Teo Eng Chuan
v
Nirumalan V Kanapathi Pillay

[2003] SGCA 40

Court of Appeal — Civil Appeal No 45 of 2003 (Notice of Motion No 56 of 2003)
Yong Pung How CJ, Chao Hick Tin JA and Lai Siu Chiu J
22 September; 8 October 2003

Civil Procedure *— Appeals — Leave — Whether leave to appeal required under s 34(2)(a) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) — Appeal against increase of damages by $130,000 — Whether amount or value of subject matter at trial is $250,000 or less*

Facts

The applicant ("Pillay") had been involved in a traffic accident and was awarded total damages of $135,361.78 by the assistant registrar against the respondent ("Teo") although his claim was for about $1.5m. He appealed against this award to a judge in chambers, who increased the award by another $130,000. Teo subsequently filed a Notice of Appeal against this increase in award, but did not apply for leave to file his Notice of Appeal.

Pillay applied to strike out Teo's Notice of Appeal. His contention was that as the amount in dispute was only $130,000, Teo had to apply for leave pursuant to s 34(2)(a) of the Supreme Court of Judicature Act ("SCJA"), which required the leave of the Court of Appeal or a judge in the case of an appeal to the Court of Appeal where the amount or value of the subject matter at the trial was $250,000 or less.

Held, dismissing the application:

(1) Although the assessment of damages in this case was first undertaken by the assistant registrar and subsequently varied by the judge in chambers, this was of no significance since the judge was entitled to hear the matter *de novo*. The two-step hearing in this case was effectively one hearing: at [14].

(2) The same result would occur even if the appeal to the judge in chambers was considered a separate hearing. Pillay's claim consisted of several components. While some of the components were no longer in dispute, his total claim before the judge was still similar to that before the assistant registrar, *ie* around $1.5m. This was the amount of the claim to be considered for the purposes of s 34(2)(a) of the SCJA: at [15] and [16].

(3) It was important to bear in mind the scheme for civil appeals under the SCJA. There should generally be one tier of appeal for the parties, and neither the plaintiff nor the defendant should be denied an opportunity to an appeal as of right simply because the amount of damages awarded were substantially less than what was claimed: at [23].

Case(s) referred to

Herbs and Spices Trading Post Pte Ltd v Deo Silver (Pte) Ltd [1990] 2 SLR(R) 685; [1990] SLR 1234 (refd)

Spandeck Engineering (S) Pte Ltd v Yong Qiang Construction [1999] 3 SLR(R) 338; [1999] 4 SLR 401 (refd)

Tan Chiang Brother's Marble (S) Pte Ltd v Permasteelisa Pacific Holdings Ltd [2002] 1 SLR(R) 633; [2002] 2 SLR 225 (folld)

Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd [1997] 1 MLJ 136 (refd)

Legislation referred to

Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) s 34(2)(*a*) (consd)

Liew Teck Huat (Niru & Co) for the applicant;
Rajinder Singh and Harpal Singh (B Rao & K S Rajah) for the respondent.

8 October 2003

Chao Hick Tin JA (delivering the judgment of the court):

1 This was a motion filed by the applicant, Nirumalan Kanapathi Pillay ("Pillay"), to strike out a Notice of Appeal (Civil Appeal No 45 of 2003) lodged by the respondent, Teo Eng Chuan ("Teo"), on the ground that prior to filing the Notice of Appeal Teo had not obtained the leave of court, as required by s 34(2)(a) of the Supreme Court of Judicature Act (Cap 322) ("SCJA"). At the conclusion of the hearing, we dismissed the motion as we did not think leave was required. We now give our reasons for the decision.

The facts

2 Briefly, the facts giving rise to the filing of the notice of appeal are as follows. In July 1991, Pillay was injured when the taxi he was travelling in as a passenger was involved in a motor accident. He suffered a whiplash injury to the spine with posterior disc prolapse at the C5/C6 and C6/C7 levels. In 1994, he instituted an action against Teo for damages for the injury suffered. In May 1995, he obtained an interlocutory judgment, with damages to be assessed. There was some delay in pursuing the assessment of damages. However, nothing turns on that.

3 On 30 August 2002, the assistant registrar awarded Pillay a total of $100,000 for general damages, made up of:

$20,000	for pain and suffering
$20,000	for cost of future surgery
$60,000	for loss of future earning capacity
$100,000	

In addition, the assistant registrar also awarded Pillay special damages of $35,361.78, making a grand total of $135,361.78.

4 We should also mention that two other sums, in pound sterling and Australian dollars, were also awarded by the assistant registrar to Pillay as special damages. As these two sums do not in any way alter the issue that arose for consideration of the motion, there is no necessity to add their equivalent values to the sums awarded in Singapore dollars.

