Tan Kee Huat *v* Lim Kui Lin
[2012] SGHC 218

Case Number : Originating Summons No 481 of 2012

Decision Date : 30 October 2012

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : V Ramakrishnan (V Ramakrishnan & Co) for the plaintiff; Patrick Yeo and Jayaprakash (KhattarWong) for the defendant.

Parties : Tan Kee Huat — Lim Kui Lin

Civil Procedure

30 October 2012

Judith Prakash J:

Introduction

1 This application arose out of DC Suit 3104 of 2009/Y ("the DC Suit"). The plaintiff in the DC Suit and in this Originating Summons was Tan Kee Huat ("the plaintiff"). The defendant in the DC Suit and in this Originating Summons was Lim Kui Lin ("the defendant").

2 The plaintiff commenced the DC Suit in 2009 to recover damages arising from injuries that he sustained when his taxi was involved in a collision with a vehicle driven by the defendant. The insurers of the defendant's vehicle conducted the defence on his behalf. Subsequently, negotiations took place and the defendant's insurers agreed that he should consent to interlocutory judgment being entered against him on the basis that the defendant would bear 85% of the damages sustained by the plaintiff. Accordingly, interlocutory judgment for damages to be assessed was entered by consent in the DC Suit on 17 March 2010.

3 The Originating Summons herein was filed on 17 May 2012. The plaintiff prayed for an order that the action be transferred from the District Court to the High Court and be tried as a suit on the basis that the sum involved exceeded $250,000, the limit of the District Court's jurisdiction.

4 I heard the application on 13 August 2012 and allowed it on the basis that the interlocutory judgment was set aside so that after the proceedings had been transferred to the High Court the defendant would be able to defend the suit and argue that his liability, if any, should be for less than 85% of the plaintiff's damages. The defendant and his insurers are not happy with this outcome and have lodged an appeal.

Background

5 On 14 October 2008, the plaintiff was driving his taxi along Upper East Coast Road when it was involved in a collision with vehicle no SGR1857K, driven by the defendant. As a result of the accident, the plaintiff suffered personal injuries. He was taken to Changi General Hospital where he complained of pain in the right foot. X-rays of his right foot showed fractures of the neck of the third and fourth metatarsals. The plaintiff was treated for pain and was discharged with analgesics and crutches. He

was given two weeks' hospitalisation leave.

6 A medical report dated 12 February 2009 stated that on 21 October 2008, the plaintiff was seen in the Orthopaedics Clinic of Changi General Hospital. He complained of neck pain, back pain and right foot pain and swelling arising after the accident. An MRI scan of his cervical spine was performed and the result was normal. He was treated with analgesics and his right foot was kept in a cast. Upon subsequent reviews, his neck and back pain had apparently resolved and his fractures were healing. The plaintiff was to be reviewed again in late February 2009 and his diagnoses were: (a) neck and back strain and (b) right foot third and fourth metatarsal fractures. The letter stated that the plaintiff's hospitalisation leave was from 21 October 2008 to 25 February 2009.

7 The plaintiff continued to complain of pain and a further MRI scan was conducted in June 2009. The plaintiff attended regularly at the outpatient clinic for treatment complaining of intermittent pain over his right foot, neck and lower back region. In a report dated 13 August 2009, a senior consultant at the Department of Orthopaedic Surgery at Changi General Hospital, Dr Low Boon Yong, stated that the plaintiff's foot injury had recovered well and the cervical spine had recovered satisfactorily. There was no evidence of residual disability in either area and occasional backaches could be treated with analgesics.

8 On 1 September 2009, the plaintiff who had applied for, and obtained, legal aid, started the DC Suit. As stated above, on 17 March 2010, interlocutory judgment for damages to be assessed was entered against the defendant after the defendant agreed to bear 85% of the damages as assessed.

9 The matter then proceeded in the District Court and a hearing of the assessment of damages was first scheduled for 17 August 2011. Neither this hearing nor a subsequently hearing fixed for the 11 May 2012 went on, however.

