

GMH G-2

Judgment
43/1964

No. 40 of 1962.

In the Judicial Committee of the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA.

IN THE 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

10

AND

TOONG FONG OMNIBUS CO. LIMITED *Defendants-Respondents.*

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
23 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

78670

Case for the Respondents

RECORD.

1. This is an appeal from an Order of the Supreme Court of the Federation of Malaya in the Court of Appeal at Kuala Lumpur dated the 17th day of May, 1962, pursuant to an Order of the Court of Appeal made on the 15th day of October, 1962, that Final Leave be granted to the above-named Plaintiff-Appellant to appeal against that part of the judgment of the Court of Appeal dated the 17th day of May, 1962, relating to damages.

p. 37.
p. 38.

2. The said Order dated the 17th day of May, 1962, dismissed the Plaintiff-Appellant's appeal from the decision of Suffian, J., given in the Supreme Court of the Federation of Malaya in the High Court at Kuala Lumpur on the 6th day of December, 1961, and the 22nd day of December, 1961, wherein the Plaintiff-Appellant appealed to the Court of Appeal against the whole of the said decision including costs.

p. 5.
p. 11.

3. The decision of the Honourable Suffian, J., was given in respect of an action commenced by writ issued on the 21st day of February, 1961, wherein the Plaintiff claimed damages for personal injuries suffered by him and caused by the negligence of the servant or agent of the Defendants in the driving of a motor vehicle.

p. 1.

30

RECORD.

p. 3.

4. The Statement of Claim dated and delivered the 21st day of February, 1961, alleged inter alia that—

(1) on or about the 13th day of November, 1959, the Plaintiff was lawfully standing on the roadway at or near the bus stop at Pudu Road near the junction of Pudu Road and Sultan Street in Kuala Lumpur when he was knocked down and injured by Motor Bus No. BA. 4384 which was being driven along Pudu Road in the direction of Sultan Street by the servant or agent of the Defendants ;

(2) the said collision was caused solely by the negligent driving 10 of the servant or agent of the Defendants ;

(3) by reason of the aforesaid negligence the Plaintiff suffered injuries and endured pain and had been put to loss and expense ;

(4) his right leg was amputated high at the thigh ;

(5) he had to use crutches ;

(6) he had to incur expenses for (inter alia) the fixing of an artificial leg.

p. 4.

5. The statement of defence delivered on the 23rd day of March, 1961, inter alia—

(1) admitted that an accident happened at or near a bus stop 20 at Pudu Road near the junction of Pudu Road and Sultan Street, Kuala Lumpur, between motor bus No. BA. 4384 driven by the Defendants' servant or agent and the Plaintiff ;

(2) denied all allegations of negligence in the statement of claim and put the Plaintiff to strict proof thereof ;

(3) contended that the accident was caused by the negligence of the Plaintiff or in the alternative was substantially contributed to by the Plaintiff.

p. 5.

6. On the 24th day of November, 1961, the action was tried before Suffian, J. On the 6th day of December, 1961, he gave judgment for the Plaintiff-Appellant, but held that the Plaintiff-Appellant had been guilty of contributory negligence. He thereby reduced the damages by one-half, awarding the Plaintiff-Appellant \$7,500 by way of general damages and \$390 by way of special damages and one-half the taxed costs.

7. In the course of his judgment, Suffian, J., said inter alia :

p. 9, l. 14-
p. 10, l. 9.

“ As to the apportionment of the blame between the Plaintiff and the bus driver, I am of the view that both parties were equally to blame and I so apportion the blame.

As to quantum, I award \$390 being half of the amount of special damages claimed. 40

As regards general damages, Cockburn, C.J., in *Phillips v. L. & S.W. Rly.* (1879), 4.Q.B.D., 406, stated that the court should

consider and take into account the following heads of damage in respect of which a Plaintiff complaining of a personal injury is entitled to compensation :—

10 ‘ These are the bodily injury sustained ; the pain undergone ; the effect on the health of the sufferer, according to its degree and its probable duration as likely to be temporary or permanent ; the expenses incidental to attempts to effect a cure, or to lessen the amount of injury ; the pecuniary loss sustained through inability to attend to a profession or business as to which, again, the injury may be of a temporary character, or may be such as to incapacitate the party for the remainder of his life.’

