

Wan Kam Fook and another (dependents of Chin Talap a/p Wan Kam Fook, deceased) v Kor
Xie Wey and another
[2014] SGHCR 15

Case Number : Suit No 117 of 2012 (Assessment of Damages 20 of 2014)
Decision Date : 05 August 2014
Tribunal/Court : High Court
Coram : Miyapan Ramu AR
Counsel Name(s) : Mr Namasivayam Srinivasan (Hoh Law Corporation) for the plaintiffs; Mr Suresh s/o Damodara (Damodara Hazra LLP) for the first defendant; Mr Nagaraja S. Maniam (M Rama Law Corporation) for the second defendant
Parties : Wan Kam Fook and another (dependents of Chin Talap a/p Wan Kam Fook, deceased) — Kor Xie Wey and another

Damages – Assessment – Dependency Claims – Quantum

5 August 2014

Judgment reserved.

Miyapan Ramu AR:

Introduction

1 This is a sad case where a 19 year-old Malaysian girl (the “deceased”) lost her life in a motor traffic accident on 29 November 2010 along the PIE. The present assessment before me primarily concerns dependency claims initiated by the Plaintiffs, who are the parents of the deceased i.e. 1st Plaintiff being the father and the 2nd Plaintiff being the mother. The dependency claim is against both the 1st and 2nd Defendants. At the material time, the 1st Defendant, Mr Kor Xie Wey, a Malaysian, was riding the motorcycle with the deceased, as his pillion. The 2nd Defendant, Mr Ong Chee Yi, Andy, a Singaporean, was the driver of a prime mover which collided into the 1st Defendant’s motorcycle, thereby causing the accident, which led to the death of the deceased. The remaining claims pursued by the Plaintiffs concern bereavement and funeral expenses, which the Defendants have chosen not to challenge at the assessment hearing. Separately, in relation to the 1st Defendant’s counter-claim against the 2nd Defendant, for general and special damages arising from the accident, counsel for the 2nd Defendant informed the court that his client would not be challenging the claim.

2 The Plaintiffs commenced proceedings against the Defendants and interlocutory judgment was entered on 28 November 2013 in another court at 100% in the Plaintiffs favour, with 20% apportioned against the 1st Defendant and 80% against the 2nd Defendant.

3 The 1st Defendant informed the court that for the purposes of the assessment hearing, he was *ad idem* with the 2nd Defendant and would primarily be relying on the arguments and submissions put forth by the 2nd Defendant. In the circumstances, the only issue before me concerned the quantum for the dependency claims. Both the Plaintiffs and the 1st Defendant testified at the assessment

hearing. I now turn to the family circumstances surrounding the deceased prior to her demise.

Deceased's family circumstances prior to her death

4 The deceased was the second child of four siblings. The deceased's elder sister is currently 26 years old and her two younger brothers are aged 17 and 11 respectively. At the time of her demise, the deceased was romantically involved with the 1st Defendant. According to the 1st Defendant's testimony, they had been dating one another for approximately five years.

5 The deceased's elder sister currently resides in Kedah, Malaysia with her husband and is a homemaker. According to the Plaintiffs, she has not contributed financially to their household, after her marriage. The deceased's eldest brother, who has stopped schooling, started work in February this year as a waiter in a restaurant in Kuala Lumpur and has contributed MYR\$600 and MYR\$350 to the 1st Plaintiff and 2nd Plaintiff respectively, on two separate occasions. The deceased's youngest brother is schooling and according to the Plaintiffs, is doing "ok" at school.

6 At the time of the deceased's demise, the 1st and 2nd Plaintiff s were 42 and 41 years respectively. The 1st Plaintiff works as a lorry driver earning MYR\$1,800 per month. He also gets an annual income of MYR\$7000 from the sale of crops from his land in Perak, Malaysia, which is equivalent to a monthly income of MYR\$583. The 2nd Plaintiff testified that she helps her mother with rubber tapping throughout the year and earns MYR\$300 per month during non-rainy seasons, and about MYR\$120 per month during rainy seasons. This would work out to about MYR\$270 per month for a year.

