

MAIMUNAH BTE ABD GAHI

AND

HJH SUAYAH BTE HJ KAMIS

**(Court of Appeal of Brunei Darussalam)
Civil Appeal No. 1 of 2008)**

Before: Power, P.; Mortimer and Chong JJ.A.

Date of Hearing:

Date of Judgment:

Headnote: *Claim for damages arising out of a traffic accident: Appeal to the Court of appeal from Intermediate Court. Application to call further evidence before Court of Appeal. No proper basis for application. Motion dismissed.*

Ms. Lim (M/S Susanna Lim Partnership) for Appellant

Ms. Naz (M/S Sandhu & Co.) for Respondent

J U D G M E N T

Power, P.:

The Plaintiff in this matter was injured in a traffic accident. The defendant admitted liability and the assessment of damages was referred to a Registrar.

After 19 days of hearing for Registrar made an award. That award in the subject of an appeal to this court.

Ms. Susanna Lim for the Defendant / Appellant has filed a Notice of Motion seeking an order that the Defendant / Appellant be a liberty to adduce additional evidence, namely affidavits from 2 Doctors, at the hearing of the appeal. Both of the doctors gave evidence before the Registrar.

We have found some difficulty understanding the arguments advanced by Miss. Lim in support of this motion.

They appear to fall under four heads, Miss Lim contends

- i) That the Registrar was misled into thinking that the main issue was “whether the disabilities are from the C2 fracture or from the existing cervical spondylosis” and that she failed to direct her mind to the evidence that the fracture to the C2 did not result in any degeneration or nerve damage. She submits in her written argument that there was “serious confusion” in this regard which will be put right by the further evidence.

It is true that the Registrar asked the question “Did the Plaintiff have a pre-existing cervical spondylosis or degeneration of the spine prior to the accident?” and that she, perhaps over stating its importance, characterized

this as the “main issue”. She went on, however, to canvass a second issue “Are the cause of the Plaintiff’s disabilities and impairments due to cervical spondylosis or the C2 fracture suffered from the accident?”

There seems to us to be no confusion with regard to this second issue which correctly identified the principal matter in contention. There is nothing in this regard that would justify an order allowing further evidence.

- ii) That the Registrar failed to demonstrate that she had understood and dealt with the second issue set out above. This submission flows on to a submission that Commissioner Lugan Mawson, who was not persuaded that there was any sufficient reason to interfere with the Registrar decision, was also at fault. What the Registrar said in this regard was:

“I will not go through the evidence here but I made it clear I have assessed the expert evidence adduced by both parties in respect of this issue. I am persuaded by the Plaintiff’s submissions that the Plaintiff’s disabilities and impairments and constant neck pain are not due to cervical spondylosis but due to the C2 fracture”.

If it be so that that ruling does demonstrate a failure to understand and deal with the second issue it is the matter to be dealt with on the appeal. It is no basis to justify an order allowing fresh evidences.

- iii) That the new evidence will allow the Court of Appeal fully to comprehend the issues. In the present case the matters in issue were canvassed in extenso. The Court of Appeal must determine the matter upon the basis of that evidence. There is nothing which would warrant or justify an order allowing further evidence in the appeal.
- iv) That, to use the words of Miss Lim, “the further evidence only became material after the hearing before Commissioner Lugan Mawson”.

This seems to be a repetition of (ii) above. The argument appears to be that since the Registrar failed to understand and deal with the issues the commissioner was equally at fault. We have already dealt with that contention under (ii).

There is no merit in the application to call fresh evidence and the motion stands dismissed.

POWER, P.

President, Court of Appeal

MORTIMER, J.A.
Judge, Court of Appeal

CHONG, J.A.
Judge, Court of Appeal