5 Being dissatisfied with the award for general damages, Pillay appealed. The judge in chambers increased the sum for pain and suffering to $30,000 and that for loss of future earning capacity to $180,000. He did not disturb the award for future surgery. In short, the judge increased the total award by $130,000, from $135,361.78 to $265,361.78. Teo's appeal to the Court of Appeal (now pending) relates to these two items of claim on which the judge had enhanced the quantum.

6 Pillay's contention, in seeking to strike out the Notice of Appeal, was on the ground that as the amount in dispute on appeal to the Court of Appeal involved only $130,000, Teo should have first obtained leave of court under s 34(2)(a) of the SCJA before an appeal could be lodged.

Issues

7 The question raised by the motion concerned the proper interpretation of s 34(2)(a) which reads:

> Except with the leave of the Court of Appeal or a Judge, no appeal shall be brought to the Court of Appeal …
>
> > (a) where the amount or value of the subject matter at the trial is $250,000 … or less

Two terms in this provision required particular attention, namely, "amount or value of the subject matter" and "trial".

8 There are two previous decisions of this court which had in some way helped to elucidate the two terms. In *Spandeck Engineering (S) Pte Ltd v Yong Qiang Construction* [1999] 3 SLR(R) 338 (at [17]), it was held that the word "trial" should be construed purposively and on that basis it meant:

> [A] hearing, whether in open court or in chambers, in which the judge determines the matter in issue before him, whether it be an issue of fact or law.

There, the court rejected the argument that a "trial" meant only a hearing before a court at which evidence was adduced, arguments were canvassed and questions of fact and/or law were finally decided. Various anomalies that could arise if such a narrow interpretation were to be given to the word "trial" were also referred to.

9 In *Tan Chiang Brother's Marble (S) Pte Ltd v Permasteelisa Pacific Holdings Ltd* [2002] 1 SLR(R) 633 (at [20]), the court held that the term "at the trial" could not be interpreted to mean "at the appeal" without doing violence to its plain meaning.

10 Pillay accepted the rulings in these two cases. What his counsel argued was that, in the context of our present case, the "trial" took place before the assistant registrar. Unlike *Spandeck Engineering* and *Tan Chiang Brother's Marble*, where the claims were for liquidated sums, here the claim was essentially for general damages; the amount was unspecified. In the circumstances, the only possible point of reference was the amount awarded by the assistant registrar, which in total (even inclusive of the special damages in foreign currencies) fell far short of the sum of $250,000. When the matter went on "appeal" to the judge in chambers, the judge increased the general damages by $130,000 and this enhanced amount is the sum which Teo wishes to take up to the Court of Appeal. Thus, the subject matter of the hearing before the judge in chambers was in respect of the increased amount of $130,000. As this sum was less than $250,000, leave of court was required.

11 However, counsel for Teo argued that in relation to an assessment of damages, the two-stage hearing – that before the assistant registrar and that before the judge in chambers on "appeal" – should be viewed collectively. The fact that on "appeal" to the judge, some items of award were not disputed, did not mean that they did not form part of the total award of the High Court.

12 In substantiation of Teo's contention, reference was made by his counsel to the case of *Herbs and Spices Trading Post Pte Ltd v Deo Silver (Pte) Ltd* [1990] 2 SLR(R) 685 where Chan Sek Keong J (as he then was) pointed out (at [11]) that an "appeal" from a decision of the Registrar of the Subordinate Court to the District Court is, in substance, a form of confirmatory jurisdiction and that that was also the position with regard to an "appeal" from a decision of the Registrar to the judge in chambers.

Our decision

13 In a case such as the present, which involved a claim for personal injury and where interlocutory judgment is entered, what is outstanding is the quantum of damages which should be awarded to the plaintiff, and that will be the "subject matter" of the "trial".

14 An assessment of damages could very well be undertaken by a judge though in practice it is very often done by the Registrar pursuant to delegation of functions. If, in our instant case, the assessment had been carried out by a judge, there would have been no doubt that the value of the subject matter, covering both general damages and special damages, would have exceeded $250,000. Indeed, the claim of Pillay at the assessment before

the assistant registrar was for more than $1.5m. Should it make a difference if the assessment were to be first undertaken by the Registrar but was subsequently affirmed or varied by the judge in chambers? We think not. It is not truly an "appeal" when a party, who is dissatisfied with the assessment, wishes to take it up to the judge in chambers. The judge is entitled to hear the matter *de novo*. For the present purposes, the two-step hearing is effectively one hearing.

