

13/84

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

LAI WEE LIAN

Appellant  
(Plaintiff)

- and -

SINGAPORE BUS SERVICE (1978) LIMITED

Respondent  
(Defendant)

CASE FOR THE APPELLANT

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10 1. This is an appeal from the Judgment and Order of the Court of Appeal in Singapore (Kulasekaram, Chua and A.P. Rajah, JJ.) dated 28th May, 1982, whereby the appeal of the Appellant herein (who had been the Plaintiff below) and the cross appeal of the Respondent (who had been the Defendant below) were both dismissed with costs against the Judgment and Order of the High Court of the Republic of Singapore (Wee Chong Jin, C.J.) under which the Appellant herein was awarded

20 damages against the Respondent totalling \$124,879.79.

Pp.16-18

P.12

2. The principal questions of law arising in this appeal are:

(i) whether or not the practice which has developed in Singapore of assessing the loss of the future earnings element in personal injury cases by reference to actuarial tables is authorised by law;

30 (ii) whether or not in the instant case the Chief Justice was entitled to assume the Plaintiff would suffer only ten years loss of future earnings;

and

(iii) whether or not the Court of Appeal in Singapore, having held that the Plaintiff would suffer more than ten years' loss of

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earnings, was entitled to affirm the award of the Chief Justice merely on the basis that the award of general damages was merely 'somewhat generous'.

P.1  
Pp.3-5  
3. The Appellant commenced the action leading to the instant appeal by Writ of Summons issued on 31st August, 1979. The claim pleaded in the Statement of Claim was for damages in respect of the negligence and breach of statutory duty of the Defendants in permitting a bus which they operated to drive off so that the Plaintiff fell from the step thereof. Amongst the particulars of special damage pleaded under paragraph 3 thereof appeared the following: 10

P.4,  
Ll.40-43  
"loss of earnings as a tuition/teacher at about \$500 per month from date of accident and still continuing..."

Pp.6-7  
P.6,  
Ll.31-35  
P.7,  
L.15  
P.12,  
Ll.7-11  
4. By their Defence dated 18th October, 1979, the Respondents denied negligence and/or breach of statutory duty and did not admit any item of injury or special damage. The denial of liability was not persisted in for, at the commencement of the trial, the parties agreed that the degree of liability attributable to the Defendants was 85% and to the Plaintiff the remaining 15%. The making of this agreement between the parties was formally recorded in the Order made after the hearing before the Chief Justice. 20

P.7  
P.7,L.15  
P.7,L.16  
5. The case came on for hearing on 28th January, 1982, before the Honourable the Chief Justice Mr. Justice Wee Chong Jin. Besides reaching agreement as to the degree of liability to be attributed to the parties, the special damages were agreed at \$24,861.40. It is to be observed that the Chief Justice recorded that the premise upon which the special damages were agreed was as follows:- 30

P.7,  
Ll.17-19  
"\$24,000.00 is for loss of earnings at \$600 per month till today based on gross income agreed at \$680 per month." 40

In these circumstances the issue that fell to be decided by the learned Chief Justice was the assessment of the appropriate amount of general damages. Such assessment was thereupon commenced.

Pp.7-10  
Pp.19-62  
Pp.7-9  
6. The Plaintiff called four witnesses in support of her case in this matter and a number of documents were admitted by agreement between the parties. Two medical witnesses, Robert Gerard

Don and Gopal Baratham, dealt with the physical injuries sustained by the Plaintiff. As a result of the brain injury that she suffered, the Plaintiff's physical injuries are conveniently summarized in Mr. Don's report:

10                   "(a) Difficulty in ambulation causing handicap in mobility and effective communication from one place to another. In addition there is the social embarrassment of an awkward gait. She will also be prone to falls.                   P.35,  
L1.27-36

(b)       Difficulty in using the right upper limb especially for writing which has affected her job as a tutor in Mandarin.

(c)       The neurogenic bladder is a social embarrassment to her."

20                   7.       In his report, the Consultant Psychiatrist, Dr. Paul Ngui (exhibit 15), (which was admitted by consent), recalling that the Plaintiff had had some academic success (A-level History, O-level Chinese, Chinese Literature, Biology and Economics) and her personal history, put his findings as follows:                   Pp.40-43  
Pp.19-29

30                   "On examination, she walked in with a very pronounced limp. Mentally, she was cooperative but rather slow in her thinking. She remained quietly smiling and if not engaged in conversation appeared engrossed in her thoughts. There was no spontaneity of speech. She was able to give her name, age and address correctly. Orientation for day, date and year was correct on the first visit but on her second visit she was wrong about the day.                   P.41,L.31  
P.42,L.12

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In mood, she was apathetic and indfferent and did not appear to exhibit any anxiety or concern that her husband is not living with her and is staying with his mother.

