

Zeng Min and others (dependants of Zhang Lan, deceased) v Mak Weng Tuck
[2012] SGHCR 9

Case Number : Suit No 11 of 2011/S
Decision Date : 11 July 2012
Tribunal/Court : High Court
Coram : Terence Tan Zhong Wei AR
Counsel Name(s) : Liew Hwee Tong Eric (Gabriel Law Corporation) for the plaintiffs; Anparasan s/o Kamachi (KhattarWong LLP) for the defendant.
Parties : Zeng Min and others (dependants of Zhang Lan, deceased) — Mak Weng Tuck

Damages – Assessment – Dependency claims

11 July 2012

Judgment reserved.

Terence Tan Zhong Wei AR:

1 This is an assessment of damages arising from a fatal collision between Zhang Lan (“the Deceased”) and the taxi driven by Mak Weng Tuck (“the defendant”) on 20 June 2009. The Deceased sustained severe injuries from the accident and subsequently passed away on 21 June 2009. Zeng Min, Zhang Gu, and Luo Ping (collectively known as “the Dependants”) sued the defendant for depriving them of “the pecuniary and other benefits which they would have received had the Deceased continued to live”. The Dependants subsequently obtained interlocutory judgment against the defendant, with the defendant agreeing to pay 100% of the damages to be assessed.

2 Having considered the evidence and closing submissions of both parties, I now set out my judgment.

The factual matrix

3 At the time of the accident, the Deceased, a Chinese National, was working as a research fellow with the Institute for Infocomm Research (“I²R”), a member of the Agency for Science, Technology and Research (“A*Star”) in Singapore, earning a monthly salary of \$4,600.00. He had been working in this capacity at I²R for about two months. In I²R’s offer of appointment letter to the Deceased (“I²R’s offer of appointment”), it was provided that upon the conferment of a Doctor of Philosophy (“PhD”) on the Deceased, “[his] gross monthly salary will be revised to **S\$4,900** and [his] contract will be revised to a **three-year contract**” [emphasis in original]. The Deceased was conferred his PhD on 31 May 2010 (about a year after his death on 21 June 2009), and it followed that his contract with I²R would run for three years to June 2013. The Deceased’s employment package also included an annual wage supplement (“AWS”) of one calendar month per calendar year and eligibility for a performance bonus based on his work performance.

4 Zeng Min (“the wife”) is the widow of the Deceased. She was 29 years old at the time of the Deceased’s death, and is presently working in Singapore as an engineer, earning a salary of \$3,700.00 per month. The Deceased and the wife had no children and did not own any property in Singapore. Zhang Gu (“the father”) and Luo Ping (“the mother”) are the parents of the Deceased (collectively known as “the parents”). They are both retired and currently live in China, where they receive a

monthly pension of RMB2,659.00 (about \$530.43) and RMB1,500.00 (about \$299.23) respectively. The father was 62 years old while the mother was 61 years old at the time of the Deceased's death.

5 The abovementioned facts and events are not in dispute. I also note that parties have agreed on the bereavement sum and all the items under special damages, except for the legal fees incurred by the Dependants in applying for grant of Letters of Administration ("LOA"). Parties are, however, in disagreement as to the dependency claims brought by the Dependants.

Agreed items

6 Parties are in agreement for the following items:

- (a) Bereavement sum: **\$15,000.00** ; and
- (b) Special damages: **\$23,107.29** , comprising of:
 - (i) Medical expenses: \$555.00
 - (ii) Funeral expenses in Singapore: \$4,840.78
 - (iii) Funeral expenses in China: \$8,000.00
 - (iv) Transport expenses in Singapore: \$150.00
 - (v) Transport expenses in China: \$200.00
 - (vi) Postage charges: \$0.00
 - (vii) Lodging in Singapore: \$2,328.32
 - (viii) Lodging in China: \$32.00
 - (ix) Air tickets: \$7,001.19
 - (x) Oath fees in China: \$0.00

Items in dispute

Special damages

7 In respect of special damages, parties were only unable to agree on one item, namely, the legal fees incurred for the Dependants' application for grant of LOA.

8 The Dependants submitted that this should be fixed at \$6,317.80. The defendant relied on *Teo Chee Yeow Aloysius and another v Tan Harry and another* [2004] 3 SLR(R) 588 ("*Teo Chee Yeow*"), where \$3,407.40 was awarded for the costs of obtaining LOA even though there were multiple assets listed, to argue that an award of \$2,000.00 for the costs of obtaining these letters would be "more than fair" given that the Deceased only had one asset listed in his Schedule of Assets.

9 I disagree with the defendant's submission and award the sum of \$6,317.80 to the Dependants for the costs of obtaining grant of LOA. The Dependants' lawyers have provided a tax invoice dated 29 July 2010 with a clear breakdown of how much was charged for each item pursuant to the Dependants' application for grant of LOA. I note that the application for grant of LOA required, *inter alia*, consultation with Chinese lawyers on intestacy law in China and also affidavits of foreign law, none of which was required in *Teo Chee Yeow*, which incidentally, was a case from almost eight years ago. In the circumstances, I am of the view that it is fair and reasonable for me to award the Dependants the sum of \$6,317.80 for this item under the special damages sought, and I so order.