10 In the meantime, the plaintiff had consulted Dr Ho Kok Yuen, Consultant Anaesthesiologist of the Pain Management Centre, Singapore General Hospital. In a medical report dated 28 January 2010, Dr Ho opined that the plaintiff suffered from the following injuries:

(a) Discogenic low back pain at L3/4 and L4/5 discs;

(b) L4/5 and L5/S1 disc bulge and protrusion respectively;

(c) Bilateral S1 radiculopathy with bilateral foot pain; and

(d) Healed fractures of the 3rd and 4th metatarsal bone of the right foot.

11 In further medical reports dated 5 July 2010, 4 August 2010 and 22 August 2011, Dr Ho opined that the plaintiff was unable to work as a taxi driver any more due to his condition and recommended that the plaintiff undergo a trial implantation of spinal cord stimulation to ease his alleged pain. This was as the plaintiff's pain was not controlled even by stronger painkillers such as methadone.

12 The defendant's insurers then required the plaintiff to go for re-examination by a specialist they had chosen, Dr W C Chang, Consultant Orthopaedic and Trauma Surgeon. Dr Chang saw the plaintiff on 10 August 2011. In his report, Dr Chang stated that the plaintiff's neck pain had resolved. He further reported that the issues with the plaintiff's back were pre-existing age related asymptomatic degenerative disc disease. This was as the plaintiff was 48 years old. Dr Chang was of the opinion that the surgical procedures recommended by Dr Ho were unnecessary and that the fractures of the right foot that the plaintiff had suffered had healed well and the residual pain complained of was

inconsistent with the good recovery seen clinically and in the x-rays. Dr Chang opined that the plaintiff could be gainfully employed in any sedentary position and this included driving a taxi.

13 The plaintiff's position was that he was not able to drive a taxi at any time after the accident and could not work thereafter.

Application to transfer

14 The plaintiff's application in these proceedings was supported by an affidavit filed by his present solicitor, Mr V Ramakrishnan. Mr Ramakrishnan deposed that the plaintiff's former solicitors had commenced the action in the District Court based on the medical reports mentioned in the statement of claim (which were dated between 12 November 2008 and 13 August 2009, the last report being that of Dr Low Boon Yong) thinking that the damages would not exceed $250,000.

15 However, as matters developed, the plaintiff had been on medical leave since the accident and had not been able to go back to work. He had subsequently been diagnosed with four conditions as stated in Dr Ho's medical report of 5 July 2010. As a taxi driver, he had earned $2,500 a month and he had since lost 42 months' worth of income amounting to $105,000. This loss was continuing. On the basis of Dr Ho Kok Yuen's medical report dated 22 August 2011 there was a potential claim for either loss of earning capacity or loss of future earnings. He would also need expensive medical treatment to deal with his pain. A trial of a spinal cord stimulation (as recommended by Dr Ho) would cost $5,000 and if that succeeded, follow up treatment involving an implantable pulse generator would cost between $50,000 and $52,000 and the battery would have to be replaced after nine years at a cost of $45,000.

16 Mr Ramakrishnan also gave details about the plaintiff's depression. The plaintiff had had depression in 2007 and 2008 and his symptoms worsened in 2010 because he was troubled by chronic pain, his unemployment and financial difficulties.

17 Mr Ramakrishnan gave the following estimation of the plaintiff's claim for general and special damages:

General damages		
(a)	Fracture of the 3rd and 4th metatarsal bone	$10,000.00
(b)	Whiplash	$20,000.00
(c)	Permanent impotency	$50,000.00
(d)	For depression activated and aggravated by the accident	$50,000.00
(e)	Medication (350 x 12 x 15)	$63,000.00
(f)	Loss of pre-trial income for 42 months based on $2,500 per month	$105,000.00
(g)	Loss of earning capacity and/or loss of future earnings	
(h)	Future medical treatment as stated in para 12	$57,000.00
(i)	Replacement of battery every 9 years at least twice during his life time (including hospitalisation charges)	$90,000.00

