

Rajendran a/l Palany v Drill-Quip Asia Pacific Pte Ltd
[2004] SGHC 100

Case Number : Suit 109/2000, RA 350/2003

Decision Date : 14 May 2004

Tribunal/Court : High Court

Coram : Lai Kew Chai J

Counsel Name(s) : S K Kumar and P Soman (S K Kumar and Associates) for appellant; Simon Yuen (Legal Clinic LLC) for respondent

Parties : Rajendran a/l Palany — Drill-Quip Asia Pacific Pte Ltd

Damages – Assessment – Appellant injured in the course of work and suffered from a prolapsed central disc and backache – Whether an award of general damages for future medical treatment warranted

Damages – Assessment – Loss of earning capacity – Whether awards of general damages and special damages for loss of earning capacity were reasonable

Damages – Assessment – Loss of future earnings – Appellant was a malingerer who took extensive medical leave – Whether assistant registrar was justified in not awarding damages for loss of future earnings

14 May 2004

Lai Kew Chai J:

Introduction

1 This was an appeal against the whole of the decision of the assistant registrar made on 16 September 2003 relating to assessment of damages. The appellant, a 33-year-old Malaysian national, claimed damages and special damages suffered by him in consequence of having sustained a prolapsed central disc between L4 and L5 vertebrae in the course of work on 15 May 1998. The respondent is a company dealing with oil-rig equipment. The appellant was injured when he was lifting and stacking connector forgings used for connecting the ends of metal pipes.

The awards and submissions on damages

2 The assistant registrar made the following awards for damages. For convenience, I also set out in the table below the appellant's claims and the respondent's submissions.

Particulars	Award of assistant registrar	Appellant's claim	Respondent's submission
(a) Pain and suffering			
(i) Prolapsed intervertebral disc between L4 and L5 and degeneration of L1-L2 disc	\$15,000	\$30,000	\$12,000 to \$15,000

(ii) Spondylosis and facetar osteoarthritis of L4–L5 vertebrae	No award	\$15,000	Disputed
(iii) Perforated duodenal ulcer	\$13,000	\$20,000	\$10,000.
(b) Future medical surgery	No award	))\$20,000	Disputed.
(c) Future medication	No award	)	No submission.
(d) Loss of future earnings	No award	\$312,000	If it be awarded, only loss of overtime at \$12,000 x 5 = \$60,000.
(e) Loss of earning capacity	\$20,000	\$20,000	\$30,000 if no loss of future earnings awarded. \$15,000 if loss of future earnings awarded.
(f) Special damages for pre-trial loss of earnings	\$20,558	\$112,674.76	Loss of overtime only at \$12,000.

3 The assistant registrar awarded interest for general damages (except the loss of earning capacity) at 6% per annum from the date of the writ to the date of judgment. In respect of special damages, interest was allowed at 3% per annum from the date of the accident to the date of trial. The assistant registrar also ordered costs on the District Court scale.

4 The assessment of damages before the assistant registrar took five days in March and April 2003. The appellant gave evidence. For the respondent, its operations manager, Mr Doug Harrison ("Mr Harrison"), gave evidence. The appellant called as his medical experts Dr V K Pillay ("Dr Pillay"), Dr Amit Kanta Mitra ("Dr Mitra") and Dr Meor Aris ("Dr Aris"). He also called Mr Ng Foo Weng from the Ministry of Manpower. The respondent called Professor Tay Boon Keng ("Prof Tay") as its medical expert. Prof Tay is Head of Orthopaedics of Singapore General Hospital and Chairman of Singapore General Hospital's Medical Board.

The appeal

5 In this appeal, the appellant asked that the awards and orders of the assistant registrar be set aside. He asked for the following orders:

- (a) General damages for pain and suffering be assessed at \$65,000;
- (b) General damages for future medical treatment be assessed at \$20,000 (including operation) or \$10,000 (excluding operation);
- (c) General damages for loss of future earnings be assessed at \$312,000;
- (d) General damages for loss of earning capacity be assessed at \$20,000;
- (e) Special damages for pre-trial loss of earnings be assessed at \$112,647.76;
- (f) Interest; and
- (g) Costs to be taxed on the High Court scale.

6 At the conclusion of the appeal, I was of the view that an award for future medication should be made. I allowed \$6,000 for this item. Dr Pillay opined that \$10,000 was required for this item over 30 years. But that was for recurring severe pain, which was not the view of Dr Mitra and Prof Tay. I confirmed the rest of the orders of the assistant registrar. I made no order as to the costs of the appeal. I now set out the circumstances of and reasons for the decisions I made.