General damages – dependency claim amount

The applicable law

10 The main source of dispute in this assessment was with respect to the dependency claims brought by the Dependants. In this regard, it is appropriate for me to begin by looking at the relevant legal principles with respect to dependency claims.

11 The statutory basis of a dependency claim can be found in ss 20(1) and (2) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("the Act"):

Right of action for wrongful act causing death

20. —(1) If death is caused by any wrongful act, neglect or default which is such as would (if death has not ensued) have entitled the person injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured.

(2) Subject to section 21(2), every such action shall be for the benefit of the dependants of the person (referred to in this section and in sections 21 and 22 as the deceased) whose death has been so caused.

The definition of a "dependant" is set out in s 20(8) of the Act, and includes, *inter alia*, "the wife or husband or the deceased" and "any parent ... of the deceased".

12 S 22(1) of the Act provides for damages "as are proportioned to the losses resulting from the death to the dependants respectively". It is trite that the damages are to be calculated "in reference to a reasonable expectation of pecuniary benefit, as of right or otherwise, from the continuance of

life": *Gul Chandiram Mahtani and another (administrators of the estate of Harbajan Kaur, deceased) v Chain Singh and another* [1998] 2 SLR(R) 801 at [17].

13 The Singapore position on the assessment of damages arising from a dependency claim is further elaborated in Julian Chin et al, *Assessment of Damages: Personal Injuries and Fatal Accidents* (Singapore: LexisNexis, 2nd Ed: 2005) ("*Assessment of Damages*") p 98 as follows:

There is no need to show that the dependant was receiving pecuniary benefit at the time of the death : *Ng Siew Choo v Tan Kian Choon* [1990] SLR 331. ***A purely prospective loss is sufficient.***

...

There must, however, be a reasonable probability of pecuniary advantage . The Court of Appeal in *Ho Yeow Kim v Lai Hai Kuen* (supra) referred to the case of *Barnett v Cohen* [1921] 2 KB 461 where the deceased child was four years old and it was clear that the father of the deceased had not lost a reasonable probability of pecuniary advantage as the claim was far too speculative.

[emphasis in bold italics added]

14 With respect to the method of assessing the reasonable expectation of pecuniary benefit suffered by a defendant, the authors of *Assessment of Damages* state at p 99 that:

This is usually done by way of the multiplier-multiplicand method. The value of the dependency (the multiplicand) is multiplied by a figure based on the number of years that the dependency might reasonably be expected to last but discounted so as to allow for the fact that a lump sum is being given now instead of periodical payments over the years (the multiplier).

15 The starting point in the calculation of the multiplier is the number of years that it is anticipated the dependency would have lasted had the deceased not been killed. This may vary as between different dependants based on the relationship between the deceased and the dependants and the personal circumstances of the deceased and the dependants: *Ling Kee Ling and another v Leow Leng Siong and others* [1994] 3 SLR(R) 395 at [8]. The court will also consider the age and expected working life of the deceased, as well as the age and expected life span of the dependants in selecting the multiplier: *Ho Yeow Kim v Lai Hai Kuen* [1999] 1 SLR(R) 1068 at [32] ("*Ho Yeow Kim*").

16 There are two main methods of determining the appropriate multiplicand. The first method is to ascertain the deceased's net annual income and deduct from that figure the deceased's own expenses: *Balanalagirisamy Gowri Rajeswari and another (administrators of the estate of Radhakrishnan Hari Babu, deceased) v Wong Si Wah* [2009] 1 SLR(R) 819 at [16] ("*Balanalagirisamy*"). The balance, it can be assumed, would be for the benefit of the dependants. To arrive at the deceased's net annual income, one should begin by considering the deceased's basic salary (see, *ie*, *See Ah Haw v Ong Hock Thian and another* [1983-1984] SLR(R) 618). The second method is to add up the financial benefits received by the dependants, such as rents and bills paid and pocket money. The proportion that is attributable to the benefit of the deceased, such as his share of the utilities bill, is then deducted.

17 The factors which affect the determination of the multiplicand are as follows (see *Assessment of Damages* at p 102):

- (a) the probability of future increase or decrease in the annual dependency;
- (b) the deceased's educational level and earning potential; and
- (c) the possibility of an unmarried deceased eventually marrying and the consequent expectation of a reduction in the contribution to the parent's support: *Ng Siew Choo v Tan Kian Choon* [1990] 1 SLR(R) 235 at [22].

Actual and projected earnings of the deceased

18 Before the appropriate multiplicand can be calculated in the present case, it is important to first establish what the actual and projected earnings of the Deceased are. It is not disputed that the Deceased was earning a monthly salary of \$4,600.00 before his death, and that his salary would be revised to \$4,900.00 (on a revised three year contract) upon the conferment of a PhD on the Deceased. The Deceased was conferred a PhD on 31 May 2010, about a year after his death on 21 June 2009.