(j)	Future consultation	$1,600.00
(k)	Maid for 20 months at $845.00	$16,900.00
(l)	Total General Damages (excluding claim for loss of earning capacity and/or loss of future earnings)	$463,500.00
Special damages		
(i)	Hospitalisation fees paid to Changi General Hospital ("CGH") and Singapore General Hospital ("SGH")	$4,161.44
(ii)	Consultation & Medication paid to Ang Mo Kio Polyclinics	$98.10
(iii)	Consultations/Investigations/x-rays & Medication paid to CGH	$399.50
(iv)	Consultations/Investigations/x-rays & Medication paid to SGH	$644.20
(v)	MRI scan paid to CGH	$680.00
(vi)	Consultations and MRI scan paid to Tan Tock Seng Hospital	$245.00
(vii)	Bone scan paid to SGH	$179.90
(viii)	Nerve Conduct Study & Emg paid to SGH	$109.10
(xi)	Rehabilitation charges paid to CGH	$51.00
(x)	Rehabilitation charges paid to SGH	$111.95
(ix)	Purchase of insole + rehabilitation charges paid to SGH	$301.25
(iix)	Fees paid to Rev Wong Chinese Physician & Acupuncture	$90.00
(iiix)	Medication charges paid to CGH	$109.40
(ivx)	Medication charges paid to SGH	$1,040.01
(vx)	L-3 Scotter Rental from Falcon Mobility Pte Ltd	$300.00
(vix)	Purchase of 1 custom fitted orthotics with 1 Year extended warranty from Solemate Orthotics	$329.00
(xv)	Taxi fares to & fro CGH, TTSH, SGH, AMK Polyclinic	$984.31
Total Special Damages		$9,834.16

18 In Mr Ramakrishnan's opinion, the damages recoverable by the plaintiff well exceeded the $250,000 limit and the plaintiff's action should therefore be transferred to the High Court.

19 In a subsequent affidavit, Mr Ramakrishnan explained why the two hearings which had originally been fixed for the assessment of damages had not gone on. In respect of the first hearing on 17 August 2011, counsel for the defendant had objected to the admission of the plaintiff's Supplementary Bundle of Documents and also asked the plaintiff to file an affidavit of evidence in chief. This led to the hearing being adjourned. Subsequently, the plaintiff obtained an order to file the

Supplementary List of Documents, his Affidavit of Evidence in Chief and the Notice for Appointment for Assessment of Damages.

20 The matter was fixed before an Assistant Registrar on 2 December 2011 to take hearing dates. This appointment was adjourned to 13 January 2012 and then to 16 March 2012 because the defendant wanted to obtain the plaintiff's medical reports from the Institute of Mental Health. Eventually, the assessment was fixed for a half day hearing on 11 May 2012.

21 At the 11 May 2012 hearing, counsel for the defendant submitted a Surveillance Report dated 9 May 2012 from Ariel Protection Pte Ltd. Plaintiff's counsel then asked for an adjournment in order to take instructions from the plaintiff on this report. This adjournment was granted. It was after this that the application to transfer the proceedings was filed.

22 Neither of Mr Ramakrishnan's affidavits stated why the plaintiff had only applied for a transfer of proceedings to the High Court in May this year. I asked Mr Ramakrishnan this question. His response was that after he had taken over the matter from the plaintiff's previous solicitors, he had suggested to the plaintiff that the matter be transferred. The plaintiff, however, was reluctant because he wanted a speedy disposal of the matter and was concerned that if a transfer took place, there would be a delay. It was only after the assessment hearing in the Subordinate Courts was adjourned twice that the plaintiff decided to apply for the transfer as in any case resolution of his claim was going to be delayed.

23 The defendant opposed the application. He filed an affidavit in which he set out the factual background of the case. He then went on to state why he considered that the case should not be transferred to the High Court.

24 The defendant's first point was that the plaintiff's claims had not been substantiated. In this respect, the defendant produced various medical reports and made various arguments as to why the defendant's medical reports should be accepted instead of the plaintiff's medical reports. Further, the plaintiff's claims for permanent impotency, for depression and for the cost of a maid were unsubstantiated. If the aggravated claims were not allowed, the plaintiff's damages would fall within the jurisdiction of the District Court.

25 The second point was that the plaintiff had delayed unduly in making his application to transfer. He had known of his alleged conditions in 2009/2010 and at hearings before the Assistant Registrar in the District Court had quantified his claim at an amount which fell within the High Court jurisdiction. The plaintiff therefore could have made his application earlier.

