

**DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM
DALAM NEGERI SELANGOR DARUL EHSAN
(BAHAGIAN SIVIL)
GUAMAN NO.: BA-23CY-4-04/2022**

ANTARA

**SUNDRA RAJOO A/L NADARAJAH
(No. K/P: 560103-04-5451)**

- PLAINTIF

DAN

MOHD RAYUS BIN ABDUL RAHIM

- DEFENDAN

GROUND OF JUDGMENT

Introduction

[1] This case is about the assessment of damages for defamation by the Plaintiff against the Defendant.

[2] On 14-9-2022, the Plaintiff has obtained Judgment in Default (JID) of Appearance.

[3] The Plaintiff's claims are for (paragraph 21 of the statement of claim)

—

(a) General damages to be assessed.

(b) Aggravated damages.



- (c) Interest on damages awarded at the rate of 5% per annum from the date of judgment to the date of full settlement.
- (d) An order that the Defendant remove the words complained of contained within the impugned comments described and set out under paragraph 13 of the statement of claim.
- (e) An injunction to restrain the Defendant, his associates, agents, and/or representatives from further posting the words complained of contained within the impugned comments described and set out under paragraph 13 of the statement of claim and/or similar words defamatory of the Plaintiff.
- (f) Costs.
- (g) Such further or relief deemed fit and proper by this Court.

[4] In the JID as signed by the Senior Assistant Registrar of the High Court is as follows (Pleading/Bundle A at page 46 to 47):

1. Defendan membayar Plaintiff ganti rugi am dan ganti rugi teruk yang akan ditaksirkan.
2. Defendan membayar Plaintiff faedah ke atas ganti rugi yang diawardkan pada kadar 5% setahun dari tarikh penghakiman hingga tarikh penyelesaian penuh.



3. Plaintiff meninggalkan tuntutan-tuntutannya terhadap Defendan untuk –
 - i. mengeluarkan kata-kata yang diadukan itu yang terkandung dalam komen-komen yang dipertikaikan itu yang dihuraikan dan dinyatakan di bawah perenggan 13 pernyataan tuntutan seperti dalam pohonan nombor (4) di bawah pohonan-pohonan Plaintiff dalam pernyataan tuntutan.
 - ii. suatu injunksi untuk menghalang Defendan, rakan sekutunya, ejen, dan/atau wakilnya daripada menyiarkan seterusnya kata-kata diadukan yang terkandung dalam komen-komen yang dipertikaikan itu yang dinyatakan dalam perenggan 13 pernyataan tuntutan dan/atau kata-kata serupa yang memfitnah Plaintiff seperti dalam pohonan nombor (5) di bawah pohonan-pohonan Plaintiff dalam pernyataan tuntutan.
4. Defendan membayar Plaintiff kos yang akan ditaksirkan.
5. Taksiran ganti rugi di perenggan 1 dan kos di perenggan 4 di atas akan ditaksirkan di hadapan Pesuruhjaya Kehakiman Mahkamah Tinggi Shah Alam.

[5] It is crystal clear that the JID had stated that the general damages and aggravated damages to be assess by the High Court whereas the relief/prayer seek by the Plaintiff is for the general damages to be assessed.



[6] On 25-11-2022, this Court has assessed the general damages and aggravated damages.

[7] The Plaintiff has called 2 witnesses that is the Plaintiff himself and Mr Lee Tze Jiet, a lawyer. The witness statements are filed.

[8] The issue of assessment of damages relating to quantum of damages only need to be decided. The Plaintiff abandons the prayers in for an order for removal the words complained of contained within the impugned comments and prayer for an injunction to restrain the Defendant, his associates, agents, and/or representatives from further posting the words complained of contained within the impugned comments.

[9] In the written submission by the learned counsel for the Plaintiff stated –

40. ... the Plaintiff prays from the Defendant in light of the matters alluded to earlier when computing the size of the award –

(a) A sum of **RM800,000.00** as **General** Damages including **Aggravated** Damages against the Defendant since there were three (3) defamatory publications in the form of the impugned comments on 16.10.2021 and one (1) defamatory publication on 17.10.2021 as set out under paragraph 20 above;



- (b) Interest of 5% on the sum of RM800,000.00 in relation to the General Damages including Aggravated Damages awarded from the date of judgment until the date of full settlement; and
- (c) Costs in the sum of RM80,000.00.