20 In attempting to place the Plaintiff in so far as can be done by money in the same position as he would have been in but for the negligence of the Defendant’s driver, I am seriously handicapped by the fact that at the time of the accident the Plaintiff was only seven years of age and was not a working man earning money. His injuries were serious, his pain and suffering excruciating. Because of the amputation his mobility has been seriously affected but not his mental capacity and if he does well at school there is nothing to stop him from earning a living in a sedentary occupation or even from achieving eminence in the professions or politics. Nevertheless I take into account the probability that he might not have the mental equipment necessary for these positions, in which event his lack of mobility would be a serious handicap to his future livelihood. Considering all these factors and considering the social class to which the Plaintiff belongs (his father is a watchman who sends two of his sons to an English school) and giving this matter the best consideration I can in the circumstances, I award \$7,500/- general damages, that is, half the damages I would have awarded for 100% liability.”

30

8. Further in the course of his judgment, Suffian, J., said inter alia :

“ I am of the opinion, however, that awards made by English courts should not be slavishly followed in Malaya. As Thomson, C.J., said in *Pahang Lin Siong Motor Co., Ltd. and Bishen Singh v. Cheong Swee Khai and Loh Soo Chai*, F.M. Civil Appeal No. 13 of 1961, unreported—

p. 10, l. 12-
p. 11, l. 5.

40 ‘ . . . local social, economic and industrial conditions are poles apart from conditions in England and Scotland and any tendency to take a particular line in relation to assessment of damages in cases of this type from a consideration of English and Scottish cases is not calculated to produce very useful results. Times may be changing but this is still not an industrial country. The economy is still generally speaking, a peasant economy in which the typical figures are the small cultivator and the small trader. This in its turn, although of course strictly speaking it does not affect the value of money, produces the consequence that small sums of capital are more difficult to acquire and more sought after than in England and, when acquired, are

RECORD.

much prized and are of much greater economic utility. In England the ordinary working man would not, generally speaking, be greatly attracted by the prospect of enough capital to acquire a small agricultural holding or open a small shop whereas in this country such an opportunity would generally be welcomed with avidity. For example \$25,000 in this country will purchase enough rubber land or padi land to enable a family to live in very great comfort with very little exertion. It is only in the most exceptional circumstances that a sum of £3,000 would produce such a result in England or Scotland. 10

Again, it must be remembered that, generally speaking, money wages are lower in this country than in England.'

As regards costs, the Plaintiff should get half his taxed costs."

p. 11.
p. 12.

9. On the 22nd day of December, 1961, Suffian, J., rejected an application by the Plaintiff-Appellant for an alteration to the order for costs, and by an Order of that date the Plaintiff-Appellant was granted leave to appeal against the afore-mentioned order for costs.

p. 13.
p. 15.

10. On the 23rd day of December, 1961, Notice of Appeal which was amended on the 29th day of December, 1961, was taken out against the whole of the decision of Suffian, J., including costs. The Memorandum of Appeal filed by the Solicitors for the Plaintiff-Appellant was dated the 27th day of January, 1962. The grounds of appeal set out in the said Memorandum concerned the findings by Suffian, J., against the Plaintiff-Appellant of contributory negligence and that he should receive from the Defendants-Respondents only one-half of his costs; but so far as the question of damages, with which this appeal alone is concerned, the following grounds were set out:— 20

p. 16, l. 28-
p. 17, l. 7.