Yearly salary increment

19 With respect to the yearly salary increment, the Dependants had contended in their Opening Statement that this should be 4%. However, Ms Tan Chee Chuen Joanne ("Ms Joanne"), the Senior Manager, Human Resource with Science and Engineering Institutes working for I²R, gave evidence at the hearing before me that the annual percentage of I²R's salary increment was around 2.5% and 2.8% in financial years 2009 and 2010 respectively. More importantly, Ms Joanne also stated that whether one would obtain a salary increment is dependent on the performance of the individual employee and also how well the economy is doing at that moment of time:

Q: ... Figures [salary increment was around 2.5% and 2.8% in financial years 2009 and 2010 respectively] you have quoted applies to an average performer and depends on performance of economy?

A: Yes.

Q: Over the period of 3 years, still entitled to get 2.5% every year?

A: Yes.

Q: At end of 3 year contract, Board will consider whether to let contract lapse; keep him at same grade; promote him?

A: Yes.

Q: These 3 options would depend on performance appraisal and economy?

A: Yes.

[emphasis in bold italics added]

It was also made clear that whether the Deceased would be offered a new contract beyond the 3 year contract, which would apply once he was conferred a PhD, would also depend on the Deceased's performance and the state of the economy at that time.

20 In *Tan Harry and another v Teo Chee Yeow Aloysius and another* [2004] 1 SLR(R) 513 ("*Tan Harry*"), the plaintiff's counsel had submitted that "account should be taken of the likelihood of an increase each year in [the deceased's] salary". While noting that the deceased (a tax manager) had enjoyed some increases in his salary in the three years he had been with the company before he died, and that it would not be illogical *per se* to take into account future increases in his salary to derive a median salary which would be higher than the last drawn salary, the court held at [16] and [19] that:

16 ... ***I was mindful of the point that it is all too easy to assume that salaries would always increase. The past few years of financial turmoil have showed otherwise. Not only have salaries not increased, they have in many instances decreased and in some cases, jobs have been lost.*** To be fair, there was no evidence about a decrease in salaries for KPMG or a loss of jobs although bonus for 2002 had been reduced from two months to one month for an above average performer. However, on the other hand, Helen Chiang of KPMG was not inclined to be dogmatic about the likelihood of salary increases. ***She would say only that "the salary increment here is also very dependent on the economic situation and results of the firm".***

...

19 ***In view of the absence of a positive assertion by KPMG about salary increases and more concrete evidence from the plaintiffs of an increase in what they were receiving from Philip over the years and bearing in mind that the burden of proof was on the plaintiffs , I declined to adopt a median figure to calculate the multiplicand. I was of the view that the AR was correct in using Philip's last drawn salary as the basis for such a calculation.***

[emphasis in bold italics added]

21 *Tan Harry* appears to be directly applicable to the case at hand. Here, Ms Joanne, while able to state that the increments range from 2.5% to 2.8% for 2009 and 2010, agreed that the salary increment was dependent on the performance of the employee and also the state of the economy. There were *no positive assertions* from her that the Deceased would have received a salary increment every year. In fact, Ms Joanne candidly agreed that she was not in a position to comment on the work performance of the Deceased. I also note that the Dependants failed to call the Deceased's immediate supervisor to give evidence as to his work performance and promotion prospects. Finally, the defendant also helpfully drew my attention to the current "Eurozone crisis coupled with slow growth in China", and the fact that the estimated growth rate for Singapore, based on statistics from the Ministry of Trade and Industry, was only 1% – 3% for 2012 as compared to 14.5% in 2010. These statistics highlighted the fact that the Singapore economy might not do as well in the near future as compared to previous years.

22 Finally, I also note that the Dependants had, in its Closing Submissions, argued that the Deceased would have even better pay and promotion prospects even if his contract was not renewed after 3 years by I²R. With respect, I cannot agree. First, the Dependants have not produced any evidence to support their bare assertion. Second, it goes against the clear evidence of Ms Joanne that the market for PhD holders, such as the Deceased, is "usually... smaller", which necessarily implied that the Deceased might have find it difficult to obtain a job with higher pay and promotion prospects.

23 In light of the above, I find that the Deceased's last drawn salary (*excluding any salary increments*) should be used as the basis for calculating the applicable multiplicand in this case. Given that the Deceased would have earn a monthly salary of \$4,900.00 from 31 May 2010 onwards (the

date on which he was conferred a PhD) for *at least* three years (as stipulated in I²R's offer of appointment) and the fact that this was only about a year after his death on 21 June 2009 (when his last drawn salary was \$4,600.00), I am minded to adopt the sum of \$4,900.00 as the Deceased's last drawn salary for the purposes of calculating the applicable multiplicands in this case.

Monthly variable component

24 The Deceased's monthly salary also included a monthly variable component ("MVC"). The defendant cited, *inter alia*, the decision of an assistant registrar in *Zhang Xiao Ling (personal representative of the Estate of Chan Tak Man, deceased) v Er Swee Poo and Another* [2004] SGHC 21 ("*Zhang Xiao Ling*") to support its argument that there have been "judicial recognition ... that applying a percentage increase in salary disregards economic situations and other exigencies". Therefore, the Deceased's basic pay of \$4,048.00 (at the time of his death), which excludes the MVC of \$552.00, should be used as the starting point in calculating the multiplicands applicable for each of the Dependants.