[10] On 22-12-2022, the decision is as follows:

**KEPUTUSAN MAHKAMAH
MENGENAI TAKSIRAN GANTI RUGI SELEPAS
PENGHAKIMAN INKGAR (JID)**

[1] *Pada 14-9-2022, tiada kehadiran telah dimasukkan oleh Defendan dalam tindakan ini dan suatu penghakiman ingkar telah direkodkan oleh Mahkamah. JID ini juga tidak diketepikan oleh Defendan.*

[2] *Bagi relief untuk fitnah bertulis dalam artikel yang dipertikaikan, Plaintiff menuntut suatu ganti rugi am yang perlu ditaksirkan oleh Mahkamah dan ganti rugi teruk.*

[3] *Pada 25-11-2022, pendengaran taksiran ganti rugi telah diadakan dan Plaintiff hadir (SP1) dan memanggil seorang saksinya iaitu En. Lee Tze Jiet, seorang peguam (SP2).*



[4] *Hujahan bertulis telah difailkan dan peguam cara Plaintiff terpelajar menggunakan nas undang-undang kes untuk memohon Mahkamah ini mengawardkan jumlah ganti rugi sebanyak RM800,000.00 sebagai Ganti rugi Am termasuk Ganti rugi Teruk terhadap Defendan memandangkan terdapat 3 defamatory publications dan faedah pada kadar 5% ke atas jumlah RM800,000.00 dari tarikh penghakiman sehingga tarikh penyelesaian penuh serta kos sebanyak RM80,000.00.*

[5] *Selepas meneliti keterangan yang dikemukakan di hadapan Mahkamah ini dalam taksiran ganti rugi, Mahkamah ini memutuskan –*

- a) *untuk menaksir ganti rugi am termasuk ganti rugi teruk sebanyak RM80,000.00 adalah taksiran yang munasabah dan adil.*
- b) *faedah pada kadar 5% setahun ke atas jumlah RM80,000.00 dari tarikh penghakiman sehingga tarikh penyelesaian penuh.*
- c) *kos sebanyak RM4000.00 (tertakluk kepada fi alokatur).*

[11] The Plaintiff appeals.



Statement of Claim

[12] The factual matrix as contains in the statement of claim is –

- (a) on 16-10-2021, one Shahrir Samad had posted on his Facebook profile page '**Shahrir Samad – Tok Uban**' a posting entitled '**Kerana dendam, imej negara terjejas**'. This posting was accompanied by pictures of the Plaintiff and 3 news reports describing Plaintiff by name.
- (b) on the same date (16-10-2021) and the next date (17-10-2021), the Defendant authored and posted in the comments section of the above posting, the following words of and concerning the Plaintiff ("impugned comments") together with their English translations in which the words complained of are underlined and made bold:

Posted on 16-10-2021 at 7.58 pm:

Oooo.. jadi admin tutup mata la atas tuduhan pecah amanah RM1 juta dana AIAC ke atas mamat ni (DATO SUNDRA RAJOO) la ya?

So org yg dituduh pecahamanah RM1 juta, atas sbb ada kekebalan imuniti (bkn bermakna dia xbuat tp dia ada kekebalan mcm raja2).. so di terlepas dari didakwa... now nk saman AG & bekas ketua SPRM.. org yg mcm ni yg admin nk angkat DEMI NK MEMBURUKKAN AG & KETUA SPRM ZAMAN PH la ya?



Pendek ceta.. “xpe buat salah sbb ko ada imuniti.. jika ada yg nk dakwa ko.. ko bole saman org tu”

Terbaik ADMIN..

Posted on 16-10-2021 at 8.26 pm:

Zulkifli Muhammad so jika ada buat salah.. tggk dari jauh jela ya?

