Rockwills Trustee Ltd (administrators of the estate of and on behalf of the dependants of Heng Ang Tee Franklin, deceased) *v* Wong Meng Hang and others
[2015] SGHC 138

Case Number : Suit No 165 of 2011 (Assessment of Damages No 25 of 2014)

Decision Date : 25 May 2015

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Kuah Boon Theng and Alicia Zhuang Baoling (Legal Clinic LLC) for the plaintiff; Christopher Chong Fook Choy and Melvin See Hsien Huei (Rodyk & Davidson LLP) for the first defendant; Dr Myint Soe and Srinivasan Selvaraj (MyintSoe & Selvaraj) for the second defendant.

Parties : Rockwills Trustee Ltd suing as administrators of the estate of and on behalf of the dependants of Franklin Heng Ang Tee — Wong Meng Hang (Huang Minghan) — Zhu Xiu Chun @ Myint Myint Kyi — Reves Clinic Pte Ltd

Damages – measure of damages – personal injuries cases

[LawNet Editorial Note: The appeals to this decision in Civil Appeals Nos 127, 131 and 132 of 2015 were allowed in part while the application in Summons No 318 of 2015 was dismissed by the Court of Appeal on 1 September 2016. See [2016] SGCA 52.]

25 May 2015 Judgment reserved.

Choo Han Teck J:

1 The plaintiff is the administrator of the estate of Mr Franklin Heng Ang Tee ("the deceased"). The deceased underwent a liposuction procedure carried out by Dr Wong Meng Hang ("the first defendant") with the assistance of Dr Zhu Xiu Chun ("the second defendant") on 30 December 2009 at Reves Clinic Pte Ltd ("the third defendant"). As a result of the first and second defendants' negligence in performing the surgery and failure to properly monitor the deceased's condition, the deceased asphyxiated during the procedure and doctors were unable to revive him in the Accident and Emergency Department of Tan Tock Seng Hospital later that day. At the time of his demise, the deceased was 44 years old.

2 The plaintiff brought this action on 11 March 2011 on behalf of the deceased's estate pursuant to section 10 of the Civil Law Act (Cap 43, 1999 Rev Ed) ("CLA") and the deceased's dependants pursuant to sections 20, 21 and 22 of the CLA. Interlocutory judgment was entered against the third defendant in default of appearance on 30 March 2011. Liability was admitted by the first and second defendants who consented to interlocutory judgment filed on 15 August 2012. This judgment pertains to the assessment of damages payable by the defendants to the plaintiff.

3 The deceased was the Chief Executive Officer of YTL Starhill Global REIT Management Limited ("YTL"), a property management firm. The deceased has two children, a daughter born on 9 June 1996, presently 18 years old, and a son born on 19 May 1999, presently 16 years old. He and his former wife, Ms Peggy Quek ("Ms Quek"), presently 45 years old had obtained the Decree Nisi for divorce on 23 February 2006. Prior to his death, the deceased was paying maintenance of $9,000 a month to Ms Quek and the children.

4 I now set out the claims made by the plaintiff in the following table, alongside the submissions made by the first and second defendants' on the particular head of claim:

Head of Claim	Plaintiff's Claim	First Defendant	Second Defendant
Damages for pain and suffering	$10,000.00	$5,000.00	$0
Medical expenses paid	$8,120.00	$0	$0
Car-related charges	$47.02	$0	$0
Coroner's Inquiry fees	$190,513.05	Agreed	$22,500.00
Trustee and administrator fees	$228,762.66	$0	$0
Loss and expenses incurred on properties	$1,279,354.39	$0	$0
Dependency claim of mother	$67,200.00	$0	$20,000.00
Dependency claim of former wife and children	$1,664,000.00	$844,800.00	$849,600.00
Loss of inheritance and/or savings	$9,484,000.00	$525,127.58	$600,000.00

5 There are also further heads of claim which are undisputed by the first and second defendants. These include funeral expenses of $14,813.95, legal fees and disbursements incurred for obtaining Letters of Administration of $15,421.58 and damages for bereavement of $15,000.

