Goh Eng Hong v Management Corporation of Textile Centre And Another [2000] SGHC 97

Case Number : Suit 307/1998

Decision Date : 27 May 2000

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Leonard Lim Kian Wee (Thomas Tham & Co) for the plaintiff; Dinesh Singh Dhillon (Khattar Wong & Partners) for the second defendants

Parties : Goh Eng Hong — Management Corporation of Textile Centre And Another

Damages – Measure of damages – Personal injuries cases – Loss of future earnings – Appropriate multiplier – Nature of employment – Physical condition of plaintiff

Damages – Measure of damages – Personal injuries cases – Loss of future earnings – Whether there is evidence to support higher multiplicand for post-trial earnings compared to pre-trial earnings

Damages – Measure of damages – Personal injuries cases – Quantum – Fracture of tibia and fibula – Fracture of medial malleolus of ankle – Post-traumatic stress disorder

JUDGMENT:

Grounds of Decision

1 This was an appeal by the Second Defendants against the damages assessed and awarded by an Assistant Registrar pursuant to an interlocutory judgment.

2 The events commenced with an accident on 3 May 1997 when the Plaintiff was using a lift at the Textile Centre at Jalan Sultan. The lift fell to the bottom of the lift shaft, and she was injured.

3 The Plaintiff was 51 years old at the time of the accident and was working as a host mamasan at the Volvo (KTV) Karaoke Lounge. She did not resume work after the accident because of the injuries to her left lower limb, the post-traumatic stress disorder that developed, and problems she had with her eyes.

4 The Assistant Registrar assessed damages for the Respondent in the aggregate sum of $415,341.79 on 6 January 2000. The Second Defendants appealed against five heads of award made by the Assistant Registrar for-

(i) fracture of the left tibia and fibula - $30,000

(ii) fracture of the medial malleolus of left ankle - $20,000

(iii) post-traumatic stress disorder - $40,000

(iv) pre-trial loss of earnings - $72,600, and

(v) post-trial loss of income - $162,000

5 I reduced awards (i), (ii), (iii) and (v) and upheld award (iv). As the Plaintiff has appealed against the reductions, I shall deal with them.

Injury to the left tibia, fibula and malleolus

6 Dr Sarbjit Singh, a consultant orthopaedic surgeon attached to the Tan Tock Seng Hospital attended to the Plaintiff from the start and had continued to be in charge of her case. He stated in his report of 27 November 1997 that

> She sustained an open compound fracture of the left tibia and fibula and a closed fracture medial malleolus of the left ankle.
>
> Wound debridement, external fixator application of the left tibia and fibula and internal fixation of the left ankle fracture was done on the same day.
>
> She was discharged from hospital on 14.5.97.
>
> Patient developed delayed union of the fractured left tibia requiring posterolateral bone grafting on 1.8.97.
>
> When last seen on 7.11.97, the wounds had healed well. The fracture site was mobile with a varus deformity. She is still on follow-up.

and in a later report dated 9 November 1998, he added that

> Patient developed delayed union of the fractured left tibia requiring posterolateral bone grafting on 1 August 97. Serial x-rays confirmed to show poor fracture union.
>
> Acute shortening and Ilizarov distraction osteotomy of the left tibia was done on 10 March 98.
>
> Serial x-rays showed good progression of the distraction site. Limited bone grafting was done on 10 June 98.
>
> The fracture united on follow-up and the frame was removed on 9 September 98.
>
> She is presently walking partial weight bearing. Patient has residual stiffness of the left ankle.

7 In his last report dated 6 August 1999 he noted

> The non-union of the left tibia healed on follow-up. She has mild stiffness of the left ankle and lack 15 ankle dorsiflexion.
>
> Presently, she walks with a shoe raise. Her left knee range of motion is full and painless.

8 The Plaintiff was also seen by orthopaedic consultants in private practice. In particular, Dr Liang Te Shan submitted his report based upon an examination on 2 February 1999 that

> 1. She is markedly hyposthetic from the mid shin level downwards. Her sole sensation to pressure and pain is reduced making skin pressure sores likely.
>
> 2. She has chronic limb pain. This is from a combination of nerve injuries, altered weight bearing biomechanics from bone malunions, ankle fusion, subtalar fibrodesis and flexion contractures causing clawing of the toes. (bone fusion, soft tissue joint scarring, muscle loss and scarring resulting in contractures.)
>
> She is basically unable to use her left leg to walk without pain and cannot be employed in her prior

occupation in a lounge.