"8. The amount of damages assessed for full liability at \$15,000/- was so inordinately low that the learned Trial Judge must have failed to take into account matters which had to be taken into account in arriving at his assessment. 30

9. The amount of \$15,000/- which the learned Trial Judge assessed as the proper damages for the injury suffered by the infant Plaintiff-Appellant in the event of full liability being established was entirely out of line with the general run of damages given by the Courts in the Federation of Malaya and in the State of Singapore for the injuries or the class of injury suffered by the Plaintiff-Appellant in this case.

10. The learned Trial Judge was wrong in fact and in law in thinking that the awards to which he referred between \$30,000/- and \$40,000/- for full liability were awards made in English cases. They were awards made in cases in Singapore and in the Federation of Malaya and they were awards which ought to have been followed. 40

11. The learned Trial Judge was wrong in fact and in law in comparing the price of rubber land or padi land or rice or small-holdings to be obtained in this country with the amount of damages

which ought to be awarded to the loss of amenities, the pain and suffering and the loss of the future prospects following on the loss of an arm or leg.”

RECORD.

11. The appeal aforesaid against the whole of the decision of Suffian, J., was heard before the Supreme Court of the Federation of Malaya in the Court of Appeal at Kuala Lumpur on the 11th and 12th days of April, 1962, and was dismissed with costs save and except to the extent of varying the order of Suffian, J., regarding costs so as to give the Plaintiff his full taxed costs on the 17th day of May, 1962. p. 37.

10 12. Thomson, C.J., stated in respect of the main basis of the said appeal—

“ The real matter of substance in the appeal 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 oecological 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 ’. p. 27, l. 35-
p. 28, l. 23.

20

30

The only reported case which has been cited to us here which was not cited in the case of *Pahang Lin Siong Motor Co. Ltd. v. Cheong Swee Khai* (supra) is that of *Bastow v. Bagley & Co. Ltd.* [1961] 1 W.L.R. 108 which was not decided until a few days after judgment was given in the former case.”

The learned Chief Justice thereafter went on to say in relation to *Bastow v. Bagley & Co. Ltd.* (supra),

40 “ For myself I do not think this case detracts in any way from anything that has been said on the subject previously and in any event it must be considered in the light of its own special circumstances. It is clear that from the beginning the Court thought that the original award of £1,150 was too low . . . On re-consideration the court increased the award to £1,800. That, it is to be presumed, is the award they originally had in mind as being suitable and it is to be noted that it represents an increase of 55% on the amount awarded by the trial Judge.” p. 29, l. 43-
p. 30, l. 17.

RECORD.

p. 30.

13. Thereupon the learned Chief Justice referred to the citation by Suffian, J., from Cockburn, C.J., in *Phillips v. L. & S.W. Rly.* set out in Paragraph 7 hereof above and agreed with the course of reasoning expressed therein. Subsequently thereafter he concluded the part of his judgment which dealt with the quantum of damage in the following way :—

p. 31, ll. 41-44.

“ In all the circumstances of the case and having regard to the authorities I do not think it is open to this Court to interfere with the trial Judge’s assessment.”

14. With regard to the question of costs, the learned Chief Justice thought Suffian, J., was wrong in apportioning the costs as he did and thereby depriving the Plaintiff of half his costs, and concluded his judgment with the words, 10

p. 32, ll. 17-20.

“ In the circumstances I would dismiss the appeal with costs except that I would vary the order of the Court below regarding costs so as to give the Plaintiff his full taxed costs.”

p. 32.

Hill, J.A., agreed with the judgment of the learned Chief Justice and also with the judgment of Good, J.A.

p. 33.

15. Good, J.A., agreed with the judgment of the learned Chief Justice and delivered additional observations confined to the quantum of damages, of which the following are material : 20

p. 34, ll. 3-35.