25 I cannot agree with the defendant's argument. In *Zhang Xiao Ling*, the assistant registrar took into account that the company which the deceased was working in was only 10 years old and that any increments would depend on the performance of the company and the economic situation. Moreover, there had been "a wage freeze across the board at the company for the last couple of years". In the circumstances, she rejected the computation of a 5% increase in the earnings of the deceased. *Zhang Xiao Ling* can be distinguished from this case in light of the fact that I²R is an established research institute (set up in 2002 under the purview of A*Star) and Ms Joanne's unchallenged evidence that the MVC for I²R employees has never been adjusted since it was introduced:

Q: BF 190 para 3. What is the monthly variable component ("MVC") about?

A: We have full discretion to make adjustments in times of bad economy. Allows flexibility for us to still keep the staff with lower costs. ***So far, we have not adjusted this since MVC was introduced.***

[emphasis in bold italics added]

26 I therefore find that the MVC of the Deceased's last drawn salary should be included in full in the calculation of the applicable multiplicand in this case.

Annual workfare supplement and performance bonus

27 Ms Joanne's evidence was that the annual workfare supplement ("AWS") is one month's salary per working year unless there are issues with the employee's performance. More importantly, she also responded as follows to a question which I had directed towards her at the hearing before me:

Ct: Is the 13th month payment a "definite" payment in that it is always paid out?

A: As long as you do not get the performance improvement plan, then will get 13th month. *But this is very uncommon* [for one to be put on the performance improvement plan].

[emphasis added]

Ms Joanne explained that only employees who have performed poorly would be put on the “performance improvement plan” and that their AWS would be withheld for that particular year in which they were put on that plan. However, she stressed that this is *very uncommon*. In light of Ms Joanne’s evidence, I reject the defendant’s argument that the court should take into consideration the uncertainty of AWS being withheld, and find that the AWS of one month per working year should be taken into account for the calculation of the applicable multiplicands in this case.

28 With respect to performance bonus, Ms Joanne’s evidence was that about 50% of the staff will receive about a performance bonus of two months’ salary. However, she also agreed that the award of the performance bonus would depend on the performances of the company and the individual employee. Since there was no evidence as to the work performance of the Deceased, save for certain bare assertions by the Deceased’s mother that he was performing very well and would have received four months’ worth of performance bonuses (see [51] below), I am of the view that performance bonuses should *not* be included in the calculation of the applicable multiplicands in this case.

Total net income of the Deceased per year

29 In light of the above, the Deceased’s total income per year would be as follows: \$4,900.00 x 13 months = \$63,700.00. It was not disputed by parties, based on Ms Joanne’s evidence, that income tax deductions ranging from 12% to 15% would apply to the Deceased’s income. In the circumstances, an average figure of 13.5% as income tax is deducted from the Deceased’s total income per year of \$63,700.00 to arrive at a final figure of \$55,100.50, which is the Deceased’s total *net* income per year.

Dependency claim of the wife

The applicable multiplicand

The parties’ positions

30 In the Dependants’ Opening Statement, the wife claimed that she was financially dependent on the Deceased to the extent of 40% of the Deceased’s net income. I note, however, that in the Dependants’ Closing Submissions, this figure had been amended to “[at least] 33%”. In support of the contention that the multiplicand applicable to the wife should amount to at least 33% of the Deceased’s net income, the wife placed much emphasis on *See Soon Soon v Goh Yong Kwang and another* [1992] 1 SLR(R) 535 (“*See Soon Soon*”), where Chan Sek Keong J (as he then was), held at [38] that:

... In calculating the net dependency under the Fatal Accident Acts, the English courts have adopted the simple solution of applying a conventional figure of 33% to a family unit of husband and wife, on the rationale that the net income would be spent one-third for the benefit of each and one-third for their joint benefit. Where there are children, the figure falls to 25%, which was the figure agreed in *Harris v Empress Motors Ltd* [1983] 3 All ER 561.

The wife further argued that the approach approved in *See Soon Soon* has since been applied, *inter alia*, in *Ho Yeow Kim* (35% of the deceased’s income was used as the multiplicand for the dependent parents) and *Balanalagirisamy* (33% of the deceased’s income was used as the multiplicand for the dependent wife).

31 The defendant made two main points in respect of the applicable multiplicand to the wife. First, the defendant emphasised that there were no evidence of “the [D]eceased giving [the wife] money

regularly or evidence of the [D]eceased spending the above sums [\$1,500.00 to \$2,000.00 a month] on her”, and that the only evidence provided by the wife support her claim was “her bare testimony”. Second, considering the wife’s “substantial [monthly] income of \$2,700” and that she would have been “expected to contribute to the household expenses as she began earning a steady income”, the applicable multiplicand with respect to the wife’s dependency claim should be “no more than **\$657.80 per month**, or \$7,893.60, (i.e. 15% of the [Deceased’s] earnings ...)” [emphasis in bold in original]. This “is a higher sum than the multiplicand of \$500 per month awarded [to the widow who was earning \$2,600.00 per month] in *Cheong Gim Fah and Another v Murugian s/o Rangasamy* [2004] SGHC 93 (“*Cheong Gim Fah*”).