15 In any event, even if we were to treat the assessment carried out before the assistant registrar and the "appeal" before the judge in chambers as separate hearings, viewing each in the correct perspective, the answer to the motion will still be the same. It is true that the assistant registrar had only awarded Pillay damages in the total sum of $135,361, consisting of general damages of $100,000 and special damages of $35,361. In appealing to the judge in chambers, Pillay contended that he should be entitled to a sum of much more than $250,000, and not just $135,361, and, to justify that, he pointed out that the assistant registrar was wrong in relation to three sub-items.

16 At this juncture, we would point out that one should not lose sight of the fact that, when a plaintiff sues for personal injuries, there is only one claim for damages, ordinarily consisting of two components, general damages and special damages, and under each of these components there may be separate sub-items of claim. Here, before the judge, the total claim made by Pillay was also close to $1.5m. On this alone, Teo would have been entitled as of right to appeal against the judgment entered against him. Of course, the judge did not award Pillay that colossal sum claimed but only varied the quantum in relation to two sub-items, making a total of $265,361.

17 Before us, counsel for Pillay seemed to be arguing, relying on the Malaysian case *Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd* [1997] 1 MLJ 136, that different consequences could follow, depending upon whether the claim is liquidated, with the sum claimed being specified, or unliquidated, like a claim for personal injuries. He submitted that based on *Yai Yen Hon* where a claim is liquidated, the amount claimed is relevant. But in respect of an unliquidated claim, the award of the trial court might well be the relevant point. Chong Siew Fai CJ, in delivering the judgment of the Federal Court, said:

> Having regard to the wording in proviso (a) of s 68(1) of the [Courts of Judicature Act 1964] and in the light of the authorities cited above, I am of the view that since the claim of the first plaintiff/appellant was well over RM100,000, he was entitled to appeal without leave even though the trial court had awarded RM62,400. In my view, the effect of s 68(1)(a) of the Act (as it was then in force) was that if the amount or value of the subject matter of the claim was RM100,000 or more, an appeal could be brought without leave. To render it necessary that

> leave should be obtained, the amount or value would have to be less than RM100,000. There might well be cases where the sums adjudged may be validly taken into account; the instant appeal before us, however, is not one such case.

18 We do not think it is necessary for us to offer any views on the proposition made there, that where the claim is unliquidated, the sum adjudged might well be relevant to be taken into account in determining whether leave is required to file a Notice of Appeal. Moreover, the Federal Court did not indicate what would be the sort of cases and circumstances to which that proposition would apply. We note that the wording of the Malaysian provision is "the subject matter of the claim" and ours is "the subject matter at the trial". The difference is really slight. While we recognise that the two formulations could in particular circumstances lead to different results, there is really no need for us to go more into that.

19 What is of interest to note about *Yai Yen Hon* is that there, which was a personal injury claim, the plaintiff at the trial claimed for RM4m. He was only awarded a total of RM62,400 by the High Court. He appealed. The minimum limit set for appeal was RM100,000. The Federal Court held that no leave was required as the claim exceeded RM100,000.

20 The approach contended by Pillay, of only looking at the quantum which a party would be disputing before the Court of Appeal to determine if leave is required, not only ignores the plain words of s 34(2)(a) and our ruling in *Tan Chiang Brother's Marble* ([9] *supra*), but will also give rise to anomalies.

21 Take a case like the present commenced in the High Court, apart from special damages, the quantum of general damages which the injured would be entitled to would be at large. Of course, at the trial itself, the plaintiff would have to state how much he is claiming for general damages. That, together with the special damages, would be the value of the subject matter. Assuming that altogether it is more than $250,000 and supposing the High Court (whether it be a decision of the High Court itself or a decision on appeal from the Registrar on assessment) awards the plaintiff a total sum of $200,000 as damages, isn't the plaintiff entitled as of right to appeal to the Court of Appeal for a sum claimed which is in excess of $250,000? We do not think such an appeal would require leave of court. This situation is similar to that in *Yai Yen Hon* ([17] *supra*).

22 Suppose further that, notwithstanding that the sum of $200,000 awarded is well below expectation of the plaintiff, the latter for reasons of his own decides not to appeal against that award, and instead, it is the defendant who intends to appeal as he thinks the $200,000 award is still too high, and let's say in his view it should be only $120,000, is the defendant obliged to apply for leave? It seems to us that the answer must also be in the negative as the test is the same: what is the value of the subject matter at the

"trial"? Otherwise, it would mean that the plaintiff need not apply for leave but the defendant would require leave, a clear inconsistency.

23 It is vitally important to bear in mind the scheme of things for civil appeals under the SCJA. Generally, there should be one tier of appeal, whether it is a case from the District Court, or from the High Court. Even if the plaintiff had exaggerated his claim and the High Court had only awarded him less than $250,000, there is no reason why the defendant, who had no hand in the action being instituted in the High Court, should be denied an opportunity to appeal if he is dissatisfied with even that lower award.

Reported by Chew Chin Yee.