and has suffered a reduction in his earning capacity.

6 The plaintiff's case is that -

7 (1) the defendants were vicariously liable for the action of a fellow worker who was in control of the tunnel boring machine;

8 (2) the defendants, as employers, were in breach of their common law and contractual duties to the plaintiff;

9 (3) alternatively, the defendants have also breached their statutory duties, provided for under the Factories Act.

10 At the close of the plaintiff's case, the one and only witness for the defendants was altogether unable to give any evidence on the matters raised by the defendants in their Defence. Besides denials, the defendants had pleaded that the accident was caused or contributed to by the negligence of the plaintiff. This witness, Mr Paul Bernard Broome, the present managing director of the defendants, who joined the defendants about the middle of 1991, knew nothing about the accident that had occurred in 1986. What he knew about the case was the evidence he had heard seated in court during the trial. He had also no control over the case for the defendants as that was being handled by the defendants' insurance company.

11 After Mr Broome's evidence, I heard counsel for the defendants, Mr Martin Lee, on liability. He submitted that as the plaintiff was the tunnel boss at the site he was responsible for the men working under his direct charge. He said there was an onus on the plaintiff to co-ordinate the work in a safe manner.

Admittedly this was so but what was in issue was the submission that the plaintiff had failed in those duties. When questioned, Mr Lee readily agreed that there was no direct evidence on this point. Indeed, there was no evidence that the plaintiff had in any way failed in his duties as the tunnel boss at the site.

12 Accordingly, on liability I found for the plaintiff. I said at that time that the plaintiff had proved his claim beyond even reasonable doubt, leave aside on a balance of probability and that there was no evidence for the defendants on their Defence.

13 On the issue of quantum of damages the following is the edited oral grounds of decision:

14 " First, on the issue on the claim for pre-trial loss, I have already indicated that once particulars are asked for and they have been furnished, they would become part of the pleadings. Therefore, pre-trial loss though not in the statement of claim can be claimed in the particulars as was done in this case. I, therefore, rule against Mr Lee on this matter.

15 On the crux of the plaintiff's case for damages, I accept his evidence that because of his injury he cannot now do the same sort of work which he was doing when he was working in Singapore. Mr Ho for the plaintiff has sought to persuade me to accept the plaintiff's evidence that he had been offered tunnelling work on the Channel Tunnel project. This is in issue. There is only the plaintiff's oral evidence with no other corroborative evidence. As the burden is on the plaintiff to prove this issue, I cannot on the facts find in his favour that a firm offer was in fact ever made.

16 The plaintiff's claim is not what he would have earned if he had worked on the Channel Tunnel project. When the plaintiff was in Singapore, he was earning something like \$12,000 a month. And if not for the accident when he finished his contract in Singapore he would have gone to work, not necessarily in England, but somewhere else as there is a demand for him all over the world. On this we have Mr Stewart's evidence that he was looking for miners with experience like the plaintiff for jobs in Denmark. Because of the plaintiff's injury from the accident he cannot get that sort of work any more.

17 Here I am also most persuaded by Mr Stewart's evidence on salaries for miners. He has given me his calculations as to the plaintiff's net worth when he worked in Singapore. Besides his salary, the plaintiff received various perks and these perks were taxable. They must be taken into account in estimating the net salary of the plaintiff.

18 In this context the plaintiff has said that he could earn between 850 and 900 a week as a leading miner if not for the accident. Mr Stewart said that he could earn as much as 1,000. There is also the evidence of Mr Hulmes that he could have earned about 1,000. I accept the evidence of these witnesses. I would, therefore put the pre-trial loss at 1,000 per week.

19 I do not agree with the submission made for the defendants that there should be a 25% allowance for contingencies. I have never had an occasion to consider such a percentage or any percentage as contingencies in actions for negligence for pre-trial loss. So, I do not allow any deductions to be made for contingencies. There must, however, be a deduction for tax from that 1,000. As both counsel have agreed that the deduction should be 25%, I leave it to counsel to work out the pre-trial loss.

20 There is an issue between the parties for how many weeks the plaintiff worked or could work in a year. Mr Lee says it should be 42 weeks a year. Mr Ho, however, has brought to my notice the judgment of Hodgson J in the case of *Hills and Others v Nuttall Ltd* reported in *Kemp & Kemp Quantum of Damages* Vol 2 pp 52206 to 52221 where much better evidence was given than that tendered at the hearing in this case. It was, like the present case, a case of an accident arising from tunnelling work. In that case, the learned Judge worked on 48 weeks a year. I will follow that decision. I rule that the calculation be based on 48 weeks a year, and not 42 weeks a year.

21 Next, I turn to post-trial loss. I can see no reason why it should be different from pre-trial loss as far as earnings are concerned. At the material time and now and for the future, there is no evidence that the plaintiff would earn any less than 1,000 per week, except for the injury he suffered. He is now earning 24,900 per annum.

22 The only issue on the post-trial loss is: what is the relevant multiplier. Mr Ho has submitted that it should be 5 and Mr Lee now submits that it should be 3. There is the plaintiff's evidence that he could work in his job till the age of 55. On that basis the multiplier that has been used in these courts for a person of the age of 49 is 3. So, that should be used in this case.

23 There remains only the head of claim for house repairs. I agree with Mr Lee that there is no itemised expenditure as to what repairs the plaintiff would have to get someone to do, now that he cannot carry out repairs to his house. The plaintiff said: "I did all my house repairs myself. At present I have to pay other people to do them". The submission is that a reasonable sum in this case would be 500 a year. This is something that has been plucked out from the air,

so to speak. I think a reasonable sum in this case would be 300. So, it will be 300 x the multiplier of 3. Can counsel give me the final figure?

24 There will be judgment for the plaintiff for S\$497,034.37 together with
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25 (a) interest at 6% per annum on damages for pain and suffering wef date
of issue of writ to date of judgment;

26 (b) interest at 3% per annum on pre-trial loss of earnings from 13.6.86
to date of judgment; and costs with the usual consequential orders. "

T S Sinnathuray J

Ho Woon Choon for the plaintiff
Martin Lee assisted by Celine Teo for the defendants
