Ang Leng Hock v Leo Ee Ah
[2004] SGHC 55

Case Number : Suit 256/2000, RA 382/2003, 385/2003, SIC 7063/2003

Decision Date : 16 March 2004

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Gurdeep Singh (K S Chia Gurdeep and Param) for plaintiff; Lee Yuk Lan (Goh Poh and Partners) for defendant

Parties : Ang Leng Hock — Leo Ee Ah

Civil Procedure – Appeals – Registrar's appeals from assessment of damages to judge in chambers – Whether judge in chambers has discretion to allow further evidence – Whether Ladd v Marshall principles applicable

Tort – Negligence – Remedies – Whether award of loss of future earnings or loss of earning capacity appropriate – Whether multiplier for costs of future medical expenses should be related to life expectancy or retirement age

16 March
2004
Judgment reserved.

Judith Prakash J:

Background

1 The plaintiff, Mr Ang Leng Hock, was riding his motorcycle on 29 January 1999 when it was involved in a collision with a taxi driven by the defendant, Mr Leo Ee Ah. Mr Ang was injured: his left shoulder was fractured, the second and third metatarsal heads of his left foot sustained crack fractures and his right wrist was sprained. At that time, Mr Ang was 41 years old.

2 This action was started in May 2000. Parties reached a settlement shortly before the trial and, on 18 August 2000, interlocutory judgment was entered for the plaintiff for damages to be assessed with costs and interest reserved to the registrar. The judgment further provided that the defendant was to be liable for 95% of the damages awarded to Mr Ang.

3 The assessment hearing took place before the assistant registrar over three days in August 2003 and her judgment was delivered on 9 October 2003. Mr Ang was awarded the following damages:

(a)	pain and suffering and loss of amenities	$ 20,000.00
(b)	Loss of future earnings	$244,062.00
(c)	Future medical expenses	$ 12,000.00
(d)	Pre-trial loss of earnings	$194,642.63
(e)	Costs of repairs	$1,000.00

(f) Loss of use of motorcycle $120.00

(g) Transport expenses $130.00

Neither party was completely satisfied with the award. Both appealed.

4 Mr Ang's appeal is:

(a) against the assistant registrar's decision that he was not entitled to his claim in respect of his alleged loss of earnings from his employment with Smith & Nephew Pte Ltd following the accident on 9 January 2000;

(b) against the assistant registrar's decision that the appropriate multiplier to be applied to his loss of future earnings is six years (Mr Ang thinks it should be between eight and ten years); and

(c) against the assistant registrar's decision not to make an award in his favour in respect of loss of earning capacity.

5 The defendant's appeal is against the awards made in respect of Mr Ang's pre-trial loss of earnings, his future loss of earnings and his medical expenses. The defendant's position is that these awards are too high and must be reduced.

Summons-in-Chambers No 7063 of 2003

6 The two appeals were fixed for hearing on 18 November 2003. Some five days before that, the defendant filed a summons-in-chambers for leave to adduce further evidence at the hearing of the appeals. The further evidence that the defendant wished to adduce comprised the results of searches done at the Registry of Companies into the shareholders of a company called "Grand Court Vegetarian Restaurant Pte Ltd". The grounds of the application were that:

(a) the nature of the evidence was such that had it been adduced at the hearing before the assistant registrar, Mr Ang could not have rebutted it; and

(c) the evidence would cast serious doubt on the credibility of Mr Ang and his witness, one Mr Gwee Tsu Sun.

This application was fixed for hearing on the same day as the appeals. Mr Gurdeep Singh, counsel for Mr Ang, objected to the admission of new evidence at this late stage. I dismissed the application and awarded costs to the plaintiff. I then went on to hear the appeals proper and at the end of the hearing I reserved my decision. Ms Lee Yuk Lan, counsel for the defendant, then wrote in for further arguments on the adduction of further evidence. I acquiesced to her request.

7 The main issue canvassed at the hearing of the further arguments was what was the appropriate test to be applied when a party to an assessment of damages that had taken place before the registrar wished to adduce further evidence at the hearing before the judge in chambers. When the issue was originally raised, I had taken the view, following *Lassiter Ann Masters v To Keng Lam* [2003] 3 SLR 666, that in such cases, the principles in *Ladd v Marshall* [1954] 1 WLR 1489 applied. Ms Lee sought to persuade me to change that view.

8 In *Lassiter*, Lai Siu Chiu J held that neither the fact that Registrar's Appeals operated by way

of rehearing nor O 38 r 2(3) of the Rules of Court (Cap 322, R 5, 1997 Rev Ed) ("the Rules") gave a judge in chambers the discretion to automatically admit further testimony (oral or written), where damages had already been assessed and judgment thereon delivered. To allow such applications would be to set a dangerous precedent and open the floodgates to abuse of the rule that Registrar's Appeals were dealt with by way of rehearing. The principles of *Ladd v Marshall* applied even to Registrar's Appeals.

9 Ms Lee's first further submission was that an appeal against the decision of the Registrar to a judge in chambers is by way of a rehearing and that registrars are not trial judges. As such, an appeal from the registrar to the judge in chambers is not an appeal in the true sense as compared to an appeal from the judge in chambers or an appeal from a judge in open court to the Court of Appeal. Accordingly, the judge in chambers hearing the appeal treats the matter as though it came before him for the first time. In support of this submission, she cited *Chang Ah Lek v Lim Ah Koon* [1999] 1 SLR 82 and *Herbs and Spices Trading Post Pte Ltd v Deo Silver (Pte) Ltd* [1990] SLR 1234. I would point out that *Chang Ah Lek*, unlike *Lassiter*, was not a case that involved the admission of new evidence on appeal from an assessment hearing before the registrar. In *Chang Ah Lek*, the Court of Appeal was considering the manner in which a judge in chambers deals on the merits with an appeal from the registrar. There was no discussion at all relating to the judge's powers to admit new evidence in such a situation. What was in issue was whether the judge could only interfere with the award made by the registrar if he was satisfied that the registrar had acted on a wrong principle of law or had misapprehended the facts or had made a wholly erroneous estimate of the damages suffered. *Herbs and Spices* dealt with the nature of the jurisdiction of a district judge in hearing appeals from the registrar of the District Court and it too has nothing to do with the issue before me. Neither of these cases, in my judgment, preclude me from applying the *Ladd v Marshall* principles to the present case.

