

Kwok Seng Fatt Jeremy v Choy Chee Hau
[2003] SGHC 308

Case Number : Suit 702/2001
Decision Date : 10 December 2003
Tribunal/Court : High Court
Coram : Ching Sann AR
Counsel Name(s) : Subir Singh Panoo (Sim Mong Teck and Partners) for the plaintiff; Defendant in person; Ramesh Appoo (Just Law LLC) for the interveners
Parties : Kwok Seng Fatt Jeremy — Choy Chee Hau

10 December 2003

Assistant Registrar, Ching Sann

Undisputed facts

The plaintiff was 21 years of age at the time of the accident on 24 June 2000 and was serving his National Service. Interlocutory judgment was entered for the plaintiff at 100% liability against the Defendant on 21 January 2002. An interim payment of \$80,000.00 was made following interlocutory judgment. The Interveners, being the insurers of the Defendant's vehicle, disclaimed liability following the Defendant's conviction for drunk driving, but intervened in the proceedings in view of their potential liability.

The plaintiff's claim

2 The plaintiff claimed for damages under the following heads:

General damages

(i)	Pain and suffering	\$306,000.00
(ii)	Future cost of medical treatment	\$11,220.00
(iii)	Future cost of medication	\$5,304.00
(iv)	Future cost of urinary tract infection	\$36,210.00
(v)	Future cost of complications per lifetime	\$100,000.00
(vi)	Future cost of psychotherapy	\$6,500.00
(vii)	Future cost of toiletries	\$108,638.16
(viii)	Future cost of nursing care	\$254,771.86
(ix)	Future dry cleaning costs	\$2,601.00

(x)	Future costs of transportation	\$183,600.00
(xi)	Future costs of paraplegic equipment	\$29,057.99
(xii)	Future additional cost of holidays	\$20,400.00
(xiii)	Future loss of earnings	\$576,000.00

Special damages

(xiv)	Hospitalisation	\$25,811.31
(xv)	Consultation bills	\$344.47
(xvi)	Acupuncture treatment	\$780.00
(xvii)	Psychotherapy	\$412.00
(xviii)	Toiletries	\$18,106.45
(xix)	Paraplegic equipment	\$9,338.00
(xx)	Home renovations and installation	\$1,505.00
(xxi)	Cost of nursing care	\$46,067.00
(xxii)	Transport costs	\$19,792.00
(xxiii)	Plaintiff's mother's transport costs	\$2,470.00
(xxiv)	Additional costs of holiday	\$1,237.00
(xxv)	Loss of earnings	\$73,278.00
(xxvi)	Dry-cleaning expenses	\$345.00

Decision

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

General damages

Pain and suffering

4 The plaintiff made the following submissions for pain and suffering:

(a)	Fracture dislocation of T7 vertebra resulting in paralysis below T6	\$160,000.00
(b)	Fracture of right clavicle	\$10,000.00
(c)	Fracture of right 2 nd , 4 th and 5 th ribs with right haemopneumthorax	\$12,000.00
(d)	Multiple abrasions	\$4,000.00
(e)	Right brachial plexus injury	\$50,000.00
(f)	Loss of sexual function	\$40,000.00
(g)	Reactive depression	\$30,000.00

Counsel differed in their treatment of the various items. Mr Subir argued that there was an overlap between items (a) and (e), on the basis that item (a) had resulted in the plaintiff's loss of the use of his legs, while item (e) had resulted in him losing much of the use of his right hand. Consequently, the plaintiff ought to be treated as a quadriplegic, save that he still had one good arm. On that basis, Mr Subir submitted a global claim of \$180,000.00 for items (a) and (e). Mr Ramesh, on the other hand, submitted \$80,000.00 for item (a) and \$1,440.00 for item (e), on the basis that item (e) overlapped with items (b) and (c). Mr Ramesh also argued that item (f), loss of sexual function, ought to be considered together with item (a).

