

IN THE COURT OF APPEAL AT PUTRAJAYA
(APPEAL DIVISION)
APPEAL NO: W-02-82-TAHUN 2001

BETWEEN

1) CHEE KUAT FONG
2) HIEW SING SHING
3) LIM MENG TECK
4) CHONG KIM YANG APPELLANTS

AND

LEE WAI YEN RESPONDENT

(In The High Court at Kuala Lumpur
Suit No. S5-23-35-1996)

Between

Lee Wai Yen Plaintiff

And

1) Chee Kuat Fong
2) Tan Gim Tong
3) Hiew Sing Shing
4) Lim Meng Teck
5) Chong Kim Yang Defendants)

CORAM:

LOW HOP BING, J.C.A.
MD. RAUS BIN SHARIF, J.C.A.
WAN ADNAN BIN MUHAMAD, J.C.A.

JUDGMENT OF LOW HOP BING, J.C.A.
(DELIVERING JUDGMENT OF THE COURT)

I. APPEAL

[1] On 12 November 1997, after a full trial in a libel action, the learned judge of the Kuala Lumpur High Court found for the respondent-plaintiff (“the plaintiff”) and ordered all the six defendants in the Court below to pay a sum of RM30,000 each by way of damages, together with interest and costs.

[2] At the hearing of this appeal, both learned counsel informed this Court that all the six defendants in the Court below have paid RM30,000 each in satisfaction of the said judgment.

[3] The second defendant, one Mahinder Singh, who was also ordered to pay RM30,000 as damages has satisfied that judgment sum in the Court below and has not lodged any appeal therefrom. This appeal was lodged by five appellants-defendants (“the defendants”) only.

[4] The defendants have originally appealed against both liability and quantum. However, they have now confined the appeal to one issue only ie concerning quantum.

II. LIBEL

[5] The libel attributable to the defendants was contained in a letter authored by the defendants against the plaintiff and addressed to the defendants' managing director. Although the extent of the publication was limited, the plaintiff was nevertheless dismissed by his employer, and his claim for unfair dismissal was rejected by the Industrial Court.

III. GLOBAL AWARD

[6] Defendants' learned counsel Mr Andrew Ng contended that the trial court had erred in ordering separate awards against each of the defendants when they should be one global award only, on the authority of *Liew Yew Tiam & Ors v. Cheah Cheng Hoc & Ors (2001) 2 CLJ 385 CA*.

[7] Plaintiff through learned counsel Mr. Jadadish Chandra submitted that the damages awarded separately against the defendants were not excessive.

[8] I shall first refer to *MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun & Others Appeals* (1995) 2 MLJ 493 CA. In the Court of first instance, the appellants and the other defendants in a libel action were ordered to pay separate sums of general damages [see (1995)1 MLJ 39]. In the Court of Appeal, it was argued that the trial court had erred in making separate awards against each appellant. At p.531A, Gopal Sri Ram JCA, with whom Lamin PCA and Abu Mansor JCA (as they then were) concurred, held that all the defendants there were sued and found liable as several and not as joint tortfeasors. Thus the trial court could make separate awards against each appellant there.

[9] It is to be noted that the capacities in which the defendants were sued ie as separate tortfeasors in *MGG Pillai, supra*, are readily distinguishable from the defendants in the

instant appeal in which the defendants were sued as joint tortfeasors. The libel in the instant appeal was contained in a single letter authored by all the defendants who are in law and in fact joint tortfeasors. The facts in the instant appeal bear a striking similarity with those in *Liew Yew Tiam & Ors, supra*, in which the trial court made separate awards against each appellant, as follows:

First appellant	RM 500,000.00
Second appellant	RM 300,000.00
Third appellant	RM 50,000.00
Fourth appellant	RM 150,000.00

Total = RM1,000,000.00

[10] At p.390, Gopal Sri Ram JCA speaking for the Court of Appeal, referred to *Cassell & Co. Ltd v Broome and Another* (1972) 1 All ER 801 HL; and *Green Lands Ltd v Wilmshurst* (1913) 3 KB 507, and held that only a single award was

admissible against all the appellants. Hence, the Court of Appeal is entitled to interfere. At p.395b, after having considered all the circumstances of the case and adopting a common sense approach to the facts, the Court of Appeal came to the conclusion that a global sum of RM100,000 would be fair, just and adequate compensation for the libel inflicted upon the respondents.

[11] Reverting to the facts in the instant appeal, on the basis of the judgment of the Court of Appeal in *Liew Yew Tiam & Ors, supra*, the trial court had erred in awarding separate awards for the joint fortfeasors ie the defendants there. The award should have been a global award.

[12] Be that as it may, in considering the global quantum to be awarded, I am of the view that the total amount of RM180,000 awarded by the learned trial judge is not outrageously exorbitant, or shockingly excessive in relation to the libel, or manifestly unreasonable, unjust or irrational. Therefore, there should be no appellate interference. Hence,

apart from the variation of separate awards of damages to a global award, the total amount of RM180,000 is a fair and just compensation. That amount should be affirmed. (see *Ling Hwa Press (M) Sdn. Bhd & Ors v Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals (2000) 3 CLJ. 728 at p. 732 FC per Eusoff Chin CJ (MALAYSIA)* (as he then was).

V. CONCLUSION

[13] On the foregoing grounds, this appeal is hereby dismissed with costs. There shall only be a global award of RM180,000 against all the six defendants in the Court below. Deposit to the plaintiff towards account of taxed costs.

DATUK WIRA LOW HOP BING

Judge
Court of Appeal
MALAYSIA.

Dated this 3 Disember 2007.

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REFERENCES:

- 1. Liew Yew Tiam & Ors v. Cheah Cheng Hoc & Ors (2001) 2 CLJ 385 CA.**
- 2. MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun & Others Appeals (1995) 2 MLJ 493 CA**
- 3. Cassell & Co. Ltd v Broome and Another (1972) 1 All ER 801 HL**
- 4. Green Lands Ltd v Wilmshurst (1913) 3 KB 507,**
- 5. Ling Hwa Press (M) Sdn. Bhd & Ors v Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals (2000) 3 CLJ. 728 at p. 732 FC per Eusoff Chin CJ (MALAYSIA).**