10 Ms Lee's second argument was that in determining whether to allow the admission of further evidence on appeal, a distinction has to be drawn between admitting such evidence before a judge in chambers and admitting it before the Court of Appeal. Whilst the *Ladd v Marshall* test would be applied in an application to admit further evidence on an appeal to the Court of Appeal, the judge in chambers hearing an appeal from the registrar is free to allow the admission of fresh evidence in the absence of contrary reasons. This is because whilst O 57 r 13(2) of the Rules specifies that further evidence may only be admitted before the Court of Appeal when there are special grounds for such admission, there is no equivalent provision or restriction in respect of an appeal to the judge in chambers against the decision of the registrar. Ms Lee relied on the Court of Appeal decision, *Lian Soon Construction Pte Ltd v Guan Qian Realty Pte Ltd* [1999] 2 SLR 233, which held that in this situation the judge in chambers was free to allow the admission of fresh evidence in the absence of contrary reasons.

11 The appellants in *Lian Soon Construction* were the main contractors engaged by the respondents for a building project. During the course of the works, the architects issued various interim certificates. The appellants only received payment in respect of some of these certificates. They therefore sued the respondents for payment in respect of the other certificates. They then took out an application for summary judgment. The respondents filed two affidavits for this hearing. At the hearing, the deputy registrar gave final judgment to the appellants. The respondents appealed. Subsequently they filed a summons-in-chambers for orders that they be at liberty to file an additional affidavit for the purpose of the appeal to the judge in chambers. This application was allowed and the further evidence was admitted. The appellants appealed against this decision and argued that the judge had erred in failing to apply the higher *Ladd v Marshall* test in determining whether to allow the admission of the new affidavit. They recognised that the practice in the UK was to readily allow fresh evidence on appeal to a judge in chambers. They argued, however, that this practice should no longer be followed since, as of August 1991, the position with respect to the procedure for filing

affidavits under O 14 r 2 of the Rules had been amended in Singapore. A strict timetable was now prescribed by the Rules and there was no equivalent in the UK.

12 The judgment of the Court of Appeal was delivered by Karthigesu JA. His Honour recognised that the newly structured timetable for the filing and service of documents and new requirements in relation to the affidavit in support of the O 14 application had been introduced to ensure that O 14 proceedings were expedited and delays minimised. He then considered the *Supreme Court Practice 1999* and *Singapore Court Practice 1999* by Pinsler, both of which commented that a judge in chambers hearing an appeal from the registrar is entitled to treat the matter afresh as though it came before him for the first time and has an unfettered discretion to admit new evidence whilst the Court of Appeal does not have such unfettered discretion to receive further evidence on hearing an appeal on summary judgment and might only do so on "special grounds" as provided in O 57 r 13. Karthigesu JA then summarised the position as follows (at [38]):

> The amendments to O 14 r 2 follow the rationale of summary proceedings and seek to expedite relief. Failure to comply strictly with those time limits may lead to an order for costs being made against the defaulting party: O 14 r 2(7). The rationale behind the amendments is distinct from the rationale behind the adduction of fresh evidence before a judge in chambers. A judge in chambers who hears an appeal from the registrar is entitled to treat the matter as though it came before him for the first time. The judge in chambers in effect exercises confirmatory jurisdiction. The judge's discretion is in no way fettered by the decision below, and he is free to allow the admission of fresh evidence in the absence of contrary reasons. On appeal to the Court of Appeal, case law has established that the Court of Appeal will not interfere with the discretion of the judge unless satisfied that the judge's discretion has been wrongly exercised. Order 57 rule 13 specifically states the manner in which further evidence may be received. There is no equivalent provision with respect to an appeal to a judge in chambers. … Lai Kew Chai J was thus correct in drawing a distinction between the admission of fresh evidence before a judge in chambers as opposed to the Court of Appeal.

13 The *Lian Soon Construction* case was cited to Lai Siu Chiu J in *Lassiter*. She did not find it determinative of the question before her. She stated at [26], [27] and [29]:

> 26 I would also add that the fact that our (and UK) courts treat Registrar's Appeals as rehearings does not give judges a *carte blanche* as Mr Hwang seemed to suggest, to admit fresh evidence as opposed to admitting additional affidavits for the appeal, which is routinely done. In my view, there is a vast difference between the two. I agree with the defendant's submission that rehearing by way of Registrar's Appeals only means that a judge in chambers is entitled to look at the case *de novo* based *on whatever evidence that was presented to the Registrar below*; it does not extend to the admission of new testimony.
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> 27 It bears remembering that, if the assessment of damages had been conducted before a judge (as was originally intended according to Mr Hwang) instead of by the Registrar and the plaintiff had appealed therefrom to the Court of Appeal instead of to a judge in chambers, there is no question that the principles in *Ladd v Marshall* would apply, in which case the applications would most likely have been refused.
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> 28 …
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> 29 Mr Hwang had cited my decision (as well as the Court of Appeal's) in *Chang Ah Lek v Lim Ah Koon* as authority for his submission that even an appeal on assessment of damages to a judge in chambers is dealt with by way of a rehearing. That may be so, but neither in that nor in

any of the other cases he cited has the court been known to admit fresh evidence by way of [affidavits of evidence-in-chief] or *viva voce* testimony on interlocutory applications.

[emphasis in original]

14 As Lai J pointed out, none of the cases that have previously been decided on the issue of adduction of fresh evidence before the judge in chambers was a case of an appeal against an award made at an assessment of damages hearing at which *viva voce* evidence had been received, cross-examination had taken place and parties had given prior discovery of all documents that they would be relying on. The facts of *Lassiter* are similar to the facts of the case before me in that in both cases, the appeals were against damages awards made by the registrar. Secondly, in both cases, the hearing before the registrar had been hotly contested, discovery had been given, affidavits of evidence-in-chief and bundles of documents had been filed, and witnesses had been subjected to extensive cross-examination on the allegations in their affidavits. The difference between *Lassiter* and the present case is that in *Lassiter*, the plaintiff appellant wished to adduce further affidavits of evidence-in-chief and this would have necessitated the recalling of witnesses who had testified at the assessment. In this case, the defendant wished to adduce documents in the public domain in order to challenge the credibility of Mr Ang and one of his witnesses. The defendant here therefore submitted that there was no necessity to recall any witnesses or for the court to take any *viva voce* evidence.