5 I was of the view that when considering the issue of overlap, it was more appropriate to treat items (a) and (e) together, rather than items (b), (c) and (e). This was because the plaintiff's loss of use of his right hand was a factor which was more properly considered together with the loss of use of his legs. Items (b) and (c), on the other hand, did not have any relation to the issue of the plaintiff's loss of use of his limbs. At the same time, I was of the view that Mr Subir had over-stated the matter when he argued that the plaintiff could be likened to a quadriplegic. It was to be noted that the plaintiff's doctor, Dr Adela Tow, had testified that although the plaintiff had lost much of the use of his right hand, he had regained much of the use of his right arm. After taking into account the various authorities cited by counsel, I awarded \$160,000.00 for items (a), (e) and (f). As for items (b) and (c), Mr Ramesh had submitted \$8,000.00 and \$8,100.00 respectively, on the basis that these two injuries overlapped. I agreed that there was some overlap in relation to these two injuries and made a total award of \$18,000.00 for both injuries.

6 Turning to item (d), Mr Ramesh submitted \$1,500.00 under this head. I was of the view that this was too low, in light of their widespread nature, and hence awarded \$4,000.00 for the abrasions. Finally, as to item (g), reactive depression, Mr Ramesh submitted that the plaintiff should only be awarded \$4,500.00. I did not find the authority, *Balachandar v Asiatic Development Bhd & Anor* [1995] 1 MLJ xlvi, tendered by Mr Ramesh in this respect to be helpful, as it was an award made by a Malaysian court, while Mr Subir had tendered local authorities in support of his claim. However, I noted that the plaintiff's mother, Ms Ho Wan Khin, had testified that his mental state had improved by a lot since the accident, and further, that the plaintiff's psychiatrist, Dr Ang Peng Chye, had not seen the plaintiff for quite some time. Consequently, I awarded \$20,000.00 for reactive depression.

7 Following from the above, the total award to the plaintiff for pain and suffering was **\$202,000.00**.

Applicable multipliers

8 In determining the proper amounts to award under items (ii) to (xiii), it was first necessary to consider the applicable multipliers. Mr Subir had used a multiplier of 17 years for items (ii) to (xii), and a multiplier of 16 years for item (xiii), while Mr Ramesh submitted a multiplier of 13 years. A relevant consideration in this area was Dr Tow's testimony that spinal cord patients such as the plaintiff would have a reduced life expectancy of 5 to 10 years. On that basis, I did not consider it unreasonable to expect the plaintiff to live to the age of 60. In the premises, the multiplier used by Mr Ramesh of 13 years was far too low and I took the view that a multiplier of 16 years across the board would be appropriate.

Future medical expenses

9 For item (ii), cost of outpatient treatment, this was estimated by Mr Subir at \$660.00 per year and by Mr Ramesh at \$60.00 per year. The claim of \$660.00 per year was based on a letter from Dr Tow in which she estimated outpatient treatment per year at \$660.00. However, as Mr Ramesh pointed out, the plaintiff had submitted receipts for all his outpatient treatment since his return home from the hospital, and these receipts showed that he had incurred the sum of \$193.04 for year 2001 and \$60.00 for year 2002. As such, I agreed that a lower multiplicand ought to apply for item (ii). Taking into account the fact that the plaintiff might need more visits to the doctor as he aged, and that tests might be ordered during such visits which would necessitate greater expenditure, I was of the view that a multiplicand of \$200.00 per year was appropriate. As such, I awarded the sum of **\$3,200.00** for item (ii).

10 For item (iii), the future cost of medication, Mr Subir relied on Dr Tow's estimate of \$1.20 per item per week, at five items, to arrive at the sum of \$6.00 per week, or \$312.00 per year. Mr Ramesh submitted that, based on the receipts submitted by the plaintiff from Ang Mo Kio Hospital, the true cost was \$14.40 per month, or \$172.80 per year. In the premises, I awarded \$200.00 per year for medication, ie an award of **\$3,200.00** for item (iii).

11 For items (iv) and (v), Mr Subir made two claims: for the future costs of urinary tract infections at \$36,210.00, and for other complications at \$100,000.00. However, as Mr Ramesh pointed out, Dr Tow had said in cross-examination that her estimate of \$100,000.00 included the cost of urinary tract infections. Consequently, I made **no award** under item (iv). As for item (v), I noted that Dr Tow had stated that her estimate of \$100,000.00 was on the high side. However, I did not accept Mr Ramesh's argument that the plaintiff could keep his expenses down to a minimum of \$15,000.00. I agreed that the plaintiff had been scrupulous in looking after himself in the intervening period between his return home and the date of assessment, such that he had a lower chance of incurring complications, but was of the view that the discount suggested by Mr Ramesh discount was far too steep. In the premises, I awarded **\$70,000.00** under item (v).