6 Counsel for the first defendant submitted that certain heads of claim brought by the plaintiff at the beginning of the trial has not been pleaded in its statement of claim. I recognise that each party should be bound by its pleadings, but I note that the purpose of the rule is for the other party (or parties) to be put on notice and to have an opportunity to respond to the claims. In this case, as the new heads of claim had been fully set out in the plaintiff's opening statement at the start of the trial, I find that the defendants have been put on notice and were able to respond to such claims at trial. I thus allow the heads of claim as laid out in the plaintiff's opening statement and submissions. The conventional method of addressing such omissions is to allow an amendment to the pleadings if there would be no prejudice. In this case, the defendants have all responded to the unpleaded claims.

General damages for pain and suffering

7 The plaintiff states that the deceased had suffered for over five and a half hours from the large number of puncture injuries inflicted on him during the procedure. Counsel for the plaintiff, Ms Kuah Boon Theng ("Ms Kuah"), has stressed that a sedative is not an analgesic agent, and does not provide pain relief. The first defendant has responded by stating that though the deceased experienced momentary pain from the injuries inflicted, further medication was administered to the deceased such that the sensation was reduced. The second defendant has opposed the awarding of any general damages for pain and suffering, stating that the plaintiff collapsed soon after the surgery.

8 Upon reviewing the coroner's report, I accept that the deceased would have experienced some

pain from the injuries inflicted during the procedure and that a sedative is distinct from an analgesic agent. However, the level of sedation that the deceased was under during the procedure "had caused him to drift into a state of deep sedation almost to the point of general anaesthesia". I thus award the plaintiff $5,000 as general damages for pain and suffering.

Medical expenses and related charges

9 The plaintiff argues that the defendants had failed to fulfil their contractual obligations in providing appropriate medical care, treatment and advice to the deceased prior to and during the treatment. But the plaintiff has not given the court evidence to show that the deceased had not been properly counselled about the risks associated with the procedure such that there was a lack of informed consent. It is also clear that the deceased did approach the defendants out of his own volition to undergo a liposuction procedure. I thus dismiss the plaintiff's claims for a refund of the medical expenses incurred and the car-related charges incurred by Electronic Road Pricing and parking.

Coroner's inquiry fees

10 Ms Kuah's professional charges for the Coroner's Inquiry have been clearly set out in their invoice dated 12 September 2012 and I find that they have been reasonably incurred. I thus award the plaintiff a total of $190,513.05 for professional fees and costs relating to the Coroner's Inquiry.

Plaintiff's professional fees and disbursements as trustee and administrator

11 Before his demise, the deceased had appointed Ms Mabel Leong ("Ms Leong"), his girlfriend, and Mr Ng Yong Hwee ("Mr Ng"), his friend, as joint executors and trustees of the deceased's estate. However, they subsequently renounced their rights in favour of the plaintiff as a professional trustee. The plaintiff states that the expenses of a professional trustee were reasonably incurred in light of the high total probate value of the deceased's assets of slightly less than $7.7m (excluding the value of insurance benefits). In contrast, Ms Leong had no training or expertise as an executor and trustee, and was unable to focus on the undertaking as one who was grieving. Further, Mr Ng was "a busy Chief Executive Officer in his own right, and with many of his own responsibilities."

12 The second defendant states in response that the administrator and his legal adviser have ignored the provisions of the Trustees Act (Cap 337, 2005 Rev Ed) which allows trustees to obtain their fees from the trust fund. Upon review of the provisions in ss 41Q, 41R, and 41S of the Trustees Act, I find that the trustees do not have a claim against the defendants as an estate claim, and dismiss the claim accordingly. As such, I also find that the plaintiff is not entitled to claim for its future expenses that will be incurred as trustee and administrator. The plaintiff will have to claim its fees from the trust itself.

Losses and expenses incurred on the landed properties

13 Following the disposal of the three landed properties owned by the deceased consequent to his demise, the plaintiff claims that the estate has suffered loss. In particular, as the Duchess Avenue property was under development and purchase had not been completed at the time of the deceased's death, the plaintiff decided to rescind the Sale and Purchase Agreement after evaluating the best course of action to take, and had to forego a significant portion of what had already been paid to the developer. This loss alone amounted to almost $1.2m.