In summary, the main psychiatric findings are:

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- memory impairment with difficulty in retention
- intellectual deficit
- change of personality from extrovert to withdrawn, apathetic individual
- lethargy and lack of initiative.

It is my considered opinion that these findings are consistent with brain damage and severe personality change as a result of the severe head injury. 10

There is probably little chance of a recovery. These handicaps will prevent her from functioning as a teacher."

P.9  
Pp.9-10

8. The Plaintiff's mother, Wong Yoke Mewi, and husband, Fong Swee Chiong, gave evidence of the effect of the Plaintiff's disabilities. In considering their evidence, it is perhaps convenient to put in context how serious those injuries had been. The Plaintiff had suffered a huge extradural haematoma in the right temporoparetal region requiring evacuation. 20  
Subsequently there had been a recollection of blood clot within the Plaintiff's head and further surgery had been required to treat this. The Plaintiff's rehabilitation had been a lengthy process and only partially successful because she had continued to suffer from disabilities of (a) awkward ambulation, (b) impairment of movement of the right arm (both of these caused by a spastic right haemoparesis), (c) a neurogenic bladder, and (d) a serious intellectual deficit. 30  
The substance of the evidence of the Plaintiff's mother and husband was that the Plaintiff was living in essentially sheltered lodgings only partially able to care for herself and clearly incapable of teaching again.

Pp.9-10

9. At the conclusion of the evidence each party's advocate addressed the learned trial Judge. It is useful at this stage to explain that in the Courts of Singapore the table (which is annexed to this case as "The Annexure") in accordance with a well known local practice (the validity of which falls for determination in this Appeal) was referred to by all before the Court. This is a table computing capital sums required when invested at 5% interest per annum to provide monthly payments over a given period of years together with a table of life expectation. This table was prepared by Messrs Murphy & Dunbar 40

in Singapore and the bases upon which it is prepared appear at page 2 thereof. This table is in general use in the courts of Singapore and Malaysia, both by those who appear as advocates before such courts and the judges thereof. In the instant case Mr. Ramakrishnan who appeared for the Plaintiff submitted to the trial Judge that the loss of future earnings should be calculated on the premise of a multiplicand of \$800 being taken for a period of twenty-five years. Whereas the sum produced mathematically would be \$240,000, the sum by reference to the tables is \$135,000. Likewise in making his submissions, Mr. Rashid, who appeared for the Defendant, submitted that future earnings should be calculated using a multiplier of ten years with a multiplicand of \$400 per month; this would, on simple mathematical principles, produce \$48,000 but the sum actually produced by using the tables and which was relied upon by Mr. Rashid in his submissions was \$37,056. The Appellant now respectfully submits that by reason of the premise upon which the special damage had been agreed, namely that the Plaintiff's loss was \$600 per month it was not open to Mr. Rashid to submit that the ongoing future loss was less than this sum.

P.10,  
L1.30-35

P.10,  
L1.36-40

P.7,  
L1.17-19

10. At the conclusion of the submissions made to him, the Chief Justice gave judgment which, according to his note, was simply as follows:

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"Pain and suffering	\$45,000.00
Loss of amenities	\$40,000.00
Loss of future earnings	<u>\$24,861.40</u>
	\$ 146,917.40

P.11,  
L1.2-9

Judgment for Plaintiff for 85% of \$146,917.40 and costs."

It therefore appears that, so far as loss of future earnings was concerned, the Chief Justice accepted the submissions that were made to him by Mr. Rashid. The Appellant respectfully submits that there was no material upon which the learned Chief Justice could conclude that the Plaintiff (who at the date of trial was aged 26½) would have only worked for ten years. It appears in the respectful submission of the Appellant, that the learned Chief Justice applied the concept of a multiplier as used in other Common Law jurisdictions, which in itself reflects a discount from the number of years for which future loss is to be calculated to reflect the fact that payment is to be received in advance.

