

Sunil Mandal

... Plaintiff

AND

Doric Sdn Bhd

... Defendant

**(High Court of Brunei Darussalam)
(Civil Suit No. 7 of 2016)**

Hj Abdullah Soefri bin POKSM DSP Hj Abidin, JC

20 October, 2022

Damages – (Assessment) general damages- future costs of employing maid- future costs of medical treatment-special damages-no award for inflation as it is not proven

Mr Vincent Joseph and assisted with Ms Nuramalina binti Abd Latif (M/S Sandhu and Company) for the Plaintiff.

Mr Lester Lee represented for the Defendant.

Cases referred:

China Construction (South Pacific) Development Co Ptd Ltd v Shae Hai (2004) SGHC 59

Bonnington Castings v Wordlaw (1956) AC 613

Hazwani bte Amin v Chia Heok Meng (2018) SGH HCR02

Tan Siew Bin Ronnie v Chin Wee Keong (2008) 1 SLR (R) 178 at [117]

ACB v Thomson Medical Pte Ltd (2017 1 SLR 918

J U D G M E N T

Hj Abdullah, JC:

The Defendant was initially represented by Messrs. Eversheds HEP who discharged themselves on 5th May 2018. The Defendant was then represented by Messrs. Rudi Lee, Annie Kon & Associates. On the 11th February 2019, Messrs. Rudi Lee, Annie Kon & Associates discharged themselves from acting for the Defendant. At the trial of this action, the Defendant did not have any legal counsel but they had asked Mr Lester Lee, who is the husband of the main shareholder of the Defendant to represent them.

Judgment on admission of liability was entered on 3rd February 2018. Liability is no longer an issue. The hearing before me is for an assessment of damages.

THE HEADS OF CLAIMS

The Plaintiff brought a number of claims, which can be divided into the following categories:

A1) General Damages

- i) Pain and Suffering

A2) Loss of Amenities

A3) Loss of Future Earnings

A4) Loss of Earning Capacity

A5) Cost of Future Treatment

A6) Cost of employing household help

B) Special Damages

C) Interest

The Plaintiff called 2 witnesses for the case:

- 1) Dr Ketan Chandrashekhar Pande, Consultant Orthopaedics Surgeon, Department of Orthopaedics, Jerudong Park Medical Centre; and
- 2) The Plaintiff Sunil Mandal.

The Defendant called a witness for their case who is Mr Lester Lee who represented the company itself for this case. Initially the Defendant wanted to call Dr Dipo as an additional Defendant's witness but decided not to.

When the Defendant admitted liability on 3/2/2018, the Defendant did not dispute the injuries suffered by the Plaintiff were caused by the wrongful act of the Defendant. However, during the hearing the Defendant disputed that the disabilities were caused by the injuries suffered from the said accident.

"I am not questioning the capability of Dr Pande. I am questioning what happened between 2015 to 2019. It is about 4 years plus. Mr Sunil did mention that he has to work as a carpenter in Bangladesh, the possibility of another accident, in a 3rd world country is highly possible. I am no

position to say any untoward accident, but there is a possibility that it did happen. As in construction of building especially in 3rd world country where HSE is seldom enforced on the worksite, accidents in my opinion, is a common occurrence and deaths of workers on site is not an unusual occurrence."

What the Defendant wanted to raise is a '*novus actus interveniens*'. '*Novus actus interveniens*' is submitted by the plaintiff may breaks the chain of causation between the wrongful act of the Defendant and the damages suffered by the Plaintiff. The issues have not been pleaded.

Order 18 rule 17 of the RSC states as follows:

"7(1) A party must in any pleading subsequent to a statement of claim plead specifically any matter

(a) which he alleges make any claim or defence of the opposite party not maintainable; or

(b) which, if not specifically pleaded, might take the opposite party by surprise; or

(c) which raises issues of fact not arising out of the preceding pleading;"

In *China Construction (South Pacific) Development Co Ptd Ltd v Shae Hai* (2004) SGHC 59, it was held:

"a court is not allowed to make a finding or give a decision on material facts which have not been pleaded. A party is required by O.18 r. 7 and 15(1) of the Rules of Court (Cap 322, RS, 1997 Rev Ed) to set out in his pleadings all material facts on which he relies for his claim so as to inform the opponent in advance of the case to be met so that the latter would have adequate opportunity to prepare and present his own case."

