# Ong Tean Hoe v Hong Kong Industrial Company Private Limited
# [2001] SGHC 303

**Case Number** : Suit 1102/2000, RA 167/2001, RA 170/2001

**Decision Date** : 10 October 2001

**Tribunal/Court** : High Court

**Coram** : Choo Han Teck JC

**Counsel Name(s)** : R Karuppan Chettiar and Fabian Jee Soo Chen [Karuppan Chettiar & Partners] for the plaintiff; James Yu and Dilip Kumar [Yu & Co] for the defendants

**Parties** : Ong Tean Hoe — Hong Kong Industrial Company Private Limited

## Judgment

GROUNDS OF DECISION

1. This was an appeal by the defendants against the quantification of damages by the assistant registrar Mr. Kwek Mean Luck on 7 August 2001. I dismissed the appeal as well as the plaintiff's cross-appeal on 11 September 2001. The defendants now appeal against my decision. Liability was not in dispute and the appeal concerned the issue of damages only. The defendants employed the plaintiff as a machine operator on 18 April 1995. On 12 April 2000 the plaintiff's hands were crushed and both hands were subsequently amputated at the wrist. The plaintiff was 51 years old at the time of the accident and was earning a monthly salary of about $1,300. The defendants consented to judgment in respect of liability. There was no question of contributory negligence. The assistant registrar awarded a sum of $729,659.10 in damages made up as follows:

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| "Special Damages | |
| 1. Pre-trial Loss of Earnings | $ 22,630.00 |
| | ($ 6,500.00) |
| | $ 16,130.00 |
| 2. Pre-trial Cost of Mechanical hands | $ 50,000.00 |
| 3. Pre-trial Cost of Nursing care | $ 12,565.00 |
| 4. Pre-trial Medical and Transport Expenses | $ 1,164.00 |
| | $ 79,859.10 |
| General Damages | |
| 1. Loss of both hands (pain and sufferings) | |
| $65,000 x 2 = $130,000 | $130,000.00 |
| 2. Post Traumatic Depression | $ 20,000.00 |
| 3. Loss of future earnings | |
| $1,600/mth x 12 x 4 = $76,800 | $ 76,800.00 |
| 4. Future cost of mechanical hands | |
| $50,000 x 4 = $200,000 | $200,000.00 |
| i.e. Age 52 (15 years) replacement every 3 years | |
| 5. Gloves and Batteries | $ 60,000.00 |
| 6. Future Cost of Nursing | $153,000.00 |

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|---|---|
| | $ 10,000.00 |
| 7. Future Transportation and Medical Expenses | |
| | $649,800.00 |
| **Total of Special Damages and General Damages** | **$729,659.10"** |

2. I think that it will be useful to state the basic principles in the hearing of appeals of cases concerning the quantification of damages. Such cases invariably require the decision maker to exercise his discretion in selecting the appropriate amount of award. No two decision makers can be expected to exercise their discretion in identically the same way or arrive at an identical award. Therefore, one can always expect awards to appear higher or lower as the case may be in comparison and, furthermore, very rarely would the facts themselves be identical or even close. A judge may award a sum of $35,000 for the loss of a hand to a fifty year old but he may award $50,000 to a 15 year old for a similar injury. Where facts change so would the exercise of his discretion. Another judge may consider the difference to be closer to $10,000 rather than $15,000. The quantification of damages for personal injury is not a scientific exercise and because of the varying facts as well as the strong element of discretion, often appears to be an arbitrary exercise. No one can say at which point money will truly compensate a person for the agony of injury and physical loss. It is impossible. One may debate without end as to whether the loss of a right arm deserves greater compensation than the loss of right foot, but it is not possible to come to any objective conclusion. There are people who may say that they would rather lose their right arm than to lose their foot; and an equal number who would think otherwise. So, in reaching a figure to award, the decision maker ought to avoid the extremes. On the one hand, the award must not be so low as to belittle the suffering of the injured and on the other hand, it must not be a largesse that deeply impoverishes and punishes the tort-feasor or his insurer. Hence, the decision maker must first decide whether the item claimed is one that is recognised at law. Then he has to decide what would be a reasonable band of award for the said item (such as the pain and suffering for the loss of an arm). Finally, he has to consider all the facts and circumstances of the case and decide what is the appropriate award to be made. In doing so, he will find it helpful to take into account similar awards but with the caution that awards from other jurisdictions may not be ideal examples because the social and economic factors may differ substantially.

3. When discretion is exercised in the manner described above, it ought not as a general rule, be disturbed, otherwise it will only encourage parties to appeal merely to nourish a hope that the appeal judge may exercise his discretion differently. I think that in cases where justice is all the more elusive on account of its dependence on the discretion of the court, a second opinion is not necessarily more equitable. Why should the second decision be any more or any less fair? Viewed in this way, subject to correction of obvious errors, finality in such cases is desirable. Thus, the duty I am bound to discharge is to satisfy myself that the court below had exercised its discretion properly and that the proper principles were applied, and once satisfied, to leave the award below undisturbed even though I might have preferred a higher or lower award myself. Hence, it is obvious that the grounds of decision of the court below will be helpful in understanding how the court's discretion was exercised. In this case there were no written grounds. I mention this not as a criticism but merely as a preamble to the view that I shall now express as to how I ought to proceed in such circumstances. In my opinion, where no written grounds are available, it must be assumed that the court below had taken all relevant factors into account and therefore exercised its discretion properly especially where the arguments by counsel below were substantially the same. There must be clear indications that call for intervention by an appeal court - for example, where an important piece of evidence had not been referred to the court below. The only reasonable test is to review the individual items and see

whether the difference, if any, between the amount given below and the amount which the appeal judge thinks is fair is substantial. If the difference, if any, is not substantial, the award below should not be disturbed.