15 I think that there is a distinction to be drawn between the adduction of further evidence before the judge in chambers on an appeal from the registrar against a decision on an interlocutory application like an O 14 application, and one that is against a final decision, albeit by a registrar, which has been taken after a full trial on the merits in that discovery has taken place, documents and affidavits of evidence-in-chief have been filed, *viva voce* evidence has been given and the parties have had the opportunity of cross-examining each other's witnesses. In the first case, the original evidence would have been only documentary. Any prejudice that might have arisen from allowing further documentary evidence by way of affidavit could have been dealt with easily by giving the other party a right of reply. The second situation is very different. In that case, both parties would have (or should have) prepared for the hearing before the registrar in the same manner as for a trial in the High Court and would have engaged in the discovery exercise and in the cross-examination of witnesses. To allow further evidence to be freely adduced before the judge on appeal could easily lead to abuse of process. In the *Lassiter* case it would have meant the plaintiff and her witnesses being recalled for further cross-examination. That was not a desirable course. It would have been expensive and would have caused delay. Of course there are some instances where it would be correct to allow fresh evidence on appeal but there is already a procedure for deciding when this would be the correct thing to do and that is the procedure laid out in *Ladd v Marshall*. In my view, there is no reason not to apply the *Ladd v Marshall* test to the adduction of fresh evidence on an appeal to the judge in chambers from an assessment of damages hearing before the registrar. The assessment hearing has all the characteristics of a trial. In procedure there is no distinction between that hearing and the hearing of a trial before a judge. As Lai J pointed out, the assessment hearing could well have taken place before the judge. It is only for administrative convenience that assessment hearings are often heard by registrars instead of by judges. The selection of the forum should not confer an additional advantage on the party who seeks to adduce further evidence.

16 The facts of the present case are not as egregious as those of *Lassiter*. The additional evidence sought to be adduced is documentary in nature. The application does not, however, pass the *Ladd v Marshall* test since this evidence was available before the assessment hearing and could have been obtained then had due diligence been exercised. In fact, it could have been produced even after the assessment hearing since there was a time lapse between the hearing itself and the date of

the decision. It is noteworthy that during this interim period the defendant did apply for leave to adduce a further affidavit from one of the medical witnesses. A similar application could very well have been made then in relation to the evidence that the defendant now seeks to adduce. Further, the second limb of *Ladd v Marshall*, *ie* that the new evidence is such that, if given, it would probably have an important influence on the result of the case, is not met here either. The purpose of adducing the new evidence is to attack the creditworthiness of two witnesses. The defendant's position is, however, that these two witnesses are not worthy of credit based on the material which is already before the court. Lengthy submissions on creditworthiness having been made, one additional item of evidence is not going to prove pivotal.

17 Even if I am wrong and I do have an unfettered discretion to admit new evidence at this stage, I decline to exercise this discretion in favour of the defendant. As the evidence to be adduced goes to credit only, I do not think that it adds much to the case but, if it were admitted, I would think it necessary, and fair, to grant Mr Ang the opportunity of explaining the situation. This course would result in more expense and delay than the evidential value of the new evidence is worth.

18 For the reasons given above, I affirm my original decision on the defendant's application to adduce new evidence.

The appeals

19 There has been no appeal against the award made for pain and suffering. Instead both appeals deal mainly with the financial consequences of the accident in relation to Mr Ang's employment situation. It is necessary therefore to first give a fairly detailed account of his occupation both prior to and after the accident.

Mr Ang's employment history

20 From 1994 until the accident in 1999, Mr Ang was an independent contractor for Grand Court Vegetarian Restaurant ("Grand Court"). In 1994, Grand Court commenced an outdoor catering business and it employed Mr Ang to assist it in relation to such catering functions. For these functions Grand Court would provide the food, the tables and chairs, crockery and cutlery and other related utensils and equipment. It would also provide the cook(s). Mr Ang's duties were to transport the equipment from the Grand Court store to the site of the function. Once there, he had to set up the kitchen facilities for the function, supervise the setting up of the tables and chairs and the table settings and also, when necessary, supervise the setting up of tents to house the function. He also provided staff to wait at the tables and to clear up and clean. Occasionally, when there was a shortage of staff, Mr Ang would also assist in the cooking.

21 Mr Ang stated that he had worked for Grand Court for many years and over the years Grand Court had always been satisfied with his services. He was appreciated by Grand Court because:

(a) he was able to undertake outdoor catering services at very short notice even when the function involved catering for over 2,000 persons;

(b) he was always able to provide adequate support staff and supervision for the staff and the functions;

(c) he was also able to provide the requisite number of suitably qualified staff to carry out the necessary duties for the outdoor catering functions; and

(d) he took good care of the equipment supplied and ensured that it was all returned to Grand Court undamaged and in the same quantity as supplied.

22 When there was a function, Mr Ang would start work at about 10.00am in the morning and he would continue until late at night or the early hours of the next day. He was required to be present throughout the period of the function to supervise and co-ordinate the entire process. He also had to ensure that at the end of the function, the premises at which the function was held were returned in good order and all of Grand Court's equipment was re-delivered to it. In the course of his duties, he had to be extremely fit as he was required to stack up bulky and heavy items of up to 50kg in weight. He also had to carry out a range of duties including driving the transport lorry, loading and unloading it, cooking, supervising functions of up to 200 tables (2,000 persons) and obtaining part-time staff.

23 Mr Ang stated that whilst working with Grand Court he was paid the following:

Month	1996	1997	1998	1999
January	$47,002	$24,890	$68,100	$31,111
February	$33,098	$49,990	$61,098	
March	$25,800	$32,888	$25,998	
April	$28,223	$21,876	$17,980	
May	$29,003	$47,500	$30,300	
June	$34,010	$28,900	$22,505	
July	$28,800	$22,988	$21,700	
August	$39,006	$20,780	$12,777	
September	$21,855	$24,445	$13,992	
October	$25,300	$33,300	$24,777	
November	$22,444	$30,600	$19,345	
December	$32,223	$37,099	$21,569	
Yearly total	$366,764	$375,256	$340,141	

These figures were based on a letter dated 22 June 1999 from Grand Court to Mr Ang's solicitors. Mr Ang did not produce any other documents in support of his assertions as to the sums received from Grand Court.