3. There is in addition unsightly scars and atrophic/poor quality soft tissue in the leg and foot.

Assessment:

Mdm Goh has suffered very severe injuries to her left leg. She also has other problems requiring consultation with other physicians and psychiatrists. Her injuries have resulted in many months of painful treatment, multiple surgeries and loss of gainful employment.

Although surgery was successful in preserving her left leg, the leg is functionally useless. In addition, she has chronic persistant disabling pain that often results in dependancy on sedatives, psychiatric modifying drugs and in some, narcotic analgesics.

In my opinion, she is better off with her leg amputated below the knee as her function (and cosmesis with an artificial limb) would be far superior.

As it is, she has little to show in beneficial terms for the pain and suffering she has endured. She may well decide eventually to have a below knee amputation to remove the painful useless limb and then may be rehabilitated back into gainful employment.

9 At the hearing before the Assistant Registrar Dr Singh expanded on parts of his reports. He explained that an Ilizarov distraction is a technique to get a fracture site to heal. This involves cutting the bone and placing the leg in a frame, after which the bone is lengthened by gradual adjustments of the frame over a period of 6 months.

10 Dr Singh also explained that the loss of 15 ankle dorsiflexion meant that the Plaintiff's foot could not be horizontal, but would point downwards at 15. This is a permanent disability which requires her to wear a shoe with a shoe raise to walk, and even with that, she will walk with a very mild limp. She is now able to walk short distances of about 30 metres and her walking is expected to improve, but there will be some pain and discomfort in the left forefoot and the ankle.

11 He also commented to the matters raised in Dr Liang's report. He disagreed that the Plaintiff's left leg is functionally useless, and considered amputation very unlikely.

12 When Dr Liang gave evidence he confirmed that he saw the Plaintiff only once before he put up his report. After the report, he saw the Plaintiff once again on 15 July 1999. On the second occasion, she was on a wheelchair. Although he said he tried to get her out of the wheelchair, she was unwilling to put weight on her leg because of her pain.

13 On the Plaintiff's own evidence, her condition has improved since Dr Liang saw her. She testified before the Assistant Registrar that she can walk about 10 steps in her orthopaedic shoes with the help of a walking stick before she felt pain. She mentioned that she experienced pain when she walked, but did not complain of the chronic persistent disabling pain Dr Liang referred to in his report. She did not say that her left leg is functionally useless, and did not express any intention to have it amputated. Indeed it was not clear whether the question of amputation has been brought up to her for consideration.

14 I preferred Dr Singh's evidence on the Plaintiff's condition to Dr Liang's. Dr Singh had a greater knowledge of the Plaintiff's condition than Dr Liang and the Plaintiff's own evidence was more consistent with his assessment. Dr Liang could have been of greater assistance if he had seen in the Plaintiff more often than he did, and closer to the hearing before the Assistant Registrar.

15 It appears from the evidence that the closed fracture of the medial malleolus healed without problems, as did the open compound fracture of the left fibula. The fractured tibia was more troublesome. A delayed union required bone grafting and Ilizarov distraction before it healed properly. The fracture of the medial malleolus of the left ankle has also healed with a 15 loss of dorsiflexion (upward flexing) in the left ankle. She has a slight limp and discomfort when she walks and she can only walk

short distances now although that would improve in time.

16 Counsel for both parties cited precedent awards for injuries similar to those suffered by the Plaintiff. Two relatively recent awards for fractures of the tibia and fibula with residual disabilities were of particular assistance.

17 In *Alagamalai s/o Veerasamy v Chan Lian Chan,* November 1994 MMD 1603, a 39-year-old police officer suffered comminuted fractures of the distal shafts of the left tibia and fibula. There was malunion at the fracture site with disuse atrophy of the bones. The left leg was shortened by 2 cm, and the lower half of the leg was deformed. There was limitation of movement in the left ankle - 5 loss of dorsiflexion as well as 15 loss of plantarflexion (downward flexing). He walked with an obvious limp and was unable to squat fully. He was awarded $20,000 in 1994.

18 In *Lai Sin Wah v Ng Soo Ngoh* January 1999 MCL 72 a 42-year-old carpenter had comminuted fractures of the tibia and fibula. His right leg was infected, malunited and shortened. He experienced chronic pain over the fractured right leg aggravated by heavy lifting and chronic discharge from the right shin. He had a limping gait and unsightly bowing of the right shin, and was unable to run, jog or squat. For these injuries he was awarded $25,000 in 1998.

