IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1994] SGCA 70

CA 105/1992

Between

Bocotra Construction Pte Ltd

… *Appellant*

And

Thorkildsen

… *Respondent*

GROUNDS OF DECISION

Civil Procedure — Pleadings — Amendment; Damages — Measure of damages — Personal injuries cases

Version No 1: 29 Oct 2026 (23:45 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Bocotra Construction Pte Ltd v Thorkildsen

[1994] SGCA 70

CA 105/1992
Karthigesu JA; L P Thean JA; Yong Pung How CJ
13 May 1994

1 Cur Adv Vult

2 The respondent, formerly in the employ of the appellants, was injured on 11 January 1986 in an accident caused by the negligence of a fellow employee while working in the Orchard MRT tunnel site. The trial judge found the appellants vicariously liable for the negligence of their employee and awarded the respondent, inter alia, the following damages:

(a) a sum of $315,862.12 for pre-trial loss of earnings;
(b) a sum of $160,394.85 for post-trial loss of earnings; and
(c) a sum of $2,777.40 for the costs of future house repair.

3 The appellants have appealed against the above awards of damages; there is, however, no appeal against the trial judge`s decision on liability.

4 **The facts**

5 The material facts that gave rise to this appeal were these. In June 1985, the respondent was employed by the appellants as a tunnel superintendent for

the MRT project in Singapore for a term of one year. The respondent was paid a monthly salary of $5,500 plus employer`s contribution to his account with the Central Provident Fund and was provided with the following perquisites: housing accommodation, telephone and other utilities and a company car. With effect from 1 March 1986, the respondent`s salary was increased to $6,200 per month. As a tunnel superintendent or a `shift boss`, the respondent was responsible for supervising tunnelling works in the MRT project and also was engaged in manual work together with his team of workers when necessary.

6 On 11 January 1986, the respondent was overseeing the tunnelling work at the Orchard MRT tunnel site on a night shift. At about 1am, he noticed a misalignment in the mechanism of the tunnel boring machine (`TBM`) which was in use. To fix the misalignment, the respondent instructed the operator of the TBM, also an employee of the appellants, to lower the expander of the TBM to enable the respondent to gain access to a tool box. When the expander was sufficiently lowered, the operator was told not to move it while the respondent bent down to pick up a spanner from the tool box. As the respondent bent down to pick up the spanner, he was struck on his back on the left side by the expander in the TBM because the operator moved the expander. The respondent did not immediately suffer any excruciating pain. In fact, he was able to work for some time behind the TBM before his back got progressively worse; it was about half an hour later when the pain in his back became severe and he could not continue working. The respondent then went home, and later the pain became very severe and he was taken to Gleneagles Hospital in an ambulance.

7 At the hospital, the respondent was referred to Dr Chan Heng Thye, a consultant orthopaedic surgeon. Dr Chan found that the respondent had a disc prolapse at the level L4-L5 (ie fourth and fifth lumbar vertebrae on the left side) pressing on the left fifth nerve root, which resulted in pain. This was confirmed

Version No 1: 29 Oct 2026 (23:45 hrs)

by a CT scan. Traction was applied to the respondent but was unsuccessful. He was then operated on: a laminectomy at L4 and L5 levels with bilateral alar fusion of L3 to L4 was done on 29 January 1986, and his L5 was sacralized. At the operation, a very stenotic canal was found and a posterolateral disc prolapse was detected at the left L4-L5 level. Bone graft was taken from his left posterior iliac crest. Following the surgery, the respondent had an uneventful recovery. The corset was removed after two months and an X-Ray of the lumbar spine showed solid fusion of L3 to L4. Apparently, he was well for sometime until a few days prior to 28 April 1986 when he experienced pain in the left ischial region. When he was examined on that day, Dr Chan noted that he had full movement of his hips and knees and neurologically no abnormality was detected in his lower limbs. Dr Chan was told that he had gone back to his normal duty since 19 March 1986. Dr Chan therefore recommended six months of light duties for the respondent before assuming his normal duty.

8 Dr Chan also noticed degenerative changes at L5-S1 and that could be attributed to the previous spinal surgery the respondent had in 1975. The doctor`s opinion was that `the degenerative changes at that level functionally may or may not cause any symptom`. In cross-examination, Dr Chan was referred to the very narrow canal and he said that was congenital. However, he opined that it was perfectly all right for the respondent to work as a miner with the congenital canal spinal stenosis and his earlier spinal surgery.

