

Lee Theng Yiow v Ismail bin Muhamad
[2003] SGHC 259

Case Number : Suit 450/2003
Decision Date : 23 October 2003
Tribunal/Court : High Court
Coram : Ching Sann AR
Counsel Name(s) : Foo Soon Yien and Chou Tzu for the plaintiff; Abdul Rashid Ghani for the defendant.
Parties : Lee Theng Yiow — Ismail bin Muhamad

23 October 2003

Assistant Registrar, Ching Sann

Undisputed Facts

1 The deceased was aged 39 at the date of the accident on 12 February 2001. She was married to the Plaintiff and was the mother of their four children, Arthur, Dion, Charles and Bianca, aged 13, 12, 10 and 4 respectively at the date of the accident. The deceased was unemployed at the time of her death. She had been employed as an Information Systems auditor with the Housing and Development Board (HDB) until March 1997, when she went on four years' no-pay leave. On the expiration of the no-pay leave, the deceased resigned from the HDB and was a homemaker. Interlocutory judgment was entered for the Plaintiff at 90% liability against the Defendant on 20 June 2003.

The Plaintiff's Claim

2 The claim against the Defendant was brought by the Plaintiff on behalf of the estate of the deceased, as well as for himself and the four children as dependants.

Heads of damage agreed to by the Defendant were the following:

- | | | |
|-------|--|----------|
| (i) | Bereavement under section 21 of the Civil Law Act (the 'Act') | \$10,000 |
| (ii) | Medical expenses | \$70.00 |
| (iii) | Costs of medical report fees, vehicle report fees and police report fees
(to be included under costs) | \$678.15 |

3 The remainder of the Plaintiff's claim was contested by the Defendant, and comprised the following:

Estate claim – general damages

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|------|--|---------|
| (iv) | Pain and suffering prior to death under section 11 the Act | \$5,000 |
|------|--|---------|

Estate claim – special damages

(v)	Funeral expenses	\$20,041.01
(vi)	Cost of employing a maid for the household	\$1090.00
(vii)	Cost of employing a maid until Bianca was 21 years old	\$127,488.00
(viii)	Loss of use of car until the date of hearing	\$34,200.00
(ix)	Loss of housekeeping, tutoring and driving services from date of accident to date of judgment	\$165,920.00

Dependency claim (as stated in the Plaintiff's opening submissions)

(x)	(a)	Loss of pecuniary benefits if the deceased had returned to work	\$1,332,480.00
	(b)	Loss of pecuniary benefits if deceased had returned to work and loss of the value of her Services	\$2,058,800.00
	(c)	Loss of deceased's services	\$1,452,640.00
(xi)		Loss of CPF earnings	\$416,000.00
(xii)		Loss of consortium, care and concern	\$16,000.00

4 Evidentiary support for the Plaintiff's claim in respect of loss of pecuniary benefits from the deceased was provided by Mrs Soh-Leo Lan Hiang, the deceased's supervisor at the HDB, who testified as to the deceased's employment and promotion prospects. Additionally, the Plaintiff testified, inter alia, as to the intent of the deceased to return to employment in 2004, when their youngest child reached school-going age.

Decision

5 Having heard all the evidence and reviewed submissions from both parties, the following award is made:

Estate claim

6 It was unclear whether the amount claimed by the estate under item (iv) above was \$5,000, as stated in the Statement of Claim, or \$10,000 as claimed in the Plaintiff's opening and closing submissions. Both amounts were in any event contested by the Defence counsel, who argued that claim should not be allowed since there was no medical evidence that the Deceased was conscious between the time of the accident at 13.15 hours and the time she was pronounced dead at 17.29 hours. This was supported to some extent by a medical report from Tan Tock Seng Hospital which stated that upon arrival at 13.45 hours, the deceased had no pulse or spontaneous breathing. However, it was also the Plaintiff's unchallenged evidence that the deceased was conscious for at least half an hour after the accident. On this basis, I assessed the claim for pain and suffering at \$3,000.00.

7 For item (v) above, counsel for the Defendant argued strongly that the claimed funeral expenses of \$20,041.01 should be reduced by \$10,000 as the three receipts constituting that latter sum had not been translated into English. Further, one of the receipts stated that it was a "donation". However, the Plaintiff had explained that the Chinese words written on the receipt stated that the sums were paid for the purpose of putting up a tablet for the deceased in the temple, for the urn and for a place to put the urn. I accepted the Plaintiff's explanation of these expenses and hence allowed the whole claim for \$20,041.01.

8 As for items (vi), (vii) and (ix), I took the view that items (vi) had to be viewed an alternative to item (ix) as the claims were by their very nature mutually exclusive. I also failed to see why these three claims had been brought under the estate claim as they had not been suffered by the deceased. As such, I considered them under the dependency claim instead.