24 Mr Ang asserted that his profits were approximately 15% to 20% of what Grand Court paid him. He obtained such profits because he performed many of the tasks involved in the catering

service himself instead of hiring additional workers to do them. Among these tasks were those of a driver, a cook and a supervisor. Mr Ang calculated that the average amount received by him from Grand Court each month during the years 1996, 1997 and 1998 was $30,060.02 and that therefore, at the rate of 15%, his average monthly profit was $4,509.

25 In January 1999, Grand Court had ongoing outdoor catering contracts. After the accident, however, Mr Ang was unable to carry out these contracts. His physical disabilities did not allow him to perform the tasks necessary to carry out the work for Grand Court to the level he had performed at prior to the accident.

26 When he filed his affidavit of evidence-in-chief in June 2003, Mr Ang stated that he was currently the sole proprietor of a business called "68 Kopitiam" situated at 167 Neil Road. This business had been registered with the Registry of Businesses before the accident but actual business had not commenced at that time. Mr Ang's intention had been to continue his contract work with Grand Court as it was lucrative but did not take up all his time. He would have been able both to run his coffee shop and to continue his work for Grand Court if he had not been involved in the accident.

27 Apart from his work for Grand Court, prior to the accident Mr Ang had also had a part-time job as a deliveryman for Smith & Nephew Pte Ltd. He was paid on an assignment basis. After the accident, Mr Ang was given medical leave for an initial period of 50 days. Thereafter, he was given another medical certificate that certified that he was only fit to do light duties for a further 20 days. He was told not to ride his motorcycle during this period and this meant that he could not go back to this despatch work. Mr Ang also claimed for loss of income from his despatch job as a result of the accident.

The appeals in respect of pre-trial loss of earnings

Loss of income from the despatch job

28 Mr Ang had claimed $5,172.80 for loss of income from his despatch job with Smith & Nephew during the years 1999 and 2000. The assistant registrar rejected this claim. She considered that he had not proved that he had suffered any loss of earnings from that job as a result of the accident.

29 In support of Mr Ang's appeal against that holding, Mr Singh contended that there was no dispute that: (a) Mr Ang had worked for Smith & Nephew before and after the accident and (b) that he was on medical leave for a period of 70 days during which he was specifically excluded from riding a motorcycle. The evidence adduced by Mr Ang showed that in the year preceding the accident, he had earned $4,229 from Smith & Nephew. Mr Singh submitted that as a result of the accident, Mr Ang was only able to earn a sum of $1,632 in 1999 causing a loss of $2,597 for that year. In the year 2000, he had earned $1,653.20 from Smith & Nephew and suffered a loss of $2,575.80. His total loss over the two years was therefore $5,172.80.

30 The defendant's position was that Mr Ang had failed to prove that he had suffered any loss of earnings from his part-time despatch job, apart from the period when he was on medical leave. This had lasted some two months and as Mr Ang's average monthly earnings over 1997 and 1998 from this job had been $253.90 per month he should be awarded no more than $508 in compensation.

31 I agree that Mr Ang did suffer some loss of earnings in respect of his job with Smith & Nephew by reason of the accident. At the least, he should be compensated for the 70 days when he was on medical leave and could not carry out any despatch work. I also think that it would be fair to give him a further month's compensation as, even after the 70 days' medical leave expired, some

hesitation in returning to riding his motorcycle for despatch work immediately would be understandable and acceptable. He had not proved, however, that the lower income from despatch work in 1999 and 2000 in comparison to his earnings in 1998 was entirely due to the accident. He was able to go back to work in 1999 and to earn a total of $1,632 that year. He should therefore have been able to carry out full despatch duties in 2000. No proof has been given that his lower income from despatch work in 2000 resulted from his injuries.

32 I allow the plaintiff's appeal in respect of his earnings from Smith & Nephew. As regards quantum, it is not correct to simply deduct his actual earnings in 1999 from his earnings in 1998 and award him the difference. I think that his earnings in 1998 only should be used to assess his then current average monthly income from this job. I do not think a two-year average is required for an *ad hoc* job of this nature. On this basis, Mr Ang earned approximately $352 a month from Smith & Nephew in 1998. Three months' loss of income in 1999 would therefore amount to $1,056 and I award him this amount for the reasons stated in [31].

Other pre-trial loss of earnings

33 The assistant registrar found that Mr Ang's average monthly income from Grand Court from 1996 to 1998 was $4,509. She accepted Grand Court's letter of 22 June 1999 as an accurate record of what he had been paid and disregarded the income tax returns that Mr Ang himself had filed showing a lower income. She also found that it was not possible for him to return to work for Grand Court as the medical evidence was that he was not fit to work in jobs that required him to lift heavy loads. Also, Mr Ang could not return to his former job because Grand Court had found a replacement for him. Finally, she found that Mr Ang could have worked as a food and drinks assistant in a coffee shop to mitigate his loss of income and that, if so, he would have earned $784 per month. She therefore assessed Mr Ang's damages for pre-trial loss of earnings as follows:

(a) for the period from the date of the accident, *ie* 29 January 1999, to the expiration of his first period of medical leave, *ie* 19 March 1999, which was approximately two months –

($4,509 less 9% to take into account income tax payable, *ie* $4,103.19) x 2 months = $8,206.38

(b) for the period after 19 March 1999 to the date of trial on 9 October 2003, which was approximately 55 months –

$3,389.75 (*ie* $4,509 minus $784 less 9%) x 55 months = $186,436.25

Total: $186,436.25 + $8,206.38 = $194,642.63

34 The defendant appealed against this award on the basis that the assessment of Mr Ang's monthly earnings from the catering business prior to the accident at $4,509 as well as the assessment of his pre-trial monthly loss of income at $3,389.75 was unjustifiable and excessive. Ms Lee submitted that there was no documentary proof of the alleged monthly earnings of $4,509. On the contrary, Mr Ang's income from his full-time employment as reflected in his income tax return form for the year ending December 1997 was $14,400 per annum or $1,200 per month and his total income declared in his income tax return form for the year ending December 1998 was $16,800 or $1,400 per month. The basic problem with the award therefore was that it was not based on reliable evidence of Mr Ang's income.

