



DN DREW & NAPIER

High Court Clarifies
That Government
Subsidies Can Fall
Within the
Benevolence
Exception to the
Rule Against Double
Recovery

Eng Beng v Lo Kok Jong
[2023] SGHC 63

23 March 2023

**LEGAL
UPDATE**

In this Update

In the recent decision of *Eng Beng v Lo Kok Jong* [2023] SGHC 63, the High Court allowed the claimant's claim for full medical expenses incurred as a result of the defendant's negligence where a portion of these medical expenses were subsidised by government subsidies and grants.

This decision serves as a timely reminder that the general prohibition against double recovery is balanced against the need to ensure that the tortfeasor is not allowed to unduly benefit from government subsidies or grants provided for the claimant's benefit.

03
INTRODUCTION

03
BACKGROUND

04
THE HIGH COURT'S
DECISION

06
COMMENTARY

INTRODUCTION

In the decision of *Eng Beng v Lo Kok Jong* [2023] SGHC 63, the High Court was faced with the issue of whether a claimant could make a claim for full medical expenses incurred as a result of the defendant's negligence where a portion of these medical expenses were subsidised by subsidies and grants from the government.

On the facts of the case, the Court found that the relevant subsidies and grants fell within the established benevolence exception to the general rule against double recovery in tort law.

KEYPOINT

This decision serves as a timely reminder that the general prohibition against double recovery is balanced against the need to ensure that the tortfeasor is not allowed to unduly benefit from government subsidies or grants provided for the claimant's benefit.

BACKGROUND

On 9 January 2020, the Appellant was crossing the road when she was knocked down by a motor car driven by the Respondent. The Appellant was hospitalised as she suffered serious injuries, including a fracture of her right ankle.

In June 2020, the Appellant filed a negligence suit against the Respondent, where she sought general and special damages. In July 2022, the Deputy Registrar awarded damages totalling S\$36,348.64 comprising general damages for pain and suffering as well as special damages. However, the Deputy Registrar refused to award the Appellant an additional sum of S\$39,515.08 which she claimed as special damages for medical expenses. This sum comprised of the following government subsidies and grants (collectively, the "**Government Subsidies**") which featured in the Appellant's medical bills: (a) generic government subsidies of S\$19,211.57; (b) Pioneer Generation subsidies of S\$148.88; and (c) government grants for Community Hospital Services and medical drugs of S\$20,155.16. The Government Subsidies were deducted from the Appellant's medical bills such that she was not required to pay the sums covered by the subsidies.

The Appellant appealed against the Deputy Registrar's decision but her appeal before the District Court was dismissed. The Appellant then appealed against the District Court's decision to the General Division of the High Court.

THE HIGH COURT'S DECISION

The High Court allowed the appeal and awarded the Appellant the additional sum of S\$39,515.08 as special damages to be recovered from the Respondent. The High Court also directed the Appellant to return to the Ministry of Health (“**MOH**”) this sum less all legal costs incurred by the Appellant after deducting the costs recovered from the Respondent in the pursuit of the claim.

The Court began its analysis with a restatement of the general principle that damages are compensatory in nature and seek to put the injured claimant in the same position, as far as possible, as if the tort had not been committed. Thus, the injured claimant generally cannot recover more in damages than the actual loss he or she has suffered. This means that any collateral benefits conferred upon the injured claimant by parties unrelated to the tortfeasor which compensate the claimant's loss should generally be taken into account when considering the amount recoverable from the tortfeasor (“**Rule against Double Recovery**”).

However, the Court noted that the Rule against Double Recovery is not absolute, and is subject to exceptions. While the Court found that the precise scope of these exceptions is not covered by any universal principle, the Court held that there are 2 well-established exceptions to the Rule against Double Recovery:

- (a) where the injured claimant recovers any monies under an insurance policy for which he or she has paid the premiums, the insurance monies are not deductible from damages payable by the tortfeasor (“**Insurance Exception**”); and
- (b) where the injured claimant receives monies from the benevolence of third parties prompted by sympathy for his or her misfortune, such as in the case of a beneficiary from a disaster fund, the monies received by the injured claimant are not deductible from damages payable by the tortfeasor (“**Benevolence Exception**”).

Before applying the above stated principles to the facts of the case, the Court found it critical to first understand the nature of the Government Subsidies that the Appellant received. In this regard, the Court found that each of the Government Subsidies conferred upon the Appellant were tailored to the Appellant's needs after considering various factors that were unique to the Appellant, such as her citizenship status, the fact that she was part of the Pioneer Generation, and her per capita household income. The Court also found that these Government Subsidies were conferred upon the Appellant out of the government's generosity and its desire to ensure affordable healthcare services for its citizens.

The Court then went on to consider whether the Government Subsidies fell within either of the 2 established exceptions to the Rule Against Double Recovery.

First, in relation to the Insurance Exception, the Appellant and the Respondent were of the view that the Government Subsidies fell outside the scope of the Insurance Exception. The Court agreed with this view, and found that the Insurance Exception exists because the insurance monies received by the injured claimant are the fruits of his or her thrift and foresight in purchasing an insurance plan, and should operate to the claimant's advantage rather than the tortfeasor's. Given that the Government Subsidies were a result of the government's generosity (as opposed to the Appellant's foresight or any contractual arrangement between the Appellant and the government), the Court found that these subsidies did not fall within the Insurance Exception.

