

Ang Swee Koon v Pang Tim Fook Paul
[2006] SGHC 61

Case Number : DA 33/2005
Decision Date : 10 April 2006
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : David Kong Tai Wai (Yeo-Leong & Peh LLC) for the appellant; Anthony Chey Cheng Chwen (Benedict Chan & Company) for the respondent
Parties : Ang Swee Koon — Pang Tim Fook Paul

Civil Procedure – Appeals – Leave – Appeal filed as of right as amount under appeal exceeding minimum amount for which appeal may be filed without leave of court – Whether leave required if amount under appeal subsequently falling below minimum amount – Section 21(1) Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed)

10 April 2006

Judgment reserved.

Kan Ting Chiu J:

1 This is an appeal against a district judge's assessment of damages for personal injuries and other losses the respondent suffered following a motor accident.

2 It started out unremarkably, but ended up with counsel and I having to deal with a point which does not appear to have been decided before, *ie*, whether leave is needed for an appeal filed as of right if the amount under appeal subsequently falls below the threshold limit under which leave to appeal is required.

3 On 13 September 2005, a district judge made an assessment of damages in favour of the respondent. Two of the awards were for:

(1) Pain and suffering:

(a)	neck injury	\$12,000	
(b)	back injury	\$ 6,500	
(c)	right knee injury	\$10,000	
(d)	right wrist injury	<u>\$ 2,500</u>	\$31,000

(2) Loss of earning capacity \$20,000

4 The appellant was aggrieved by the two awards and filed an appeal to the High Court under s 21(1) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("the Act") which provides that:

[A]n appeal shall lie to the High Court from a decision of a District Court or Magistrate's Court in any suit or action for the recovery of immovable property or in any civil cause or matter where the amount in dispute or the value of the subject-matter exceeds \$50,000 or such other amount

as may be specified by an order made under subsection (3) or with the leave of a District Court, a Magistrate's Court or the High Court if under that amount.

No leave of court was obtained for the filing of the appeal as it was not required.

5 After the appeal was filed, the appellant received and read the district judge's grounds of decision and decided not to proceed with the appeal against the award of damages for pain and suffering. Consequently, in the appellant's case filed, the appeal was limited to the award for the loss of earning capacity.

6 When the appeal came up for hearing before me, counsel for the respondent raised a preliminary objection. The objection was that when the appeal is restricted to the \$20,000 award, the appeal cannot proceed unless leave of court is obtained. He argued that although the appeal was against the awards for \$51,000 when it was filed, it was an appeal against an award of \$20,000 when it came before me.

7 The argument was premised on the assumption that leave was required if the notice of appeal was against the award of \$20,000. The appellant did not challenge that assumption although there was some room for him to do that. Instead, his arguments against the preliminary objection was that the notice was not defective or misleading and that the appellant was seriously contemplating an appeal against both awards when the notice was filed, and it was only after filing the notice and receiving the grounds of decision that the appellant decided to proceed only against the award for loss of earning capacity.

8 The proper construction of the requirement for leave under s 21(1) has been considered by the courts over the years, and the treatment given to it bears examination. I will refer to the principal cases in chronological order.

9 The first decision is *Anthony s/o Savarimiuthu v Soh Chuan Tin* [1989] SLR 607. In this case, the plaintiff was awarded damages of \$1,660 by a magistrate. The defendant sought leave to appeal against the award under s 21 of the Act when the operative threshold amount was \$2,000. Lai Kew Chai J refused leave, stating at 608, [1]:

This is an application for leave to appeal under s 21 of the Supreme Court of Judicature Act against the judgment of a magistrate who awarded \$1,660 damages to the plaintiff arising out of a collision between the plaintiff's taxi and the defendant's lorry. Section 21 provides, inter alia, that there shall be a right of appeal if the amount in dispute exceeds \$2,000 or 'with leave of the High Court if under that amount'. The High Court's power is obviously discretionary and such discretionary power has to be exercised judicially and ought to be exercised if prima facie and generally it could be shown that justice would require an appellate investigation of the case.