35 As Mr Singh admitted, Mr Ang had no personal documentary records to substantiate his

income during the time he was with Grand Court. The only documents that he could produce were two letters written in May and June 1999 by Grand Court to his solicitors in response to their queries about Mr Ang's income. These letters were prepared by Grand Court's freelance accountant, Mr Robert Xie Jin Yong. Grand Court itself did not have the additional accounting documents to support these figures as these had been kept by Mr Xie. According to the evidence of Mr Gwee Tsu Sun, the managing director of Grand Court, all documents pertaining to the accounts of Grand Court were kept by Mr Xie. They were not kept at Grand Court's premises unless the auditors were coming in, in which case the documents were taken to the premises for auditing. Upon completion of the audit, the documents would be taken away by Mr Xie for safekeeping. Unfortunately, Mr Xie died in China. After his death, the accounting documents could not be found.

36 Mr Gwee produced Grand Court's accounting documents for the period from May 2000 to May 2003. These documents had been prepared by a new accountant hired by Grand Court. Mr Singh submitted that these exhibited documents substantiated the existence of a system of records such as payment vouchers (albeit in different forms) for the payment of outdoor catering services. This was the same system that was in place in June 1999 when Grand Court wrote to Mr Singh setting out the amounts received by Mr Ang. These sums were not a figment of Mr Gwee's imagination nor that of Mr Xie. There was no reason for them to have falsified the sums paid to Mr Ang or for the sums to have been incorrect. Evidence was adduced that Grand Court's account were audited annually. Hence, it was submitted, the sums presented in the June 1999 letter must necessarily be reliable and accurate.

37 It was also submitted that the accuracy of the sums paid to Mr Ang could be tested against the oral evidence of Mr Gwee, Mr Ang himself and one Mr Chey Kum Cheong, a cook employed by Grand Court, who had taken over the task of supervising the outdoor catering functions. Mr Singh undertook a series of calculations based on testimony from these three witnesses that for a function involving 100 tables, Mr Ang had to supply 66 workers for whom he was paid at standard rates by Grand Court and from whom he took a small commission each and that he was also paid transport costs of between $100 and $150. Whilst the payments were based on a standard number of workers per function, Mr Ang did not have to return the wages of those workers who did not turn up and these so- called "savings" also formed part of his income. Mr Chey testified that for a function involving 100 tables, Mr Ang would be paid about $3,000 and transport costs and his profit from this sum would be about 15%. Based on these various calculations, it would appear that for such a function, Mr Ang would pay the pre-function workers $1,100, and the function workers $1,885. This would total $2,985. The workers would pay him commission amounting to $211 and he would collect a transport fee of $150. Assuming that Grand Court paid him $3,000 excluding transport, Mr Ang would make $211 plus $150 plus $15 (the difference between $3,000 and $2,985) *ie* $376 as profit, giving him a profit margin of not more than 12%. He would only earn more than this if some of the workers did not turn up and he was able to pocket the amounts allotted for their wages. If, as Mr Singh posited, one cook, one waitress and one dishwasher did not turn up, Mr Ang would be able to keep an extra $200 in his pocket giving him a profit of $576, a figure well within the 15% to 20% profit range that Mr Ang had asserted.

38 The above calculations have a certain weight to them. The problem is, however, that the exercise was undertaken to determine how much Mr Ang earned on a monthly basis. In order to do that, one would not only have to know how much money he could make from one 100-table function but how much he could make from smaller functions (where the number of workers involved would have been considerably smaller and the amount given to him therefore less) and exactly how many functions of each size there were each month. Thus, detailed records would be required either from Grand Court or from Mr Ang himself. In fact, records from Mr Ang would be better because these would reflect how many workers actually turned up on each occasion and what he managed to earn

each time. No such records are available, however, and therefore the credibility of Mr Ang himself and of Mr Gwee becomes an important issue.

39 The only direct record of payment by Grand Court to Mr Ang was Grand Court's letter of June 1999. Mr Gwee's position was that payment vouchers in respect of payments to Mr Ang from Grand Court had existed. In his affidavit, he stated that he was not able to produce these payment vouchers because they were in the possession of the freelance accountant Mr Xie and he had passed away in China some time in March 2001. There was no evidence, however, that Mr Xie had been employed as a freelance accountant for Grand Court or that he had died in March 2001. Grand Court did have a firm of auditors to prepare its audited accounts, a company called L W Ong & Co, and Mr Gwee testified that Mr Xie had dealt with one Mr Ong from this firm in respect of all documents evidencing payment by Grand Court to third parties. The said Mr Ong was not, however, called as a witness to assist on the documentation. It also appeared to be unlikely that Mr Xie, a freelance accountant, would have retained records of payment belonging to Grand Court. Another discrepancy was that although Mr Xie was stated to have died in March 2001, Grand Court was able to produce its vouchers for the period from May 2000 up to March 2001. How is it that these vouchers were with Grand Court when Mr Xie was supposed to have kept all such vouchers as a matter of course? The other interesting point was that, according to Mr Gwee, Grand Court's letter of June 1999 setting out the amounts paid to Mr Ang was drafted by Mr Xie who had the vouchers at that time. However, in the prior letter of May 1999, Grand Court had told Mr Ang's solicitors that they were "unable to provide you copies of our payment vouchers". During the assessment hearing when Mr Gwee was cross-examined as to why Grand Court had not provided the payment records when Mr Xie was still alive, he was not able to give a plausible answer. All Mr Gwee said was that he had left the computation of the sums paid to Mr Ang to Mr Xie and since Mr Xie had since died, Grand Court was unable to furnish the documents. In these circumstances, I find much merit in Ms Lee's submission that Mr Gwee's explanation for not producing the payment records was not satisfactory and should not be accepted. She further submitted that Mr Gwee was simply using the death of Mr Xie as a convenient excuse for not providing documentary proof of the alleged payments to Mr Ang by Grand Court. I accept that submission. In my view, the June 1999 letter from Grand Court cannot be accepted at face value as documentary proof of the amounts allegedly paid to Mr Ang by Grand Court or that he earned $4,509 a month by reason of his work for them.

