

Ang Siam Hua v Teo Cheng Hoe
[2004] SGHC 147

Case Number : Suit 296/2003, NA 18/2004
Decision Date : 12 July 2004
Tribunal/Court : High Court
Coram : Ho Su Ching AR
Counsel Name(s) : Willy Tay B C (Ari, Goh and Partners) for plaintiff; Wee Jee Kin (Bogaars and Din) for defendant
Parties : Ang Siam Hua — Teo Cheng Hoe

12 July 2004

Assistant Registrar Ho Su Ching:

The plaintiff, Ang Siam Hua, sustained serious multiple injuries as a result of a road traffic accident on 4 August 2001. This included a head injury with contusion of the right temporal lobe of the brain, intra-abdominal injury with rupture of the spleen, fractured pelvis and fracture of the right femur. Interlocutory judgment was entered against the defendant on 1 August 2003 for 100% of the damages to be assessed.

2 As a result of his injuries, the plaintiff was in a coma for 16 days and required treatment in the intensive care unit with intubation and ventilation. He underwent a laparotomy and splenectomy for his ruptured spleen on 5 August 2001 and open reduction and internal fixation of the right femur was performed on 11 August 2001. On 14 August 2001, he required a tracheotomy to continue mechanical ventilation of his lungs. The plaintiff's post-operative care was complicated by pneumonia and he was subsequently discharged some 2 months later on 5 October 2001 and followed up his treatments at the hospital's outpatient clinics.

General Pain and Suffering

3 The plaintiff's claim for pain and suffering amounted to \$ 335,600. This comprised the following:

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| (a) Head Injury | \$ 150,000 |
| (b) Memory Impairment | \$ 25,000 |
| (c) Loss of Consciousness (Coma of 16 days) | \$ 2,500 |
| (d) Epilepsy | \$ 5,000 |
| (e) Fracture of right humerus | \$ 20,000 |

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| (f) Fracture of Pelvis | \$ | 20,000 |
| (g) Fracture of right femur with scars | \$ | 28,000 |
| (h) Ruptured spleen with scars | \$ | 23,000 |
| (i) Pneumonia | \$ | 8,000 |
| (j) Liver Lacerations | \$ | 7,500 |
| (k) Visual impairment in left eye | \$ | 25,000 |
| (l) Loss of Hearing | \$ | 5,000 |
| (m) Nosebleed (Epitaxis) | \$ | 800 |
| (n) Tracheotomy scar | \$ | 800 |
| (o) Abrasion over arm | \$ | 5,000 |
| (p) Loss of amenities | \$ | 10,000 |
| Total | \$ | 335,600 |

Head Injury- items (a) to (d)

3 Ms Alice Yeoh ("Ms Yeoh"), a clinical psychologist, administered a neuropsychological test on the plaintiff on 14 May 2002 to test his attention span, memory, information processing speed, judgment, planning, visuospatial function and visual perception. Overall, she found the plaintiff's mental faculties to be in the average range and that his memory functions are grossly intact. In her report, Ms Yeoh also stated that although his visuospatial function is variable i.e between low average to superior range, it is not impaired.

4 Dr Ng Puay Yong ("Dr Ng"), a consultant with the Department of Neurosurgery at the National Neuroscience Institute, agreed that the plaintiff's memory remains intact and that clinically, he was able to carry out a proper conversation. However, Dr Ng cautioned that this does not necessarily mean that the plaintiff's memory is back to normal and he would in fact be 'uncomfortable' to make such a finding. Dr Ng explained that his difficulty in making such a finding stemmed from the fact he does not have the benefit of a pre-injury neuropsychological test for comparison. As such, it would be very difficult to make any conclusions on the extent to which the plaintiff's memory and intelligence have been affected by the brain injury. However, Dr Ng stated that he 'would definitely expect' the plaintiff to have suffered memory impairment in view of the severity of his injuries which left him in a coma for a lengthy period of time.

5 In October 2002, the plaintiff suffered from post-traumatic epilepsy and was prescribed a life-long course of anti-convulsants to control his epilepsy. According to Dr Ng, the plaintiff still runs a 5% to 10% chance of a relapse although he is taking anti-convulsants and has not experienced any further epileptic fits since October 2002. Dr Ng explained that this was because the plaintiff suffered an underlying injury to the temporal lobes of the brain, which is the part of the brain that controls memory and are known to generate epilepsy in patients who have diseases or injuries to the temporal lobes. As a result, the plaintiff may develop fits at any time and without any warning symptoms.