Secondly, in respect of the Benevolence Exception, the Court found that this exception exists because donors intend their donations to be given only to the victim for his or her personal use and enjoyment, rather than to relieve the tortfeasor of liability. The Court found that this exception extended to hospital and pharmaceutical benefits, assuming that these benefits are conferred upon the injured claimant for his or her personal use and enjoyment, rather than to relieve the tortfeasor of liability.

In this regard, the Court found that while Parliament has not expressed its intentions behind the Government Subsidies, the inference from the policy considerations and the government's actions towards alleviating the healthcare costs of its citizens is that Parliament intended to assist and ensure that the Appellant's medical bills were within her means to pay. The Court held that these subsidies are not meant to relieve any potential tortfeasor from his liability to fully compensate the victim for injuries arising out of any tortious wrong. In the Court's view, it would be absurd to state that the government intended to dedicate scarce resources towards healthcare subsidies to relieve tortfeasors of their liability to fully compensate victims for their own tortious wrongs.

The Court also observed that the High Court in *Noor Azlin bte Abdul Rahman and another v Changi General Hospital Pte Ltd and others* [2021] SGHC 10 had also allowed the first claimant in that case to claim for compensation for the full medical expenses notwithstanding that the first claimant had enjoyed the benefit of similar government subsidies.

For these reasons, the Court held that the Government Subsidies fell within the Benevolence Exception and the Appellant was thus not prohibited by the Rule of Double Recovery in claiming the additional sum comprising the Government Subsidies from the Respondent.

Finally, the Court considered whether allowing the Appellant's claim for the sum forming the Government Subsidies effectively meant an encashment of these subsidies. In this regard, the Respondent submitted that such an encashment would be contrary to public policy. On the facts of the case, the Court found that there was nothing wrong for the Appellant to monetise the Government Subsidies by seeking to claim the full medical expenses from the Respondent as a just and reasonable compensatory claim for medical treatment for her injuries caused by the Respondent. In fact, the

Court found that to allow the Respondent to deduct the amount forming the Government Subsidies would have been unfair and unreasonable, because the Respondent would not have otherwise been entitled to these subsidies if not for the Appellant.

Nevertheless, the Court noted that the Appellant had informed the District Court that if the Court allowed her claim for the amount forming the Government Subsidies, she was willing and prepared to accept a Court order for her to return the Government Subsidies to the relevant authorities. The Appellant also reiterated her intention to abide by such an order during the appeal proceedings. The Court thus found that the Respondent's concern of double recovery was not fatal to the Appellant's case.

In the circumstances, the Court allowed the Appellant to claim the amount forming the Government Subsidies from the Respondent, and directed the counsel for the Appellant to inform the MOH that the Respondent had been ordered by the Court to pay the Appellant the amount forming the Government Subsidies. The Court then ordered that the Appellant return the MOH the amount of the Government Subsidies less all the legal expenses incurred by the Appellant after deducting the costs recovered from the Respondent in the pursuit of the claim. The Court noted that the MOH could then decide what it wishes to do with the Government Subsidies, including whether to allow the Appellant to retain the amount.

COMMENTARY

The High Court's decision serves as a timely reminder that the Rule against Double Recovery is not absolute and is subject to exceptions. In this regard, the Court's decision makes it clear that in cases involving claims for medical expenses where the injured claimant has benefitted from subsidies or grants from the government, these amounts are claimable from the tortfeasor on the basis of the Benevolence Exception. In such cases however, the injured claimant must show that the subsidies or grants are intended by Parliament to operate for the enjoyment of the injured claimant rather than to relieve the liability of the tortfeasor. Ultimately, this case demonstrates that the Rule against Double Recovery is balanced against the need to ensure that the tortfeasor is not allowed to unduly benefit from subsidies or grants provided for the claimant's enjoyment.

Furthermore, in such cases, it would be prudent for the injured claimant to consider whether to provide an undertaking to the Court that, if successful in his or her claim against the tortfeasor for the full medical expenses, he or she will reimburse the relevant government authority for the subsidy or grant. This is to ensure that any concerns surrounding the encashment of government subsidies or grants and concerns of double recovery are less likely to arise.

The content of this article does not constitute legal advice and should not be relied on as such. Specific advice should be sought about your specific circumstances. Copyright in this publication is owned by Drew & Napier LLC. This publication may not be reproduced or transmitted in any form or by any means, in whole or in part, without prior written approval.

If you have any questions or comments on this article, please contact:



Adam Maniam

Director, Dispute Resolution & Competition Law Practice (Disputes)

T: +65 6531 2741

E: adam.maniam@drewnapier.com

Sidharth Rajagopal

Associate, Dispute Resolution

T: +65 6531 2785

E: sidharth.rajagopal@drewnapier.com

Drew & Napier LLC

10 Collyer Quay
#10-01 Ocean Financial Centre
Singapore 049315

www.drewnapier.com

T : +65 6535 0733

T : +65 9726 0573 (After Hours)

F : +65 6535 4906

 **DREW & NAPIER**