Posted on 16-10-2021 at 8.58 pm:

Zulkifli Muhammad kdg bkn sbb bodoh.. sbb dh nmpk kesalahan dpn mata tp dihalang sbb imuniti ni.. imuniti tu patut pd kes2 yg berkaitan AIAC.. jika pecahamanah tu patut terbatal imuniti.. tp tula.. undang2 manusia yg buat.. patut anda puji org mcmni.. sbb cara lain xde nk dakwa kesalahan org2 mcmni.

Posted on 17-10-2021 at 12.59 am:

Berdasarkan kertas pertuduhan, Sundra Rajoo didakwa sebagai Pengarah AIAC yang akan diamanahkan dengan penguasaan dana syarikat itu, melakukan pecahamanah berjumlah keseluruhan 1,011,367.50 di pejabat AIAC, Bangunan Sulaiman, Jalan Sultan Hishamuddin, di sini, antara 8 Disember 2016 dan 17 Ogos 2018.

Best btul hidup ada imuniti mcm raja2...

Walau dikata tindakan AG & SPRM di mata undang2 adalah bodoh.



Patut di mata rakyat.. satu tindakan terpuji

Tapi ada rakyat setuju dgn undang2 mcmni

[13] The Plaintiff in paragraphs 14 to 16 pleaded that the Federal Court in its grounds of judgment in the Plaintiff's case **Sundra Rajoo Nadarajah v. Menteri Luar Negeri Malaysia & Ors** [2021] 6 CLJ 199, amongst others, held that –

- (a) the charges against the Plaintiff pursued in the criminal court for criminal breach of trust were without merit and illegal and thus reinstated the decision of the High Court;
- (b) in any event, there was functional immunity applicable to protect the Plaintiff in respect of matters carried out in his official capacity by virtue of his position as the former Director of the Asian International Arbitration Centre; and
- (c) there was no evidence that the Plaintiff had committed criminal breach of trust (which decision was also arrived at by the High Court).

[14] Therefore, according to the Plaintiff, in light of the Federal Court decision, the comments authored and posted by the Defendant are plainly false, untrue, unwarranted, unsubstantiated, malicious, mischievous and constitute a grave and serious libel on the Plaintiff.

[15] Next, the Plaintiff has pleaded that the Defendant had lowered the Plaintiff in the estimation of right-thinking members of society generally.



The Plaintiff has thus been brought into public scandal, odium and contempt.

[16] The impugned comments by the Defendant has also caused the Plaintiff extreme embarrassment, hurt to his feelings and acute distress.

[17] In the Plaintiff's witness statement (marked as "PSP-1"), the answers given pertaining to the impugned comments by the Defendant that affect the Plaintiff, namely –

"Answers to Q6 at page 6:

- A1. I received several calls from fellow lawyers and friends asking me whether the words complained of forming part of the impugned comments were true. They also asked me why a discussion on the CBT allegation against me was continuing if the matter had been put to rest by the Federal Court decision in my favour, and whether I was actually involved in the CBT allegations.
- A2. These are people whom I know. As for other Facebook readers, that may not be aware of the Federal Court decision made 4 months prior to the impugned comments. My estimation would have clearly been lowered their eyes.
- A3. I was distraught, it affected me mentally and physically. I was afraid to face the world, and my self-confidence was severely affected. I felt that people were keeping their distance from me.



Answers to Q9 at page 10:

- A1: In light of the fact that the Federal Court had cleared me of all or any wrongdoing, and the fact that the impugned comments were made by the Defendant some 4 months after the Federal Court's grounds of judgment clearly shows that he has no regard for the findings of the highest court of the land and/or was reckless as to its existence.
- A2: The words used were scandalous, vitriolic, grave, and serious in nature. My name has been tarnished, and I have been '*dragged through the mud*'. My reputation has been injured by the words complained of posted by the Defendant.
- A3: There were no attempts made by the Defendant to verify the facts with me prior to posting his impugned comments and neither did he allow me any opportunity to state my side of the story.
- A4: The Defendant appeared to be indifferent to the truth and he is clearly irresponsible. In short, the words complained, of touch on my integrity, personal reputation and professional reputation as a leading Arbitrator and practitioner of Construction Law and Arbitration. Hence, in so far as its gravity is concerned, it is indeed grave and serious.