40 Mr Gwee did, however, produce copious records showing payments made by Grand Court for outdoor catering services during the 16 months between May 2000 and August 2001. It would appear from these documents that there were fewer functions per month during these 16 months than there had been per month during the years 1996 to 1998. The amounts paid out varied between a high of $28,824.82 in May 2000 and a low of $5,230.90 in March 2001 with the average monthly payment being some $15,434.30. This contrasts with the much higher average figure of some $30,000 a month for the earlier period. If Mr Ang had been working for Grand Court between May 2000 and August 2001, then at a profit rate of 15%, he would have earned approximately $2,315 per month.

41 Mr Ang also relied on his own oral evidence of his income and the supporting oral evidence of Mr Gwee. In the defendant's written submissions, there are numerous attacks on Mr Ang's credibility and many of these have considerable force. First, there was the issue of what he had told his doctors regarding his occupation. Before the assessment hearing took place and during the time when he was operating "68 Kopitiam", Mr Ang had been examined by two orthopaedic surgeons, Dr Tho Kam Sam and Dr Yeo Khee Quan. He told Dr Yeo that he worked in a coffee shop as a daily-rated worker and Dr Tho that he was an assistant in a coffee shop. He was asked why he had done this. His answers were evasive and prevaricating. This is the exchange that took place:

Q: You informed the doctor that you are an assistant of a coffeeshop. That is not correct?

A: Why is it not correct?

Q: Because you are the owner.

A: The owner also works.

Q: But an owner has assistants. They are different.

A: What do you mean it is different?

Q: Owner and assistant are different?

A: Are you saying that if I employ others, I need not work?

Q: I am saying that the description is different.

A: I do not understand.

Secondly, in relation to this issue of his position in the coffee shop, Mr Ang tried to explain that he was only a sole proprietor "in name" but was unable to give a credible explanation as to what he meant when he said "in name". Instead, he claimed that he became the sole proprietor of the coffee shop business because his intended partner had withdrawn from it and he had no choice but to carry on the business on his own. Mr Singh tried to repair the damage during re-examination by asking Mr Ang whether the job he did in the coffee shop was like the job of a coffee shop assistant or that of a boss who sat back and acted like a boss. Mr Ang replied that he had to assist in the work because he was used to working and could not sit still. Then when he was asked directly by Mr Singh why he had told the doctor that he was a coffee shop assistant when he was also the sole proprietor, Mr Ang replied by asking "Is there anything wrong with saying that?" It was significant that even before entering court Mr Ang had been quite willing to misrepresent his occupation and income earning ability.

42 Secondly, Mr Ang was unable to provide a consistent and credible account of the circumstances in which he went into the coffee shop business. He claimed initially that he had been approached by a person whose name he could not remember to go into this business but this person had subsequently withdrawn. Then he said that this person had put in 50% of the money needed for the coffee shop. Subsequently, he said that this partner had withdrawn because he did not dare venture into the business and that he had withdrawn before he put in the money. Later he said that in July 1999, someone supported him and he was the one that contributed the 50%. This person was not the partner but did it out of his relationship with Mr Ang. When asked to identify this person, Mr Ang said it was his best friend. He was then asked for the name of his friend and after being pressed, he said that there were two persons who supported him, his father-in-law and his elder brother, who loaned him $20,000 and $30,000 respectively. This part of the cross-examination took place in the morning. In the afternoon, Mr Ang's memory made a remarkable recovery and he remembered that his first partner was named Mr Yeo. He then said that Mr Yeo did not put in any money at all and admitted that previously when he had said that his partner had put in 50% of the money required, he was referring to Mr Yeo.

43 Mr Ang also claimed that he had no choice but to take over the coffee shop business when his partner withdrew. It subsequently transpired, however, that he had had a choice. The withdrawal took place in March 1999. At that stage, Mr Ang was not committed to renting the premises. The tenancy agreement was only signed in October 1999 and therefore there was no reason, other than

his own desire to do business, why Mr Ang had to go ahead with the business when Mr Yeo withdrew.

44 Mr Ang was also less than candid when queried on his income from his coffee shop business, in particular for his income for the year ending December 1999, the year in which he commenced the business. He had initially denied that he had profit and loss statements for that year and asserted that he did not submit any income tax returns for the year ending December 1999. When the income tax return forms as well as the notice of assessment of income tax were brought to his attention, he claimed he could not remember or that he had no knowledge of the income tax documents submitted as some other parties had submitted the forms on his behalf.

45 Ms Lee submitted, and I agree, that Mr Ang's evidence regarding the number of workers he employed for the coffee shop and the income received and expenses incurred in respect of this business contained many inconsistencies. He was unable to provide any credible explanation for the discrepancy between his profit and loss accounts submitted to the tax authorities and his loss and expense book for the business. After being pressed on these matters, Mr Ang admitted that he was prepared to falsify his income tax returns so that he would have less tax to pay.

46 Another area in which Mr Ang's evidence was not satisfactory was in respect of his relationship with Grand Court. His initial evidence was that he was strictly an independent contractor for Grand Court's outdoor catering jobs. Mr Ang denied that he was in any way interested in or related to Grand Court or that he held any shares in the company. When it was put to him, however, that Grand Court's records filed at the Registry of Companies showed him to be the holder of 51,000 ordinary shares in the company and its third largest shareholder, Mr Ang claimed that he was only a shareholder in name in that he had not paid for the shares. He further claimed that he had only agreed to be a shareholder in name because Mr Gwee had "wanted to find someone whom they can get along to set up the business, so I lent my name for this purpose". He then said that he did not know how to explain how he came to own the shares but that it was Mr Gwee's idea. Mr Gwee was satisfied with his performance as a sub-contractor and had found Mr Ang's name could go along very well with the vegetarian business so Mr Gwee had given Mr Ang shares without any monetary contribution from him. Mr Gwee's evidence, however, was not consistent with that of Mr Ang on this point. Mr Gwee said that the shares were not a gift to Mr Ang. Instead they had been paid for by commission earned by Mr Ang for procuring outdoor catering business for Grand Court.

