Murugasu, Euan v Singapore Airlines Ltd
[2004] SGHC 132

Case Number : Suit 803/2001, RA 42/2004

Decision Date : 17 June 2004

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Renuka Chettiar (Karuppan Chettiar and Partners) for plaintiff; Adeline Chong (Harry Elias Partnership) for defendant

Parties : Murugasu, Euan — Singapore Airlines Ltd

Damages – Assessment – Whether assistant registrar accurately assessed damages

Damages – Quantum – Whether quantum of damages inflated – Whether selected multiplier and multiplicand inaccurate

17 June 2004 *Judgment reserved.*

Judith Prakash J:

Introduction

1 This is an appeal against an assessment of damages by the assistant registrar. On 28 May 2000, the plaintiff, Dr Euan Murugasu, met with an accident whilst on board an aircraft belonging to the defendant, Singapore Airlines Limited. The defendant conceded liability for the accident and interlocutory judgment was entered for the plaintiff. Upon the assessment of damages, the assistant registrar made the following awards:

(a) pain and suffering:		$16,000.00
(b) pre-trial loss of earnings:		$52,000.00
(c) cost of future medical treatment:		$25,000.00
(d) loss of future earnings:		
	(i) $28,600 x 2 years =	$57,200.00
	(ii) $42,000 x 10 years =	$420,000.00
(e) special damages:		$1,613.51 and US$6,922.10

The defendant was dissatisfied with all but the first and last awards, hence this appeal.

Background

2 At the time of the accident, the plaintiff was 38 years old and was employed by the Tan Tock Seng Hospital ("TTSH") as a consultant ear, nose and throat ("ENT") surgeon. By the time of the assessment hearing, he had given up medical practice and was employed by the Agency for Science, Technology & Research (A*STAR) as a principal investigator at the Institute of Bio-Engineering.

3 The plaintiff is a very highly qualified man. He obtained his MBBS degree from the National University of Singapore in 1986 and went on to do post-graduate courses in otolaryngology in Scotland, England and Singapore. In 1996, he obtained a doctorate in auditory physiology and molecular biology. In 1998 and 1999, under the sponsorship of the Ministry of Health, he was sent to the UK and the US for the purposes of learning and mastering highly complex surgery in the areas of neurotology and skull base surgery. This sort of surgery, involving as it does micro-surgery in the ear and brain, is very delicate. It requires complete concentration as the operating area is very close to vital areas of the brain-stem, cranial nerves and blood vessels. On the plaintiff's return from the US in July 1999, he was employed as a consultant surgeon by TTSH.

4 On 28 May 2000, the plaintiff was travelling aboard flight SQ 328 to Manchester *via* Mumbai. He was asleep in his seat when a passenger who boarded the plane at Mumbai tried to place an oversized suitcase into the overhead compartment above his seat. The suitcase slipped and fell on to the plaintiff's head and back. He felt a sharp pain in his neck and developed headache and double vision. This was the start of severe medical problems for the plaintiff.

5 At the assessment, the plaintiff's position was that he had been permanently injured as a result of the accident and that there was little hope of further recovery. Four specialist doctors gave evidence, three for the plaintiff and one for the defendant. The consensus (of all apart from one) was that his injury could be described as cervical radiculopathy. The fourth doctor considered that the plaintiff had suffered a right upper brachial plexus injury. He thought that this could possibly be co-existing with the cervical radiculopathy.

6 According to the plaintiff, since the accident he has been feeling constant pain in his neck, which becomes acute at times, with some weakness in his right upper arm and intermittent episodes of numbness and tingling in his right arm. At the time of the hearing he had to take painkillers on a daily basis. Despite lengthy and varied types of treatment having been applied up to the date of the hearing, the plaintiff had not recovered from his injury. All the medical experts agreed that his symptoms were unlikely to improve and that they would progressively become worse.

7 The plaintiff testified that the injury had affected his ability to perform surgery. Although he continued to operate thereafter, he experienced much pain and discomfort especially when working with the operating microscope. After the injury he found it difficult to operate for long hours. When he had to operate with the microscope he had to fix his neck and head position in order to get an optimal view of the surgical field. After an hour he would be in pain and after two hours the pain and spasms experienced would increase to an intolerable extent. He was advised to take frequent breaks when he operated so as to obtain some relief from the pain. This, however, was not feasible in major operations which sometimes lasted between six and 12 hours, if not longer.

8 The plaintiff feared that the pain and spasms he experienced would affect his surgical skills during operations. This would pose a risk to those patients on whom he operated near crucial areas such as the brain-stem. It was for this reason that he decided to give up surgery and work instead as a

researcher with the Institute of Bio-Engineering. Even after taking up his new position, the plaintiff found that his neck still gave him considerable pain and discomfort when he worked. As a researcher he still had to use the operating microscope often and this involved bending his neck to get a good view, after which he would experience a sharp pain on the right side of his neck. Occasionally he also experienced painful cramps on the right side of his neck and shoulder muscles. He often had to take short breaks in order not to aggravate the symptoms.