26 The third point was that liability for the matter had been finalised. The defendant had agreed to liability at 85% on the basis that damages would be assessed within the jurisdictional limit of the District Court. If the transfer were to be allowed, the prejudice caused to him would be immense and could not be compensated by an order as to costs.

Reasons for the decision

27 The application was brought under s 54B of the Subordinate Courts Act (Cap 2007 Rev Ed) which provides:

> (1) Where it appears to the High Court, on the application of a party to any civil proceedings pending in a subordinate court, that the proceedings, by reason of its involving some important question of law, or being a test case, or *for any other sufficient reason*, should be tried in the

High Court, it may order the proceedings to be transferred to the High Court.

28 At the hearing, both parties relied on the leading authority on this type of application *viz* the decision of the Court of Appeal in *Keppel Singmarine Dockyard Pte Ltd v Ng Chan Teng* [2010] 2 SLR 1015 ("*Keppel Singmarine 2010*"). The plaintiff also relied on an earlier Court of Appeal decision in the same case [2008] 2 SLR(R) 839 ("*Keppel Singmarine 2008*").

29 In *Keppel Singmarine 2008*, the Court of Appeal held that in respect of a case commenced in the Subordinate Courts, the entering of an interlocutory judgment is not a legal affirmation of the lower court's jurisdiction over the plaintiff's claim for the entire duration of the proceedings (see [32]). Further, at [35] the Court noted that as to what constitutes "sufficient reason" for a transfer of proceedings in the context of s 54B(1), some Commonwealth jurisdictions had expressly enacted that the fact that the amount to be awarded to the claimant is likely to exceed the jurisdictional limit of the inferior court would be a proper ground for a transfer. The Court went on to state at [38] that it agreed that a possibility of a plaintiff's damages exceeding the jurisdictional limit of the District Court would ordinarily be regarded as a "sufficient reason" for a transfer of proceedings to High Court.

30 The plaintiff's submissions were that his case was a proper one for transfer because his damages were likely to amount to more than $250,000. Secondly, there had been a material change in his condition since the time that he had filed his writ in the Subordinate Courts as shown by the medical reports. Thirdly, there would be no prejudice to the defendant because it would make no difference to the defendant whether the application for transfer was filed before the interlocutory judgment was made or thereafter.

31 The defendant resisted the application. After carefully considering counsel's arguments, however, I was of the view that the plaintiff's case was a proper case for transfer to the High Court and that he had shown sufficient cause for the transfer.

32 The defendant's first point was that the plaintiff had not obtained proper medical evidence to demonstrate a material change in his medical condition after the commencement of the action. The defendant went into a somewhat detailed discussion of the various medical reports on the plaintiff's condition and the various doctors who had treated the plaintiff. The basic point of the defendant was that the doctor whose reports were relied on most by the plaintiff, Dr Ho, was not an orthopaedic surgeon but a consultant anaesthesiologist. In the defendant's view, Dr Ho was not qualified to comment on the orthopaedic condition of the plaintiff or to assess his condition. Much more weight had to be given to the plaintiff's own orthopaedic surgeon, Dr Sayampanathan, who stated in March 2009 that the plaintiff's back pain had resolved. The defendant's orthopaedic surgeon, Dr Chang, had come to the conclusion that the plaintiff's back injuries were not due to the accident but were the result of age related degeneration. His view was that the procedures recommended by Dr Ho were unnecessary, the plaintiff's pain was not consistent with the good recovery demonstrated by the x-rays and that the plaintiff's long term pain management treatment could lead to drug dependency and serious side effects. The defendant also emphasised that there was inadequate evidence supporting the plaintiff's new claims for impotency and depression. Dr Ho was not qualified to give a medical report on these conditions.

33 I noted the defendant's criticisms of the medical evidence relied on by the plaintiff. I thought, however, that the hearing of the application was not the correct forum to determine which doctor's evidence was more credible.