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P.10,  
L.40

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P.12  
P.13

11. The Judgment of the learned trial Judge as the formal Order of the Court was drawn and entered on 19th February, 1982, and the Plaintiff gave Notice of Appeal on 22nd February, 1982, only against that part of the decision of the assessment of the prospective loss of earnings arrived at of \$37,056. Thereafter, under the rules of Court, it was incumbent upon the Chief Justice to give grounds for his decision but no such grounds of decision were given. This submission is based on the provisions of the Rules of the Supreme Court (Republic of Singapore Subsidiary Legislation, No. S274) which state, by Order 57, Rule 5(1):

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"When a Notice of Appeal has been filed, the judge who gave the judgment or made the order must, unless the judgment was written, certify in writing the grounds of such judgment or order; but delay or failure so to certify shall not prevent the appellant from proceeding with his appeal."

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P.14

Mr. Ramakrishnan, in his capacity as solicitor for the Appellant, was refused grounds of judgment by the Supreme Court when he applied for the same. The Appellant accordingly filed his Petition of Appeal to the Court of Appeal in Singapore on 1st April, 1982. After reciting the basis upon which the appeal arose, the Plaintiff continued as follows:

P.14,  
Ll.19-27

"(3) Your Petitioner is dissatisfied with the award of \$37,056 for prospective loss of future earnings of the Appellant on the ground that the same is inadequate having regard to the evidence adduced in Court, the circumstances of the case and the general trend of awards on future earnings.

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(4) The Petitioner prays that that part of the Judgment may be reversed and the sum awarded be increased to a fair and reasonable sum."

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P.16,  
Ll.30-31  
P.15,  
Ll.12-13

12. It appears that the Respondents herein and before the Court of Appeal in Singapore sought to cross appeal to that Court in respect of the assessment of the loss of amenities in the sum of \$40,000. Reference is made thereto to in the Judgment of the Court of Appeal of Singapore and in the 'formal judgment'. No cross notice of appeal is included in the record.

P.15, L.9

13. The Appellant's appeal to the Court of Appeal in Singapore came on for hearing on 20th

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May, 1982, before Kulasekaram, Chua and A.P. Rajah JJ., and it appears that judgment was reserved until 28th May, 1982. In a single judgment of the Court, the history relating to the appeal and the cross appeal is recited and the conclusions of the Court upon the merits of the appeal and cross appeal are so succinct that they do not admit of an effective precis being made. In the circumstance the conclusions are quoted fully herein:

P.17,L.44  
Pp.16-17

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"We have considered the arguments of both counsel in respect of loss of amenities. We are of the view that what really matters in cases of damages for personal injuries is the global figure finally arrived at by a trial Judge even if he has calculated the damages under a number of recognised heads. If the global figure arrived at is, in the particular circumstances of each case, reasonable and fair, then we do not think that any appellate Court would increase or decrease a component item of damage on the basis that such item is low or excessive. In the instant case the sum arrived at for loss of amenities is \$40,000 and that for loss of future earnings is \$37,056, computed on a multiplier of ten applied to a base figure of \$400. We ourselves think that perhaps a multiplier of ten is not adequate considering that the Appellant was born on 22nd July, 1955. However, we are also of the view that the award of \$40,000 for the loss of amenities is somewhat generous in all the circumstances of the instant case. On the whole we think that these two items balance each other off to the extent that, in our view, the global figure of \$146,917.40 arrived at is on the whole a fair assessment of the damages for personal injuries suffered by the Appellant in the instant case.

P.17,  
L1.4-36

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We therefore do not propose to interfere with the award herein one way or the other and in view of what we have said we also do not propose to make any order as to the costs of the Appeal."

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14. The Appellant respectfully submits that the approach of the Court of Appeal in Singapore fell into error in four respects. The first respect in which it is submitted the Court of Appeal in Singapore erred is in relation to its

endorsement of calculating loss of future earnings by reference to the table in the Annexure. The second respect is that if it was correct to use the table then the multiplier applied was wrong in principle. The third respect is that approach of the Court of Appeal in Singapore was reviewing the award of the Chief Justice was wrong in principle. The fourth respect is that they failed, for the reasons adumbrated in paragraph 9, to apply a multiplicand of not less than \$600 per month to the calculation of future loss of earnings. Save as to the fourth respect the bases of these submissions are developed in the following paragraphs.