The appeal

Pre-trial loss of earnings

9 The assistant registrar rejected the defendant's submission that the plaintiff was not entitled to claim pre-trial loss of earnings because he had failed to demonstrate that he was compelled to leave his employment at TTSH on account of his injury. She was not impressed either by the argument that the plaintiff's true interests, as shown by his *curriculum vitae*, lay in the field of research, development and training. She noted that it took six years of training for a doctor to become a general ENT surgeon and that thereafter another two to three years were needed to acquire sub-specialist skills in ENT treatment. The plaintiff had started training to become an ENT surgeon in 1990 and had continued improving his skills until 1999. The assistant registrar found that "his career path clearly supports the plaintiff's stand that his primary intention was to be a doctor and surgeon and that, before the accident, his chosen field was microsurgery specialising in the area of Neurotology and skull-base ENT surgery": see [2004] SGHC 24 at [13].

10 Before me, it was submitted that the plaintiff could have renewed his contract with TTSH. That was due to expire in April 2002 and the evidence showed that there had been talks between the plaintiff and TTSH on his future employment after April. The plaintiff had continued his employment with TTSH for a period of two years after the accident. TTSH was well aware of his injury and had given him a heavier caseload despite the accident. It was submitted that these facts suggested strongly that the plaintiff would have been able to continue with his practice in TTSH and that his claim that he had a real fear of surgery was inconsistent with the true position. Thus, the move to A*STAR was a voluntary one and the plaintiff should not be able to recover the drop in earnings arising from it.

11 I have considered the evidence and I find no reason to disagree with the conclusion of the assistant registrar. From 1997 until April 2002 the plaintiff, when not studying, concentrated on his clinical and surgical practice at TTSH. He explained on the stand the satisfaction he got from alleviating his patients' illnesses. There is no reason to doubt his sincerity. He showed a high degree of responsibility in deciding to leave practice for a less well-paid position because of his fear of causing injury to a patient due to the pain that he experienced while operating. The plaintiff's area of specialisation was an extremely demanding one. The doctors who testified, including Dr Chang Wei Chun, a consultant orthopaedic and trauma surgeon, who was the defendant's witness, agreed that it would be difficult for the plaintiff to do prolonged micro-surgery due to the head positioning required. They also agreed that if the plaintiff had a lot of pain and stiffness these symptoms would affect his performance and interfere with his work as an ENT surgeon.

12 Dr Tan Seang Beng, an orthopaedic surgeon specialising in spinal surgery, considered that the plaintiff was moderately disabled in carrying out surgical work. Dr Chang and Dr Tan agreed that when micro-surgery is carried out there is frequent movement of the neck to adjust to the microscope. Since the plaintiff had a disability in this regard, this could affect his concentration and effectiveness. Dr Tan also said that when carrying out delicate skull-base surgery that carried significant risk to patients, a surgeon needed to display a high level of concentration as "any tremor in the hand would

be magnified". In his view, a surgeon performing such surgery would have to be fit and in good health.

13 The medical evidence was that the plaintiff was in a great deal of pain after the accident. Various treatments were tried. Some helped on a short-term basis but none of them had a long-term effect. In August 2001, some 15 months after the accident, when Dr Tan reviewed the plaintiff, he found that, despite intensive conservative measures, the plaintiff still experienced neck pain radiating down to his right shoulder which hampered his work as a surgeon. At that stage, Dr Tan considered that the plaintiff's symptoms were likely to be permanent. In October 2001, Dr Chang examined the plaintiff for the first time and confirmed Dr Tan's finding and diagnosis. In January 2002, the plaintiff was examined by Dr Yee Woon Chee, a senior consultant in neurology. He found that there was a limitation in the range of motion of the plaintiff's neck and that his right hand's power and grip were reduced as compared to his left, even though the plaintiff was right-handed. There was also mild impairment of sensation in his right arm and right thumb. Dr Yee's conclusion was that these impairments would not improve significantly with time. Dr Peter Singleton, a professor at Stanford University who first examined the plaintiff in late 2002, testified that the overall assessment of the plaintiff's condition was very disappointing. From the time he first saw the plaintiff in October 2002 up to the time of the latest examination in November 2003, despite therapy, medication and injections, the plaintiff's progress had been minimal.

14 In the light of all the medical evidence of the plaintiff's condition as it existed in early 2002, there is no reason to believe that the plaintiff's change in career was entirely voluntary and not influenced by his injury. The plaintiff may have shown an interest in research throughout his career but the weight of the evidence supports the conclusion that his main focus was clinical practice. He left that practice because he was no longer able, in view of his medical condition, to carry it out efficiently and responsibly.