12 Finally, the plaintiff's claim under item (vi) was based on \$250.00 per visit multiplied by 26 visits, on the basis that Dr Ang had said that he would need a year of fortnightly treatment to come to terms with his loss. Mr Ramesh, on the other hand, submitted that no award should be made for this item as the plaintiff had stopped his psychotherapy treatment of his own accord and had not approached his parents for help in paying his psychotherapy fees. More importantly, the plaintiff had resumed the semblance of a social life and had gone on holiday just after he stopped seeing Dr Ang. I was of the view that the plaintiff probably did not need psychotherapy treatment. However, I made

some allowance that he might need it in the future, on the basis of Dr Ang's diagnosis that he was still a very lonely person. Hence, I awarded **\$2,000.00** under item (vi).

Cost of future nursing care

13 Dealing next with item (viii), this was divided into three separate heads: agency fees, the monthly costs of the maid, and the maid's medical expenses. The first matter to consider under this head was the apportionment of expenses incurred as a result of having to hire a maid. Mr Subir conceded that a discount ought to apply as the maid did some work for the family as well, and his submissions under this item were made on the basis of a 10% discount. Mr Ramesh, on the other hand submitted that a discount of 33% should apply. After taking into account the fact that the plaintiff did not need 24-hour care, that many household chores would have been carried out for the entire family, and that the maid was the only person who attended to the plaintiff at night, I was of the view that a 15% discount should apply.

14 For agency fees, Mr Subir estimated this at \$443.50 every two years, based on receipts from two maid agency fees paid. Mr Ramesh, on the other hand, submitted that agency fees would only be incurred every 5 years and that the agency fees would only be \$288.00, based on the lower of the two receipts submitted by the plaintiff. I accepted Mr Subir's submission on this issue as the fact that one maid might be willing to work longer would be offset by the difficult nature of caring for the plaintiff, which might lead to a maid wanting to go home earlier. As such, a maid would need to be replaced eight times over the applicable period of 16 years, ie a total cost of \$3,548.00.

15 For the monthly costs of the maid, Mr Subir based his submission on a wage bill of \$320.00 per month, levy of \$345.00 per month, and food and lodging at \$700.00 per month. Mr Ramesh contested the claim for the levy on the basis that it was paid by the plaintiff's mother, and that she claimed tax relief for it. Mr Ramesh also argued that no claim should be allowed for the maid's food and lodging as these were losses incurred by the plaintiff's parents and no evidence had, in any event, been adduced to support the claimed sums. I did not fully accept Mr Subir's argument that the plaintiff should be allowed to claim for the levy as it was an expense incurred for his benefit. Although it was clear that the need for the maid had only arisen after the plaintiff had been injured, the fact remained that the plaintiff's mother obtained tax relief from her paying of the levy. In the absence of further evidence as to how this benefit was to be quantified, only a nominal award was justified. Likewise, I accepted that some expense was incurred by the plaintiff's parents on account of the maid's food and lodging, and that the plaintiff could claim for it. However, in the absence of any proof as to the actual loss, only a nominal sum would be awarded. Consequently, I assessed the monthly costs to the plaintiff of the levy, food and lodging at \$80.00 per month.

16 As for the maid's medical bills, Mr Subir submitted \$50.00 a year while Mr Ramesh submitted \$40.00. I accepted Mr Subir's submission of \$50.00 per year, or \$800.00 for 16 years, on the basis that the mandatory twice-yearly check-ups would already cost \$36.00 and there was the possibility that the maid might fall ill.

17 In light of the foregoing, after applying a 15% discount for the wage bill, the agency fees and the medical bills and adding the award for the levy and the food and lodging, I awarded **\$71,279.80** for item (vii).