The court’s assessment

32 The defendant is right in stating that the wife did not provide any evidence of the amounts for which she was financially dependent on the Deceased. However, what is also clear is that there is no need to show that the dependant was receiving pecuniary benefit at the time of the death. A purely prospective loss is sufficient. In other words, it sufficed that there was some basis of fact from which it could be inferred that there was a *reasonable - but not speculative* - expectation of pecuniary benefits to the dependant, and therefore of prospective loss from the death: *Ng Siew Choo* at [15].

33 Here, the wife’s evidence was that she was financially dependent on her husband to the sum of approximately \$1,500.00 to \$2,000.00 per month. This sum was spent on items such as rental, food, utilities, phone bills, transport and leisure/shopping. At the time of the Deceased’s death, the wife had only been working for about a month, earning a salary of \$2,700.00. Moreover, she had to spent about \$500.00 to \$800.00 on travel, *ie*, going back to China to visit her parents about two times a year, and paying “school fees which [were] about \$5,000.00” (this has since been fully paid for). I accept the wife’s evidence that while the Deceased did not “have the habit of literally giving [her] money every month”, he took care of most, if not all of the expenses. Moreover, it was also the wife’s unchallenged evidence that the husband would give her “his atm card” whenever she goes out to buy things. In the circumstances, I am of the view that there is a reasonable probability of pecuniary advantage to the wife in the present case and that her claim is not too speculative.

34 However, I accept the defendant’s argument that the wife’s earning capacity should be taken into account in determining the multiplicand applicable to her dependency claim. Here, the wife was earning \$2,700.00 at the time of the Deceased’s death. She is now earning \$3,700.00 as an engineer. Moreover, it was also the wife’s evidence that she would “buy the groceries if [they] cooked”, and this amounted to approximately \$200.00 to \$300.00 per month. With respect to household expenses, I accept that the Deceased was responsible for paying most, if not all of these expenses when he was alive. I also note that the wife would have willingly contributed to some of the household expenses if the Deceased had asked:

Q: Before the accident, as you were earning \$2,700, no necessity for your husband to pay for your expenses?

A: According to our culture, ***I would give him money if he asked***. But he had never asked me for money.

[emphasis in bold added]

Even though the wife’s evidence was that the Deceased did not in fact ask for money from her to pay for any of the household expenses, this did not mean that he would *never* have asked in the future. This is especially relevant when we consider that the wife had only been working for about a month

and might not even have received her first pay check at the time of the Deceased's death, but is currently earning \$3,700.00. According, I find that the wife would have contributed a portion of her increased income to the household expenses if the Deceased had not met with the unfortunate accident.

35 With respect to the defendant's argument that the multiplicand should be "no more than **\$657.80 per month**, or \$7,893.60, (i.e. 15% of the [Deceased's] earnings ...)" [emphasis in bold in original], I cannot agree. In *Cheong Gim Fah*, it was held at [12] that:

12 I had serious doubts about the value of the dependency as claimed by Mdm Cheong who worked and continues to work as a staff nurse at a baby and child clinic earning \$2,600 per month as her gross salary, or approximately \$2,080 per month as net salary. ***In her affidavit of evidence-in-chief, she stated that she used her income to "maintain myself and my own expenses including some maintenance, marketing, etc".*** In cross-examination, she stated that she had enjoyed medical benefits from the deceased and that the deceased had paid for the family's expenses, such as school fees, home maintenance and household expenses, upkeep of the car, and holidays. In face of the evidence adduced, I accepted that despite earning her own salary Mdm Cheong was dependent on the deceased to some extent. Furthermore, I was of the view that the issue of dependency also included non-monetary factors such as, but not limited to, emotional support. ***However, I did not see how any of these factors could in any way justify Mdm Cheong's claim of \$2,500 a month in dependency.***

[emphasis in bold italics added]

36 It is clear from the above that the assistant registrar had arrived at her conclusion that the multiplicand should not be \$2,500.00 per month because it was Mdm Cheong's own evidence that she used some of her monthly income to maintain herself and to pay for some other expenses. In contrast, the wife's evidence here was consistent, in that she maintained that the Deceased paid most, if not all of the household expenses, and that she was financially dependent on the Deceased for approximately \$1,500.00 to \$2,000.00 per month. The only evidence of her spending any of her own income on her expenses was with respect to groceries (which she paid for only when the couple cooked) and *occasionally*, paying for the things she bought when she went shopping.

37 In the circumstances, I am of the view that the applicable multiplicand should be \$16,530.15, or 30% of the Deceased's yearly earnings of \$55,100.50. This is lower than the 33% provided in *See Soon Soon* as it takes into account my finding above that the wife would have contributed a portion of her increased income to the household expenses if the Deceased had not met with the unfortunate accident.