9 Dr Chan examined the respondent again on 13 February 1992. This time he noted that the respondent had almost full spinal movements except for loss of lumbar lordosis on forward flexion. His examination revealed that there was chronic disc prolapse disease at L5-S1. The spine was stable with flexion and extension. However, Dr Chan`s conclusion was this:

Version No 1: 29 Oct 2026 (23:45 hrs)

> *With a history of two back surgeries, he is unlikely to resume his previous job with pre-existing spondylotic changes in the lumbar spine. His spine is likely to become progressively worse with passage of time. The changes are increasing stiffness and pain in his spine.*

10 After his discharge from hospital, the respondent did progressively more administrative work with the appellants. After his contract expired on 12 June 1986, he returned to the United Kingdom.

11 The respondent`s evidence at the trial was this. Prior to working in Singapore, the respondent had chalked up considerable experience in various parts of the world, first as a mine labourer and then working his way up to a leading miner and a `shift boss`. He started in the tunnelling industry in 1965 and spent the first three years working as a mine labourer. He then progressed to a miner and, two years later, to a leading miner, that is, the man in charge of achieving production. He then progressed through different companies as a leading miner, and, for the last ten to 11 years, had done projects in different parts of the world. In Singapore, he was appointed a tunnel superintendent by the appellants.

12 After his return to United Kingdom, he worked purely in a supervisory capacity. The respondent`s earnings for the period 6 April 1987 to 24 June 1991 were as follows:

(a) 6 April 1987 to 5 April 1988 - Â£ 29,307

(b) 6 April 1988 to 5 April 1989 - Â£ 32,026

(c) 6 April 1991 to 24 June 1991 - Â£ 6,938

13 In June 1991, he joined Johnson Construction Co and worked in a supervisory capacity as a `shift boss` at a salary of Â£24,000 pa, which was

Version No 1: 29 Oct 2026 (23:45 hrs)

increased to Â£24,900 in January 1992. According to the respondent, the average salary for leading miners during the years 1986 to 1992 was between Â£850 to Â£900 a week. The normal retirement age for a leading miner is 55. The respondent was 43 years of age at the time of the accident and 49 years old at the time of the trial.

14 According to the respondent, had it not been for his back injury, he would have gone on to work on the Channel Tunnel project, where leading miners were said to be paid Â£1,200 per week. The respondent claimed that he was offered such a job by a friend of his, one Frank Cardiff, in August or September 1986 but he could not accept the offer because of the condition of his back. He was asked to work on the Channel Tunnel project again a year later but failed the requisite medical examination. His back injury rendered him unable to do the work of a leading miner. He was not able to bend forward fully and was unable to lift heavy weights as he previously could. Even the active sports life he used to enjoy before the accident was affected.

15 In support of his claim, the respondent called various witnesses. One Terrence William Hulme (`Hulme`), a project manager in charge of civil and structural engineering in the MRT, gave evidence on salaries of miners for the years 1985 to 1992. His evidence was based on salaries being given for the Channel Tunnel project. He testified that the salaries for leading miners were in excess of Â£1,000 per week and that the salaries of such workers in Taipei were higher than in the United Kingdom. The salaries for supervisors would be less than those for leading miners engaged in production work. Hulme also testified that, during the period 1986 onwards, there were a lot of tunnelling projects going on in the world such as the Channel Tunnel project, drainage and sewerage works in the United Kingdom, the Taipei Metro and drainage works in the United States. According to him, the respondent would not have had any

Version No 1: 29 Oct 2026 (23:45 hrs)

difficulty in securing suitable employment in the industry if he was physically fit.

16 Next, there was the evidence of one David Fielding Stewart (`Stewart`), a chartered engineer based in Bangkok, who had been in the tunnelling industry since he graduated in 1971. He testified that the rates of pay in the tunnelling industry for the kind of work that the respondent was doing would vary depending on the project and the conditions in the tunnel. An average rate would be Â£1,000 per week. According to him, there would be no difficulty for an experienced person like the respondent to get a suitable job if he was medically fit since there was a great shortage of skilled persons in the industry. On the question of whether there would be a difference in the salary between a leading miner and a `shift boss`, he said that once a person becomes a leading miner, the level of remuneration does not change significantly. The difference in salary would depend on the project involved. In a project where the leading miner does purely production work and the `shift boss` does purely supervisory work, the leading miner would be paid more than the supervisor. Aside from this situation, the difference in the salary would depend on the precise nature of the work done and the project involved.

