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Objective Intended
Purpose of Payment
Determines
Whether Rule
Against Double
Recovery is Violated

Lo Kok Jong v Eng Beng
[2024] SGCA 28

14 August 2024

**LEGAL
UPDATE**

In this Update

In *Lo Kok Jong v Eng Beng* [2024] SGCA 28, the Singapore Court of Appeal held that whether the rule against double recovery is violated depends on whether the intended purpose of the payment, objectively judged, was to provide the claimant with a sum to be enjoyed over and above the damages payable. The Court of Appeal also listed the key indicia that future courts should look at in determining the intended purpose of the payment in question.

03
INTRODUCTION

03
BACKGROUND

03
COURT OF APPEAL'S
DECISION

05
COMMENTARY

INTRODUCTION

In *Lo Kok Jong v Eng Beng* [2024] SGCA 28, the Singapore Court of Appeal (“CA”) allowed an appeal against a decision of the General Division of the High Court (“HC”) and held that claims for sums paid through government subsidies and grants are subject to the rule against double recovery.

The Court of Appeal held that the key question when assessing whether the rule against double recovery is violated is if “the intended purpose of the payment, objectively judged, was to provide the [claimant] with a sum to be enjoyed over and above the damages payable”.

Given the variety of subsidies and grants that Singaporeans enjoy in respect of healthcare and other aspects of social life, the Court of Appeal’s decision warrants closer study to ensure that claims that are brought before the courts are not rejected on the basis of the rule against double recovery.

BACKGROUND

The case involved a traffic accident where the Respondent was hospitalised after she was hit by a vehicle driven by the Appellant. The Respondent filed a negligence suit against the Appellant where she sought both general and special damages.

The appeal primarily related to the Respondent’s claim for various medical bills which had been paid for by various government subsidies and grants (“Sum”). While the Respondent had been initially unsuccessful before the District Court in her claim for the Sum, the HC allowed the claim on the basis that, among other factors, the relevant government subsidies and grants were not intended to relieve the tortfeasor (*ie* the Appellant) from liability to full compensate the victim (*ie* the Respondent).

For a more detailed account of the facts and our analysis of the HC’s decision, you can read our legal update on the HC’s decision [here](#).

COURT OF APPEAL’S DECISION

The CA allowed the Appellant’s appeal against the HC’s decision. The CA started its analysis from the fundamental principle that damages in tort are compensatory in nature and are meant to compensate the victim for actual loss suffered. As a result, any “collateral benefits” received by the claimant (*ie* benefits that the claimant would not have received but for the injury) would normally be deductible from the damages payable to him or her (*ie* the rule against double recovery).

The Court also reiterated that the two established categories against this rule are: (a) where the relevant sums relate to insurance payouts pursuant to policies which the claimant paid the premiums for; and (b) where the relevant sums are received from the benevolence of third parties prompted by sympathy for the claimant's misfortune.

The CA recognised that outside these two exceptions, there are "many borderline cases" where it is not immediately clear whether the relevant payment should be deductible from the damages payable. In such cases, the CA held that as a general rule of application, the primary question should be whether "the intended purpose of the payment, objectively judged, was to provide the [claimant] with a sum to be enjoyed over and above the damages payable". In the CA's view, such sums form a "separate pool of funds, accruing to the [claimant], which is unrelated to and distinct from that which the tortfeasor must pay to cover the [claimant's] loss".

The CA also found that the following non-exhaustive key indicia shed light on the objective intended purpose of a payment:

- (a) whether the claimant contributed to the relevant payment. If so, it is more likely that the payment is intended to be enjoyed on top of the damages payable;
- (b) whether the payment is in the nature of an indemnity for, or is targeted directly at, the type of loss for which damages were sought. If so, it is less likely that the payment is intended to be enjoyed on top of the damages payable;
- (c) the source of the payment (*ie* the tortfeasor, government or some other third party). If the source of the payment is the tortfeasor, that would ordinarily indicate that there is no intention for the claimant to enjoy the sum over and above the damages payable (and *vice versa* if the source of the payment is a third party). If the source is the government, the CA found that "this would generally indicate that there is no intention for the payment to be enjoyed on top of the damages payable". However, other factors or clear parliamentary intention may "tip the scales in the other direction"; and
- (d) the group of persons to whom the relevant payment is made available. In the CA's view, the "more directed the payment and the more the [claimant's] individual circumstances are assessed before disbursement, the stronger the indication that the payment is intended to be enjoyed on top of the damages payable".

However, the CA cautioned against a "mathematical or formulaic" application of the indicia and instead held that the indicia should be "considered holistically, in a manner which informs an overall judgment as to the intended purpose of the payment". The CA held that the test of the objective intended purpose is not meant to replace the two established exceptions to the rule against double recovery (*ie* the insurance and benevolence exceptions). The CA also found that excessive weight should

not be placed on public policy considerations in applying the objective intended purpose test.

On the facts of the case, the CA found that the four indicia indicated that there was no intention for the relevant government subsidies and grants to be enjoyed on top of the damages payable by Appellant. In particular, the CA found that: (a) the Respondent had not contributed to the subsidies and grants; (b) the subsidies and grants were specifically targeted to address the medical expenses incurred by the Respondent; (c) the source of the payment was the Singapore government; and (d) the subsidies and grants were made available to all citizens in general.

The CA found that a holistic assessment of the indicia showed that nothing indicated that the subsidies and grants were intended to be a separate “bounty” given to the Respondent for her enjoyment. As such, the CA allowed the appeal and rejected the Respondent’s claim for the Sum.

COMMENTARY

The CA’s decision provides welcome guidance on the scope of the rule against double recovery and the types of payments that would constitute exceptions to the rule. The test formulated by the CA for general application in such cases (*ie* the test of the objective intended purpose of the payment) and the accompanying indicia provide a clearer basis for parties to assess whether their claims are likely to violate the rule against double recovery.

Insofar as government subsidies and grants are concerned, the CA’s decision indicates that claims for such payments may violate the rule against double recovery, especially if the relevant subsidies and grants are made available to the Singaporean public in general. That being said, the analysis for each subsidy / grant will depend significantly on the legislative intent behind it.

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