“ Many factors have to be taken into consideration (though they may not all arise in a single case) ; pain and suffering, much reduced by modern drugs, anaesthetics and surgical techniques ; disfigurement, and consequent social embarrassment, more serious probably for a woman than for a man and for a young girl than for an elderly woman ; loss of actual earnings ; impairment of potential earning capacity, depending to a large extent on the Plaintiff’s education, social and economic background and intellect, and almost incalculable in the case of a young person whose potential is as yet unknown ; and loss of amenity, which varies with the individual’s tastes and abilities. 30

I mention these considerations not for the purpose of attempting to establish any general principles but merely to demonstrate the number and variety of the combinations of circumstances which may occur. When they are considered and weighed by individual Judges there are bound to be differences in the results, some judges placing more weight on this factor and others on that and all judges being at liberty to do so provided they do not manifestly depart from a reasonable sense of proportion. That, I think, is the answer to Mr. Murphy’s constantly reiterated plea for standardisation of damages. It also suggests that the practice of assessing damages in one case by reference to damages awarded in similar cases must be followed with caution, for the circumstances which may have to be taken into consideration are so numerous and so variable that an apparent analogy can too often turn out to be a fallacy.” 40

Subsequently, Good, J.A., continued his judgment in the following manner : RECORD.

10 “Speaking for myself, I do not know what comparison is to be drawn between the loss of a 7 year old schoolboy’s leg and the various injuries sustained by adults in the cases mentioned. I cannot help thinking, with all respect to Mr. Murphy’s industry and persuasiveness, that a comparison of the present case with those other cases gives us very little help. If those cases demonstrate anything that can be regarded as being of general application, they demonstrate the extreme reluctance of the Court of Appeal to interfere with the trial Judge’s discretion even where the members of the Court thought that the damages awarded were not what they themselves would have given if they had been trying the case. . . .” p. 36, ll. 16-30.

 . . . I would dismiss the appeal as regards the quantum of damages.” p. 37, ll. 8-9.

On the question of contribution and costs Good, J.A., agreed with the learned Chief Justice whose findings are set out in Paragraph 14 hereof above.

20 16. Finally, in the case of *Pahang Lin Siong Motor Co., Ltd. & Another v. Cheong Swee Khai & Another* (1962), 28 M.L.J. 29, referred to above by Suffian, J., and subsequently throughout this Case for the Defendants-Respondents, the Court of Appeal comprised the same members who adjudicated upon the present case from whom this appeal herein has been brought. At page 32, Good, J.A. delivered the following judgment :

30 “ I have had the advantage of reading the judgment of the learned Chief Justice with which I am in complete agreement. I really have nothing to add to it, but I feel impelled to record my express agreement with what he has said on the subject of referring to the damages awarded in English and Scottish cases in relation to the assessment of damages in this country. The practice of holding a sort of auction based on the sums which have been awarded in England and Scotland is not necessarily conducive to arriving at the right result, or even a fair result, in local conditions here.”

17. The Defendants-Respondents respectfully submit that the Court of Appeal was correct in dismissing the appeal from Suffian, J., as regards the quantum of damage.

40 18. The Defendants-Respondents respectfully submit that the decision of the Court of Appeal on appeal from Suffian, J., should be upheld and that this appeal from its decision should be dismissed for the following and other

REASONS

- (1) BECAUSE Suffian, J., and the Court of Appeal upheld the correct principles for the assessment of damages relating to the circumstances of the case.

- (2) BECAUSE Suffian, J., and the Court of Appeal were correct in refusing to apply to the circumstances of the case a consideration of awards in English and Scottish cases.
- (3) BECAUSE Suffian, J., and the Court of Appeal were correct in rejecting the plea of standardisation of damages to the circumstances of the case.
- (4) BECAUSE the findings and reasonings of the Court of Appeal are right and should be upheld.

EDWARD GRAYSON. 10

**In the Judicial Committee of the
Privy Council.**

ON APPEAL

*from the Supreme Court of the Federation
of Malaya.*

IN THE 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 Respondents

LIPTON & JEFFERIES,

39 Jermyn Street,

London, S.W.1,

Solicitors for the Respondents.