19 An older 1991 award for similar fractures with residual disabilities was also referred to. This was in *Parakatt Sajeev s/o Kunniyer Damodara Kurup v Camperon Bernard – Singapore Piling Civil Contractors Pte Ltd* [1996] MD 991. A 28-year-old carpenter sustained an open wound over the medial aspect of the left leg and open fracture of the left tibia and fibula. External fixation and split skin graft were applied to the open wound. He developed an infected non-union which required treatment by debridement and Gentamycin beads, but even with the treatment infection may flare up again in the future. The residual disabilities were two large scars, a stiff ankle and difficulty in squatting and rapid ambulation. $36,000 was awarded for these injuries. This is higher than the 1994 and 1998 awards as the residual injuries were less severe, with no shortening or deformity. I accepted the two later awards to be more reflective of the current levels of awards for such injuries.

20 For the injuries to the malleolus and the ankle two awards made in 1992 were cited. $12,000 was awarded to a 21-year-old construction worker for a closed fracture of the medial malleolus with stiffness of the ankle in *Lee Wee Yee & Anor v Koh Geok Chee & Ors* December 1992 MMD 1574. In *Mohamad Aliman bin Kassim v Zulkifli bin Abdul Latib & Anor* 1998 MD 1750, $20,000 was awarded to a 52-year-old driver/storekeeper for an open fracture of the right medial malleolus with puncture wound over the fracture site, resulting in permanent slight restriction in dorsiflexion of the ankle as well as osteoarthritis in the ankle which may lead to pain that require treatment.

21 I used these awards as guides and benchmarks. I took into account the differences in the forms and severity of injuries eg the Plaintiff's limited ability to walk and the fact that her fractures have healed without shortening, the overlap between the three fractures to her lower limb, and the age of the Plaintiff. After considering these matters, I concluded that an award of $40,000 for the lower limb injuries was appropriate, and reduced the Assistant Registrar's awards for these injuries by $10,000.

Post-traumatic stress disorder

22 Three psychiatrists gave evidence on the post-traumatic stress disorder the Plaintiff developed. Dr Kwek Seow Khee of the Department of Psychological Medicine, Tan Tock Seng Hospital who had attended to the Plaintiff submitted a report dated 21 July 1999 that

> Mdm Goh developed Posttraumatic Stress Disorder following the fall of the lift she was in from 19th storey. Her symptoms were elaborated in the previous report submitted by my colleague dated 4 Feb 99.
>
> She has been regular with her follow-up as well as with her medication. Though fairly stable on the whole up to her last visit, her symptoms tended to get worse when she ran out of medication. Her

treatment also needed adjustment at times when she experienced new stressors, such as the repeated hospitalization for operations.

She continues to experience fear each time she enters a lift and have startle response at the hearing of noise produced by appliances e.g. air-conditioner. She needs to be accompanied for most part of her daily life and has to avoid items that would remind her of her traumatic experience such as a violent scene from a television show.

She has departed from her previous confident character and outgoing lifestyle and has tended now to be dependent on people and medication.

It is likely that she needs ongoing treatment for the foreseeable future.

23 Dr Tan Lay Ling of the Department of Geriatric Psychiatry, Woodbridge Hospital is the colleague Dr Kwek referred to. Dr Tan reported on 4 February 1999 that

Mdm Goh was referred to the Psychological Department by the Department of Orthopaedic Surgery of Tan Tock Seng Hospital on 9 July 97. Mdm Goh apparently sustained an open compound fracture of the left tibia and fibula and a closed fracture medial malleolus of the left ankle when the lift she was in fell 19 floors. She requested for a psychiatric referral as she was complaining of insomnia following the accident.

Mdm Goh reported having insomnia since her accident on 4 May 97. She would experience recurrent, intrusive images of the scene of the accident that disturbed her sleep. She also worries that her air-conditioner would fall on her while she sleeps and would startle easily at the slightest noise in the room. She developed intense fear and avoidance of taking lifts. She was also anxious and had difficulty concentrating on what she was doing.

Mdm Goh was diagnosed to be suffering from a posttraumatic stress disorder following the accident. She was started on medications with regular outpatient follow-up.

When she was last reviewed on 14 Jan 99, her sleep has improved with the medications, but she was still rather anxious. She was not noted to be depressed.