4. In the present case, conceding that there is no direct authority on point, the defendant's counsel sought to persuade me that the present award is excessive by comparing it with cases concerning other injuries, such as the amputation of a right thigh and amputation of arm below the elbow. In particular, defence counsel suggested that by granting the sub-heads of pain and suffering "in full" the assistant registrar erred because no consideration was thus given on account of overlapping compensation. He submitted that there should be no award for the costs of mechanical hands when there is an award for pain and suffering for the loss of both hands "because the artificial hands provide some relief for the pain and suffering suffered by the plaintiff". This was a submission which had been made to the assistant registrar and there being nothing before me to support a contention that the assistant registrar had not taken this into account I must assume that he had done so. The question before me therefore is whether, as a matter of principle, the proposition by defence counsel that the court below made the award for pain and suffering without considering the question of overlap was correct. Compensation for pain and suffering for the loss of both hands is just that - a compensation - so far as money can do – to alleviate the suffering occasioned by the physical deprivation of one's hands. The costs of artificial hands is a distinct head. There is no question of an overlap in this sense. It seems clear to me that the assistant registrar gave an award that took into account the age of the plaintiff, the cost of each set of artificial limbs, the number of times the limbs have to be replaced. The award was based on an assessment which does not appear excessive to me. Thus, should the amount for pain and suffering be reduced in view of the fact that the plaintiff will be having the benefit of these limbs? These items had been submitted to the assistant registrar below and there is nothing to indicate to me that he had not taken the question of overlapping into account. Artificial limbs can never replace the dexterity and sensitivity and beauty of the natural hands. If the science was unable to give the plaintiff the use of artificial hands, I would on my part, have given the award pain and suffering to be much higher. The provision of costs for artificial limbs is an item over and above damages for pain and suffering. Thus, it surely cannot be said that if not for the artificial hands which costs about $200,000 the award for pain and suffering would have been increased by that same sum. If that was what defence counsel meant by an 'overlap' then, with respect, I must disagree with the use of that term. If science was unable to provide the plaintiff with artificial limbs to alleviate the plaintiff's suffering then I would think that she might then have been entitled to a higher award for pain and suffering, but that is not the same as saying that because she will be getting artificial limbs, there is an overlap by giving her the limbs as well as damages for pain and suffering. If this was what counsel meant, he must show that had the assistant registrar taken that into account he would have given a lower amount. There is nothing to support such a suggestion. I am of the view that the question of overlap (if at all) was not overlooked by the court below. I see no reason to fault the assistant registrar's assessment here. I note, however, that the assistant registrar awarded $65,000 for each hand. I would agree that compensation for the loss of both hands is not necessarily calculated by doubling the quantification for the loss of one hand. This is because the pain, inconvenience and frustration resulting from the complete helplessness in such a case may be more than that; as it can be imagined that the loss of both eyes would be much more serious than the loss of one and the question of damages may not be answered by merely doubling the award given for the loss of a hand or an eye. The difficulty lies in determining how much more or, for that matter, how much less. However, even taking this into account, I am of the view that the amount I would have given would not be substantially more than the $130,000 awarded. I ought to add that the authorities presented by both sides are diverse and not directly on point to be of much help. The award of $65,000 below for each hand might have been determined under the guidance of *Ng Kim Cheng v Naigai Nitto Singapore Pte Ltd* [1991] SLR 517 where the same amount was awarded for an amputation of an arm. That was however an agreed sum. On the other hand, there is *Van der*

*Veldr v Lim Seow Tat* [1964] 2 MLJ lvii where Chua J awarded $45,000 to a 32-year old man for a similar injury, but in that case the plaintiff was able to return to work after therapy and the provision of an artificial limb. The suffering of a person who has both hands amputated is much greater and more complex; so, if at all, *Vander Veldr* is an indication that the award of $65,000 is not excessive. Defence counsel here also referred to some paralysis cases but in my view these cases are not suitably similar for any useful comparison.

5. In respect of the cost of future nursing care, I think that there is no doubt that it is required. The provision of artificial hands does not mean that it will put the plaintiff in a position as if she had not lost her hands. That was very much an issue of fact which the assistant registrar having heard the evidence and submission is properly appraised to decide whether any discount ought to be made for it. Nothing of significance was raised before me to refute this. I reviewed each of the other items assessed and on my part, I would not have awarded a substantially different amount in respect of any of them. Therefore, in my view, the award must stand. For these reasons, the plaintiff's appeal was dismissed. For the same reasons, I do not agree with Mr. Karuppan that the award was inadequate. The plaintiff's cross-appeal was, therefore, also dismissed.

Sgd:

Choo Han Teck
Judicial Commissioner

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