Norhayati Binte Salleh @ Norhayati Bte Mohamed Ali v Mohamed Haedi Bin Abdullah [2007] SGHC 1

Case Number	: Suit 715/2005, RA 246/2006
Decision Date	: 11 January 2007
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Vangadasalam Ramakrishnan (V Ramakrishnan & Co) for the plaintiff; Teo Weng Kie (Legalworks Law Corporation) for the defendant
Parties	: Norhayati Binte Salleh @ Norhayati Bte Mohamed Ali — Mohamed Haedi Bin Abdullah

11 January 2007 Judgment reserved.

Choo Han Teck J:

1 The appellant, riding pillion on the defendant's motorcycle on 21 July 2002, was injured in an accident. She was then 25 years old. Judgment was entered in her favour against the defendant and a sum of $282,776.43 in damages was awarded by the assistant registrar to her. She appealed against the amount awarded. The appellant is a divorcee and has two young children. The appellant's highest educational level was primary five. She was unemployed at the time of the accident, but had worked periodically and variously prior to the accident. She did not hold down a job and sometimes worked only for a month. Some of the jobs she held included that of a sales representative. She is presently looked after by her neighbour, Salijah Latef, who is 57 years old, and sometimes by Mdm Salijah's daughter, Sherin, who was almost 18 years of age as at March 2006. Mdm Salijah had only known the appellant for only two years before the appellant's accident. However, she testified that she would continue to care for the appellant.

2 The appellant suffered head injury described in the medical report as an occipital fracture, a posterior arch fracture, and intracranial haemorrhage including an acute subdural haematoma on the right side, bifrontal and bitemporal intracerebral haematoma and occipital extradural haematoma. There were some complications to her recovery caused by a pneumothorax of the right lung, pneumonia, transient hyponatremia, pulmonary embolisation secondary to a deep vein thrombosis of her left basilica vein. She recovered gradually, and with rehabilitation she was described in Dr Tang Kok Kee's report of 11 January 2006, as having "improved significantly and was ambulant". She does, however, suffer from post-traumatic seizures, a condition that requires life-long medication, which would reduce the frequency but not prevent the occurrence of such fits. The report concluded with the observation that the appellant "is able to perform her activities of daily living under supervision and definitely have difficulty in abstract thinking and execution of complex task[s]." Dr Tang reported that the foregoing cognitive deficits "are very likely to be permanent in nature." Another doctor, Dr Chua Hong Liang, a gynaecologist testified that the appellant suffered from urinary incontinence but that could be controlled by drugs.

3 In his oral testimony at the assessment of damages, Dr Tang stated that he had noted that the appellant suffered from insomnia, and although ambulatory, would not be able to travel alone without losing her way. Counsel for the defendant pointed out that the evidence from the appellant herself during the assessment hearing, that she said that she was capable of travelling on her own, and had done so three times. On the first occasion she took the Mass Rapid Transport train but missed her stop because she fell asleep. The second time she decided to go to Yio Chu Kang instead

of stopping at Bishan, and there took a bus home. On the third occasion, she found the train too crowded and went home by bus instead. On all three occasions, she found her way back unaided.

4 The appellant was dissatisfied with the following awards. First, in respect of general damages, in which she claimed, through her counsel, Mr V Ramakrishnan, $150,000 for the skull fracture with brain injury (she was awarded $75,000 below) and $50,000 for loss of amenities for which no award was made below. Secondly, she claimed for $248,400 for future loss of earnings (she was awarded $81,360 below), and $172,680 for the cost of engaging a domestic help (she was awarded $97,736 below). Thirdly, she appealed against the award of $48,000 being the costs of the proceedings and asked for a sum of $125,000 to be given instead.