Future transport expenses

18 Dealing next with item (x), the plaintiff gave evidence that he had to use a London cab to travel around, and that this would cost \$35.00 per trip. As such, Mr Subir submitted \$900.00 per

month for this item, after deducting \$100.00 per month, being what the plaintiff would have spent even if he had not been injured. Mr Ramesh for his part took issue with the plaintiff's claim that he needed to travel by London cab, as he could take a normal taxi with the help of friends, and should have tried to cut down on his transport costs by booking the taxi ahead of time. Mr Ramesh also purported to rely on *Ang Chuan Seng v Lee Siah Cheng* (unreported) as authority for his submission that the plaintiff should not be entitled to claim anything apart from transport costs incurred as a result of visiting the doctor, ie \$60.00 a year at \$20.00 a trip.

19 I did not find the submissions made by Mr Ramesh in this respect to be helpful. It was clear even from the extract relied upon by Mr Ramesh from *Ang Chuan Seng* that no additional transport costs had been awarded in that case as the assistant registrar had concluded that apart from the trips to see the doctor, the plaintiff had incurred no additional transport costs. In the present case, it was patently clear that the plaintiff had incurred additional transport costs as a result of his injuries, as he would be compelled to take taxis where he could previously have relied on public transport. I also did not consider Mr Ramesh's submission that the plaintiff ought to try taking other forms of taxis to be reasonable in light of the plaintiff's size and the injury to his right hand, which meant that he was not able to lift himself as other paraplegics might. Finally, I did not agree with his submission that on average, the receipts submitted by the plaintiff showed that he only averaged about \$255.00 per month on transport. Mr Ramesh appeared to have selectively picked out two months in which the plaintiff had incurred lower transport charges and ignored other receipts the plaintiff had submitted, which showed his average monthly transport expenses to be nearer to Mr Subir's estimate of \$1,000.00 per month.

20 At the same time, I did not agree with Mr Subir's submission that the plaintiff would have only spent \$100.00 a month on transport if he had not been injured. I noted that many of the receipts submitted by the plaintiff showed that he had been out after midnight. As such, even if the plaintiff would normally have travelled by public transport if he had not been injured, he would still have had to travel by taxi on many occasions as the public transport services would have already stopped running. In the premises, I assessed the additional costs of transport at \$400.00 per month, leading to an award of **\$76,800.00** for item (x).

Other future non-medical expenses

21 The claim under item (vii) was made on the basis that the total amount spent on toiletries from December 2000 to September 2003 was \$18,106.45, ie an average of \$532.54 per month. Mr Ramesh's submission of \$520.00 per month was based on receipts submitted by the plaintiff. I accepted Mr Subir's submission and awarded **\$102,247.68** for item (vii).

22 For item (ix), the main area of difference was the multiplier applied by parties. On the basis that dry-cleaning cost the plaintiff \$25.50 on each occasion, as evidenced by the receipts submitted, I awarded **\$2,448.00**.

23 For item (xi), the plaintiff's claim was based on the testimony of Raja Singh, the plaintiff's supplier of paraplegic equipment, who had testified as to the expected lifespan of the equipment. Mr Ramesh argued, however, that the claim ought to be revised in that Mr Raja, being in the business of supplying such equipment, would give self-serving evidence as to the lifespan of the equipment. Instead, it could be estimated that the equipment would last a further third of its estimated lifespan. I saw no reason to infer an ulterior motive on Mr Raja's part and accepted his testimony on this matter. Using the multiplier of 16 years, I awarded the full amount claimed for the tyres (being \$60.00, replaceable every 2 years), the Roho cushion (being \$600.00, replaceable every 3 years), the customised wheelchair (being \$3,700.00, replaceable every 5 years), the deluxe commode (being

\$400.00, replaceable every 5 years) and the Spenco mattress (being \$500.00, replaceable every 5 years). As for the folding commode, I took the view that the expense incurred in replacing it every five years was not justified, given that it was only of use on occasions when the plaintiff travelled, and, for the reasons explained in the next paragraph, the plaintiff would not travel very often. Hence, I awarded \$5302.86 for this item, being the amount Mr Ramesh was willing to concede for this item, which in my view was already on the generous side, and after making the necessary adjustments to account for the difference in multipliers used. I also made no award for the cloud cushion as Mr Subir had conceded that it was not in fact needed. On this basis, I awarded **\$23,702.86** under item (xi).