17 Stewart also explained the functions of a leading miner and a `shift boss`. A leading miner is the head of a team of mine labourers and his work consists of both directing his team and taking part, where necessary, in the physical or manual work involved. The manual work involved includes excavation works; the building of the tunnel lining; and heaving, lifting and off-loading of cement, pipes and other supplies brought into the tunnel. The exact duty of a leading miner depends on the type of project involved. In a project involving work to be done by hand, the work of the leading miner can be extremely arduous. However, with increasing mechanization, his duties will

Version No 1: 29 Oct 2026 (23:45 hrs)

include operating and directing the operation of the mechanical equipment. There is a progression from a leading miner to a `shift boss`. An experienced leading miner may be suitable for a `shift boss` position. The work of a `shift boss` was somewhat more supervisory in nature. However, in places like Hong Kong and Singapore, where much of the tunnelling work force is relatively inexperienced, the nature of work of a `shift boss` is a combination of the work of a leading miner and a `shift boss`.

18 Another witness who gave evidence for the respondent on the same issue was one Thomas Anthony Shield (`Shield`). He is a civil engineer and had worked on the MRT project in Singapore in 1986 with a firm called Nishimatsu Construction Co. He said that, at that time, his firm employed two `pit-bosses` or `shift bosses` and they were paid in the region of $13,000 per month. He also testified that he had been advised by friends in the tunnelling industry that when the Channel Tunnel project started, `shift bosses` were earning about Â£1,000 per week. Shield himself had not worked in the Channel Tunnel project.

19 The respondent`s wife, Anne Priscilla Thorkildsen, also gave evidence. She testified that the respondent was not as physically active as before since his accident and was also not able to do general cleaning and repairs works around their house in the United Kingdom which he used to do prior to the accident. This necessitated additional expenses in engaging contractors to do these works. She estimated the costs at Â£1,500 a year.

20 **The decision below**

21 The trial judge accepted the respondent`s evidence that his injury had rendered him unable to do the work that he was doing in Singapore prior to the accident. He also accepted the evidence of Stewart that there was a demand for

Version No 1: 29 Oct 2026 (23:45 hrs)

miners with the experience of the respondent. Because of the injury, the respondent could not get that sort of job any more.

22 In computing the respondent`s pre-trial loss of earnings, the trial judge held that the respondent`s total earnings at the time of his accident, including the value of his perquisites, was about $12,000 a month. Based on the evidence of Hulme and Stewart, the trial judge held that the respondent could have earned about Â£1,000 per week if not for his injury, and he assessed the respondent`s pre-trial loss of earnings at that rate, allowing for a 25% deduction for tax which the parties had agreed. Following the case of ***Hills & Ors v Nuttal Ltd*** , the trial judge accepted that a miner could work 48 weeks a year. The total amount of the pre-trial loss of earnings was thus computed on that basis and it came to $315,862.12.

23 With respect to the future loss of earnings, the trial judge held that the amount to be calculated would be on the basis of Â£1,000 per week or Â£48,000 pa, less the respondent`s annual earnings of Â£24,900 at the time of the trial. He then applied a multiplier of three and arrived at total amount $160,394.85.

24 As regards the claim for house repairs, the trial judge held that the figure of Â£500 per year claimed by the respondent under this head was `something that [had] been plucked out from the air`, and instead awarded a sum of Â£300 per year which he felt was a more reasonable sum. On that basis, and applying a multiplier of three, he arrived at a sum of $2,777.40 representing the costs of house repair.

25 **Our decision**

26 Before we consider the award of damages under the three heads, we should dispose of first a procedural point raised before us. In the statement of claim filed by the respondent at the commencement of the action in October 1987, no claim for pre-trial loss of earnings was made. In January 1992, the respondent`s solicitors, on their own volition, filed and delivered `voluntary` further and better particulars of the statement of claim in which were set out particulars of the pre-trial loss of earnings. No application was made by the respondent to amend the statement of claim to include this claim; nor was any application made by the appellants to disallow these `voluntary` further and better particulars. At the trial, no issue was taken at the outset as to the filing of the further and better particulars. Only at the closing speech did counsel for the appellants submit that no pre-trial loss of earnings had been pleaded. The trial judge at some stage of the trial - presumably at the close of the case - ruled that the pre-trial loss of earnings had been pleaded in the particulars.