14 The first and second defendants cite section 10(3)(*c*) of the CLA to show that such a claim has

been barred. The section states:

> Where a cause of action survives as specified under subsection (1) for the benefit of the estate of the deceased person, the damages recoverable … shall be calculated without reference to any loss or gain to his estate consequent on his death except that a sum in respect of funeral expenses may be included.

15 The plaintiff attempts to argue in reply that "the only thing consequent to the demise, was the actual realisation of *how much* the loss was going to be (emphasis in original)." But it is clear in this case that the losses and expenses incurred on the properties by the rescission of the sale and purchase agreement were consequent to the deceased's death. Further, in the circumstances of this case, the loss that was occasioned to the estate was not directly caused by the death of the deceased but by the estate being unable to service the loan and the subsequent decision to rescind the agreement. This claim also fails for reasons of remoteness as such a loss is not reasonably foreseeable to the defendants.

Dependency claim for loss of support

16 The plaintiff calculates the loss of support to dependants based on ascertaining the percentage of the deceased's income used for personal expenses, and then assuming that the balance would be meant for them ("the percentage deduction method"). An alternative method would be to calculate the total value of benefits received by the dependants from the deceased whilst the deceased was still alive, and use that to determine the value of a dependency claim for loss of support ("the traditional method"). I find that in this case, although the deceased did view his family as important to him and contributed towards their expenses, I am not persuaded that the balance of his income would wholly have gone to his dependants. This is especially pertinent in this case as the deceased was no longer living with his family, and had a girlfriend whom he would conceivably have spent considerable expenses on. I will thus go on to assess the dependency claims using the traditional method.

Dependency claim of Mdm Tan Siak Cheng

17 The plaintiff has claimed for the loss of support of the deceased's mother, Mdm Tan Siak Cheng ("Mdm Tan"), of $1,200 per month up to August 2014. Mdm Tan is currently 94 years old. The plaintiff claims that the deceased made regular Automated Teller Machine ("ATM") withdrawals of $1,000 from his bank account, allegedly for Mdm Tan's personal expenses, and $200 a month for medical expenses. But the plaintiff has only provided evidence of two medical bills which were paid. These are merely one-off payments and do not prove that Mdm Tan received regular support of $1,200 per month from the deceased for her personal and medical expenses. I find that it is just and appropriate to award $20,000 instead to Mdm Tan's caregiver to go toward payment of a part of her medical expenses.

Dependency claim of Ms Quek and the children

18 In assessing the dependency claim of Ms Quek and the children, I have found that the composite maintenance order of $9,000 constitutes a good starting point to work from. This is because the manner in which a court assesses dependency under the traditional method is similar to how the court assesses maintenance in matrimonial proceedings – in both cases, taking into account the claimant's needs and whether the deceased was able to meet those needs (*Hanson Ingird Christina and others v Tan Puey Tze and another appeal* [2008] 1 SLR(R) 409 ("*Hanson*") at [27]). I then consider whether the pecuniary support which the dependent would have received from the deceased, but for his death, exceeds the composite maintenance order.

19 The plaintiff calculates the dependency claim of Ms Quek and the children using the composite maintenance order, and $20,000 per year for overseas vacations and other expenses as multiplicands. It then seeks to find an appropriate multiplier to use by determining when the children will complete their tertiary education, thus coming to a multiplier of 11 for Jo-Ann (assuming she graduates at the age of 23) and 15 for Ryan (assuming he graduates at the age of 25 after undergoing National Service as well). It also assumes that the deceased would continue to work past 65 years old, and thus uses a multiplier of 25 for Ms Quek. It takes an average multiplier of 17 years and applies a 25% discount to obtain an average discounted multiplier of about 13 years.

20 I have found it useful to assess the claims of Ms Quek and the children separately as their needs and potential pecuniary benefit they would have derived from the deceased differ. The first defendant has also rightly cited section 22(3A) of the CLA which states that:

> In an action brought under section 20, the damages payable to a former wife of the deceased shall only be in respect of a subsisting maintenance order against the deceased at the time of his death.