34 No doubt Dr Ho is not an orthopaedic surgeon but he is a specialist in pain management and has issued several reports which support the plaintiff's stand that his condition deteriorated after he

commenced the action. Both Dr Ho and Dr Chang are well qualified medical specialists, *albeit* in different areas and without the benefit of cross-examination to determine exactly why they have come to the differing conclusions evinced in their respective medical reports and the benefit of analysis of their evidence and the logic and coherence of their professional opinions, the court is not able to reach any conclusion on the true physical condition and abilities of the plaintiff. I considered that there was, *prima facie*, credible evidence to support the plaintiff's assertion of continuing disability leading to an inability to return to work and a substantial loss of earnings. It may be that the plaintiff is malingering as the defendant insinuates but such a determination can only be made after a full hearing. In the meantime, even if I disregard the plaintiff's rather late complaints about impotency and depression, the other conditions that he complained of would, if established, support a quantification of damages which would exceed the District Court limit.

35 I was therefore of the opinion that the plaintiff had, *prima facie*, established the material change in circumstances necessary to support his application for a transfer.

36 The defendant's next point was that even if I accepted that the plaintiff had suffered a material change in condition and that there was a possibility that his claim would exceed the District Court limit, on the authority of *Keppel Singmarine 2010*, the mere existence of a sufficient reason would not automatically entitle the plaintiff to have the proceedings transferred to the High Court. Instead, I should undertake a holistic evaluation of all the material circumstances and assess the prejudice that might be visited upon the party resisting the transfer (see *Keppel Singmarine 2010* at [17]).

37 In the present case, the defendant argued, that in the holistic evaluation, I should take account of two points. The first was that the plaintiff had clearly and irrevocably affirmed the jurisdiction of the District Court. The second point was that the defendant would suffer irretrievable prejudice if the transfer was allowed and he could not be compensated by an order as to costs.

38 In respect of the first point, the defendant noted that the plaintiff had not only entered consent interlocutory judgment but had filed for a Notice of Appointment for Assessment of Damages twice. Further, the plaintiff had obtained an order of court on 11 October 2011 which gave further directions for the assessment of damages. Two hearings had been fixed. The first had not gone on because the plaintiff had put forward new medical reports and at the second tranche, the plaintiff had not prepared an opening statement for the assessment, so it could not go on. The plaintiff had full knowledge of his supposed material change in circumstances when he had taken the various actions referred to earlier but had only applied on 17 May 2012 to transfer the matter to the High Court.

39 When I made the holistic evaluation of the circumstances relating to the application, I considered that this point was the strongest point made by the defendant. The plaintiff had clearly taken steps to carry proceedings in the District Court beyond the entry of the interlocutory judgment. The defendant had responded and also prepared for the assessment in the District Court. In assessing the weight to be given to this factor, I also took into account the consideration that the work done by both sides would be as useful to an assessment in the High Court as it would have been to an assessment in the District Court. The work was not, therefore, wasted. I also took account of the fact that it was not wholly the plaintiff's fault that both the assessment hearings had not gone on.

40 As regards the first hearing, fixed on 17 August 2011, it did not go on because the defendant's lawyer asked for the date to be vacated on various grounds. The plaintiff had produced a supplementary bundle of documents on his earnings which the defendant's lawyer had not seen and needed to take instructions on before cross-examining him. Also, the defendant's lawyers wanted the

plaintiff to file a supplementary affidavit-of-evidence in chief to exhibit two documents which had been mentioned in his list of documents but were not included in his original affidavit-of-evidence in chief. In any case, the hearing had been fixed for only one morning because at the time of fixing, the plaintiff had not undergone medical examination by the defendant's medical specialist and defendant's counsel had worked on the basis that the plaintiff would be cross-examined first and the doctors would be produced at a further hearing. Therefore, he was not able to deal with the plaintiff's doctors at that hearing. I note that in any case the assessment hearing could not have been completed on 17 August 2011 since only half a day had been allocated on the basis that the medical evidence would be adduced later. The defendant's medical evidence was not even ready then.