5 The assistant registrar noted in her brief grounds that the appellant's claim for $150,000 for damages for the skull and brain injury was based on *Toon Chee Meng Eddie v Yeap Chin Hon* [1993] 2 SLR 536, where an award for a similar injury was made at $160,000. She noted that the consequences of the injury in *Toon Chee Meng Eddie* far exceeded those suffered by the appellant in severity. While the appellant is ambulant and even capable of work in a sheltered environment as the medical evidence showed, Toon Chee Meng was paralysed on one side, unable to walk or stand, unable to speak, and became intellectually retarded to the level of a one year old child. The assistant registrar also noted that in the case of *Chin Swey Min* [2004] Mallal's digest 1059 an award of $70,000 was made. She noted, however, that in *Chin Swey Min* the plaintiff suffered personality changes, poor memory, and poor learning skills, whereas the appellant was cheerful and responsive, read her own affidavit (although slowly) and was appropriate in her answers. Perusing several other similar cases from 1992 to 2001 encompassing damages varying according to the severity of the injuries, from $50,000 to $80,000, she decided on $75,000. The assistant registrar saw no reason to make a separate award for loss of amenities because in most cases, this head of claim was considered together with the quantification of pain and suffering. That is apparent in the cases cited above. I agree that these two claims ought to be considered together because loss of amenities is part of the pain that arises from the injuries suffered. It would be more reasonable, and less artificial, to consider it as part of the general pain and suffering arising from the injury. I am unable to say that the award of $75,000 so made was manifestly inadequate. I have no reason, therefore, to vary that award.

6 In respect of the appeal against the sum awarded for loss of future earnings, the assistant registrar noted that the appellant, now 28 years old, had a potential 34 years of working life. However, the evidence showed that she had only worked a total of 22 months from 1994 to 2002, and was unemployed for three and a half years prior to the accident. After considering against the evidence that the appellant might be able to work in a sheltered environment, she decided that the appellant did not seem likely to hold down a job in a sheltered workshop for a sustained period of time. She noted that the appellant's previous salaries were from $350 to $500 a month. She therefore decided on a multiplicand of $400, which was just above the average for that range. She adopted a multiplier of 15 years, and taking the employer's contributions Central Provident Fund contributions at 13%, she awarded the sum of $81,360. I am of the opinion that that the appellant's claim for $1,000 as the multiplicand was without basis. Her appeal on this award therefore failed.

7 The assistant registrar accepted the appellant's claim for $2,800 being fees to be paid to the maid agency every three years at $700 a year; $15,600 being general expenses of $100 a month for 13 years for the maid (although the appellant claimed without proof, twice this sum); $46,020 being the levy for the employment of the maid at $295 a month for 13 years; and $39,000 being the maid's salary of $250 a month for 13 years. That worked out to a sum of $103,420 (second stage assessment). However, the assistant registrar discounted 20% from this sum on the ground that the maid would not be devoting full time to the care of the appellant and would be doing other domestic

work. This was the approach adopted in *Toon Chee Meng Eddie*. I am of the view that a discount of this nature is one of the ways a court might make a fairer adjustment to the overall compensation, but one ought to first consider whether *Toon Chee Meng Eddie* laid down a rigid principle that a discount must be made to take into account the probability of the maid having to do other work. I do not think that there is such a rigid rule. In *Toon Chee Meng Eddie* the plaintiff was a seven year old child living with his parents. Not much else was known about Eddie Toon's family, and I must thus take it on the basis that that case justified the court's finding that some other work would be done for the benefit of the rest of the household, and perhaps that the family would have in all probability employed a maid in due course had their son not been injured. I would not comment thus on the facts there, but on the evidence before me, it did not seem likely that this appellant was inclined to employ a maid at any time even if she had not been injured. Hence, if the services of a maid were required predominantly because of the injury, the fact that the injured person would have gained some extra bits of ancillary services should not be deducted. I would vary the amount appealed against from $82,736 to $103,420.

8 Lastly, the appellant appealed against the award of costs of $48,000. Counsel submitted that costs of $125,000 would have been fairer. The assessment involved 11 witnesses, including four doctors, the appellant and her caregiver, Md Salijah, and required five days of hearing. I am of the opinion that the award of costs was a little on the low side but not so low as to justify a variation on appeal. $125,000 was certainly too much to justify in this case. I would however, hear the question of the costs of this appeal at a later date in view of the adjustment made in respect of the costs of the domestic help.