15 The next attack made on the pre-trial loss of earnings award was as to quantum. Before the assistant registrar the plaintiff suggested a multiplicand of $60,000 a year being the difference between the average remuneration of a senior consultant in 2002 and that earned by the plaintiff from A*STAR. The assistant registrar found that multiplicand to be too high. She noted that the difference between the average annual earnings of a consultant surgeon at TTSH in 2002 and the plaintiff's salary from A*STAR was only $29,000. She considered that figure to be a more accurate reflection of the pre-trial loss and rewarded the plaintiff $52,000 for the period of 21.5 months from the day he joined A*STAR to the date of assessment.

16 The defendant submitted that the basis for referring to the average earnings of TTSH consultants ($215,000) to arrive at the $29,000 multiplicand was questionable. That figure had been the mean earnings of five of the plaintiff's former colleagues of various seniorities (two first-year consultants, and one third-year, one fourth-year and one fifth-year consultant). Secondly, the $215,000 included components other than the base salary. If these other elements were included in deriving the mean earnings of the TTSH consultants, then the non-salary components of the plaintiff's A*STAR income should be included as well.

17 I do not find much merit in the defendant's submission on this point. The plaintiff earned $179,584.00 in 2000 and $213,799.00 in 2001. In 2002 when he moved to A*STAR from TTSH his earnings dropped to approximately $175,000. His monthly salary from A*STAR was pegged at $15,500 per month (plus employer's Central Provident Fund contributions) until April 2004. Under the terms of the contract the plaintiff was not to be entitled, until June 2004, to any staff benefits, bonuses or increments, which benefits he had received while working for TTSH. If it had not been for the accident and the plaintiff had continued working for TTSH, in all likelihood he would have been given increments and bonuses and, as his experience grew and he undertook more and more complicated

operations, his earnings would also have grown. I think that the assistant registrar was conservative in assessing the difference – between the plaintiff's income from A*STAR and what he would have earned at TTSH had it not been for the accident – at $29,000 per year. I see no reason to interfere with her award. The cost of living allowance which the plaintiff was given by A*STAR when it sent him to Stanford University on a fellowship programme should be disregarded, as that was intended to cover expatriate living expenses which would not have been incurred had the plaintiff remained in Singapore.

Loss of future earnings

18 In regard to the loss of future earnings, the assistant registrar found that before the accident, the plaintiff had had a bright and promising career as an ENT surgeon. He had excelled in what he did and throughout his medical career he had received various awards and honours. In her view, had he remained in TTSH, he would most likely have eventually become a senior consultant surgeon. From the evidence, it appeared that a consultant surgeon would be eligible for promotion to a senior consultant in his seventh year at TTSH. She then assumed that the plaintiff would have been promoted in his tenth year (*ie*, May 2008) and that he would retire at 62 after spending four years as a consultant and 17 years as a senior consultant.

19 The assistant registrar decided on a multiplier of 12 years on the basis that the plaintiff was 40 years old at the time of the assessment and would, in the normal course of events, retire at 62. She then awarded him $477,200 as future loss of earnings on the following basis:

(a) Two years as consultant at TTSH based on $28,600 per year (the $28,600 figure was arrived at by taking approximately 13.5% of $215,000 less relevant deductions for tax) = $57,200.

(b) Ten years as a senior consultant at TTSH based on $42,000 per year (the $42,000 figure was arrived at by taking approximately 13.5% of $309,000 less relevant deductions for tax) = $420,000.

The defendant attacked both the multiplier and the multiplicand.

20 As regards the multiplier, the defendant submitted that a multiplier of 12 was excessive. It pointed out that in *Khoo Ih Chu v Chong Hoe Siong Jeremy* [1989] SLR 855, the High Court affirmed a multiplier of nine years for a 39-year-old dental surgeon. *Khoo Ih Chu* is a somewhat old case, however. In more recent cases courts have been more generous, reflecting the current longer working lives of Singaporeans. For example, in *Karuppiah Nirmala v Singapore Bus Services Ltd* [2002] 3 SLR 415, I used a multiplier of 11 years for a plaintiff lecturer aged 42. In my judgment, the application of a multiplier of 12 in the present case was perfectly justified.