6 The plaintiff's counsel cited the cases of *Chua Seng Lee v Ang Teow Koon & Anor* (Suit No. 2103/1996) and *Peh Diana & Anor v Tan Miang Lee* [1991] SLR 341 in support of the claim of \$ 150,000 for the head injury. In *Chua's* case, the High Court awarded the sum of \$ 120,000 to the plaintiff who suffered from a crushed brain, multiple face and skull fractures and was in a coma for 4 months. As a result of the injuries, the plaintiff was left with dense weakness of the left side of his body, a non-functional left arm and left hemiparesis. The plaintiff also suffered from profound post-traumatic personality change, slurred speech and became mentally retarded. As for the case of *Peh Diana*, the plaintiff in that case was initially awarded \$ 150,000 for a severe head injury which left her with cerebral atrophy (shrinking of brain) and borderline mental retardation with impairment in her recent memory and delayed recall. This award was subsequently reduced to \$ 70,000 on appeal – a fact that plaintiff's counsel had omitted to mention in his written submissions. Be that as it may, the medical evidence in the present case clearly shows that the head injury, while significant, have by no means, resulted in disabilities as severe as those cited in the two cases.

7 In view of this and taking into account all medical evidence including Dr Ng's opinion that the plaintiff would have suffered some form of memory impairment, I considered an award of **\$ 50,000** to be reasonable. This is especially in light of the award of \$ 60,000 in the 1996 case of *Chua Ping Ping (an infant) suing by her father and next friend Chua Khoon Seng v Kay Pai Seng & Anor* (Suit 47/1996) for a head injury where in addition to epileptic fits and mental slowness, the ensuing disabilities included spasticity in all 4 limbs and temper tantrums. For the avoidance of doubt, the award of \$50,000 also takes into consideration the fact that the plaintiff was in a coma for 16 days, for which I failed to see any justification for a separate award. To my mind, the loss of consciousness in this case, is simply one of the factors to be considered in assessing the severity of the head injury, and hence the appropriate quantum of award.

Fractures - item (e) to (g)

8 It is not in dispute that as a result of the accident, the plaintiff suffered a fractured pelvis and femur that required an open reduction and internal fixation of the right femur. According to the plaintiff, the accident also left him with a fracture of the neck of the right humerus which was not diagnosed at the time of the accident. The defendant disputed this and claimed that the fracture to

the humerus was sustained independently from the accident. In support of their position, they called upon Dr Low Chee Kwang ("Dr Low"), an orthopaedic surgeon with Tan Tock Seng Hospital ("TTSH"), who testified that the plaintiff's case notes did not show any records of a fracture of the humerus upon admission or discharge. Dr Low also stated that had a fracture to the humerus been present, TTSH would definitely have detected it.

9 Dr W.C. Chang ("Dr Chang"), an orthopaedic surgeon in private practice, examined the plaintiff on 23 October 2002. He testified that the X-rays and M.R.I. scans show a malunited fracture of the neck of the right humerus which is at least 6 months old and opined that the fracture was probably not diagnosed at the initial hospitalisation. He reasoned that this was probably because when the plaintiff was admitted to TTSH, he was not only comatose from severe head injury but also suffered from other severe life threatening injuries i.e ruptured spleen, fractured pelvis and fractured right femur. Dr Chang explained that in such a situation, all medical attention would be directed to these areas. In this context, a fracture to the humerus would not be considered so important. Furthermore, the plaintiff would not have been able to communicate the problem to his doctors in his shoulder at the time because of his head injury and tracheotomy. The injury was thus neglected until he was in the rehabilitation unit and started using his arm for the crutches.

10 I found Dr Chang's explanation as to why the fracture could have gone undiagnosed to be logical and sensible. This is especially since I saw no reason to doubt the plaintiff's evidence that he had not sustained a blunt trauma to his right shoulder in the intervening period between the accident and the time when Dr Chang examined him.

11 The medical evidence shows that the malunion of the fracture of the neck of the humerus has caused the humeral to be tilted into a malposition in the shoulder joint. This resulted in a marked restriction in the range of motion in terms of the forward flexion and abduction of the right shoulder. As result of this, Dr Chang would expect the plaintiff to suffer chronic stiffness, shoulder pain and weakness. Additionally, the right shoulder is, in his view, also pre-disposed to post-traumatic arthritis that would be likely to present itself as increasing pain and stiffness over the next 10 years. Taking all this into account as well as all the relevant authorities on this point, I awarded the sum of **\$ 15,000** for this item.