The applicable multiplier

38 The wife submitted that the applicable multiplier should be 18 years. The defendant disagreed, arguing that the multiplier should be 10 years instead.

39 I am of the view that the appropriate multiplier to be applied in this case should be 15 years. In the recent decision of *Balanalagirisamy*, a multiplier of 15 years was applied to a widow who was 31 years old at the time of her husband's death. Here, the wife was 29 years old at the time of the Deceased's death. I disagree with the defendant's argument that *Ang Song Huay v Chu Yong Thiam* [1995] SGHC 116 ("*Ang Song Huay*"), where a multiplier of 10.75 years was applied to a dependant plaintiff who was 31 years old, should be adopted in this case. First, the defendant's submission that the court should consider the "lower life expectancy and retirement ages in China" is erroneous in

light of the wife's current status as a Singapore Permanent Resident and her evidence that the Deceased and her were likely to stay in Singapore permanently:

Q: How long do you think your husband would have worked in Singapore if he was alive?

A: ***Permanently here.***

Q: There must be a point in time when you all will go back to China?

A: ***No. Singapore is a safe place and provides a conducive environment to raise our children.***

[emphasis in bold added]

Second, *Ang Song Huay* was a decision from more than 16 years ago and I am of the view that the more recent decision of *Balanalagirisamy* should be applied to the present case, given that the multiplier applied in the latter case would be more in line with the social and economic conditions of Singapore today. Therefore, I find that the appropriate multiplier to be applied to the wife is 15 years.

40 In light of the above, I find that the wife is entitled to $\$16,530.15 \times 15 \text{ years} = \$247,952.25$ for her dependency claim.

Dependency claim of the parents

The parents' position

41 It was argued on behalf of the parents that there was clear testimony from the parents that the Deceased had, *inter alia*, sent money to them since he started working in China back in 2004, gave them money during festive occasions and when he returned to China in 2009, and contributed financially towards the purchase of the parents' home in China in 2008. The parents conceded that they had no evidence of the remittance of "monthly fixed sums" from the Deceased, but argued that this cannot be interpreted as a "lack of intention to maintain his parents". This is because the Deceased had just started work when he met with the accident and the fact that he had no opportunities of returning home to pass them money. Finally, the Deceased was also a very filial son and there was no evidence that the Deceased would not have sent money to the parents. Therefore, the parents argued that "no less than 40%" of the Deceased's net income should be awarded to them (the multiplicand), with a multiple of 10 years being applied.

42 The defendant disagreed with the parents and argued that they have not lost a reasonable probability of pecuniary advantage as their dependency claims were far too speculative based on the objective evidence before this court.

Whether there was a reasonable probability of pecuniary advantage

43 In their Affidavits of Evidence in Chief ("AEICs"), which incidentally was almost identical except that the names of the father and mother was used in his and her own AEIC respectively, the parents claimed, *inter alia*, that the Deceased would "mail [them] some money during major holidays ... while his [*sic*] was in Singapore", contributed to the purchase of their new apartment in 2008 and bought a computer for their use.

44 At the hearing before me, the defendant pointed out that there was no documentary evidence to support any of the parents' claims above. While that is true, it is also trite that the parents could

succeed in their dependency claims if there was some basis of fact from which it could be inferred that there was a *reasonable - but not speculative* - expectation of pecuniary benefits to the parents, and therefore of prospective loss from the Deceased's death: *Ng Siew Choo* at [15].

45 However, having assessed the objective evidence before me, I find, for the reasons set out below, that the only basis of fact from which a reasonable expectation of pecuniary benefit to the parents and therefore of prospective loss from the Deceased's death could be inferred, was that the Deceased sent the parents money during the Spring Festival while he was in Singapore and the last time he did so was in February 2009, when he sent them RMB5,000.00 (approximately \$1,000.00).

46 First, the Deceased did not have a habit of giving the parents money on a regular basis, as is clear from the evidence of the father:

Q: BF 68 para 10. Your deceased son gives you money occasionally?

A: ***Not every month.*** But in total, he did give me a substantial amount on average. He has not worked for long in Singapore.

Q: ***Between 2004 and 2009, he gave you RMB42,000 [as stated in para 10 of the father's AEIC]?***

A: ***No.***

...

Q: Even though he started working in 2004, no documentary record of your son's remittances to you. Agree?

A: ***Did not ask for any money for him.*** But he did give us money later.

...

Q: ***Suggest to you that, looking at para 10 of your affidavit, your son does not have a habit of giving you money on a monthly basis. At best, it is only on certain occasions. Agree?***

A: ***Yes. He did not give me on a monthly basis. But on average the amount was quite substantial.***

[emphasis in bold italics added]

47 Second, the Deceased did not send money back to his parents often while he was studying in Singapore and living on his scholarship allowance. As the father explained, "while [the Deceased] was on scholarship, most of that stipend would go towards their [Deceased and the wife] living expenses. So we can understand that most of that went towards their living expenses. But when he started working for real, we ***expected*** him to send us more money" [emphasis in bold italics added]. The word "expected" is especially relevant here as it shows that it was the parents' *expectation* that the Deceased would send them more money when he started working. However, as is clear from the evidence, this expectation did not materialise.