7 At the time of accident, the deceased was a 3rd semester student undertaking a business studies course at a Malaysian polytechnic (the "Polytechnic"). She was scheduled to undergo her final semester from January 2011 to April 2011. Upon successful completion of the course, she would have graduated with a "Certificate of Business" studies. According the 1st Defendant's testimony, both the deceased and he had made plans to wed in November 2011 and had planned to live in Johor Bahru, so that it would make it easier for both of them to commute to Singapore for work. In other words, the deceased had plans to find a job in Singapore. The deceased's intention to work in Singapore after her graduation was corroborated by the 1st Plaintiff, when he testified that it was, "*his daughter's dream to work in Singapore*". In fact, the deceased's intention to work in Singapore and reside in Johor Bahru with the 1st Defendant after marriage, were undisputed facts that fell squarely into my considerations for determining the appropriate multiplicand. I will now turn to my determination of the appropriate multiplicand.

Appropriate multiplicand

Deceased's prospective earnings

8 In relation to the job prospects available to the deceased had she completed her course in business studies, I was referred to two primary sources of evidence: (i) the records from the Polytechnic and (ii) the 1st Plaintiff's Affidavit of Examination-in-Chief ("AEIC") and his oral testimony. I will now deal with them in turn.

9 According to the records from the Polytechnic, which were provided by the Plaintiffs, the deceased would have completed her course in business studies in April 2011, if not for her demise. Upon her graduation, the Polytechnic was of the view that she would have been in a position to

consider vocations in the various fields nationwide as follows: (a) Bank Officer, Administrator and Manager, (b) Data Processor, (c) Insurance Agent, (d) Financial Planner and Manager and (e) Accountant/Auditor or others. For the above set of vocations, the Polytechnic provided a salary range from MYR\$1,500 to MYR\$3,500.

10 According to the 1st Plaintiff's AEIC and oral testimony, he stated that the after graduation, the deceased wanted to secure "*an administrative or clerical job in a Singapore company*". He also went on to state that in the event that this was not possible, his daughter was prepared to, "*in the worst case scenario, work as a factory-girl or a waiter earning about \$1,300 to \$1,500 per month*". When the court queried the 1st Plaintiff on how he came to learn of this, he testified that his late daughter had spoken to him about the same, "*a month before she died*". The 1st Plaintiff further went on to testify that his late daughter's friends from Singapore had told her, on previous occasions, that "*if she was able to secure a clerical or administrative job in Singapore, she would be able to earn a monthly income of at least \$2000*". When the 1st Plaintiff was further queried on the identity of these "*friends*", he was unable to provide any useful information to the court.

11 Apart from these two primary sources of evidence, the Plaintiffs provided the court with income statistics performed by the Singapore's Manpower Research and Statistics Department entitled, '*Research on the Median Monthly Gross Wages of Major Occupational Groups by Industry, June 2012*' (the "Report"). In submitting that the multiplicand of \$2,000 was appropriate, the Plaintiffs referred the court to the Report's median gross salary range for '*Clerical Support Workers*', which provided a range of gross wages for varying industries.

12 With reference to the Report, the 1st Plaintiff stated that the range of income for '*financial and insurance services*' and '*professional services*' stemmed from \$2,417 to \$2,700. For managers, the 1st Plaintiff testified that they "*are able earn from S\$7,755 to S\$9,720*" [sic]. Based on these figures, the 1st Plaintiff concluded that his daughter's prospective future earnings should be at "*S\$2,500 during her entry and intermediate level, and with the Court's discretion, an amount of S\$8,000 at a later stage of her career*".

13 Based on the statistics available in the Report, the Plaintiffs submitted that a median monthly gross salary of \$2000 was suitable in this case. In support of this, Plaintiffs relied on the case of *Tan Ngo Hwa & Lim Soei Pin (administrator & co administratrix of the estate of Tan Wan Chin, deced) v Siew Mun Phui* [1998] SGHC 376 ("*Tan Ngo Hwa*"), where the deceased was a 16 year old female student at the time of the accident. The court assessed the multiplicand at \$2000 per month, which was based on the view that the deceased would have earned a starting monthly salary of about \$2000 using the statistics in the *Report on Wages* and that her salary would rise progressively up to \$4000 to \$5000 in five years.