Pain and suffering

7 In the course of the assessment, it was not disputed that the appellant suffered from a prolapsed intervertebral disc ("PID") between L4 and L5. It was agreed that the respondent was liable to pay general damages for pain and suffering for (a) the PID; (b) acute L5 radiculopathy and left-sided sciatica; and (c) a perforated duodenal ulcer requiring laparotomy.

8 In relation to the physical injuries, the following items were contested, viz: (a) recurrence of the PID; (b) facetar osteoarthritis at L4–L5 due to malalignment; (c) spondylosis at L4–L5; and (d) early degeneration of L1–L2 disc.

9 The assistant registrar, in dealing with the claims for general damages for pain and suffering, stated that she placed more weight on the expert evidence of Dr Mitra, who operated on the appellant, and Prof Tay. She did so, having heard and evaluated the evidence. Secondly, she noted that the appellant's claims were generally "more than the amount awarded in the cases cited".

10 She made specific findings and rulings. She held that the appellant had not, on a balance of probabilities, shown that the PID had recurred. In connection with the pain and suffering caused by the PID, she awarded \$15,000. She also found that the appellant had not proven spondylosis nor facetar osteoarthritis of the L4–L5 disc. She therefore made no award for these two alleged injuries.

11 Counsel for the appellant submitted that the assistant registrar had erred in her award for general damages for pain and suffering. The appellant relied on the evidence of his expert, Dr Pillay, who concluded that there was recurrence of the PID of the L4–L5 disc. In addition, Dr Pillay had also observed that there was degeneration of the L1–L2 disc.

12 In my view, a fair summary of the evidence led on behalf of the appellant on the issues of pain and suffering may be stated within a reasonably brief compass. The evidence supported the decisions of the assistant registrar. On the question of the recurrence of the PID, Prof Tay said in evidence that the appellant did not have recurrent PID. What the appellant had was "residual

backache from the accident". Prof Tay examined the appellant in July 2001. He formed the view that the appellant did not need another back operation.

13 After the appellant was discharged from routine care in August 1999, he was again medically examined in May 2000. Dr Mitra thought it was a back strain. Dr Mitra was specifically asked about Dr Pillay's opinion that there was recurrent PID. Dr Mitra was of the view that there was none when he last saw the appellant in May 2000. With regard to the view of Dr Pillay that the appellant should have another operation to fuse the lumbar vertebrae, Dr Mitra explained that it was common to have backache after spine surgery. The treatment was usually conservative and surgery was not resorted to. If another operation was carried out, there would be further backache. He explained that fusion was only for the situation where the spine was unstable. That was not the situation in the case of the appellant.

Facetal osteoarthritis and spondylosis

14 With regard facetal osteoarthritis, Dr Mitra opined that the appellant has degenerative disc and this would usually develop into osteoarthritis in the long run. He did not think there was malalignment. Where there was degenerative disc, in which case the water content of the disc would disappear, the height of the disc would decrease and the disc would be less able to absorb shock. In this case, the degeneration was caused by the prolapsed disc and manual work. Dr Mitra stated that ageing causes degeneration as well.

15 In relation to spondylosis at L4-L5, there was no evidence proving that the appellant was suffering from this disability. As for the degeneration of the L1-L2 disc, there was no evidence that this was caused by the accident. There was no causal link to the PID which occurred at L4-L5, another part of the spine.

16 The appellant relied on *Teng Kui Thai v Goh Chwee Kim* [1996] SGHC 219 where there was an award of \$20,000 for pain and suffering for back injuries resulting from a degeneration of three lumbar discs. The case of *Lim Ai Geok v Ang Gim Choon* [1999] Mallal's Digest 1231, was also relied on. The sum of \$22,000 was awarded for PID leading to severe disc degeneration in the lower four discs. There was difficulty in flexion of the spine. I agreed with the assistant registrar that the award for PID must reflect the differences which were due to the more severe injuries recorded in the two cases.

17 The assistant registrar awarded \$13,000 for the perforated duodenal ulcer. There was no merit in the appellant's submissions that the injuries in terms of pain and suffering were more serious than those suffered in *Tan Guat Chye v SBS (1978) Ltd* (District Court Suit No 1946 of 1997). There were no authorities dealing with an operation for perforated ulcer. Some guidance may be gleaned from the case of *Ho Kiat v Ngo Siong Hong* [1986] 1 MLJ xcii, where an award of \$12,000 was given for an operation to the abdomen, involving perforation of a part of the duodenum, tears to the colon and adhesion of the anterior part of the stomach.