48 Third, even after he started working in March 2009, the Deceased did not send money to the

parents back in China in the two months before the accident. Indeed, the parents confirmed that the last time they received money from the Deceased was during the Spring Festival in February 2009, when he sent them RMB5000.00. Pertinently, I also note that the Deceased neither told his parents that he had started working at I²R nor gave them any details as to the job that he had secured:

Q: Even after he started earning, he did not give you money monthly?

A: ***No, he did not. When he came back, he did not tell us about the job.*** We have never asked him questions as to where he was working at. He did not give us money every month then.

[emphasis in bold italics added]

The implication from this is that the Deceased was unlikely to send the parents any additional money (on top of the RMB5,000.00 sent to them for the Spring Festival in February 2009) after he started working with I²R. I also reject the parents' argument that the Deceased did not send them any money after he started working with I²R because he had only just started working when he met with the accident and the fact that he had no opportunities of returning home to pass them money. If the Deceased had wanted to send additional money back to his parents after he started working at I²R (on top of the RMB5,000.00 which he had sent to them for the Spring Festival in February 2009), he could have easily done so by remitting the money through banks or other financial institutions.

49 Fourth, the parents made numerous self-serving and bare assertions during the hearing before me that the Deceased would give or send them money because he was a filial son (regardless of whether the Deceased has enough money to spend on himself and the wife), even though this was clearly contrary to the objective evidence at hand. The relevant parts of the father's evidence are as follows:

Q: We were cross-examining your daughter-in-law yesterday. She mentioned that about half of your son's income, about S\$2000 plus, would be spent towards his rental, utilities, and food expenses. Also said that there would be a further sum she would spend on groceries, about \$200-\$300. And then they also spent as a family, a sum of \$500-\$600 for movies and leisure. Also said that husband would allow her to buy clothes or when she goes shopping. They also travel back to China once or twice a year, and have to incur expenses for those travels. From her evidence, appears that almost all of your son's income would be committed towards the household and her. Therefore, I suggest to you that your son may not have sufficient money to send you for the upkeep of your wife and you.

A: I disagree. *According to past records when he was working in China, he would place priority on his parents.*

Ct: Are you disputing your daughter-in-law's evidence?

A: While he was on scholarship, most of that stipend would go towards their living expenses. So we can understand that most of that went towards their living expenses. *But when he started working for real, we **expected** him to send us more money.*

[emphasis in italics and bold italics added]

The mother made similar bare and self-serving assertions which I found difficult to accept:

Q: On any pension scheme? If so, how much per month?

A: Yes. RMB1,900. ***But not enough to spend.***

...

Q: We were cross-examining your daughter-in-law yesterday. She mentioned that about half of your son's income, about S\$2300, would be spent towards his rental, utilities, and food expenses. Also said that there would be a further sum she would spend on groceries, about \$200-\$300. And then they also spent as a family, a sum of \$500-\$600 for movies and leisure. Also said that husband would allow her to buy clothes or when she goes shopping. They also travel back to China once or twice a year, and have to incur expenses for those travels. From her evidence, appears that almost all of your son's income would be committed towards the household and her. Therefore, I suggest to you that your son may not have sufficient money to send you for the upkeep of your wife and you

A: I disagree. ***My son would give me money regardless of whether he has money.***

...

Q: Also put to you that because you have pension and your elder son sends you money and taking into account your expenses, then you need not rely on Zhang Lan. Why did you disagree?

A: Reason why I had children was to improve my standard of living. For the son to provide for us, that is very reasonable. ***He must provide for us no matter what happens. Zhang Lan is very filial to me.***

[emphasis in bold italics added]

50 Fifth, I also found the evidence of the mother to be unreliable as it was full of contradictions. For example, she claimed that the Deceased had given her money after the Spring Festival in February 2009 (about RMB2,000.00 to RMB3,000.00 each time):

Q: When he started work in March 2009, in the 4 months when he was earning \$4,600 (until the accident), confirm that he did not give you any money?

A: ***He did give us money.***

Ct: How much?

A: He did not give me on a monthly basis. But ***RMB2000-3000 each time.***

[emphasis in bold italics added]

However, when confronted with para 10 of her own AEIC (which contradicted what she had just said in court), she did a complete turnaround and claimed that she could not recall whether the Deceased had sent the parents money after February 2009:

Q: See para 10 of your affidavit. According to your husband and your [AEIC], the RMB5000 given in Feb 2009 was the last contribution from your son, do you agree?

A: ***Agree.***

Q: Therefore from March to June 2009, he did not give you any sums of money. Agree or disagree?

A: ***I cannot recall exactly the details.***

[emphasis in bold italics added]

51 Finally, it also appeared that the mother had discussed what she was going to say in evidence with the wife before the mother's turn to give evidence:

W: I want to ask the [Defence counsel] some questions.

...