14 With respect, I did not find *Tan Ngo Hwa* helpful as it was easily distinguishable on the facts. The deceased in *Tan Ngo Hwa*, despite achieving mediocre grades in school, was in all likelihood to have obtained a degree from abroad in some discipline, as her father not only had the financial means to support her, but was determined to send her abroad for tertiary education. As the court accepted this finding, the assessment of the multiplicand automatically began with references made to starting salaries for university graduates.

15 The situation before me however, was a far cry from that in *Tan Ngo Hwa*. In fact, looking at the information provided by the Polytechnic, there strangely appears to be no academic results recorded for the deceased's previous two semesters. It was also troubling to note that there were

similarly no attendance records available. Sadly, the only positive report concerned the deceased's good behaviour in school.

16 Not wanting to shut the door on the deceased's educational prospects, I looked further into her educational history which brought me to the deceased's secondary school leaving certificate, otherwise known as the Malaysian Certificate of Education ("MCE"), which I understand is the equivalent to the O-Levels in Singapore. The deceased sat for the MCE exams in 2008 comprising a total of nine subjects. Unfortunately, this did not seem helpful as well, as she was only able to obtain three credit passes in '*Malay Language*', '*Moral Knowledge*' and '*Mathematics*'. I also noted that the grades obtained for the three subjects were mediocre, at best. She clearly did not fare well in '*English Language*', '*History*', '*Entrepreneurship Studies*', '*Principles of Accounting*', '*Physics*' and '*Chemistry*'. With this in mind, I had my concerns if the deceased was indeed equipped to secure an administrative job in Singapore.

17 In the circumstances, I was left with no other alternative but to agree with the 2nd Defendant that in light of the deceased's educational background, at the time of her demise, it appeared very unlikely for her to have secured a job in an administrative capacity in Singapore. In other words, I agreed with the 2nd Defendant that it would be too remote and speculative to suggest that the deceased would be able to secure an administrative or clerical job in Singapore for that matter.

18 For the forgoing reasons, I was of the view that the Plaintiffs had not satisfied me that *Tan Ngo Hwa* was an appropriate case for my consideration. Similarly, to me, the multiplicand of \$2000 per month, being the median salary of the deceased in that case, was clearly a non-starter. I shall now turn to the multiplicand component suggested by the 2nd Defendant.

19 In order to determine a proper median salary for the deceased's intended job prospects in Singapore, the 2nd Defendant derived a multiplicand of \$1000 per month. The 2nd Defendant arrived at this multiplicand by basically obtaining the median average of the salary range provided for by the Polytechnic, as referred to at [9]. The figure was thereafter converted to Singapore dollars (with the exchange rate being SGD\$1 = MYR\$2.57 as of 3 June 2014) for the purposes of comparing the Plaintiffs' suggested median salary.

20 I was not truly convinced that the 2nd Defendant had arrived at a just and fair multiplicand. For a start, I had my concerns with the inputs provided by the Polytechnic. As discussed at [9], the range of job prospects provided by the Polytechnic was very wide to begin with. It also did not help that the salary range provided was nothing more than an estimate that failed to address the individual salary ranges for the various vocations as listed at [9]. For these reasons, I was similarly not inclined to agree with the 2nd Defendant that \$1000 per month was an accurate median average salary to begin with.

21 As I was not prepared to accept either party's suggested multiplicand, I embarked on a review of the deceased's academic achievements in search of more information. Unfortunately, with the very little that was provided to me, I was unable to glean anything from the documentary evidence that suggested that the deceased would have been able to secure an administrative or clerical job in Singapore. I therefore decided to consult the Report once again in search of a more realistic option that would appear reasonable given the circumstances surrounding the deceased.

22 Upon a survey of the occupational groups referred to in the Report, I came to the view that the deceased would be more inclined to find a job as a factory worker or, at the very least, a job in the food and services industry. This was also in line with the deceased's "*final resort*" options that she

communicated to the 1st Plaintiff, shortly before her demise. Using the Report, I came to the view that, as far as the deceased's educational background was concerned; it would be more accurate to refer to the category for '*Plant and Machine Operators and Assemblers*', which included the vocations mentioned. As the median monthly gross salary range for vocations in this industry ranged from \$1071 to \$2,303, I arrived at the appropriate multiplicand of \$1687, which was the average median of the salary range. I will now proceed to address the apportionment of the deceased's prospective earnings to the Plaintiffs.