The Plaintiff submits that the Defendant's counsel raised to issue of *novus actus interveniens* in their Defence and urge the Court to exclude all those evidences not pleaded in their Defence.

The Plaintiff further submitted that the burden of proving intervening acts rests with the Defendant and cited the case of *Bonnington Castings v Wordlaw* (1956) AC 613.

The Plaintiff submitted further that it is for the Defendant to prove that the Plaintiff (Sunil) suffered another accident after 2015 or that he had unreasonably aggravated his injuries after 2015.

The representative of the Defendant, Mr Lester Lee when he raised about the possibility of another accident might happen to the Plaintiff between 2015 to 2019, he did not provide any evidence. It was no even pleaded.

Having had said the above and having had heard the submission of the Plaintiff's counsel, this court will exclude the Defendant's contention that the Plaintiff suffered another accident after 2015 or that he had unreasonably aggravated his injuries after 2015.

Pain and Suffering

I will now look into each of the heads of claim, beginning first with the claim for Pain and Suffering. In *Hazwani bte Amin v Chia Heok Meng* (2018) SGH HCR02, it was stated that *"Singapore Court of Appeal in ACB v Thomson Medical Pte Ltd (2017 1 SLR 918, the quantification of damages for intangible injuries – such as pain and suffering – is an exercise that is fraught with difficulty, for it involves the ascription of a "monetary value to matters which do not lend themselves easily to pecuniary expression" (at [137]). I bear this well in mind. I bear in mind, also, that the "sensible way forward" in the assessment of damages for pain and suffering is to use the awards made in precedent cases as guides but to remember that each case turns on its own particular facts (see Tan Siew Bin Ronnie v Chin Wee Keong (2008) 1 SLR (R) 178 at [117]."*

Now I will turn to the assessment and awards for this case.

Pain and Suffering

No	Type Of Pain And Suffering	Award
i	Severely Comminuted proximal tibia and fibula fracture involving the knee joint with epiphyso-metapyseal extension of the comminuted injuries.. 5mm shortening of left tibia...	\$30,000
ii	Tender swelling on distal to the left knee and valgus deformity of the left knee due to valgus angulation union with joint incongruence	\$1500
iii	4cm laceration on top of head	\$8000
iv	13cm long surgical scar over medial aspect of left knee and leg	\$7000
v	13cm long surgical scar over the lateral aspect of left knee and leg starting at the superior pole of patella and extending distally	\$7000
vi		\$18,000

	26cm long surgical scar over the lateral aspect of left knee and leg starting at the superior pole of patella and extending distally, 17cm from the tibial tuberosity at an angle to the previous scar at the proximal 1/3	
vii	3 scars 1.5cm x 1.5cm, 16,17 and 20 cm (9cm altogether) proximal to the left ankle joint line on the medial aspect	\$3000
viii	Multiple small scars over the postero-lateral aspect of the leg in the upper 1/3	\$2500
ix	Two linear, oblique scars, 1cm and 2cm long over the anterior aspect of left leg, just distal to the tibial tuberosity	\$2000
x	A linear scar 4cm long over the dorso-medial aspect of left foot starting at the anterior part of medial malleolus and extending distally	\$2500
xi	Post traumatic osteoarthritis/arthrosis	\$7000
xii	0.5cm muscle wasting of the left thigh and 1cm of the calf muscles	\$1500
	Sub total	\$90,000

A2. LOSS OF AMENITIES

i	Inability to participate in sports like football and running which he previously enjoyed	\$8000
	Sub Total	\$8000