10 It is to be observed that the judge referred to the award of \$1,660 that the defendant was appealing against rather than the sum the plaintiff had claimed (which was not disclosed in the judgment, and may have exceeded \$2,000) in coming to the conclusion that leave to appeal was required.

11 The second case is a decision of the Court of Appeal in *Augustine v Goh Siam Yong* [1992] 1 SLR 767. In this case, the plaintiff was awarded damages of \$4,780.89 by a deputy registrar of the Subordinate Courts. The matter was brought on appeal by the defendant before a district judge in chambers, who reduced the award to \$1,177.50. The plaintiff sought to appeal to the High Court against the reduction, but the defendant contended that the plaintiff had no right of appeal on

the ground, *inter alia*, that leave was required under s 21 of the Act to appeal as the amount in dispute was less than \$2,000. Chan Sek Keong J ruled in favour of the plaintiff. The defendant appealed against that ruling. Yong Pung How CJ, in delivering the decision of the Court of Appeal, dismissed the appeal and explained at 771, [12]:

In the present case, however, it was the plaintiff who sought to appeal against a *reduction* in the award from the sum of \$4,780.89 assessed by the deputy registrar to the sum of \$1,177.50 allowed by the district judge, a difference of some \$3,603.39. ***This was the 'amount in dispute'***, and it obviously exceeded \$2,000. [emphasis added in bold italics]

12 It is important to note that the \$3,603.39 referred to was neither the sum claimed by the plaintiff nor the sum awarded by the district judge, and was the sum in dispute in the appeal. The plaintiff was seeking to have the district judge's award of \$1,177.50 set aside, and the deputy registrar's award of \$4,780.89 reinstated. To put it simply, he was appealing to get \$3,603.39 more than he was awarded by the district judge.

13 The third relevant decision is *Sethuraman Arumugam v Star Furniture Industries Pte Ltd* [1999] SGHC 144 where I set out my views on the effect of s 21(1). I stated in [17] and [18]:

What is the purpose or object of s 21(1)? Minister of Law Professor S Jayakumar during the Second Reading of the Supreme Court of Judicature (Amendment) Bill which led to the amendment [of the threshold limit to \$50,000] explained that:

The purpose of the amendment is that in view of the increased jurisdiction of the Subordinate Courts, there is a need to discourage non-serious appeals to the High Court. This is best done by raising the threshold limit from \$5,000 to \$50,000. Litigants who feel that their appeals have merit may still apply for leave to appeal.

It can be argued that in keeping with that reason, the threshold limit should apply to the amount in dispute *in the appeal*, rather than the amount in dispute in the original claim. A strict construction of s 21(1) can lead to anomalous results. When a claim for \$30,000 is dismissed, leave to appeal is required before the High Court will hear the appeal because the High Court will be dealing with a dispute involving a claim of \$30,000. When \$30,000 is allowed on a claim for \$60,000, an appeal will also involve a sum of \$30,000 whether the plaintiff or defendant appeals, but on a strict construction, no leave is required. As leave is required in the first situation, leave should also be required in the second situation. The object of setting the threshold limit is not promoted when appeals involving sums below the limit are allowed to proceed without leave. [emphasis in original]

14 In the fourth case, *Abdul Rahman bin Shariff v Abdul Salim bin Syed* [1999] 4 SLR 716, the plaintiff filed a claim for \$50,000 and damages. After the claim was heard before a district judge, judgment was entered for \$50,000 and interest at 6% per annum thereon till judgment and costs. The defendant applied for leave to appeal under s 21(1) of the Act (the threshold amount had been increased to \$50,000 by that time). After his application was dismissed by a district judge, he applied to the High Court for a declaration that as the amount in dispute in the appeal (being \$50,000, interest and costs) exceeded the threshold figure of \$50,000, leave was not required.