9 Finally, item (viii) was contested by the Defendant on the basis that the estate could not make the claim since the car was owned by the Plaintiff. The Plaintiff's reply to this was that the Plaintiff was making this claim in his personal capacity. I did not allow the claim as the Plaintiff had conceded that he had received insurance compensation of \$130,000.00 for the loss of his car. Although he explained that he had not used the compensation to purchase a car as the family were not as financially well-off, the fact remains that the Plaintiff could have regained the use of his car but failed to do so.

Dependency claim

10 The arguments on the dependency claim centered largely on the question of whether the deceased would have returned to work. The Plaintiff claimed that she would have returned to work in January 2004, when Bianca commenced schooling. Item (x)(a) was a claim for the pecuniary benefits which would have accrued to the Plaintiff and the children as dependants if the deceased had returned to work, while item (x)(c) was the Plaintiff's quantification of the services provided by the deceased if she had remained as a homemaker. Item (x)(b), claimed on the basis that the deceased would have been able to continue her homemaking duties while working, was calculated by adding half of item (x)(c) to item (x)(a). The defence, for its part, took the position that the deceased would never have returned to work, as Mrs Soh had testified that due to re-structuring, the HDB would not have been able to re-hire the deceased in 2004. In any event, the defence also contested the Plaintiff's quantification of the amounts.

11 It has to be noted at the outset that there were a few notable discrepancies in the amounts claimed by the Plaintiff. The Statement of Claim quantified the dependency claims of the Plaintiff and the children at \$756,000. This figure subsequently rose, in the Plaintiff's opening submissions, to the figure stated in item (x)(a) above, namely \$1,332,480.00. Furthermore, this figure of \$1,332,480.00 was explained as being derived from paragraph 38.3 of the Plaintiff's affidavit of evidence in chief, yet the figures stated in that paragraph did not tally with Plaintiff's figures in the opening submissions.

12 Be that as it may, I found the amounts claimed by the Plaintiff to be grossly exaggerated. In his testimony, he explained that he had assessed the deceased's net salary at \$9565.00 per month, less personal expenses of \$1000. He then applied a multiplier of 21 years, on the basis that the deceased would have been 41 years of age when she returned to work in 2004, and that she would retire at the age of 62. I took the view that this calculation was flawed in that it was predicated on the assumption that the Plaintiff and the children were entitled to all sums earned by the deceased after deducting her own expenses, as opposed to sums they could expect to receive from the deceased as support. The claims made under item (x)(c) were similarly over blown. The Plaintiff

quantified the value of the deceased's housekeeping services by taking the cost of hiring a maid (at \$685 per month for 16 years) and then multiplying the total by two, without an explanation as to why this doubling of the claimed amount was justified. The same was done for the value of tuition services provided by the deceased to the children, where the Plaintiff took a value of \$50 per subject (rising to \$75 per subject at junior college level), multiplied it by two, and then applied it to all subjects (except Chinese) possibly taken by the children, thereby arriving at a whopping \$853,600 for tuition alone. I also found the Plaintiff's insistence that the deceased would have been able to continue driving him and the children around, tutoring the four children, and managing their household, all without the services of a maid and while holding down a full-time job, to be incredible.

13 In his testimony, the Plaintiff had alluded many times to the "plan" conceived by the deceased and himself which envisaged her returning to employment with the HDB in 2004 when Bianca entered Primary1. The only problem with this was that, as Defence counsel had pointed out, Mrs Soh had testified that the HDB would not have a position for the deceased by 2004. That said, Mrs Soh had also stated that she would have asked the deceased to rejoin the HDB just prior to the restructuring, in order to secure her employment. In light of the heavy emphasis placed by the Plaintiff on both the high employability of the deceased as well as on the "plan", I found it unduly speculative to assume that the deceased would have departed from this plan and returned to the workforce earlier than January 2004, or that the scheme proposed by Mrs Soh for ensuring her re-employment by the HDB would be successful. Finally, although there would be no place at the HDB for the deceased by that stage, I accepted that she would be able to find employment elsewhere.

14 Having decided that the deceased would have returned to work, I also took the view that it would have been necessary to hire a maid. As such, it would not be appropriate to allow the claim under item (vii) above. Having said that, I was also of the view that the deceased would have continued to provide some services to the Plaintiff and the children while she was working. As such, I assessed the dependency claim on the basis of (x)(b), although I was unable to accept the quantum claimed by the Plaintiff.

15 In arriving at a multiplicand, I took into account the deceased's last drawn salary of nearly \$5000 per month, the fact that the salary range for someone in her supervisor's position was from \$10,420 to \$15,780, and Mrs Soh's testimony that a person with the deceased's qualifications would be sought after in the industry. However, such factors had to be weighed against her age, the fact that she would be re-entering the workforce after a hiatus of at least 6 years, and the fact that she would have to seek employment with a new employer. I also took into account the fact that after the birth of her third child, the deceased had explored the option of working on a part-time basis. In light of the many prevailing uncertainties, I assessed her average net salary at \$4000 per month. I was of the view that a multiplier of 12 years was appropriate in the circumstances.