Thus, Ms Quek's dependency claim has been limited by statute to her portion of the subsisting maintenance order against the deceased at the time of his death.

Dependency claim of Ms Quek

21 Ms Quek has admitted under cross-examination that in dividing the composite maintenance order of $9,000, approximately $2,000 was set aside for herself, and $7,000 was to be for the children in equal amounts. I will thus use $2,000 as the multiplicand for Ms Quek's dependency claim. I find that the deceased would most probably have continued to work until the age of 65 years but for his death and hence arrive at a multiplier of 21. "It is axiomatic that the longer the period of dependency, the greater would be the percentage reduction" to take into account the vicissitudes of life and the investment value of receiving a lump sum payment in an award (*Balanalagirisamy Gowri Rajeswari and another (administrators of the estate of Radhakrishnan Hari Babu, deceased) v Wong Si Wah* [2009] 1 SLR(R) 819 at [10]). With that in mind and after considering the precedents, I use a 40% discount to fix the discounted multiplier at 12.6 (being 40% of 21). Applying a multiplier of 12.6 to the multiplicand of $2,000 per month will give Ms Quek a total sum of $302,400.

Dependency claim of the children

22 The plaintiff claims that the deceased, over and above paying monthly maintenance of $9,000 to the family, had also paid $20,000 a year to cover additional expenses including gifts, computers and school trips. But these are mere assertions made by Ms Quek and the children without further corroboration. The only evidence they were able to give to the court was that the deceased had paid Ms Quek two sums of $59,000 and $129,700 respectively, presumably to aid her and the children in buying a new home. However, these one-off payments for the purchase of a home are not evidence of a commitment by the deceased to pay for a bulk of the children's expenses every year from now till the foreseeable future. The children also claim that their father encouraged them to study abroad and Ms Quek "is very sure the deceased would have supported his children in their decision to pursue their studies overseas". But unlike the plaintiff in *Hanson*, the plaintiff in this case has not been able to give the court examples of how the deceased demonstrated any outward conduct whilst he was alive, which shows his intention to support and fund the children's overseas tertiary education. I thus find that there is insufficient evidence that the deceased had intended to fund the children's overseas tertiary education, and use $3,500 as the multiplicand in calculating the dependency claim of each child separately.

23 The plaintiff submits that a multiplier of 11 years should be used for the daughter Jo-Ann, and a multiplier of 15 years should be used for the son Ryan. I find that a multiplier of 10 years for Jo-Ann is more appropriate, given that she was 13 years old at the time of the deceased's demise, and will be 23 years old when she finishes her tertiary education. As for Ryan, I find that a multiplier of 15 years is appropriate, as he would finish his tertiary education at the age of 25 years old. Given the length of the multiplier, I think that it would be appropriate to employ a discount, and use a discounted multiplier of 7.5 for Jo-Ann and 11.25 for Ryan (applying a discount of 25% for each). I agree with counsel for the second defendant that during the years of tertiary education, the children may require a higher amount of maintenance. I will use the multiplicand of $4,000 for three years to enable them to obtain a university degree. I thus find that Jo-Ann's dependency claim will come to $328,500 (being $4,000 per month for three years, and $3,500 per month for seven years, and applying a discount of 25%) and Ryan's dependency claim will come to $486,000 (being $4,000 per month for three years and $3,500 per month for 12 years, and applying a discount of 25%). I do not think it appropriate to make provision for Ms Quek's contribution to the family as I am not calculating the total expenses of each child (after all such information was not given to the court by the plaintiff). I am, instead, focussing on what pecuniary benefit the children would have received from the deceased, but for his death. The plaintiff's overall dependency claim for Ms Quek and the children will be $1,116,900.

Loss of inheritance claim

24 All parties have stressed that this is the first case in which a loss of inheritance claim is being made under a dependency claim pursuant to section 22(1A) of the CLA. The parties have submitted for different methods of calculation.