24 The Plaintiff saw Dr Peh Lai Huat on 2 February 1999 for a second opinion. He noted in his report of 19 August 99 that

Besides her physical injuries, she suffered from psychological symptoms after the incident in May 1997 in which she was inside a falling lift. These include anxiety and being easily frightened by noises. When she partially overcame her fears of using lifts, she grew alarmed when there were many people in the lift or when the lift showed signs of not closing properly. She manifested phobic avoidance in such situations by letting the lift go first or insisting on getting out of it immediately.

These signs and symptoms indicate that she developed Post-traumatic Stress Disorder as a result of the lift incident.

She was initially depressed and had insomnia. Her physical disabilities and restrictions of lifestyle were factors contributing to her despondency and anxieties about her future.

She received treatment for her condition at the Department of Psychological Medicine of Tan Tock Seng Hospital but continued to be symptomatic. When I reviewed her on 19 August 1999, her mental state was anxious and she reported being startled by loud noises such as that from the air-conditioner

at home. She would also have tremors of her body when she came across television scenes of disasters and would avoid them.

In my opinion, Mdm Goh Eng Hong has not fully recovered from her psychiatric disorder and needs continuation of treatment. The physical and mental trauma she suffered and the loss of functional abilities put her risk of depression, even in the future. The psychological part of her rehabilitation needs to be taken into consideration, in addition to the treatment of her post-traumatic stress disorder.

25 Only one precedent for an award for post-traumatic stress disorder was cited to me, namely *Pang Koi Fa v Lim Djoe Phing* [1993] 3 SLR 317. The plaintiff was a lady of 51 whose daughter died as a result of the negligence of the defendant, a neurosurgeon. No report of her condition was set out, but it can be gathered from the judgment that the plaintiff was distraught when her daughter died. She was on the verge of a breakdown and almost committed suicide. She complained of heart palpitations, breathlessness, insomnia, crying episodes, loss of interest in her work and social life. She was preoccupied with memories of her daughter, and preserved her daughter's room at home and her desk at her office. There was evidence that she underwent a personality change; she stopped cooking for the family, became over-protective of her son and quarrelled frequently with her husband. Her psychiatrist diagnosed her to be suffering from post-traumatic stress disorder and pathological grief, with the grief bringing on the disorder. She was awarded $30,000 general damages.

26 The signs and symptons described were as severe, if not more severe than the Plaintiff's. Furthermore counsel for the Second Defendants drew attention to the fact that while both ladies developed stress disorder, the plaintiff in *Pang Koi Fa* also experienced pathological grief. He argued that the Plaintiff should not get more than the $30,000 the latter received. I could not fault the reasoning, and reduced the award under this head from $40,000 to $30,000.

Loss of income

27 The Plaintiff had claimed that she was earning $6,635 a month at the time of the accident. She was appointed as a host mamasan in April 1997, after a 2-week trial period. She had a group of 8 to 10 "daughters" under her charge. She received from the lounge $110 for each bottle of Martell or Hennessy brandy opened by customers entertained by her or her "daughters". She claimed that she kept these payments to herself because all the customers were her customers, and the "daughters" were only entitled to the tips they received from the customers.

28 Prior to becoming a host mamasan, she was a freelance mamasan from 1988 to 1992. She explained that a freelance mamasan is not employed by or attached to a nightclub, and accompanies her customers to the nightclubs they patronise. A host mamasan entertains her customers at a fixed establishment, but she is also not under its employment. The Plaintiff claimed that her takings as a freelance mamasan were more than $3,000 a month, but she did not say whether that was before or after she shared the takings with her "daughters" (as freelance mamasans do).

29 The Plaintiff did not produce any documentary evidence to support her claim on her earnings. She called Gan Chin Kuan, a partner of the Volvo (KTV) Karaoke Lounge (since renamed Classic KTV Karaoke Lounge), as her witness.

30 His evidence was that the Plaintiff had a 2-week trial period as a host mamasan from about 10 March 1997 and became as a regular host mamasan from 3 April 1997. He confirmed that the Plaintiff received $110 for each bottle of liquor opened by customers entertained by the Plaintiff or her "daughters". He produced vouchers recording payment of $6,635 to her in April 1997.

31 However Mr Gan contradicted the Plaintiff's claim that all the customers entertained by her and her "daughters" were her customers. He was quite firm that about 30% of them were customers of the "daughters".