Apportionment of prospective earnings

23 The Plaintiffs submitted that the deceased would have given 40% of her salary on the average to her parents. In support of this, the Plaintiffs relied on the case of *Ho Yeow Kim v Lai Hai Kuen* [1999] 1 SLR(R) 1068, where the deceased, 17 years old, had undergone three months of Institute of Technical Education in Mechatronics Engineering at the time of his death. On appeal, the Court of Appeal upheld the Assistant Registrar's view that the deceased would have given 40% of his salary on the average to his parents.

24 The 2nd Defendant submitted that the "usual apportionment" of 40% should not be used as a "baseline" and that "the test facing the court is to assess the value of the reasonable expectation of pecuniary benefit on the part of the deceased's dependants and that each case ought to turn on its own facts" as stated by Prakash J at [28] in *Fong Khim Ling (administrator of the estate of Fong Ching Pau Llyod, deceased) v Tan Teck Ann* [2013] SGHC 104 ("*Fong Khim Ling*"). In line with the proposition laid down in *Fong Khim Ling*, the 2nd Defendant submitted that by taking into account the dependant's parents' earnings, the contributions by other siblings and the likelihood of deceased getting married, the deceased would have given 20% of her salary on the average to her parents.

25 I agreed with the 2nd Defendant that the court should not be limited to the usual 40% baseline for apportionment, as each case should turn on its own facts. As set out at [4] to [6] above, I was mindful of the deceased's family financial circumstances prior to her demise. In coming to my decision on the appropriate apportionment, I took into account the following main considerations:

- (i) the deceased was planning to wed the 1st Defendant in November 2011, which would have reduced the quantum of her contribution to her parents;
- (ii) the deceased's marriage plans to reside in Johor Bahru and start a family, instead of a pricier Singapore;
- (iii) the possibility of both her brothers proving financial support in the long run;
- (iv) the eldest sister, albeit not currently contributing financially to the family, may nevertheless choose to do so in the future;
- (v) no evidence to suggest that parents are in dire straits; and
- (vi) the relatively young age of the parents (i.e. in their 40s) and their future earning capacity.

26 Having carefully applied my mind to the various considerations above, I came to the view that 25% would be an appropriate rate of apportionment. The multiplicand would therefore work out to be \$421.75 per month (25% of \$1687).

Multiplier

27 As the age differential between the Plaintiffs was a mere one year gap, parties submitted that a single multiplier would suffice.

28 The Plaintiff submitted that a multiplier of 13 to 15 years was appropriate.

29 The 2nd Defendant submitted that a multiplier of 13 years was more appropriate taking into consideration the life expectancy of Malaysians (which counsel for the 2nd Defendant submitted was lower compared to Singaporeans). In support of this contention, the 2nd Defendant produced a table entitled, "*Malaysia -Life Expectancy at birth 2014*" extracted from <http://countryeconomy.com>. By extrapolating the figures for 2012, the 2nd Defendant submitted that the life expectancy of men was 72.65 years and for women 77.25 years.

30 The Plaintiffs submitted that life expectancy estimates submitted by the 2nd Defendant should not be relied upon as they were based on life expectancy at birth. Plaintiff referred to the case of *Man Mohan Singh s/o Jothirambal Singh v Zurich Insurance (Singapore) Pte Ltd* [2008] 3 SLR(R) 735 ("*Man Mohan Singh*"), where the Court of Appeal stated at [28]:

"...A longer life expectancy is a factor that, in our view, could justify a slightly higher multiplier being applied than that adopted in previous analogous cases, all other things being equal. We therefore endorse the assistant registrar's reasoning in *Lee Kwan Kok* (in taking into account life expectancy when determining the appropriate multiplier), but with two important qualifications: *first, life expectancy should be considered as at the date of the accident, and not at the date of the assessment of damages hearing*; and, second, it must be borne in mind that life expectancy remains but one factor in what is essentially a multivariate equation...". [emphasis added]