W: Yesterday when you were talking about the [Deceased's performance] bonus, it was not fixed whether it was 2 month or 4 month bonuses. But I was informed by my son's manager that he should be entitled to a 4 month bonus.

Ct: ***How did she know what was discussed in this courtroom yesterday?***

W: ***My daughter-in-law.***

Ct: ***Did you discuss what you were going to say in court?***

W: ***No.*** Want to ask another question. Even though I receive pension, does this mean that the driver who knocked down my son does not need to compensate us?

[emphasis in bold italics added]

This was a highly unsatisfactory situation and placed grave doubts as to the reliability of the mother's evidence.

52 Taking into consideration what has been set out from [46] – [51] above, I find that the only basis of fact from which a reasonable expectation of pecuniary benefit to the parents and therefore of prospective loss from the Deceased's death could be inferred, was that the Deceased has the habit of sending money back to them occasionally, *ie*, during the Spring Festival each year.

The applicable multiplicand and multiplier

53 I note that the parents' evidence was that the Deceased sent them a sum of RMB5,000.00 in February 2009 for the Spring Festival. This sum of RMB5,000.00 was identical to the sum which the Deceased had gave to the parents during the Spring Festival of 2005 (as set out in para 10 of the AEIC of each of the parents). Moreover, I also note that one of the "holidays" identified by the parents as an occasion when the Deceased would send money back to them, *ie*, the Dumpling Festival, occurred on 28 May 2009. It is telling that the Deceased did not send the parents any money for the Dumpling Festival even though he had already started working at I²R. In the circumstances, I find that it is fair and reasonable to adopt the sum of RMB5,000.00 as the applicable multiplicand to the parents in the present case.

54 With respect to the multiplier, it is trite that "where the dependant is a parent and the deceased a son or daughter, the controlling life expectancy will be that of the dependant rather than that of the deceased": *Assessment of Damages* at p 104. Here, the father was 62 years old while the mother was 61 years old at the time of the Deceased's death. Although no evidence was led as to the life expectancy in China, the World Bank has on its online database the life expectancy (at birth) of both males and females in China in 2010, which are 67.6 years and 71.7. years respectively. [\[note: 1\]](#)

55 In determining the multiplier to be applied to the parents, I also found the case of *Man Mohan Singh s/o Jothirambal Singh and another v Zurich Insurance (Singapore) Pte Ltd (now known as QBE Insurance (Singapore) Pte Ltd) and another and another appeal* [2008] 3 SLR(R) 735 ("*Man Mohan Singh*"), cited to this court in by the parents in support of their claims, instructive. In *Man Mohan Singh*, the Court of Appeal fixed the multiplier for the parents at 8 years for the first appellant who was 46 years old when his sons died, and at 13 years for the second appellant (the wife of the first appellant) who was 44 years when her sons died. In light of *Man Mohan Singh*, I find that a multiplier of 5 years for the father and a multiplier of 9 years for the mother are fair and reasonable in the circumstances, especially considering the fact that the father and the mother only have, on average, about 6 and 11 years of life left respectively, and so a smaller discount should be applied as compared to the first and second appellants in *Man Mohan Singh*.

56 In light of my finding that the applicable multiplicand should be RMB5,000.00 (approximately \$1,000.00), the father and the mother are entitled to a total of \$1,000.00 x 5 years = \$5,000.00, and \$1,000.00 x 9 years = \$9,000.00 for their dependency claims respectively.

Conclusion

57 In summary, the Dependants succeeded in the following:

- (a) Bereavement sum agreed at **\$15,000.00**
- (b) Special damages:
 - (i) Medical expenses agreed at \$555.00
 - (ii) Funeral expenses in Singapore agreed at \$4,840.78
 - (iii) Funeral expenses in China agreed at \$8,000.00
 - (iv) Transport expenses in Singapore agreed at \$150.00
 - (v) Transport expenses in China agreed at \$200.00
 - (vi) Postage charges agreed at \$0.00
 - (vii) Lodging in Singapore agreed at \$2,328.32
 - (viii) Lodging in China agreed at \$32.00
 - (ix) Air tickets agreed at \$7,001.19
 - (x) Oath fees in China agreed at \$0.00

(xi) Costs of obtaining LOA assessed at \$6,317.80

Total: **\$29,425.09**

(c) General damages:

(i) The wife's dependency claim assessed at \$247,952.25

(ii) The father's dependency claim assessed at \$5,000.00

(iii) The mother's dependency claim assessed at \$9,000.00

Total: **\$261,952.25**

58 Interest is to be at half of 5.33% on special damages (including the bereavement sum agreed at \$15,000.00) from the date of the accident to the date of judgment. No interest is awarded for the post-trial damages, *ie*, the dependency claims of the wife and the parents. The usual consequential orders are to apply.

59 I will hear parties on the issue of costs.

[\[note: 1\]](#) Available at <http://data.worldbank.org/indicator/SP.DYN.LE00.FE.IN?display=graph> and <http://data.worldbank.org/indicator/SP.DYN.LE00.MA.IN?display=graph>.

Copyright © Government of Singapore.