27 Before us, it was argued on behalf of the appellants that the trial judge erred in treating the `voluntary` further and better particulars as pleadings of special damages for the pre-trial loss of earnings. It was submitted that the trial judge should have disallowed such particulars and ruled that, as no special damages had been pleaded, the respondent was not entitled to any damages for pre-trial loss of earnings. We are not persuaded that the trial judge was in error in allowing these particulars to stand as pleadings of special damages. In our opinion, these particulars were truly pleadings of special damages for pre-trial loss of earnings, and the respondent`s solicitors should have sought leave of the court prior to filing and delivery thereof, to amend the statement of claim, instead of filing and delivering them in the guise of voluntary further and better particulars. Nevertheless, in making the ruling at the trial that the particulars were part of a statement of claim, the trial judge was in effect allowing the

Version No 1: 29 Oct 2026 (23:45 hrs)

respondent to amend the statement of claim by treating the particulars as pleadings of special damages. At any rate, these particulars were filed and delivered long before the trial and the appellants had ample notice thereof and had not been prejudiced in any way in the preparation of their case. Although we do not approve of this manner of slipping an amendment to the pleadings in the guise of further and better particulars - in fact, we deprecate this practice - such amendment had been allowed by the trial judge and it would be unduly technical for us at this stage to disallow the amendment and rule that special damages for pre-trial loss of earnings have not been pleaded. We therefore reject the submission of counsel for the appellants on this procedural point.

28 We now turn to the substantive issues before us: first, the pre-trial loss of earnings assessed in the sum of $315,862.12. Two questions arise: (i) whether there was any pre-trial loss of earnings on the part of the respondent, and (ii) if there was, how should the loss be computed. On the first question, there is no doubt that, for the period 11 January 1986 to 12 June 1986 (the latter being the date of expiry of his contract with the appellants) the respondent suffered no loss of earnings. The real issue is whether, by reason of his injury, the respondent had suffered any loss of earnings during the subsequent period from 13 June 1986 to the date of commencement of the trial, which was a period of approximately six years.

29 The respondent`s case was that the injury he sustained had rendered him unable to do the work of a leading miner which, in various projects, pays more than the work of a `shift boss`. The medical evidence adduced at the trial confirmed the respondent`s inability to do the work of a leading miner which usually entails considerable manual labour. It is plain that because of his back injury he cannot carry or move anything that is heavy and cannot perform any work involving any exertion of some great physical strength. The sort of work

Version No 1: 29 Oct 2026 (23:45 hrs)

he was engaged in doing prior to the accident was that of a leading miner and a `shift boss` in tunnelling work, ie a combination of both types of work. That work he could no longer do.

30 His evidence was supported to a certain extent by the evidence of Stewart and Hulme. Stewart testified that a leading miner with the experience of the respondent could easily get a job. Hulme testified that the respondent was a very sound and conscientious man and would not have any difficulty in obtaining work in the tunnelling industry, and, as a leading miner, the respondent would have to direct the work of his team and also work with them.

31 The trial judge has accepted the evidence of the respondent that, because of his injury, he cannot do the same sort of work which he was doing prior to the accident. The trial judge has also accepted the evidence of Stewart and Hulme that the respondent had no difficulty in getting a job in the tunnelling industry if he was physically fit. In our opinion, on the evidence before him, the trial judge was entitled to accept their evidence.

32 It is significant to note that, at the time of expiry of his contract with the appellants, the respondent was earning $6,200 per month plus $600 per month as the employer`s contribution to his Central Provident Fund account. He also had the following perquisites, namely, provision of housing accommodation, telephone and other utilities and a company car. The respondent was therefore earning much more than $6,800 per month. In terms of monetary value, the respondent was in fact earning in total about $12,000 per month; that was what the trial judge held. That would amount to $144,000 a year, which, at the rate of exchange of $3.086 to Â£1 (which counsel agreed was the prevailing rate of exchange at the date of the judgment), would be Â£48,000 a year. After his contract with the appellants, there was a significant drop in his earnings: for the

Version No 1: 29 Oct 2026 (23:45 hrs)

period 1987-1989, he was earning Â£29,307 a year, for the period 1988-1989, his earnings increased to Â£32,026 a year, and then, for the ten-week period in 1991, he was earning Â£693.80 per week or Â£33,302.40 a year.

33 In our judgment, the respondent has established that he had suffered pre-trial loss of earnings. We, therefore, are unable to accept the argument advanced on behalf of the appellants that there was insufficient evidence adduced to prove such pre-trial loss.