12 In relation to the fractured pelvis and right femur, the medical evidence shows that the pelvis had healed with no evidence of obvious deformity while the right femur has malunited with a 1.5 cm shortening. While there is no localised pain or tenderness in the pelvis, there is muscle wasting to the right gluteus and right lower limb as well as weakness that are permanent. The plaintiff now walks with a limping gait on account of the weakness and shortening, whilst the malunited femoral fracture accounts for the marked hip stiffness.

13 I agreed with the defendant's submission that by reason of the proximity of the two injuries to each other (the fracture of the right femur occurred on the proximal 1/3 of the bone), and that they really relate to the same function of the body, a global award would be appropriate. I thus awarded the global sum of **\$ 25,000** for both injuries. In so doing, I was guided in particular by the cases of *Udaiyappan Subramaniam v Vermiculite Industries Pte Ltd* (DC Suit No. 1534/1998) and *Samsurin bin Ja'afar v Ham Kow Teck* (DC Suit 4944/1997)

Lung/Spleen/Liver – items (h) to (j)

14 The plaintiff had to undergo a splenectomy as a result of the accident. During the course of his post-operative care, the plaintiff suffered from pneumonia which was treated with vancomycin.

15 In respect of the plaintiff's claim for pneumonia, I found the authorities cited by the plaintiff which related to pneumothorax to be completely unhelpful. Pneumothorax is the abnormal state where, as a result of a lesion in the lung or a wound in the chest wall, there is a collection of air in the pleural cavity. Pneumonia on the other hand, is an inflammation of the lung tissues caused by infection, which does not result from trauma. I agreed with the defendant's approach of viewing pneumonia from the perspective of a lesser lung condition such as a lung contusion that is likely to involve some degree of lung inflammation : see *Raveendran v Chong Siew Foo* (Suit No. 2123 of 1986). I found an award of **\$ 2000** to be appropriate for this item.

16 In relation to the ruptured spleen with scars, I considered the case of *Tan Guat Whye v SBS* (DC Suit No. 1936/1997) which involved a similar injury and awarded the sum of **\$ 15,000**.

17 The plaintiff's claim for liver lacerations was made solely on the basis of Dr Ng's report which stated that the plaintiff suffered from "ruptured spleen and liver lacerations". Aside from this report, which made a passing reference to the presence of the liver lacerations, there was no further evidence before me as to the extent or severity of these liver lacerations. It was indeed lamentable that plaintiff's counsel completely omitted to examine Dr Ng on this aspect of his report. In view of this, I made a nominal award of **\$ 200** for this item.

Visual Impairment in left Eye – item(k)

18 The plaintiff was diagnosed with a traumatic subluxated cataract in his left eye. At least 180 degrees of angle recession was also noted in the left eye. This resulted in visual blurring. Upon examination, the visual acuity was 6/6 for the right eye and 6/45 on the left eye, improving to 6/15 with the use of a pinhole. Dr Sharon Tow, the ophthalmologist who examined the plaintiff, stated that presence of angle recession in the left eye posed a 4% to 9% risk of the plaintiff developing glaucoma.

19 Based on the medical evidence as well as authorities cited, I awarded the sum of **\$ 15,000** for this item.

Loss of Hearing and Nosebleed – item (l) and (m)

20 According to the plaintiff's counsel, the plaintiff's claim for loss of hearing and epistaxis is "evidenced" by a report dated 12 March 2003 by Dr Samuel Yeak of TTSH. I failed to see how counsel for the plaintiff could make such an assertion when the report shows that the plaintiff's tympanic membranes were noted to be normal and there was no evidence of residual disability. Furthermore, there is also no evidence that the epistaxis, which the plaintiff complained to be suffering from sporadically, resulted from the accident. In any event, Dr Yeak's report show that the epistaxis, which the plaintiff complained of, had resolved. As such, I saw no basis for making any award for these items.

Scars – items (n) and (o)

21 In addition to a 2.5 cm tracheotomy scar, the plaintiff had multiple abrasions scars over an area of 3.5 x 4.5 cm at the back of the right arm, a 4 cm vague abrasion scar, surgical scars (12 cm trochanteric, 13 cm upper thigh and 2 cm lower thigh scar) from insertion of the locked intramedullary nail in the femur and a mildly keloid 25 cm long midline scar from the laparotomy. Bearing in mind the case of *Seow Seet Lye v Ho Kian Min* (MC Suit No. 9504 of 1996), where \$ 500 was awarded for a 2.5cm tracheotomy scar and *Mohd bin Sutyrisno v Shariff bin Mohd Yasin* (DC Suit 2145 of 1996) where \$ 2,000 was awarded for a 17 cm surgical scar with keloid formation on the left thigh, I was of the view that **\$ 6,000** was a fair amount for all the scars.