41 As for the second hearing, the plaintiff's evidence was that it was vacated because of the new evidence produced at the last moment by the defendant. This assertion was contained in Mr Ramakrishnan's affidavit. The defendant did not deny that on affidavit. At the hearing, his counsel submitted that the 11 May 2012 hearing was adjourned because the plaintiff had not prepared an opening statement for the assessment. There was no evidence that that was the main reason for the adjournment. I think it highly unlikely that the court would vacate a date simply because an opening statement had not been prepared especially in a case like the present which contains no novel questions of law but turns on facts and medical opinion. In the case of the second hearing, it appeared to me that the responsibility for the vacation of the date had to be laid at the defendant's door.

42 Moving on to the point about prejudice, the defendant submitted that both parties had agreed to proceed on the basis that the damages to be awarded would be circumscribed by the jurisdiction of the District Court. To re-open a consent interlocutory judgment without showing sufficient reason for the transfer of proceeding would prejudice the defendant as the plaintiff would be re-litigating the maximum quantum payable by taking the matter to the High Court.

43 It seemed to me that the above argument was stating the obvious. If there was no sufficient reason for the transfer, then the defendant would be prejudiced. If there was sufficient reason for the transfer, then the defendant could not argue that he would be prejudiced even if the result of the transfer would mean that the damages eventually paid by the defendant came up to more than the District Court limit. Therefore, the defendant was essentially saying that he would be prejudiced by a transfer. This argument was not open to the defendant. The prejudice that he had to establish could not be simply the fact that the transfer would lead to a higher damages award. If the defendant's argument were to be the law then no case of this kind could ever be transferred to the High Court. In *Keppel Singmarine 2010*, the Court of Appeal found that the appellant in that case would be prejudiced by the transfer of the proceedings to the High Court but it emphasised at [17] that the "prejudice" suffered by the appellant was *not* simply that the damages awarded could exceed the District Court jurisdictional limit.

44 In *Keppel Singmarine 2010*, the Court of Appeal considered it as a significant consideration that the appellant's insurers in that case had, after the interlocutory judgment was entered, set aside only a reserve of $250,000 pursuant to regulations prescribed by the Monetary Authority of Singapore. In this case, there was no evidence of any similar reserve or any particular prejudice that the defendant or his insurers would suffer by reason of the transfer.

45 The only possible prejudice which the defendant was able to point to was his inability to recover costs from the plaintiff as the plaintiff is legally aided. Counsel submitted that even if the court were minded to consider that the prejudice suffered by the defendant could somehow be compensated by an order as to costs, such an order could not be made in view of the plaintiff's status. I did not find this argument convincing either. To accept it would mean that legally aided

litigants could never apply for a transfer of their proceedings from the District Court to the High Court no matter how good their reasons were because the defendant could not ask for a costs order to compensate him. I did not accept that this would be the proper principle to implement.

46 I noted that in *Keppel Singmarine 2010*, the Court of Appeal took the view that even if the proceedings were transferred on the condition that the consent order was to be set aside, the appellant would be prejudiced by the transfer because the parties might have to re-litigate their respective liabilities. In that case, the application to transfer proceedings was made six to seven years after the date on which the accident took place and the Court considered that many practical difficulties might arise if the issue of liability had to be reopened.

47 In this case, however, at the time of the hearing less than four years had elapsed since the accident. Although the time lapse was not ideal, there was no evidence that it had led to any particular difficulty in conducting the litigation. Further, the defendant did not submit that any particular practical problem would be encountered in re-litigating the case if the consent order were to be set aside. Indeed, it was the defendant's submission that if the court were minded to allow the transfer to the High Court, the consent interlocutory judgment *must* be unravelled and the issue of liability be reopened and re-litigated in view of the defendant's increased exposure to a much larger claim for damages. The circumstances here were, therefore, different from those in *Keppel Singmarine 2010* and this element of prejudice did not exist in this case.

48 On an overall consideration of the circumstances, I was satisfied that the plaintiff had established sufficient cause to support a transfer of the case to the High Court. I was also satisfied that there was no good reason why the court's discretion should not be exercised in favour of the plaintiff. I considered that any prejudice that the defendant might sustain by reason of the transfer would be adequately met by setting aside the consent judgment so that the defendant could re-litigate the extent to which he was liable for the accident. The defendant was not able to satisfy me that he would be irretrievably prejudiced in any way by the transfer.