Judgment 43/1964

No. 40 of 1962

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA
COURT OF APPEAL at KUALA LUMPUR

B E T W E E N:-

JAG SINGH (an infant) suing by his father and next friend Sham Singh s/o Utam Singh — (Plaintiff) Appellant

- and -

TOONG FONG OMNIBUS CO. LIMITED — (Defendants) Respondents

C A S E FOR THE APPELLANT

Record

1. This is an appeal from an Order dated the 17th May, 1962 of the Court of Appeal at Kuala Lumpur of the Supreme Court of the Federation of Malaya (as it then was) pursuant to leave granted by the said Court on October 15, 1962. — pp.37-38, pp.38-39

2. The Order dated the 17th May, 1962, dismissed with costs the Appellant's appeal from an Order of the High Court of Kuala Lumpur dated the 22nd December 1961 which ordered (so far as now material) that judgment be entered for the Appellant against the Respondents for $7,500 as general damages. — pp.12.-13

3. The sole question for decision on this Appeal is whether (as the Appellant contends) the award of $7,500 as general damages is an insufficient award.

4. On the 13th November, 1959, the Appellant who was then 7 years of age was knocked down by a double deck omnibus belonging to the Respondents, and suffered injuries in consequence of which his right leg had to be amputated above the knee. — p. 25, lines 5 - 13

Record

5. On the 21st February 1961 the Appellant commenced proceedings against the Respondents
pp. 3-4 and in his Statement of Claim delivered on the same day he claimed damages for (inter alia) injuries and pain.

6. On the 24th November 1961 the case came on for hearing before Suffian J. The learned judge found that the Appellant and the driver of the
p.9, lines 8 - 11 Respondents' omnibus were equally to blame for the accident, and awarded the Appellant $7,500 general damages being one half of the amount
p.10, lines 2 - 9 which he would have awarded had the driver of the Respondents' omnibus been wholly to blame for the accident. The Appellant had contended
p.10 lines 10 - 12 that on a basis of full liability the award of general damages should be between $30,000 and $40,000. Upon that contention the learned
p.10, lines 12 - 14 judge said:

> "I am of the opinion, however, that awards made by English courts should not be slavishly followed in Malaya".

7. The Appellant appealed against (inter alia) the award of general damages, and the Appeal came on for hearing on the 11th and 12th April, 1962 before Thomson, C.J. Hill and Good JJ.A. The Appellant contended (inter alia)

(i) That the cases which had been cited to Suffian J. as supporting an award of between $30,000 and $40,000 were cases decided in the Federation of Malaya and the State of Singapore; and

(ii) That the amount of $15,000 was inconsistent with the general pattern of awards made by Courts in the Federation of Malaya and the State of Singapore.

8. On the 17th May 1962 the Appellant's appeal was dismissed with costs. Thomson C.J. said:

> "The real matter of substance in the appeal
p.27, lines 35 - 43 - p.28, lines 1 - 17 is the question of the quantum of damage. I do not, however, think it is necessary to deal with that question at length for a great deal of what was said just over six months ago by this Court in the case of Pahang Lin Siong Motor Co. Ltd. v. Cheong Swee Khai (1962) M.L.J. 29 is applicable here. In that case, as regards the limits

which should bind a Court of Appeal in dealing with questions of this nature, we based ourselves on the cases of Flint v. Lovell (1935) 1 K.B. 354, Bird v. Cocking & Sons Ltd. (1951) 2 T.L.R. 1260 and Scott v. Musial (1959) 2 Q.B. 429. As regards the consideration of awards for similar cases we accepted the views expressed by Birkett, L.J., in the case of Bird v. Cocking & Sons Ltd. (Supra) and Singleton, L.J. in the case of Waldon v. The War Office (1956) 1 A.E.R. 108, which I do not propose to repeat here. We took the view that by reason of differences in sociological conditions a consideration of awards in English and Scottish cases is not calculated to produce very useful results in this country and with regard to such local cases as are reported we went on to express the view that in any event these 'are so few in number and so diverse in their conclusions that they cannot afford any very reliable guidance'".

"I think on the whole that if I had been trying the case I should, had there been no question of contributory negligence, have assessed the damages at a little more, something in the neighbourhood of $18,000 but certainly less than $20,000. And it cannot be said that such an award, although it might be less than sums awarded in other cases by individual Judges in similar but not necessarily identical circumstances, would be very much out of keeping with anything that has been said in the past by this Court, particularly when it is remembered that in the present case there was nothing to suggest that the injured boy had in fact suffered or would necessarily suffer any diminution of earning capacity by reason of his injury." p.31 lines 7 - 21

Good J.A. said:

"In the present case I find myself in a position similar to that of the Court of Appeal in Loughran v. Armstrong Drennan v. Greer and Pahang Lin Siong Motor Co. Ltd. & Another v. Cheong Swee Khai & Another, except that in those cases the damages were thought to be on the high side, while the sum awarded here seems to me to be on the low side. At the risk of p.36, line 34 - p.37 line 7

Record

appearing to be wise after the event, I do not think that $15,000/- is the amount I would have awarded. I feel sure that I would have awarded more, but not a great deal more. On the other hand I am not, as was said by Morris L.J. in Scott v. Musial (1959) 2 Q.B. 429, 437,

> 'satisfied that the Judge has..... made a wholly erroneous estimate of the damages suffered.'

nor do I feel disposed to say adapting the words of Diplock L.J. in Bastow v. Bagley & Co. Ltd. (1961) 1 W.L.R. 1494, 1496, that the sum awarded is one which is out of all proportion to the sum awarded to others in respect of similar physical injuries".

p.32 lines 33 - 37 Hill J.A. expressed his concurrence with the observations of Thomson C.J. and Good J.A.

9. The Appellant respectfully submits that the dicta in Pahang Lin Siong Motor Co. Ltd. v. Cheong Swee Khai upon which Thomson C.J. founded his observations were misconceived in that there is an ascertainable and reliable local pattern of awards. This pattern has been established in part by a use of the ratio which obtains between English awards in comparable cases.

10. The Appellant further respectfully submits that the award in the present case is out of all proportion to the sums assessed in comparable local cases and in consequence is wholly erroneous.

11. The Appellant further respectfully submits that the award in the present case does not (as it ought to) contain any element in respect of diminution of earning capacity.

12. The Appellant therefore humbly submits that this Appeal should be allowed with costs for the following among other

R E A S O N S

(1) BECAUSE there is a local pattern of awards.

(2) BECAUSE the award of general damages is inconsistent with that pattern.

(3) BECAUSE the award of general damages does not contain any element in respect of diminution of earning capacity.

MICHAEL MANN

No. 40 of 1962

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA COURT OF APPEAL AT KUALA LUMPUR

BETWEEN:-

JAG SINGH (An Infant) suing by his father and next friend Sham Singh s/o Utam Singh (Plaintiff) Appellant

- and -

TOONG FONG OMNIBUS CO. LIMITED (Defendants) Respondents

CASE FOR THE APPELLANT

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