31 In line with *Man Mohan Singh*, I agreed with the Plaintiffs that the life expectancy figures for Malaysians in 2012 were obviously an inaccurate basis on which the multiplier is to be assessed. However, since counsel for the Plaintiffs did not provide the court with any further data on this point, I turned to my own research and referred to the table on, "*Malaysia Life Expectancy History - 2011*" extracted from <http://worldlifeexpectancy.com> (assessed 5 June 2014). As the accident occurred in November 2010, the closest estimates for life expectancy of men and women were extracted from 2011. According to the table extract, in 2011 the Malaysian life expectancy of men was 71.7 years and women at 76.4 years. For the purposes of deriving the multiplier, as of 2010 (i.e. the time of the accident), I was of the view that the estimate of 71 years and 76 years for men and women respectively, would suffice.

32 As for having one multiplier applicable for both parents, I was not persuaded by parties' arguments. The approach to separate multipliers was discussed in *Man Mohan Singh*, where the Court of Appeal stated at [22]:

"Before we proceed further, we should clarify that while we appreciate the logic of the AR's reasoning in departing, in the circumstances of the present case, from the conventional approach of applying a separate multiplier for each dependant (as illustrated by, *inter alia*, the Singapore High Court decision of *Ling Kee Ling v Leow Leng Siong* [1994] 3 SLR(R) 395 at [8]), *we are of the view that adopting a separate multiplier for each dependant is still the preferable approach and, conceptually, the neater solution*. Even after accounting for the unusual facts of the present appeals, the AR's approach would, with respect, give rise to difficulties when compared

to decided cases. Furthermore, it would tend to obscure dependant-specific factors, such as age and life expectancy, which are important considerations when setting the multiplier. For example, a mother would typically have a longer life expectancy than a father and, if she was a housewife, she would also for that reason have a greater need for financial support." (emphasis added)

33 While bearing the above principle in mind, and having regard to the circumstance of the case, I was not inclined to agree with a one multiplier approach. I therefore proceeded to adopt the conventional approach of applying a separate multiplier for each dependant, which is illustrated in the following paragraphs below.

34 At the point in time of the accident, the 1st Plaintiff was 42. If the deceased had graduated and found a job, the 1st Plaintiff would have been 43. By taking the life expectancy of the 1st Plaintiff to be 71 years, the multiplier is 28 years. As for the discount to be given for the vicissitudes of life and for payment upfront, which in the norm would be 33% as adopted in *Fong Khim Ling*, I was of the view that the a discount of 43% was more appropriate a figure because the parents in *Fong Khim Ling* were much more elderly compared to the Plaintiffs in this case. I therefore concluded that the appropriate multiplier for the 1st Plaintiff would be 12.04 years.

35 For the 2nd Plaintiff, she was 41 at the time of the accident. Again, assuming the deceased had graduated and found a job, the 2nd Plaintiff would have been 42. By taking the life expectancy of 2nd Plaintiff to be 76 years, the multiplier is 34 years. Again, with the appropriate discount of 43%, the appropriate multiplier for the 2nd Plaintiff is 14.62 years.

Conclusion

36 Therefore, the award of damages are as follows:

(a) Damages for loss of dependency:

(i) Multiplicand of \$1687 per month or \$421.75 per parent;

(ii) Multiplier of 12.04 years for the 1st Plaintiff and 14.62 years for the 2nd Plaintiff;

Sub -Total: \$134,926.26

(b) Undisputed amounts:

(i) Bereavement: \$15,000 (excluding the usual interest on Bereavement of 2.7% per annum)

(ii) Funeral Expenses: \$2918.29, i.e. exchange rate being SGD\$1 = MYR\$2.57 as of 3 June 2014 (excluding usual interest of 5.33% per annum)

(i) Sub-Total: \$17,918.29

Total (100%): \$152,844.55

Total (80%): \$122,275.64 – 2nd Defendant

Total (20%): \$30,568.91– 1st Defendant

(c) 1st Defendant's Counter-Claim against 2nd Defendant:

Undisputed amounts: -

(i) General Damages: \$2000

(ii) Special Damages: \$95

Total (100%): \$2095

At 80%, 2nd Defendant to pay 1st Defendant \$1676.

(d) Usual consequential orders to apply.

37 I will hear parties on the issue of costs.