Loss of amenities – item (p)

22 In making the above awards for each individual injury, I had taken into account the loss of amenities associated with that particular injury. However, I considered a separate award for loss of amenities to be appropriate to compensate the plaintiff for the combined effect of the individual disabilities on the overall function of the body and awarded the sum of **\$ 10,000** for this item as claimed.

Future Loss of Earnings/Loss of Earning Capacity

23 The plaintiff was a taxi driver at the time of the accident. He resumed work as a taxi driver immediately after his medical leave (from 4 August 2001 to 10 June 2002) but was forced to stop work on 25 October 2002 as a result of post-traumatic epilepsy. The plaintiff has since given up the prospect of returning to work as a taxi driver as he has been found medically unfit to drive on account of his post-traumatic epilepsy.

24 The plaintiff started working as a taxi driver in December 1998. Prior to that, he worked as a foot reflexologist for about four years. His employment history also included work as a mechanic, foreman and technician as well as a stint in sales and insurance. The plaintiff also tried his hand at running a furniture business as a sole-proprietor.

25 According to the plaintiff, he has great difficulty in finding employment because of his current disabilities. He gave evidence that he tried to find work in a factory and even applied for a job as a petrol kiosk assistant but to no avail. It was only in December 2003, that he managed to find some work as a foot reflexologist in a friend's shop where he earns a \$9 commission for every customer that he serves. According to the plaintiff, there are not enough customers to go around and he manages to service an average of 2 to 3 customers only on a good day. However, more often than not, he goes home empty pocket.

26 During the course of the cross-examination, the plaintiff stated that he had not given up looking for a job. He would not, however, consider foot reflexology as a long term career as he no longer possesses the same stamina or strength for the job since the accident. This is consistent with the medical evidence that the plaintiff suffers from residual chronic stiffness, shoulder pain and weakness as a result of the malunited right humerus. Furthermore, the plaintiff's shoulder is pre-disposed to post-traumatic arthritis that would likely to present itself as increasing pain and stiffness over the next 10 years. In view of this, I agreed with the plaintiff that a career in foot reflexology would not be sustainable. For that matter, I would also consider the plaintiff to be handicapped in any job that requires the use of strength in his arms e.g work that requires the lifting of heavy loads. Moreover, the ever-present risk of an epileptic fit means that the plaintiff is also immediately excluded from jobs that involve the operation of heavy machinery. In fact, bearing in mind the plaintiff's age and highest educational qualifications (GCE 'O' Levels), it is clear to me that the combined effect of the disabilities from all his injuries would severely hamper his employment prospects.

27 The plaintiff claimed to be earning at least \$ 18,000 per annum (about \$ 50 a day) in his former job as a taxi driver. However, his claim was not supported by his Income Tax Statements for the Year 1998, 1999 and 2000 which show an annual income of \$ 72.00, \$ 1,1617.50 and \$ 12,992.00 respectively. When cross-examined on this discrepancy, the plaintiff admitted to under-declaring his income for the purposes of evading taxes. Admittedly, while I did not consider the plaintiff's claim to be earning \$ 50 a day as a taxi-driver to be far-fetched, I considered it far too speculative to use \$ 18,000 as the basis for a mutiplicand since one could not altogether discount the possibility that the plaintiff may be able to find work. Furthermore, based on the plaintiff's employment history, I was not

satisfied that the plaintiff who is presently 48 years old, would in all probability remain as a taxi-driver for the next 19 years until he is due for retirement.

28 For the reasons cited above, I considered an award for loss of earning capacity to be more appropriate and valued the plaintiff's loss of earning capacity at **\$ 100,000**. In so doing, I took into account the income that the plaintiff claimed to be earning as a taxi-driver, the length of his remaining working life, the extent to which his disabilities will disadvantage him in the employment market as well as the possibility that he may be able to find some form of gainful employment.

Pre-trial loss of earnings

29 The pre-trial period from the date of the accident to the date of judgment is 1074 days. It is not disputed that during this time, the plaintiff returned to work as taxi driver for 136 days and that he starting working as a foot reflexologist from 1 December 2003. Hence, whilst I accepted that the plaintiff would not have been able to work at his full capacity during the 136 days, I was of the view that any loss of income suffered during this period would to a large extent off set the income earned by him as a foot reflexologist. Therefore for the purposes of calculating the pre-trial loss of earnings, I considered the relevant pre-trial period to be 938 days (1074 less 136 days).