25 The plaintiff seeks to evaluate this lump sum award "by way of a *financial projection* guided by experts with relevant financial and accounting expertise in this area (emphasis in original)." The plaintiff's expert, Mr Keoy, has reviewed the cash flow analysis for a period of four years, followed by a three-stage future projection to come to a value of about $23m (subsequently amended in submissions to the an amount of about $9.5m using a different discount rate). Mr Keoy's report takes into account the cash flow of the deceased not just based on his salaried income, but also his investments in properties and other areas. This approach also comprised of many forecast assumptions that attempted to predict 36 years into the future. I am not convinced that these are balanced assumptions. Though Mr Keoy applied a discounted cash flow approach when assessing the deceased's wealth, he employed a discount rate of 1.1% based on 12-month fixed deposit rates, which did not seem appropriate for longer period forecasts. In calculating the value contributed by the three landed properties which the deceased owned, Mr Keoy seemed to have adopted a simplistic view of property values. This included the fact that the annual rental for each property would grow at 2.2% per annum, equivalent to long-term inflationary rate, and that the deceased would own all of the three properties up to the age of 80 when he would have died of a natural death. This approach disregards the volatility in values that may be caused due to market forces. As such, his estimation of $9.103m attributed to the properties appears to be high.

26 On the other hand, the defendant's expert report seems to adopt an overly narrow approach in focussing on the income of the deceased and fails to take an all-rounded and balanced appreciation of the deceased's accumulation of wealth which would naturally be inherited by his children. The defendant's expert has also seemed inconsistent as during the course of the trial, his estimated cash flow value was revised from a deficit of more than $4m to a surplus of almost $2m and then to a net surplus of slightly more than $2m.

27 I have considered the expert views from both parties and have been greatly assisted by the

court assessor, Mr Harsha Basnayake ("Mr Basnayake"), and taking into account all views presented, I am of the opinion that a balanced approach is to calculate the amount of wealth the deceased would have accumulated, but for his death. I first make an adjustment to Mr Keoy's report by taking out the value attributed to the three properties, because the estate has realised the value by disposing them and that represents the value today for those assets. I then deduct the personal expenditure and insurance expenses of the deceased, and factor in the maintainable rental income per annum and amounts set aside to finance the properties which would have contributed to the deceased's average maintainable savings per annum. Using this information and the information from both expert reports, I come to a range of $524,000 to $650,000 per annum of savings. I thus take the average savings of the deceased per year as $587,000. This is also consistent with the way such claims are quantified. There is no reason to create a wholly new method of calculation in this case.

28 I do not find it appropriate to use Mr Keoy's discount rate of 1.1%, and instead choose to use a discount rate of 4% which better reflects the risks attached to the cash flows. This is consistent with prevailing market interest rates, precedent cases, and the position in other jurisdictions. I applied the discount rate of 40% to the multiplier of 21 years (being the remaining years till the deceased's probable retirement at 65 years old) and multiplied this sum by $587,000 per annum, coming to a sum of $7,396,200. I consider the children of the deceased to be his dependents, and note that they are to inherit 52.5% of the deceased's estate based on his last will. Thus this will result in a sum of $3,883,005 for the loss of inheritance of the dependants.

Conclusion

29 To conclude, I summarise my award of damages for the plaintiff's claims in the following table:

Head of claim	**Amount of award**
Damages for pain and suffering	$5,000.00
Coroner's Inquiry fees	$190,513.05
Funeral expenses	$14,813.95
Letters of Administration fees	$15,421.58
Bereavement	$15,000.00
Dependency claim of Mdm Tan	$20,000
Dependency claim of Ms Quek and the children	$1,116,900
Loss of inheritance claim of dependants	$3,883,005.00
Total sum	**$5,260,653.58**

I award interest at 5.33% per annum (as the default interest rate) on the damages for pain and suffering, Coroner's Inquiry fees, funeral expenses, and Letters of Administration fees, in all cases from the date of writ until judgment. I also award interest at 5.33% per annum on the damages for bereavement and pre-trial loss of support of Ms Quek and the children (using an approximate figure of five years as submitted by the plaintiff) for the period between the date of death up to and including the date of final judgment. I will hear the parties on costs at a later date if they are unable to agree costs.