15 Tay Yong Kwang JC (as he was then) ruled in [26]:

[W]hat we have is an appeal by the defendant against an award of \$50,000, nothing more and nothing less. This 'amount in dispute' does not exceed the minimum prescribed in s 21 Supreme

Court of Judicature Act and the defendant cannot therefore appeal as of right. If the plaintiff's action had been dismissed in toto and he wished to appeal against the whole of that decision (ie including the refusal to award him further damages), he would have been able to appeal as of right because the 'amount in dispute' would then be \$50,000 plus the further damages sought. Similarly, if the learned district judge had awarded further damages in addition to the \$50,000 awarded by her, the defendant would have been able to appeal against the whole of her decision as of right. [emphasis in original]

He adopted the same approach as that taken in *Sethuraman Arumugam v Star Furniture Industries Pte Ltd* in looking at the amount in dispute in the appeal to determine if leave was necessary.

16 The final case for consideration is *Hua Sheng Tao v Welltech Construction Pte Ltd* [2003] 2 SLR 137, an industrial accident case. In this case, the plaintiff had filed a claim for \$188,872.89. A district judge heard the claim and entered judgment for \$35,923.43 against the second defendant. Both the plaintiff and the second defendant appealed against the judgment. The question arose whether they needed leave to appeal under s 21(1). Choo Han Teck J ruled that the plaintiff did not require leave but the defendant needed leave.

17 Choo J held at [3]:

I do not agree [with counsel] that the "amount in dispute" in s 21(1) necessarily means the "judgment sum". It may well be a larger sum, namely, the amount claimed by the plaintiff at first instance. That is because his dissatisfaction with the judge's decision may stem from his belief that the judge ought to have granted him the full amount originally claimed. For my part, I would place emphasis on the "amount in dispute" rather than on the word "decision" in s 21(1). The relevant portion of s 21(1) in present context would read as follows:

[A]n appeal shall lie to the High Court from a decision of a District Court or Magistrate's in any civil cause or matter where the amount in dispute exceeds \$50,000.

Read in plain English, the meaning seems clear enough. The only question one need ask is whether the plain reading will result in an absurdity. The answer plainly, is no.

and at [8]:

It will not be right to take the difference between the amount claimed and the amount awarded to see if the figure exceeds \$50,000 because that goes against the plain reading of s 21(1) and is inconsistent with the Court of Appeal's decision in *Tan Chiang Brother's Marble (S) Pte Ltd v Permasteelisa Pacific Holdings Ltd* [2002] 2 SLR 225. Furthermore, on appeal, the entire dispute may have to be re-examined and the amount in dispute that is being re-examined must obviously be the amount in dispute at the trial below.

The decision in *Tan Chiang Brother's Marble (S) Pte Ltd v Permasteelisa Pacific Holdings Ltd*, which will be considered later in this judgment, is that the operative amount is the amount claimed at the trial.

18 He went on to state at [9]:

The wording of s 34 is similar but different from s 21(1). The former reads:

Where the amount or value of the subject-matter *at the trial* is \$250,000 or such other

amount as may be specified by an order made under subsection (3) or less; ...

Although the two sections in the same Act differ in that s 21(1) refers to the amount in dispute while s 34(2)(a) refers to the amount at trial, ***it seems to me that there is no justification in applying a diametrically opposite principle on account of such difference.*** It must not be forgotten that the words “amount in dispute” in s 21(1) qualify the preceding words, “in any civil cause or matter”. So, in so far as one examines the purposive approach taken by the Court of Appeal, it only reveals that the court ... did not regard the amount adjudicated by the trial judge to be the pivotal sum for the purposes of determining whether leave to appeal is required.

[emphasis added in bold italics]

and ruled that the plaintiff did not require leave to appeal since the statutory limit must be read as a reference to the amount at the trial.

19 However, in respect of the second defendant’s appeal, Choo J held at [11]:

The second application was the application of the second defendant whose case was that the accident was caused entirely by the fault of the plaintiff with no contribution whatsoever on the part of the defendants. I am of the view that although it does not follow that where leave is granted or proceeded as a matter of right by one party, leave ought to be granted to the other party as a matter of course, in this case there is a sufficiently strong nexus between the two intended appeals that a tug on one side pulls the other and vice versa. In such circumstances, fairness requires that leave be granted to the second defendant to appeal so that the full picture can be examined from both angles. *I therefore granted leave to the second defendant to appeal.* [emphasis added]

20 It appears that the “amount in dispute in the appeal” test was applied to the second defendant’s appeal. The defendant’s appeal would have fallen below the \$50,000 threshold and needed leave only if that test was applied rather than the “amount at the trial” test, as the amount in dispute in the defendant’s appeal was \$35,923.43 whereas the amount at trial was \$188,872.89.