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15. So far as the first respect is concerned, the Court of Appeal in Singapore ought not to have endorsed the approach of the Chief Justice in relation to the use of the table in the Annexure. The practice of using such tables has not been followed in Brunei. This was noted by Roberts C.J. in McGuinness v Ahmed Zaini (1980) 2 M.L.J. 304 where he said:

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"Since by virtue of the Application of Laws Enactment (Cap.2.) the Common Law of England has been imported into the Law of Brunei, it is the Common Law, as expounded in the decisions of the English Courts which must govern the principles upon which damages in Brunei are assessed.

If, therefore, the Courts of Singapore or Malaysia have not followed Common Law Principles, the courts in Brunei should not feel themselves to that extent obliged to pay attention to the general level of the awards of those Courts."

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It is respectfully submitted that no distinction as to the application of the Law of England in Brunei and in Singapore can be drawn. It is further submitted that the application of English principles approved by Roberts CJ. is to be preferred to the practice that has developed in Singapore.

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The use of actuarial tables was strongly deprecated by Lord Diplock in delivering the judgment of the Privy Council in an appeal from Australia, Paul v Rendell (1981) 55 A.L.J.R. 371 where he stated:

"To undertake detailed mathematical calculations in which nearly every factor is speculative or unreliable in order to assess the capital sum to

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10 represent what is only one of several components in a total award of compensation of personal injuries is, in their Lordships' view, not only not worth while but, worse than this, it has a tendency to mislead. To have one's attention focused on the detailed differences between the rival calculations of counsel and their Lordships as has been in the instant appeal, makes it only too easy to forget how far removed from all reality are most of the assumptions upon which the calculations are based. One is in danger of becoming unable to see the wood for the trees."

In saying this Lord Diplock echoed an earlier observation in the Judgment:

20 "A judicial guess gains nothing in reliability by being used as a factor in a mathematical formula; the answer reached by working out the formula is still no more than a judicial guess."

And in relation to the use of tables themselves Lord Diplock stated:

30 "'Rule of Thumb' may be an apt description of the Australian practice of using actuarial tables in order to produce a figure to use as a starting point for determining what is a suitable capital sum to compensate a plaintiff for future economic loss. But in their Lordships' view, if this course is adopted, one must follow the logic of the method of calculation to the end or else as a guide post it will guide the wrong way."

40 Although that last observation was used in relation to the incidence of taxation so far as damages were concerned, it is pertinent also to apply it to the choice of multiplier to be applied to the tables. The Appellant respectfully submits that the tables in the Annexure can only be used if the multiplier to be read into the table is the actual period for which it is likely that a plaintiff will suffer a loss of earnings. This is the second ground upon which the Appellant submits that the Court of Appeal in Singapore fell into error and is amplified in the following paragraph hereof. Paul's case was cited with approval Selvanayagam v University of the West Indies (1983) 1 W.L.R. 585. In that case the issue of damages was remitted to the local Court to be determined therein on a fresh

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inquiry. Selvanayagam's case however was not followed in Ratnasingham v Kow Ah Dek (Privy Council Appeal No. 5 of 1982) where the Board awarded a figure different to those that had been awarded in the Courts in Malaysia. In the instant appeal, the Plaintiff would ask, on the premise that the appeal might succeed, that the Board should itself assess damages. In Ratnasingham's case, the taking of the point in relation to the validity of the use of the tables in the Annexure was foreshadowed. Lord Scarman said, in the Judgment of the Board: 10

"Since no challenge has been made in this appeal to the tables as a calculation, their Lordships assume, without deciding, their relevance and reliability."

The first principal issue, therefore, did not fall for consideration in that case but, in the respectful submission of the Appellant, the continued use of the tables cannot be reconciled with the observation of Lord Morris of Borth-y-Gest in Jag Singh v Toong Fong Omnibus Co Limited (1964) 30 M.L.J. 463 (cited with approval by Lord Scarman in Ratnasingham's case), namely: 20

"In deciding this appeal their Lordships think that three considerations may be had in mind: (i) that the law as to the factors which must be weighed and taken into account in assessing damages is, in general, the same as the law in England; (ii) that the principles governing and defining the approach of an appellate Court that is invited to hold that damages should be increased or reduced are the same as those of the law in England; (iii) that to the extent to which regard should be had to the range of awards in other cases which are comparable, such cases should, as a rule, be those which have been determined in the same jurisdiction or in a neighbouring locality where similar social, economic and industrial conditions exist." 30 40

Thus the Appellant respectfully submits that the practice of using the tables is one which has diverted the due and orderly administration of the law in Singapore and Malaysia into a new course and invites the Board hearing this appeal to hold that there is no authority for the use of 50

such tables and that the assessment of damages in the instant case ought to be reviewed.