30 In their written submissions, the defendant submitted that the multiplicand for the pre-trial loss of earnings should be \$ 35 per day. This is roughly equivalent to his declared annual income of \$12,992.00 in 1999.

31 I did not agree with the defendant's choice of the multiplicand. This is especially since the defendant has accepted the plaintiff's evidence that he had under-declared this income. As such, it is only logical to expect the plaintiff to be in fact earning more than \$ 35 per day. As alluded to earlier, I did not consider the plaintiff's claim to be earning at least \$ 50 per day to be unreasonable and considered it as more reflective of what the plaintiff was in fact earning. As such, I awarded the sum of **\$ 46,900** (\$ 50 x 928 days) as pre-trial loss of earnings.

Future Medical Costs

32 The plaintiff's claim for future medical costs included the cost for physiotherapy for the humerus, cost of anti-convulsant medication to control his post-traumatic epilepsy and the cost of removing the intramedullary nails in the plaintiff's right femur.

32 The medical evidence from Dr Low was that physiotherapy at this stage, would not be useful to increase the range of motion as it may be too late and should have been administered as soon as the fracture healed. In relation to the surgery for the removal of the intramedullary nails, Dr Low stated that implants can be left in situ unless they cause symptoms such as aching sensation when the weather changes. Under cross-examination, the plaintiff indicated that he would not want to undergo surgery to remove the intramedullary nails. As such, I saw no reason to make any award for these two items.

33 As for the cost of future medication, Dr Ng's evidence is that that plaintiff is required to take anti-convulsants to control his epilepsy for the rest of his life. Dr Ng estimates the cost of his current medication to be less than \$ 5 a week. According to Dr Ng, there is a 10% chance of the plaintiff developing an adverse reaction to his current medication. This would then mean that the plaintiff has to switch to other more expensive medication. Taking all this into account, I awarded **\$ 3,000** as the cost of future medication. This award is based on a multiplier of 9 and also factors in the 10% chance that the plaintiff may develop an adverse reaction to his current medication.

Special Damages for acupuncture and transportation for medical treatment

Acupuncture

34 In light of Dr Chang's evidence that it would be reasonable for someone with chronic pain to use acupuncture as a modality of treatment and his recommendation of using acupuncture as an alternative form of treatment, I awarded the sum of **\$ 3,360** for the cost of acupuncture treatments as claimed.

Transportation for medical treatment

35 The plaintiff claimed a sum of \$ 1,925 (77 trips x \$ 25 per trip) for transportation for medical treatments which claim I noted was not fully supported by receipts. However, based on the receipts that were produced in the bundle of documents, the average cost of a taxi fare worked out to be only about \$11.50 per trip. As such, I found the submission by plaintiff's counsel of \$ 25 per trip to be highly questionable. Given the paucity of evidence as to the actual cost of each trip, I considered \$ 11.50 to be the best estimate of the cost per trip and awarded **\$885.50** (77 trips x \$ 11.50) as special damages under this item.

Conclusion

36 In summary, I made the following awards:

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| (a) General Damages for Pain and Suffering and loss of amenities | \$ 138,200.00 |
| (b) Loss of Earning Capacity | \$ 100,000.00 |
| (c) Pre-trial loss of earnings | \$ 46,900.00 |
| (d) Future Medical Cost | \$ 3,000.00 |
| (e) Medical Expenses (agreed) | \$ 20,348.13 |
| (f) Cost of acupuncture | \$ 3,360.00 |
| (g) Transportation for medical treatment | \$ 885.50 |
| (h) Future transportation for medical treatment (agreed) | \$ 800.00 |
| (i) Cost of repair of Taxi (agreed) | \$ 1,000.00 |

(j) Hire of Maid (agreed) \$
30,000.00

(k) Unauthorised call on lost\$
handphone (agreed) 20.50

(l) Replacement of lost handphone\$
(agreed) 100.00

(m) Walking stick (agreed) \$
18.60

Total \$344,632.73

37 I awarded interest at 6% per annum from the date of service of writ to the date of judgment on general damages for pain and suffering and loss of amenities. Interest on pre-trial loss of earnings and special damages incurred before the date of judgment was awarded at 3% per annum from the date of the accident to the date of the judgment.

38 The usual consequential orders will apply. I will hear parties on costs.

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