16 Defence counsel argued that the Plaintiff, as a person of means who earned about \$28,000 at the time of the accident, could not be considered a dependent, and further, that the Plaintiff had single-handedly supported the family for those years that the deceased was not working. I also noted in this connection that the Plaintiff's own testimony that he could expect to earn similar amounts when he regained employment. Although Plaintiff's counsel pointed out that the family's expenses exceeded his income alone, I noted that the additional expenses were due to mortgages on four properties owned by the family, which mortgage payments were covered by the rentals on the properties, leaving the Plaintiff with a healthy surplus each month. Indeed, any shortfall in the family's finances now were due not to the death of the deceased, but to the Plaintiff being retrenched and the bad economic situation. As such, I failed to see how the Plaintiff could have reasonably expected to receive any income support from the deceased when she returned to work. On the basis, however, that despite working, she would have continued to provide some non-pecuniary services, I assessed

the Plaintiff's dependency from January 2004 onwards at \$150 per month, resulting in a total award to him of \$21,600.00.

17 Turning now to the children's dependency claim for the period beginning January 2004, the multiplier claimed by the Plaintiff of 11 years, 11 years, 14 years and 18 years for Arthur, Dion, Charles and Bianca respectively. On the other hand, the Defendant did not contest the multiplier used by the Plaintiff in his statement of claim, which was of 7 years, 9 years, 10 years and 16 years respectively. I accepted that an additional 2 years ought to be added to the multiplier for the male children on account of national service. Given the age of the children at the beginning of this time period, I was of the view that a multiplier of 9 years for Arthur, 9 years for Dion, 12 years for Charles and 16 years for Bianca was appropriate. After taking into account the value of non-pecuniary services provided by the deceased to the children, I assessed each child's dependency claim at \$650 per month. The children's dependency claims were hence assessed as follows:

Arthur:	$\$650 \times 12 \text{ months} \times 9 \text{ years}$: \$70,200.00
Dion :	$\$650 \times 12 \text{ months} \times 9 \text{ years}$: \$70,200.00
Charles:	$\$650 \times 12 \text{ months} \times 12 \text{ years}$: \$93,600.00
Bianca:	$\$650 \times 12 \text{ months} \times 16 \text{ years}$: \$124,800.00

18 As for items (vi) and (ix), which I considered under pre-trial loss of dependency, I was of the view, as previously stated, that the Plaintiff could not claim both the cost of employing a maid for this period and the value of the deceased's housekeeping services. On the basis that a maid would have cost the family \$685 per month, I assessed the Plaintiff's and each child's pre-trial loss of dependency at \$400 each, per month for 16 months, leading to an award of \$6,400.00 each.

19 Furthermore, as sums computed in paragraphs 15 to 17 above would only have effect from January 2004, I awarded the Plaintiff and the children \$1,600.00 each to cover the post-trial loss of dependency for the period up to January 2004.

20 As for item (xi), I took into account the current level of uncertainty regarding the rate of contribution to the Central Provident Fund (CPF), the Minimum Sum Scheme. I also took into account the fact that the deceased's CPF savings were intended for her support in her old age. As such, I assessed item (xi) at \$12,000.00 for each child.

21 Finally, as to item (xii), this claim was not allowed as the claim in the present case was brought under the Act, which makes no provision for such a claim. In any event, I was of the view that any considerations arising under item (xii) would have been more than adequately covered by the claim for dependency.

Conclusion

21 In summary, the award is made as follows:

Estate:	\$23,111.0
	Interest at 6% from the date of the writ to the date of judgment

Plaintiff: Bereavement : \$10,000.00
Pre-trial dependency : \$6,400.00
Post-trial dependency : \$23,200.00
Total award : \$39,600.00
Interest at 6% on the sum of \$16,400.00 from the date of the writ to the date of judgment

Arthur: Pre-trial dependency : \$6,400.00
Post-trial dependency : \$83,800.00
Total award : \$90,200.00
Interest at 6% on the sum of \$6,400.00 from the date of the writ to the date of judgment

Dion: Pre-trial dependency : \$6,400.00
Post-trial dependency : \$83,800.00
Total award : \$90,200.00
Interest at 6% on the sum of \$6,400.00 from the date of the writ to the date of judgment

Charles: Pre-trial dependency : \$6,400.00
Post-trial dependency : \$107,200.00
Total award : \$113,600.00
Interest at 6% on the sum of \$6,400.00 from the date of the writ to the date of judgment

Bianca Pre-trial dependency : \$6,400.00
Post-trial dependency : \$138,400.00
Total award : \$144,800.00
Interest at 6% on the sum of \$6,400.00 from the date of writ to the date of judgment

Usual consequential orders.

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