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THE HIGH COURT'S CLARIFICATION ON THE ASSESSMENT OF A PERSON'S 'LOST YEARS' (AOD V AOE [2015] SGHC 272)

Introduction

In the most severe accident cases, a claimant may suffer a shorter life expectancy on top of his / her physical injuries. In such cases, claimants are faced with an unenviable task i.e. to ensure that all of his possible claims arising out of the accident are made and which is hoped will help the family to cope financially once the claimant later passes away.

Although Singapore law permits that all such claimants are entitled to claim for the loss of future earnings, calculated on the basis of his / her expected earnings from the average working age until his life expectancy, there was an uncertainty if a claimant could claim beyond that i.e. the years he would have additionally worked until retirement. Such a claim is characterised as a 'lost years' claim.

The Honourable George Wei J in the High Court case of **AOD v AOE [2015] SGHC 272** has now clarified that such a claimant can indeed claim for his 'lost years'. The case also sets out the steps required in ascertaining such a claim by a very young claimant.

Brief Facts of the Case

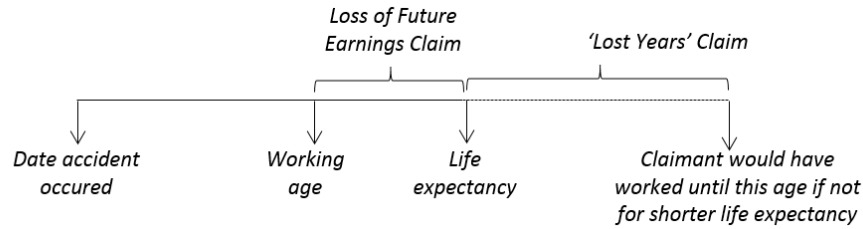
This case involved the assessment of damages of a 9 year old boy who was hit by the Defendant's car and became quadriplegic. Both the Plaintiff and the Defendant had filed a Registrar's Appeal as they were dissatisfied with the Assistant Registrar's decision.

One of these items that the parties were dissatisfied with was in relation to the claim for his 'lost years'.

The Decision in AOD v AOE

The Court recognized that the exercise of assessing a living Plaintiff's 'lost years' claim was always a difficult one, especially where it involved a young child. The Court however acknowledged that it was an exercise that had to be undertaken by the Court and should not be dismissed merely because of its difficulty.

The Court also clarified the difference between assessing the claim for the period in which the Plaintiff is expected to live and a claim for a living Plaintiff's 'lost years'. The former involved the Court awarding a Plaintiff his estimated loss of earnings (\$x) while the latter involved the Court awarding the Plaintiff his estimated loss of earnings after deducting his estimated living expenses i.e. (\$x - \$y).



In assessing the claim for lost years, the Court utilised the benchmark of mean commencing salary of young workers as the starting multiplicand and the average percentage of savings a young person would have based on his monthly CPF contributions (i.e. 40%).

In this case, as the Court had decided that the working multiplicand for loss of earnings would be \$1,723.24, the multiplicand for lost years would be 40% * \$1,723.24 = \$689.30 and over the course of 8 years as the multiplier. The multiplier was chosen even though the Court accepted that the Plaintiff would have worked until he was 62 years old but applied a substantial discount on account of the unpredictability and vicissitudes of life.

Conclusion

Insurers and personal injury practitioners would find this case instructive and helpful in approaching a case involving a young claimant. Although the exercise of determining a quantum in relation to the claim for 'lost years' will inevitably be difficult and would require trawling through statistical information, this case sets out some pointers and indicators that one could bear in mind when faced with such a claim.

This update is for general information only and is not intended to constitute legal advice. JTJB has made all reasonable efforts to ensure the information provided is accurate at the time of publication.



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