21 As regards the multiplicand, the defendant submitted that it was difficult to appreciate the basis of referring to the 13.5% ratio, which was derived from the following formulation:

$215,000 minus $186,000 = $29,000

$29,000 divided by $215,000 x 100%
= 13.5%

This is because the 13.5% ratio was in part based on the plaintiff's earnings as a trainee in A*STAR while he was undertaking an overseas fellowship programme and was remunerated at a lower scale, and in part premised on the earnings of consultants of various seniorities. These two variables could not conceivably be assumed to progress at the same rate. The first variable (*ie*, the plaintiff's remuneration from A*STAR) was likely to increase dramatically upon his return from his fellowship program. The plaintiff might be rewarded by bonus payments of up to four months of his salary. The plaintiff would be eligible for other staff benefits and salary adjustments as well. As for the other variable (*ie*, earnings of consultants), there were insufficient facts upon which to calculate its rate of increase. At best, there was only the estimate provided by the National Healthcare Group of the likely remuneration of a newly promoted senior consultant to a sixth-year consultant.[1] It was 7.4% ($20,000 divided by $270,000 x 100%). This would not be comparable to the potential four months' bonus that the plaintiff might receive at A*STAR, which would work out to 33.3% of the salary (four months' salary bonus divided by 12 months' salary x 100%). The defendant concluded by submitting that there was insufficient material in evidence to enable the court to ascertain the rate of the plaintiff's loss of future earnings. In the absence of a quantifiable and assessable loss, the proper award would be for loss of earning capacity.

22 I do not agree with the above submission. Whilst the assistant registrar was speculating that the gap between the plaintiff's earnings at A*STAR and those that he could have received from TTSH would remain constant at 13.5%, I think the evidence was sufficient to show that she was adopting a conservative course. The plaintiff's annual salary from A*STAR without bonus was $186,000. With four months' bonus, that would have increased to $248,000. On the other hand, the evidence from the National Healthcare Group was that the estimated average annual remuneration of a sixth-year ENT consultant would be $270,000 inclusive of bonuses. A newly-promoted senior consultant would get about $290,000 per year inclusive of bonuses. So, assuming the economy was good enough for bonuses to be paid, the difference between a sixth-year ENT consultant's pay and A*STAR's remuneration would be at least $22,000, and the difference between a senior consultant's pay and A*STAR's remuneration would be $42,000. There was also evidence that in the year 2000 a senior consultant at TTSH earned $300,000, in 2001 one senior consultant earned $391,000 and in 2002, two senior consultants earned $309,000. I consider that the award made was reasonable and in line with the plaintiff's possible earnings had he been able to continue his career with TTSH.

23 It should not be forgotten either that the plaintiff, had he not been injured, would also have had the opportunity of moving into private practice. The evidence (including that of Dr Chang) was that it was common for doctors from government hospitals to move to private practice where they could expect to earn a much higher income. The plaintiff was one of a very small group of surgeons qualified to undertake micro-surgery in the area of neurotology and, as such, if he had moved into private practice he would, most likely, have had bright prospects. In all the circumstances, there is no reason to interfere with the award for loss of future earnings.

Future medical expenses

24 The assistant registrar awarded the plaintiff $25,000 for the cost of five injection treatments in the future. She considered that since conservative methods of treatment like physiotherapy and acupuncture had not proved successful, it would not be unreasonable for the plaintiff to choose to go through the injection treatment. Whilst injection therapy had not helped the plaintiff previously, the evidence was that a patient might need to go through different types of injection therapy before finding one that suited him. Hence it was premature to conclude that injection therapy as a whole would not benefit the plaintiff.

25 The defendant submitted that this award was not supported by the evidence. The plaintiff's evidence had been that pain medication gave good relief although he was concerned about the long-term effects of taking painkillers. But the award had been for injection therapy and not painkillers. In so far as injection procedures were concerned, the scepticism that the local medical experts held regarding the possibility of any long-term benefits from the same were confirmed by Dr Singleton's testimony that the injection procedure did not permanently alleviate the plaintiff's symptoms. Alleviation of his symptoms was transient –three to four days only. Also, there were risks associated with invasive therapy like injection therapy. In the light of the evidence the defendant submitted that the proper award should have been for the course of pain medication.

26 There was medical evidence to support the usefulness of injection therapy. This came mainly from Dr Tan. It was Dr Tan who said that there were many kinds of injection therapy available and that many patients would try a variety of such treatments until they found a suitable one. He was of the view that over the plaintiff's lifetime the plaintiff would require more than five such treatments, depending on whether or not the particular treatment worked. In addition the plaintiff would also require conservative treatment. Dr Tan considered that it was not advisable to take pain medication on a long-term basis as doing so could lead to side-effects such as liver problems. Furthermore, the effectiveness of pain medication would be reduced if it was taken for a protracted period; stronger medication such as opium would then have to be consumed. Dr Tan's view on the usefulness of injection procedure was supported by Dr Chang, the defendant's expert witness. The latter agreed that it would be reasonable for the plaintiff to go for the injection procedure in order to obtain pain relief as the plaintiff had been taking the painkiller Vioxx on a daily basis since 2002 and still experienced pain.

27 The decision of the assistant registrar in this regard was fully supported by the evidence. I see no reason to overturn it.

Conclusion

28 In the result, this appeal fails on all counts and is dismissed with costs.

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[1]Exhibit PE1.