32 The Assistant Registrar did not accept the Plaintiff's claim that she earned $6,635 as a host mamasan. He held that

> The Plaintiff's evidence in court was that the full $6,635 commission was hers to keep and that her girls shared no part of it, their remuneration consisting solely of tips given by their customers. In my view, the possibility of the $6,635 commission having to be distributed between the Plaintiff and her girls cannot be overlooked. Apart from the fact that the Plaintiff's testimony was wholly self-serving and uncorroborated by any documentary evidence or the evidence of her girls (none of whom were called), the owner of the lounge's (Gan Chin Kuan) testimony was that for all of the Plaintiff and her girls' work, he would pay a lump sum commission to the Plaintiff and it was up to the Plaintiff to remunerate her girls, if at all. There is thus a real possibility that the Plaintiff merely retained part of her $6,635. This is particularly likely in light of the owner's testimony that he knew as a fact that the customers who patronised the Plaintiff and her girls belonged to both the Plaintiff and her girls. There was consequently no reason for the Plaintiff to pocket the full commission when some of the customers were actually not hers.

33 He set the Plaintiff's pre-trial income at $2,200 per month, applied a multiplier of 33 months and awarded $72,600 pre-trial loss of earnings. The Plaintiff did not appeal against this award, which I upheld against the Second Defendants' appeal.

34 The Plaintiff has appealed against my variation of the Assistant Registrar's award for post-trial loss of earnings of $2,700 a month for 5 years, which worked on to $162,000.

35 The Assistant Registrar set the higher multiplicand for the post-trial earnings with the explanation that

> The pre-trial multiplicand is significantly lower than the post-trial multiplicand because the economy was bad for the second half of 1997, 1998 and for part of 1999. The services that the Plaintiff provided was in the nature of a luxury item and therefore its performance was expected to fluctuate with the economy...As for the post-trial multiplicand I have decided that $2,700 per month was reasonable.

36 It was not the Plaintiff's case that her earnings would have increased in 1999. She made her claims for pre-trial and post-trial loss of earnings on the same multiplicand of $6,635 per month. No submission on economic fluctuations was made by counsel. There was no evidence before the Assistant Registrar the state of the karaoke lounge business over that period or how that would impact on a mamasan's earnings. With no input from persons in the trade like Mr Gan or the Plaintiff's former colleagues, these are not matters on which judicial notice can be taken.

37 Consequently, I did not uplift the multiplicand for the post-trial loss and kept it at $2,200.

38 That left the multiplier to be established. The Assistant Registrar set it at 5 years "considering that the Plaintiff is already 54 at the time of the trial and the fact that the job in question is dependant on age". There was little evidence to help the court. The Plaintiff said nothing about it in her affidavit of evidence-in-chief, and only mentioned during re-examination that she could have worked for "10 odd years" if she was not injured. Mr Gan told the Assistant Registrar that host mamasans can work for as long as they want if they have their customers and "daughters", and that he had seen them working to between 50 and 60, but he was non-committal about their working beyond 60.

39 It is not clear what retirement age the Assistant Registrar adopted. I found that 60 years would be fair on the evidence available. It is trite law that in assessing lost future income, the multiplier to be applied is not the full measure of the lost working years. This was made clear by the Privy Council in *Lai Wee Lian v Singapore Bus Service (1978) Ltd* [1984-1985] SLR 10, where Lord Fraser of Tullybelton held that in the selection of an appropriate multiplier discounts should be made for the inevitable contingencies and uncertainties of human life and working capacity, as well as the fact that an award for lost future earnings is received in an accelerated lump sum payment.

40 Looking at the Plaintiff's employment record, she was working as a host mamasan for about a month and was a freelance

mamasan before that. From the evidence it can be inferred that mamasans are prone to come and go, as are the lounges and nightclubs they operate in.

41 Apart from the lower limb injuries and stress disorder, the Plaintiff was having problems with her eyes which would affect her ability to work. She developed cataracts in both eyes after the accident.

The left eye underwent surgery in September 1997, and the right eye was operated on in August 1999. The Plaintiff deposed on 29 November 1999 that she was still having trouble with her vision, with numerical figures appearing sometimes reversed as in a mirror image, or upside down, or as entirely different figures, and vision of her left eye is blur. The Assistant Registrar had found that the eye condition was not connected to the accident and the Plaintiff had not appealed against this finding.

42 After taking these matters into consideration, I found that the multiplier of 5 years is not justified, and I set it at 3 years. Consequently I reduced the award for post-trial loss of income to $2,200 for 3 years, or $79,200, from the $162,000 awarded by the Assistant Registrar.

Kan Ting Chiu

Judge