47 The examples given above are not exhaustive of the difficulties with Mr Ang's evidence. On perusing the notes of evidence it was clear to me that on many occasions Mr Ang was less than truthful. He was also an evasive witness. He was argumentative at times when he did not want to answer questions. He told lies, not only in court but also to doctors out of court. He admitted that his income tax returns were not truthful. He did not seem to see any difficulty in this but regarded under-declaration of income to be a necessary expedient in order to achieve his aim of paying little or no income tax. He also admitted that in the accounts of the coffee shop business that had been prepared for the income tax authorities, the expenses had been inflated in order to decrease the income earned from the business. Overall, Mr Ang was not a satisfactory witness. In my view it would be unsafe to rely on his oral testimony except to the extent that the same was backed up by documents or the oral evidence of other witnesses if the latter were credible.

48 As regards his income from Grand Court, Mr Ang relied on supporting oral evidence from Mr Gwee. Mr Gwee's evidence was not free from difficulty either. First, as stated earlier, he was not able to give a credible explanation as to why Grand Court could not provide the records of payments made to Mr Ang. Secondly, he prevaricated in his evidence regarding how Mr Ang came to be a shareholder in Grand Court. There were also some inconsistencies in his evidence regarding Mr Ang's role as the outdoor catering contractor. Initially, he said that all such contracts were obtained from

Grand Court's own customers and it was only after a contract was secured that Mr Ang's services would be engaged. Subsequently, however, he stated that more than half of Grand Court's outdoor catering contracts were procured by Mr Ang. Then, he said that Mr Ang had earned a commission for introducing customers to Grand Court and this is what had paid for Mr Ang's shares. Subsequently, Mr Gwee claimed that the shares were bonus shares in respect of which no payment had been made by Mr Ang.

49 As plaintiff, Mr Ang had the burden of proving that he had suffered a loss of monthly earnings at the rate of $4,509 per month from the outdoor catering business. The evidence that he adduced in order to discharge that burden was not satisfactory. There was no proof that, on the balance of probabilities, Mr Ang earned $4,509 per month from his work for Grand Court before the accident. As the oral evidence was unreliable, I am thrown back on the documents. The documents produced showed that for the period from May 2000 to August 2001, if Mr Ang had been carrying out the catering services, he would have earned an average of $2,315 per month and that too, only if he was able to meet a profit margin of 15% which would have depended on some workers not turning up. Though to some extent speculative, in the present case, $2,315 is the safest figure on which to base any assessment of Mr Ang's pre-trial loss of earnings. However, it would not be correct to award Mr Ang the full amount as monthly loss of earnings for the pre-trial period. This is because he did have an income from his coffee shop business during most of that period. That income would have to be deducted from the $2,315. The difficulty is that one does not know how much that income was since his records were unreliable. The assistant registrar thought that he could have earned $784 a month as a coffee shop assistant. This, in my view, was not a realistic figure. It was based on official statistics of what such a worker earned on average rather than on evidence of Mr Ang's own earnings. Mr Ang's own evidence was that while he was running the coffee shop, he had employed his brother as supervisor and paid him $1,300 a month. He had also paid two other full-time workers $1,100 a month. On that basis, Mr Ang would probably have paid himself at least $1,500 a month if not more since he said he needed at least $3,000 a month in order to support his family. There is no evidence, however, of exactly how much money Mr Ang took home each month from the coffee shop business. He might well have taken home much more than $2,315 a month.

50 One other issue must be addressed. Mr Ang had registered the coffee shop business before his accident. His claim was that his intention was to start up the business and run it concurrently with his outdoor catering services for Grand Court and that he would have done this if it had not been for the accident. Instead, once the accident took place he was not capable of going back to work for Grand Court and had to carry on the coffee shop business only. The medical evidence was that Mr Ang was no longer capable of carrying loads heavier than about 7kg. He was, however, as shown by evidence from a private detective who followed him around for a number of days, capable of working long hours, driving a van, and doing a certain amount of fetching and carrying. He could therefore have gone back to work for Grand Court had he so chosen and employed another worker to do the heavy carrying that he could no longer do. The wages for this worker might have cut into his profit but he would still have been able to earn something from the Grand Court business. The evidence also was that Mr Ang did not even try to see whether he could resume some outdoor catering for Mr Gwee. Mr Gwee stated that Mr Ang did not approach Grand Court for outdoor catering jobs after the accident and did not express any intention or interest in resuming this business when the two of them met after the accident. Mr Gwee also confirmed that he had no objections to resuming business dealings with Mr Ang as Mr Ang was still a shareholder in the business. Mr Chey, who had taken over supervision of the outdoor catering functions, also stated that he would have no objection to Mr Ang going back to being Grand Court's outdoor caterer. Mr Chey's evidence was that he was not being paid any additional salary for the additional responsibilities he had taken on and that if Mr Ang resumed the outdoor catering work, then Mr Chey himself would not have to work so hard.

51 On the evidence, it appears to me that on the balance of probabilities, Mr Ang chose not to go back to work as an outdoor catering contractor for Grand Court after the accident because he wanted to concentrate on building up his own coffee shop business. Although he might have intended originally to do both, his plans must have changed after March 1999 when his erstwhile partner withdrew and it became clear that Mr Ang would be solely responsible for the new business if he decided to go on with it. In these circumstances, I think that Mr Ang is only entitled to recover the loss of earnings from his job with Grand Court for the period between the accident and the time when he started the coffee shop business. There is no proof that he sustained any loss of income after that business started in October 1999. The fact that the coffee shop business may have done badly thus leading to its being closed four years after it commenced is beside the point. It was up to the plaintiff to produce reliable figures. In any case, if he chose to go into a risky business rather than go back to a tried and true occupation, the defendant cannot be expected to underwrite him. Going on the basis of $2,315 per month, this would give Mr Ang $6,945 for the three months from February to April 1999. Further, if he had gone back to work as an outdoor caterer in May 1999, between then and September 1999, he would have earned $1,100 less (see [54] below) due to his physical disabilities. Therefore his total loss for the period from February to September 1999 was $12,445. The defendant's appeal on this item is allowed and the award is reduced to $12,445.