24 Item (xii) was based on an estimate of \$1,200.00 per year for holidays taken by the plaintiff. Mr Ramesh, on the other hand, argued in all probability, the plaintiff would not have travelled every year if he had not suffered his disability. He also argued that the cost per holiday was too high, as the plaintiff should be able to stay at mid-range, 3-star hotels when he travelled. I agreed with Mr Ramesh's argument that it was highly unlikely that the plaintiff would have travelled every year. Instead, it was more likely that he would have gone on holiday every 3 years. However, I did not agree that the plaintiff could stay at 3-star hotels. The plaintiff himself had testified as to the great difficulty he had in finding hotels which could accommodate him and his equipment, which was why he had to resort to higher-end hotels when he travelled. For reasons elaborated below in paragraph 38, I took the view that an additional cost of \$884.00 per holiday was appropriate in the circumstances, and consequently awarded **\$4,714.67** under item (xii).

Loss of earnings

25 Finally, as to item (xiii), the plaintiff's claim of \$576,000.00 for lost earnings was based on a monthly salary of \$3,000.00, inclusive of Central Provident Fund contributions and after deducting expenses. Mr Ramesh for his part cast doubt on the plaintiff's ability to earn the sums claimed and submitted that the plaintiff should not recover for loss of future earnings. He pointed out that the plaintiff neither passed his Primary School Leaving Examination nor obtained a full certificate from the Institute of Technical Education (ITE). Although the plaintiff had been working as a salesman at Alfred Dunhill prior to his National Service, he had no firm plans to work there. I agreed to a large extent with Mr Ramesh's submissions. It was the evidence of Ms Goh Hui Har from Alfred Dunhill that the company had not needed his services all the time, but would instead call on him as and when they needed an extra hand. Moreover, Alfred Dunhill had downsized significantly from the time the plaintiff worked for them, such that they would have no place for the plaintiff after he completed his National Service. I also found the plaintiff's stated plan to return to ITE after his National Service and earn a full certificate to be highly speculative and lacking in certainty. There was also no evidence as to the amount the plaintiff could earn. The estimates he had given of \$1,200.00, \$1,500.00 and \$1,800.00 per month being salaries for a worker with a full ITE certificate were not substantiated by any evidence. In any event, they could not be safely relied on given that the plaintiff himself did not have a full ITE certificate.

26 The above said, I took the view that it would still be possible to make an award, albeit a conservative one, for loss of future earnings. The plaintiff had shown that he had earned up to \$2,300.00 a month with Alfred Dunhill during those periods when they could take him on. Even if Alfred Dunhill had not been able to hire the plaintiff when he completed National Service and he had not been able to obtain his full ITE certificate, he would nevertheless have been able to take on some form of part-time sales position, even if it might be less prestigious and for less remuneration. As such, I took the view that the plaintiff would be able to earn at least \$700.00, per month, after deducting expenses.

27 It would be appropriate at this juncture to deal with Mr Ramesh's submission that there was

insufficient mitigation on the part of plaintiff in that he ought to have should have sought a job. I disagreed strongly. Ms Goh had testified that she would not hire the plaintiff for a sales position as such persons needed to be presentable whereas the plaintiff was wheelchair-bound. The plaintiff himself had testified as to the difficulty of finding a job. I also did not find helpful Mr Ramesh's citation of Mr Raja, the equipment supplier, as justification for his argument that the plaintiff was employable. Mr Raja had testified that he regarded himself as an exceptional case and that most paraplegics would find it difficult to go back out into the workforce. Indeed, Mr Raja himself did not hire any paraplegics in his office.

28 In the premises, I awarded **\$134,400.00** under item (xiii).

Special damages

29 Item (xiv), hospitalisation expenses, was agreed between the parties at **\$25,811.31**, as was item (xv), consultation bills, at **\$344.47**.

30 For item (xvi), Mr Ramesh agreed to an award for the acupuncture treatment given to the plaintiff at Ang Mo Kio hospital, which cost \$405.00. However, he contested the claim for a further \$375.00 which the plaintiff had incurred at a Chinese physician, arguing that this was not treatment advised by the doctors and had no benefit to the plaintiff. This was contradicted by Dr Tow's testimony, in which she has stated that she would let her patients go for acupuncture if they felt they needed it, and that it helped to reduce pain and relax the plaintiff's muscles. On that basis, I awarded the full sum claimed under item (xvi) of **\$780.00**.