34 The next question is how is the pre-trial loss to be computed. The trial judge, in accepting the evidence of Hulme and Stewart, held that the respondent, but for his injury, could have earned Â£1,000 per week. That, in all probability, was too high; the respondent himself said he could earn Â£850 to Â£900 per week. We propose to take the mean of these two figures, ie Â£875 per week. The trial judge then held that, as a miner, the respondent could work 48 weeks a year and, before us, there was no dispute or challenge on this point. On the basis that he worked 48 weeks a year, the total amount he could have earned during the six years before the trial would be Â£252,000. From this amount should be deducted the total amount of the salaries he earned during this period and income tax at the rate of 25%. However, the evidence on his actual earnings was unfortunately lacking. The documentary evidence adduced showed that the respondent earned the following amounts since his return to the United Kingdom:

(a) 6 April 1987 to 5 April 1988 - Â£ 29,307
(b) 6 April 1988 to 5 April 1989 - Â£ 32,026
(c) 6 April 1991 to 24 June 1991 - Â£ 6,938

Version No 1: 29 Oct 2026 (23:45 hrs)

35 There was no evidence of what his earnings were during the period 13 June 1986 to 5 April 1987. Further, there was also no evidence of his earnings for the period 6 April 1989 to 5 April 1991. The respondent said in evidence that he joined Johnson Construction Co on 10 June 1991 and his salary was Â£24,000 pa, and, since January 1992, was increased to Â£24,900 pa. There was no documentary evidence in support, and he did not explain why his salary during this period was so low compared to the earlier period 1987-1989. The trial judge made no finding on the veracity of his viva voce evidence on the actual earnings. Looking purely at the record, we have grave doubts whether what he said was true and correct. In the circumstances, we accept only his documentary evidence and, on that basis, his average salary was approximately Â£31,545.13 pa. We would take this figure as the amount he actually earned for the purpose of computing his pre-trial loss of earnings, and the computation is as follows:

> Estimated earnings for the period 13 June 1986 - 23 July 1993: Â£ 252,000.00
>
> Deduct actual earnings: Â£ 189,270.80
>
> Â£ 62,729.20
>
> Less 25% income tax: Â£ 15,682.30
>
> Balance: Â£ 47,046.90

36 On this computation, the respondent`s pre-trial loss of earnings would be Â£47,046.90 which, at the rate of exchange prevailing at the date of judgment, would amount to $145,186.70. This is the figure we would adopt.

37 As regards the post-trial loss, it should be computed also on the same basis, applying an appropriate multiplier. The trial judge has used a multiplier of three and we agree with him. The computation is as follows:

Version No 1: 29 Oct 2026 (23:45 hrs)

Estimated earnings at Â£875 x 48 x 3: Â£ 126,000.00

Deduct actual earnings: Â£ 94,635.40

Â£ 31,364.60

Deduct 25% as tax: Â£ 7,841.15

Â£ 23,523.45

38 Accordingly, we would award a sum of Â£23,523.45 which, at the prevailing rate of exchange, would amount to $72,593.37.

39 We now turn to the last award of $2,777.40 for house repairs. The evidence adduced on this claim was most unsatisfactory. There was no evidence to show the type of house repairs the respondent used to do or could do, the regularity of such house repairs and the necessity for such work to be carried out. Nor was any evidence led to show that contractors had in fact been hired to carry out the house repairs over the six years prior to the trial and that charges had been paid to the contractors in respect of such work. There was only the bare assertion of the respondent and his wife without any other evidence in support that these additional charges were necessitated by his injury. We would, therefore, disallow the award of $2,777.40 for the costs of future house repair.

40 In the result, we allow the appeal and vary the judgment below as follows:

(a) that the sum of $315,862.12 as pre-trial loss of earnings appearing in items 2 and 5 of the judgment be substituted by the sum of $145,186.70;

(b) that the sum of $160,394.85 as post-trial loss of earnings appearing in item 3 of the judgment be substituted by the sum of $72,593.37; and

Version No 1: 29 Oct 2026 (23:45 hrs)

(c) that the award of $2,777.40 described as future expenses in item 4 of the judgment be set aside.

41 The appellants should have the costs of the appeal, and we so order. There will be the usual consequential order for repayment to the appellants or their solicitors of the deposit in court as security for costs.

42 Appeal allowed.

Karthigesu JA
L P Thean JA
Yong Pung How CJ

Martin Lee (Goh Poh & Pnrs) for the appellants
Loh Yong Kah (Godwin & Co) for the respondent

Version No 1: 29 Oct 2026 (23:45 hrs)