A3. LOSS OF FUTURE EARNINGS

i	Sunil was earning an average salary of \$18 per day and he was also paid B\$2.25 an hour for overtime. The value of his benefits and accommodation is B\$100 a month. Sunil average earnings at the time of the accident is approximately B\$859.50 per month	\$48,912 (Multiplicand \$509.5 (salary) x 12 x 8) = \$48,912

	Sub total	\$48,912
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A4. LOSS OF EARNING CAPACITY

i	Loss of earning capacity	\$20,000
	Sub total	\$20,000

A5. COST OF FUTURE TREATMENT

i	A topical analgesic ointment	\$30
ii	Tab Arcoxia 90mg once a day	\$72
iii	10 sessions of intermittent courses of physiotherapy when he has exacerbation of left knee pain	\$500
iv	Total knee replacement procedure	\$28,000
v	Antibiotic spacer to clear infection	\$5000
vi	Antibiotic therapy including blood tests for monitoring response	\$3000
vii	Preoperative evaluation and medications	\$500
viii	Cost of hospital stay including the room at JPMC	\$500
ix	Regular physiotherapy twice a week for 2-3 months	\$960
	Subtotal	\$38,562

A6. COST OF EMPLOYING HOUSEHOLD HELP

i	Cost of hiring household help	\$9000
	Subtotal	\$9000

B. SPECIAL DAMAGES

i	Cost of medical report (RIPAS)	\$200
ii	Cost of medical report (Alpha Joints)	\$1605
iii	Cost of consultation (Alpha Joints)	\$160.50
iv	Cost of company search	\$9
v	Cost of developing photographs	\$29.20
vi	Cost of transportation for 7 follow up visits@\$20 per trip	\$140
vii	Cost of air travel to Brunei May/June 2016 to see Dr Pande	\$970
viii	Cost of visa to BRUNEI IN May/June 2016	\$23.33
ix	Cost of medical report (JPMC)	\$1200
x	Cost of x-rays (JPMC)	\$170
xi	Cost of registration (JPMC)	\$10
xii	Cost of medicine in Bangladesh	\$1000
xiii	Loss of salary @ B\$319.5 per month during recuperation from March 2014 to November 2014 (9 months)	\$2875 .50
xiv	Loss of free accommodation from (01.12.2014) to date (July, 2019) for 55 months at \$100 x 55months	\$5500
xv	Loss of total salary from December, 2014 to May 2015 (6 months)	\$5157
xvi	Loss of salary @ \$609.50 x 48 months	\$29,256
	Subtotal	\$48305.53

Total awards under both headings are as follows:

General Damages: \$214,474

Special Damages: \$48305.53

Subtotal: \$262,779.53

C. INTEREST

i	Interest on pain and suffering and loss of amenities at 6% per annum from date of accident (01.03.2014) to date (July 2019) on the sum of \$98,000 at B\$490 per month for 103 months.	\$50,470
ii	Interest on special damages at 3% per annum from (01.03.2014) to date (July 2019) on the sum of \$48305.53 at \$120.76 per month for 103 months	\$12,438.28
	Subtotal	\$62,908.28

Interest

(1) Interest on pain and suffering and loss of amenities at 6% p.a. from date of accident (01.03.2014 to date 1/10/2022) on the sum of \$98,000 at B\$490 per month for 103 months which is \$50,470.

(2) Interest on special damages at 3% p.a. from date of accident (01/03/2014) to date (1/10/2022) on the sum of \$48,305.53 at \$120.76 per month for 103 months which is \$12,438.28.

(3) Judgment interest at 6% per annum from the date of judgment until date of full and final settlement

(4) Inflation is not awarded as it is not proven.

CONCLUSION**Total Awards**

1. Under the heading of General Damages - \$214, 474
2. Under the heading of Special Damages - \$48,305.53
3. Interest for General Damages: (pain and suffering and loss of amenities) - \$50,470
4. Interest for Special Damages - \$12,438.28
5. Judgment interest at 6% per annum from the date of judgment until date of full and final settlement
6. Costs of the action be awarded to the plaintiff, to be taxed if not agreed

HJ ABDULLAH SOEFRI BIN POKSM DSP HJ ABIDIN
Judicial Commissioner