31 For item (xvii), receipts were submitted for psychiatric consultation which the plaintiff had had with Dr Ang. This was contested by Mr Ramesh who submitted that the plaintiff should only be awarded \$90.00 for this item as he should have gone to the Institute of Mental Health instead of a private practitioner. I did not accept this objection. First, the issue of whether the plaintiff should have gone to the Institute of Mental Health emerged for the first time in submissions. Secondly, the referral to Dr Ang had been made by Dr Tow, such that it was not the plaintiff who had chosen to go to a private practitioner. Hence, I awarded the full sum claimed of **\$412.00**.

32 For item (xviii), there was some confusion between the parties as to the proper amount to be awarded. The plaintiff conceded in cross-examination that he had mistakenly added in a claim for \$347.50 while Mr Ramesh appeared to have left out two further invoices for expenses incurred between the date the plaintiff's affidavit of evidence in chief was filed and the date of the assessment. After reviewing the invoices submitted, I concluded that the proper amount to be awarded was **\$18,106.45**.

33 Item (xix) was agreed between the parties at **\$9,338.00**.

34 For item (xx), Mr Subir conceded that there had been a mistaken claim of an additional \$300.00 for a mattress. Mr Ramesh, however, conceded for his part that the mattress would have had to be changed anyway and offered to pay half of its value. As such, I awarded **\$1,655.00** under this head.

35 For item (xxi), the parties were in agreement as to the amount of salary paid out to the two maids that had been engaged since. As already stated in paragraph 13 above, I was of the view a discount of 15% should be applied to the maid's salary (being \$9,280.00 paid thus far for 33 months), the maid's medical bill (being \$50.00) and the agency fees (being \$887.00), and that a nominal sum only should be awarded for the claims made in respect of the maid levy and the maid's food and

lodging. Consequently, I awarded **\$11,324.45** under item (xxi).

36 For item (xxii), the plaintiff submitted receipts totalling \$19,792.00 being the cost of taxi rides he had taken in order to go out. For the reasons stated in paragraph 20 above, I applied the rate of \$400.00 per month to the 22-month period in question and hence awarded **\$8,800.00**.

37 Item (xxiii) was abandoned by the plaintiff in closing submissions.

38 For item (xxiv), Mr Subir submitted that it was reasonable for the plaintiff to take his maid along for his holiday, such that he should be compensated for the price of her air ticket and airport tax at \$370.00. However, I agreed with Mr Ramesh's submission that the additional cost of transportation should be reduced by a third, to \$48.00, as the plaintiff's friend also enjoyed the benefit of that. I also accepted the submission made by Mr Ramesh as to the reduction of the claim for hotel charges should be reduced to \$366.00 as it the plaintiff's friend had also benefited from it. I took the view that the food costs claimed for the maid were on the high side given that she would also have eaten if she had remained in Singapore, and awarded \$100.00. The total award for item (xxiii) was hence **\$884.00**.

39 For item (xxv), the claim for lost earnings was contested by Mr Ramesh who argued that there were no grounds for the plaintiff to make his claim, be it on the basis of his previous employment with Alfred Dunhill or on his ITE qualifications. As stated in paragraphs 25 and 26 above, I agreed with Mr Ramesh's submission for the most part, but nevertheless was of the view that there an award for lost earnings was justified. In the premises, I awarded the plaintiff **\$18,200.00** for lost earnings from the time he would have completed National Service and entered the workforce in July 2001 to the time of the assessment.

40 Finally, as to item (xxvi), the claim was based on receipts submitted by the plaintiff. Mr Ramesh, however, claimed that the plaintiff had only submitted receipts for the sum of \$330.50, and that he had also claimed the cost of dry-cleaning a comforter which was not one of the items required. From the receipts submitted, it was clear that the plaintiff had submitted receipts for \$356.00, from which he had then deducted the sum of \$11.00 for a comforter. As such, I awarded **\$345.00** being the full sum claimed under this head.

Summary

41 In summary, the total award made to the plaintiff is as follows:

Special damages: \$96,000.68

General damages: \$695,993.01

Total award = **\$791,993.69**

And interest on \$96,000.68 at 3% from the date of accident to the date of trial, and on \$202,000.00 at 6% from that date of service of the writ to the date of trial. Usual consequential orders.