

13/84

No 53 of 1982

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL 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

RESPONDENTS
(Defendants)

CASE FOR THE RESPONDENTS

HERBERT OPPENHEIMER, NATHAN & VANDYK

20 COPTHALL AVENUE
LONDON EC2R 7JH

Writ and Statement of Claim
Pages 1 to 5 of the Record

1. On the 31st day of August 1979, the Appellant issued a Writ in the High Court of Singapore claiming damages for personal injuries and consequential loss suffered by the Appellant as a result of the negligence of the Respondents' servants or agents.

Notes of Evidence
Page 7 of the Record

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2. Both parties to the action agreed to liability being apportioned 85% in respect of the Respondents and 15% contributory negligence in respect of the Appellant. Special damages amounting to \$24,861.40 was also agreed to by the parties.

Notes of Evidence
Pages 7 to 10 of the Record

3. On the 28th day of January 1982, the action was heard before the Honourable Chief Justice Mr Wee Chong Jin and the sole issue before the Court was the amount of general damages to be awarded to the Appellant.

Judgment of High Court
Page 11 of the Record

4. The Honourable Chief Justice gave Judgment dated 28th of January 1982 to the Appellant for 85% of the sum of S\$146,917.40. Damages were itemised in the following manner:-

Notes of Evidence
Page 11 of the Record

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Pain and suffering	S\$ 45,000.00
Loss of Amenities	S\$ 40,000.00
Loss of Future Earnings	S\$ 37,056.00
Special Damages (agreed)	S\$ 24,861.40
Total Damages	<u>S\$ 146,917.40</u>

Notice of Appeal and Petition of Appeal
Pages 13 and 14 of the Record

5. The Appellant subsequently appealed to the Court of Appeal in Singapore in respect of the High Court's award for loss of future earnings. The Respondents cross-appealed in respect of the award for loss of amenities.

Judgment of Court of Appeal
Page 16 of the Record

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6. The Honourable Judges of the Court of Appeal affirmed the decision of the High Court and held that what matters in cases of damages for person 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.

Judgment
of Court of
Appeal
Pages 16 and
17 of the
Record at
lines 4 to 16

7. As a consequence of this ruling, the Court of Appeal held that if the global figure arrived at is, in the particular circumstances of each case, reasonable and fair, then, an appellate Court would not increase or decrease a component item of damage on the basis that such item is low or excessive.

Judgment
of Court of
Appeal
Page 17 of
the Record
lines 20 to
26

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8. The Honourable Judges of the Court of Appeal expressed the opinion that a multiplier of 10 adopted by the High Court was not adequate. However, they were also of the opinion that the High Court's award of \$40,000.00 for loss of amenities was somewhat generous.

Judgment of
Court of
Appeal
Page 17 of
the Record
at lines 26
to 32

9. On the whole, the Honourable Judges of the Court of Appeal held that both the awards of prospective loss of future earnings and loss of amenities granted by the High Court "balance each other off" and they were unanimous in upholding the High Court's global award of \$146,917.40 as a fair assessment of the damages for personal injuries suffered by the Appellant.

Formal
Judgment
of the Court
Appeal
Page 15
of the
Record

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10. In consequence thereof, the Appellant's appeal and the Respondent's cross-appeal was dismissed by the Court of Appeal with no order as to costs.

Order of
Court
Page 18 of
the Record

11. Leave was granted to the Appellant by the Court of Appeal on the 13th day of September 1982 to appeal to this Honourable Court against the award for loss of future earnings.

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12. The issue raised by the Appellant for determination on this Appeal is whether the High Court's assessment of damages for loss of future earnings is so erroneous as to require adjustment by this Honourable Court.

13. The Respondents contend that the sum of \$37,056.00 for prospective loss of future earnings awarded by the Honourable Chief Justice and unanimously upheld by 3 Honourable Judges of the Court of Appeal should not be disturbed for the reasons appearing hereunder.