21 It can be seen from the above cases that whenever s 21(1) was considered, the courts had, except in the last-mentioned case, looked at the amount of the judgment sum under appeal or the amount in dispute in the appeal rather than the amount at the trial.

22 In *Tan Chiang Brother’s Marble (S) Pte Ltd v Permasteelisa Pacific Holdings Ltd* referred to by Choo J, the Court of Appeal was dealing with s 34(2)(a) of the Act. The provision reads:

Except with the leave of the Court of Appeal or a Judge, no appeal shall be brought to the Court of Appeal in any of the following cases:

(a) where the amount or value of the subject-matter *at the trial* is \$250,000 or such other amount as may be specified by an order made under subsection (3) or less.

[emphasis added]

23 The Court rejected the view expressed in *Twin Enterprises v Lim Heng Wah Peter* [2000] SGHC 288 at [32] that:

Although the said section [s 34(2)(a)] bespeaks the value of *subject matter at the trial* it is also

... intended to refer to the amount of the *subject matter on appeal* as well. [emphasis in the original]

and ruled instead that the threshold limit applies to the amount claimed at the trial, explaining at [20] that:

In our judgment, to read the word 'trial' to mean 'appeal' would do violence to the ordinary meaning of that word and would be wholly unwarranted.

placing importance on the words "at the trial", but without making reference to its ruling in *Augustine v Goh Siam Yong* ([11] *supra*) on s 21(1) where those words were absent.

24 In my reading of the cases, the Court of Appeal's ruling in *Tan Chiang Brother's Marble (S) Pte Ltd v Permasteelisa Pacific Holdings Ltd* is not a revision or retraction of its ruling in *Augustine v Goh Siam Yong*, as the rulings relate to two sections of the Act which are worded differently. The test set for each provision should be applied unless the provisions are amended, or there are further rulings from the Court of Appeal.

25 After reviewing the cases I find firstly, that I am bound by the Court of Appeal's decision in *Augustine v Goh Siam Yong*, and secondly, that the "amount in dispute in the appeal" is the test to be preferred and applied to s 21(1).

26 Having come to that conclusion, it is clear that an appeal against the award of \$20,000 for the loss of earning capacity requires the leave of court. If, however, the "amount at the trial" test is applied to s 21(1), then no leave will be required in this case as the plaintiff's claims at trial exceeded \$50,000.

27 Should the fact that the appeal filed was against the two awards which added up to \$51,000 exempt the appellant from obtaining leave now? Section 21(1) states that an appeal shall lie to the High Court when the value of the subject matter exceeds \$50,000. That must mean that an appeal shall not lie (except with leave) to the High Court where the subject matter does not exceed \$50,000. The subject matter of the appeal is clearly less than \$50,000 now. As the value of the subject matter can change, the right of appeal without leave must also be liable to change in response to that.

28 We should also look at the policy considerations for the imposition of the threshold amounts to the right of appeal at the different levels. When the threshold limit in s 21(1) was raised to \$50,000, the rationale for that was explained, as I have set out in *Sethuraman Arumugam v Star Furniture Industries Pte Ltd* at [13] herein.

29 The right to appeal to the High Court is strictly a creature of statute. The legislature has prescribed that appeals less than \$50,000 in value will not lie except with the leave of court. There is no reason for allowing the present appeal to proceed without leave merely because its value exceeded \$50,000 at the time the appeal was filed, although it now stands at only \$20,000.

30 I therefore uphold the preliminary objection. I grant an extension of time of one week from today for the appellant to apply to the District Court for leave to appeal against the award on the loss of earning capacity.