Post-trial loss of earnings

52 The assistant registrar considered that Mr Ang's loss of earnings per month subsequent to the trial would not differ from his loss of earnings per month for the period before the trial as there would not be a change of the factors affecting the quantum of loss. She therefore used the same multiplicand of $3,389.75 as for the earlier loss of earnings calculation. To arrive at a multiplier, she considered that Mr Ang was already 45 years old at the time of the assessment and that his previous job relied heavily on manual labour. He would have to carry very heavy loads of up to 30kg and his ability to do so would naturally diminish with age. Taking these factors into consideration, she was of the view that a multiplier of six would be fair. Hence, Mr Ang's future loss of earnings was calculated at $3,389.75 x 12 months x 6 years = $244,062. She also found that Mr Ang's disability that caused him to be unable to lift heavy loads would not hamper him in the job market as the disability was very limited. Hence, she did not award any damages for any loss of earning capacity.

53 There is no reason why Mr Ang cannot go back to his work as an outdoor catering contractor. Mr Ang himself asserted that customers had only engaged Grand Court for their outdoor catering functions because of their relationship with Mr Ang. He can still do the supervisory work, provide the transportation and use his self-proclaimed good contacts with workers to procure the necessary staff for these functions. Further, Mr Gwee's evidence was that Mr Ang brought in a lot of business and he would be happy to take Mr Ang back. Mr Chey also seemed to welcome the prospect. If Mr Ang did this, he would be able to earn as much as he did previously except that being handicapped by his medical condition, he would have to employ someone as a general worker to do all the heavy lifting that he himself is no longer capable of. The defendant submitted, based on Mr Ang's evidence of hourly wage rates, that it would cost Mr Ang not more than $480 a month to employ a part-time worker to help with the loading. In my opinion, however, if Mr Ang is going to carry out the work of an outdoor caterer, he would need someone available all the time to do the loading and unloading and would find it difficult if he had to rely on *ad hoc* labour. Going by the salaries that Mr Ang paid his full-time workers in the coffee shop, it would cost him at least $1,100 a month to have such a full-time worker.

54 As there is no reliable evidence of Mr Ang's loss of earnings from his employment as an outdoor catering contractor, in my judgment, this is one of those cases in which the appropriate award should be for loss of earning capacity rather than for loss of future earnings. On the basis that

his earning capacity would be reduced by $1,100 a month because he could no longer carry heavy loads and would need to employ someone else for such work, that figure should be taken as the multiplicand for a loss of earning capacity award. As regards the multiplier, even the defendant considered that a multiplier of six years was too low and submitted that the appropriate multiplier would be eight years. Mr Singh submitted that the multiplier should be increased to ten years. The retirement age under s 4 of the Retirement Age Act (Cap 274A, 2000 Rev Ed) had been raised to 62 as from 1 January 1999. Most of the authorities on the calculation of the length of the multiplier had been decided prior to the change in 1999. He cited the cases of *Wee Sia Tian v Long Thik Boon* [1996] 3 SLR 513, where an eight-year multiplier had been used for a 48-year-old plaintiff, *Shela Devi d/o Perumal v Rawi Bin Nahari* (Suit No 1191 of 1995, unreported) where an 11-year multiplier was used for a 41-year-old plaintiff and another unreported case, *Surendamugam s/o Narayanasamy v Low Chong Hock* [1993] SGHC 130, where a 12-year multiplier was used for a 39-year-old plaintiff.

55 I agree that the multiplier of six used in this case was too low. Prior to the accident, Mr Ang was a healthy man who carried out onerous physical tasks with little difficulty. If he had not been injured, he would have been physically capable of carrying on in his usual fashion for many years. As a self-employed person depending on his established business contacts, there would be no prefixed cut-off date for his employment in the catering business. Even after his injury, the evidence was that he was capable of working long hours and undertaking a variety of tasks including carrying loads of up to 7kg and doing quite a lot of lifting. In these circumstances and in view of the changes in how older workers are viewed, I think a multiplier of ten would be appropriate.

56 I therefore set aside the award for future loss of earnings of $244,062. In its place, I award Mr Ang $132,000 (being $1,100 per month for ten years) as loss of earning capacity.

Costs of future medical treatment

57 The assistant registrar accepted Dr Tho's finding that Mr Ang's fractured left clavicle had triggered the development of arthritis in the acromioclavicular joint which needed to be treated with medical supplements for the rest of his life. These cost $600 per year. The assistant registrar took into account Mr Ang's then age of 45 years and his estimated life expectancy to arrive at a multiplier of 20 in order to calculate the damages for future medical expenses. The award under this head was $12,000 being $600 per year for 20 years.

58 The defendant appealed against that award. Ms Lee submitted that the multiplier of 20 was too high and that a multiplier of 10 to 12 years would be fair and reasonable. In support she cited various cases from the *Practitioners' Library — Assessment of Damages: Personal Injuries and Fatal Accidents* (Butterworths Asia, 2001). Among those cases the highest multiplier given for cost of medical care was 17 years and that was in respect of a plaintiff aged about 33 at the time of the assessment. Mr Singh resisted any change being made to the multiplier. He pointed out that Mr Ang would need the medication for the rest of his life. Mr Singh's submission was that a distinction had to be drawn between a multiplier used for future earnings which was based on retirement date and a multiplier used for medication since the latter should be based on life expectancy rather than retirement date. The retirement age is now 62 and according to statistics compiled by the Ministry of Health, the present life expectancy of a male Singaporean is approximately 76 years. Further, even on the award made by the assistant registrar, a discount had already been given for the cost of medication going up and more medication being required with the pain getting worse with age.

59 There is merit in Mr Singh's argument that an award for medical costs should be related to life expectancy rather than the retirement age. In this case, further information provided by Mr Singh showed that a male Singaporean like Mr Ang who was born in 1958 had a life expectancy of 60.6

years as of the date of his birth. However, in view of advances in medical practice and general health standards, it is likely that Mr Ang would live beyond 60 years though no one can say whether he will live to 65 or more. I think the award of 20 as a multiplier was on the high side. I reduce it to 15 years. The award for future medical costs is therefore reduced to $9,000.

Conclusion

60 For the reasons given above, both appeals are allowed in part. The awards made below are set aside to the extent indicated earlier in this judgment and replaced by the awards made above. Overall, the defendant has been the more successful in his appeal in that the quantum of damages awarded to the plaintiff has been reduced considerably. I therefore award the defendant 70% of the costs of the appeal.