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14. In granting the award of \$37,056.00 for prospective loss of future earnings, the Honourable Chief Justice heard the following evidence:-

Notes of Evidence

Page 8 of the Record at line 30
Page 7 of the Record at lines 16 to 19

Page 9 of the Record at line 24
Page 10 of the Record at line 19

- (1) The Appellant is able to do simple sedentary work and is not totally disabled;
- (2) The special damages agreed upon between the parties included loss of earnings at \$600.00 per month from the occurrence of the accident to the time of trial.
- (3) The Appellant married P.W.4 Fong Swee Chiong after the accident
- 10 (4) The Appellant intended to take up further studies after her husband graduated from the Nanyang University

15. Given these factors and other contingencies of life, the award of \$37,056.00 was not manifestly low nor can it be said that the award was so inordinately low that it was a wholly erroneous estimate of the damage as to warrant adjustment by this Honourable Court.

20 16. This award being an award granted by the High Court of Singapore and subsequently unanimously affirmed by the Court of Appeal of Singapore was an award given by Judges with knowledge of relevant local social and economic conditions in Singapore and this Honourable Court with all due respect should be slow in upsetting the award for the reasons found in two previous appeals to this Honourable Court.

30 17. In Selvanayagam v University of the West Indies (1983) 1 All ER 824, this Honourable Court applied the approach adopted by the Honourable Lord Diplock in Paul v Rendell (1981) 34 ALR at 579, 581 and held, *inter alia*, that though the Judicial Committee has the power to substitute its own assessment of damages for an erroneous award made by the trial judge, it is not the Board's practice to do so, because it lacks knowledge of relevant local conditions and circumstances.

18. It is submitted therefore that the award of the trial judge in the instant case for this reason should not be disturbed.

40 19. Further or in the alternative, it is also the Respondent's contention that even if it can be argued that the award of prospective loss of earnings is low, the Court of Appeal has found that the award for loss of amenities was high and that the Court of Appeal held that both awards "balance each other off" making the global award of \$146,917.40 a fair assessment in the circumstances.

Judgment of the Court of Appeal
Page 17 of the Record at lines 26 to 32

20. In filing a cross-appeal in the Court of Appeal, the Respondents had in mind the decision of George and Anor v Pinnock and Anor (1973) 1 All ER 927 which held that a Respondent in an appeal should not, without giving a cross-notice, seek to uphold a quantum of damage judgment on the ground that even if one head of damage as awarded by the judge is held to be demonstrably too low, another is equally demonstrably too high.
- 10 21. The result was that the assessment of the global award was held to be fair with the result that both the appeal and the cross-appeal were dismissed. The Respondents are satisfied with this finding of the Court of Appeal and humbly seek to uphold the judgment of the said Court.
- 20 22. It is humbly submitted that this Honourable Court in deciding the issues raised herein by the Appellant in this Appeal must address itself to the generous award for loss of amenities granted by the High Court.
23. In the comparable case of Chan Kum Lan v Ong Lean Kee (1979) 1 MLJ xxxvii, the Singapore High Court awarded the sum of \$50,000.00 for pain and suffering and for loss of amenities, whereas in the present case the award for pain and suffering and loss totalled \$85,000.00.
- 30 24. The Court of Appeal was therefore justified in their finding that the High Court's low award for prospective loss of future earnings was balanced off by the high award for loss of amenities.
25. In the premises, the Respondents humbly submit that this Honourable court should affirm the decision of the Court of Appeal as it is fair and reasonable given the surrounding circumstances of the case.
26. For all the reasons set out above, the Respondents humbly submit that this Honourable court should dismiss this Appeal with costs to the Respondents.

Counsel for the Respondents

ABDUL RASHID BIN ABDUL GANI

No 53 of 1982

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B E T W E E N :

LAI WEE LIAN

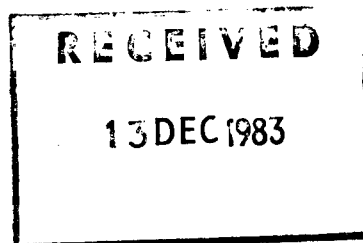
APPELLANT
(Plaintiff)

AND

SINGAPORE BUS SERVICE (1978) LIMITED
RESPONDENTS
(Defendants)

CASE FOR THE RESPONDENTS

S.D. to Kingsford Darmann



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