16. Returning to the second point, the Appellant respectfully submits that the finding of fact which appears to have been made by the Chief Justice that the Plaintiff would only have taught for ten years (see paragraph 10 above and the judgment note of the Chief Justice at page 11, line 4 of the Record when read in conjunction with the note of the submission of Mr. Rashid made on behalf of the Respondent at page 10, line 40 of the Record) cannot be justified upon the evidence. In his finding of fact it seems that the Chief Justice may have held that, because the Appellant was a woman, she would have fewer years earning than would be the case with a male Plaintiff. The Appellant respectfully submits that if this is so the Chief Justice would not be entitled to rely on the Appellant's sex as a ground for reducing the multiplier. Such a conclusion is not justified in terms of general principle and is contrary to the adopted practice in Singapore. An example of the local practice is to be found in Chan Kam Lan v Ong Lean Kee (unreported but noted at (1979) 1 M.L.J. XXXVIII), where the Chief Justice himself applied a multiplier of 32 in the case of a female plaintiff aged 19 at the time of accident and 23 at the time of the trial. It is further respectfully submitted that there is no concurrent finding of fact in relation to the finding of the Chief Justice that the Appellant would only have taught for ten years because the statement by the Court of Appeal in Singapore in their judgment that:

"We ourselves think that perhaps a multiplier of ten is not adequate considering the Appellant was born on 2nd July, 1955"

P.17,  
L1.20-25

indicates that that Court disagreed with the finding of the Chief Justice. In the premises the Appellant submits that the matter is at large for determination in the instant appeal. The Appellant would invite, in the event of the tables being held applicable contrary to the first submission made herein, that a multiplier of twenty-five should be applied. This figure would reflect the Plaintiff notionally working until the age of sixty with some ten years without any employment during that period.

If, on the other hand, the Board should hold that the tables ought not to be used and a straight multiplier should be applied the Appellant would invite the Board to apply a multiplier of seventeen.

17. The Appellant respectfully submits that the

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Court of Appeal in Singapore fell into error in their approach to the Appellant's appeal. So far as the matters apparently canvassed in the cross appeal are concerned as to the level of the award for the pain and suffering element it would, in the submission of the Appellant, have only been open to the Court of Appeal in Singapore to have varied the award of the Chief Justice if that Court had been satisfied that there had been a significant error in the approach of the Chief Justice. It is respectfully submitted that a 'somewhat generous' approach by the Chief Justice does not entitle the Court of Appeal to vary the Chief Justice's award. The findings of the Court of Appeal in Singapore that 'a multiplier of ten is not adequate' is a finding of fact upon which it is respectfully submitted that the Court ought then to have acted. The Appellant respectfully admits that by failing to make a finding of what was the appropriate multiplier to use the Court of Appeal in Singapore erred and the matter is therefore at large in this appeal.

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P.17,  
L1.21-22

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P.18

18. On 13th September, 1982, the Appellant was granted final leave to appeal to the Judicial Committee of her Britannic Majesty's Privy Council against that part of the judgment of the Court of Appeal of Singapore relating to the award of \$37,056 for prospective loss of future earnings of the Appellant.

19. The Appellant respectfully submits that this appeal should be allowed by varying the amount of the award for prospective loss of future earnings to such sum as may appear to the Judicial Committee of her Britannic Majesty's Privy Council to be just and that she should be awarded the costs of the hearing before the Court of Appeal in Singapore and before the Privy Council for the following, amongst other

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R E A S O N S

- (a) BECAUSE the Courts in Singapore fell into error in their approach as to the calculation of the Appellant's future loss by reference to the tables in the Annexure hereto.
- (b) BECAUSE the Courts in Singapore applied too low a multiplier to the calculation of the Appellant's future loss of earnings.
- (c) BECAUSE the Courts in Singapore should have applied, for the reasons set out in

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paragraph 9, a multiplicand of not less than \$600 a month to the calculation of the Appellant's future loss of earnings.

- (d) BECAUSE the Court of Appeal in Singapore failed to consider the appeal on a correct basis.
- (e) BECAUSE the amount of damages awarded in respect of prospective loss of future earnings is too small.

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NIGEL MURRAY

V. RAMAKRISHNAN