Future surgery and medication

18 I now turn to the claims for future medical surgery and future medication. On the evidence recited, I agreed with the finding of the assistant registrar that the appellant had not shown, on a balance of probabilities, that he required another back operation.

19 However, I was persuaded that on the evidence of Dr Pillay, the appellant was entitled to an award for future medication for the treatment of his backache. That there was backache was

common ground and, on the evidence, the appellant needed medication to relieve the backache.

Loss of future earnings

20 The most substantial claim was for loss of future earnings. The assistant registrar rejected the multiplicand of \$2,000 per month as this was almost double the basic pay of the appellant when he was at his best earning capacity. She also rejected the multiplier of 13. The reasons were as follows. The appellant had not lost his job at the time of the assessment.

21 At the time of the assessment, the appellant was just under 38 years of age. He had been in the employ of the respondent since 1994. He was able to carry out light work but he pretended that he could not do even light semi-skilled work.

22 The assistant registrar found that the appellant was a malingerer. There was ample evidence to support this finding. The appellant took rather extended medical leave: in year 2000, he took 83.5 days and in the following year he took a total of 176.5 days of medical leave; in the year 2002 he was on medical leave for a total period of 175 days. How did he obtain so much leave? The appellant "shopped around for doctors and medical leave", as submitted by counsel for the respondent. In Johor Bahru, where he was living at the time of the assessment, he consulted the doctors in ten different clinics. In Parit Buntar, Perak, Malaysia, where he visited his family, he consulted the doctors in 13 different clinics. He took care not to consult the same doctor on consecutive visits to them. He gave the lame excuse that the preceding clinic, coincidentally, was always closed.

23 At every consultation, the appellant failed to inform the examining doctor that he had seen another doctor and was taking medicine prescribed by the other doctor. He also did not disclose the medicine that he had taken.

24 Prof Tay was told of the appellant's claim that it hurt whenever he turned his body at the waist and whenever he bent backwards slightly. Prof Tay said he was surprised. He had carried out a test which did not support the appellant's claims. The professor opined that the appellant suffered "at most bearable pain" whenever he bent forward to touch his knees.

25 Mr Harrison testified that the appellant pretended that he was unable to do light semi-skilled work at the respondent's factory and warehouse. He was assigned the jobs of cleaning and helping with pressure testing. From the end of 1998 to the year 1999, the respondent's business dropped and overtime and salary were frozen.

26 I refer to *Leong Mei Li Janice v Low Mun Seng* (District Court Suit No 3408 of 1997). In this case, a 25-year-old flight stewardess suffered a PID. The pain associated with this injury was more severe than the pain caused by scoliosis. There was likelihood of future deterioration. She was working as a leading stewardess at the time of the assessment. She was awarded \$12,000 for loss of earning capacity. She was not awarded any general damages for loss of future earnings.

27 I need also to refer to *Teng Kui Thai v Goh Chwee Kim* ([16] *supra*). The plaintiff, a 26-year-old female at the time of the traffic accident, suffered a lumbar injury and was unable to practise her occupation as a seamstress. She was working as a production operator at the time of the assessment. She was awarded \$73,000 (in round figures) for loss of future earnings; the multiplicand on the facts was \$511 per month and the multiplier was 12. The appellant in the present case could have continued to work in light semi-skilled work and upgraded himself to ISO certification level. He malingered instead.

28 I was of the view that the assistant registrar was amply justified in refusing to award general damages for any loss of future earnings. Malingerers cannot expect to have a free ride.

Loss of earning capacity

29 It was common ground that the appellant would no longer be able to carry out heavy semi-skilled manual work. But he could have done light semi-skilled manual work. He was not an unskilled manual worker. The appellant could have upgraded himself to fall in line with the programme of the respondent to obtain ISO certification. His colleagues succeeded. But for his malingering attitude, he could have earned more. I was of the view that the award of \$20,000 as general damages was reasonable.

Special damages for loss of earning capacity

30 The assistant registrar decided to award the appellant damages under this head from the time of the accident until the end of 1999, a period of 19 months. His average overtime pay was \$1,082 per month for the period for the whole of 1997 and four and a half months in the year 1998. The assistant registrar accepted the evidence of Mr Harrison and found that from the year 2000 the appellant was seldom offered overtime because he "simply was not around". He was a malingerer. The award was therefore $(\$1,082 \times 19) = \$20,558.00$. There was, in my view, no reason to interfere with this assessment.

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