Answers to Q10 at page 10 to 11:

A1: I would say that having posted on Facebook, the size and influence of the circulation of the impugned comments would no doubt be massive. The negative connotations would reach a wide spectrum of people from all walks of life. Facebook is a common social media platform accessible domestically and internationally, so anything posted would have far-reaching consequences.

A2: I have an international presence having held many positions internationally.

A3: As mentioned earlier, I had fellow lawyers calling me and asking me what was going on. They said the impugned comments painted me in a bad light.

[18] As the Plaintiff answered that “I received several calls from fellow lawyers and friends asking me whether the words complained of forming part of the impugned comments were true.”, the Plaintiff call Mr Lee Tze Jiet, a lawyer as its second witness.

[19] Mr Lee Tze Jiet’s witness statement (marked as “PSP-2”) is as follows:

- I was called to the Bar in 2018 so I have been in practice for 4 years now.



- I have known the Plaintiff ever since the year 2011 when I was in university. The Plaintiff was a famous author of textbooks in the area of arbitration practice. A2. Having qualified as a lawyer, I became engaged in the practice of arbitration, and as such on many occasions I came into contact with the Plaintiff either when I appeared as Counsel before him sitting as an arbitrator, in social functions and in arbitration talks and lectures given by him.
- On or around 18.01.2021, sometime in the evening, I was scrolling through various social media platforms, and while scrolling through the Facebook page of Shahrir Samad in particular 'Shahrir Samad – Tok Uban' the page of which I am a follower, I came across a posting by him entitled 'Kerana dendam, imej negara terjejas'.
- Having read through the said posting, I then noticed under the comments section immediately at the bottom, several comments posted by other Facebook users.
- A particular Facebook user by the name Rayus Rahim, who is the Defendant in this suit, had made several damaging comments about Datuk Sundra Rajoo. I was shocked upon reading the same, and I immediately alerted him of the same.



- The comments posted by the Defendant casted Datuk Sundra Rajoo in a bad light suggesting he was guilty of criminal breach of trust, that he was let off from being prosecuted because of his immunity as a Director of the Asian International Arbitration Centre (AIAC), and his immunity ought to be cancelled in cases of criminal breach of trust.
- This is where, as I had mentioned earlier, on 16.10 2021, Shahrir Samad had posted on his Facebook profile page 'Shahrir Samad – Tok Uban' a posting entitled 'Kerana dendam, imej negara terjejas' in Bahasa Malaysia with its English translation. This is the said posting I was referring to.
- The posting itself is in favour of the Plaintiff. However, if we look at the comments section beginning in B, p. 113 appearing at the end after the said posting and ending in B, p.115, there are several comments made by the Defendant in Bahasa Malaysia with its English translation. As I understand it, the words complained of have been made bold and underlined...



- I was shocked and surprised especially since only about 4 months earlier the Federal Court in its decision had exonerated the Plaintiff of all charges and wrongdoing and had held that the charges for criminal breach of trust against him were without merit and illegal. The Federal Court also held that in any event the Plaintiff had functional immunity.

Who is the Defendant?

[20] The Plaintiff has in paragraph 9 of the statement of claim pleaded –

“The Defendant is a businessman having an address for service at No. 10, Jalan Kenyalang 11/3E, PJU 5 Kota Damansara, 47810 Petaling Jaya, Selangor and also goes by the moniker Ray Imran. The Defendant has a Facebook account bearing the name ‘Rayus Rahim’.

[21] The Plaintiff describe the Defendant as follows (Answers to Q15 at page 14 to 15:

“I would say that his behaviour leaves a lot to be desired. He had ignored my demands made in my Letter of Demand sent to him, he had ignored the Court papers served on him by way of substituted service.



When he posted the impugned comments, he did so with total recklessness. He was indifferent to the truth and failed to contact me to seek verification and/or to set out my version of the story so that the comments set out by him would be balanced.”.

The aggravated damages

[22] The Plaintiff has in paragraph 19 of the statement of claim stipulated the factors in support of claim for aggravated damages.

[23] The Plaintiff rely on the following factors in support of his claim for aggravated damages:

- (a) The Defendant proceeded to publish the words complained of recklessly and maliciously without conducting any verification to ascertain the truth or accuracy of the said words.
- (b) The Defendant proceeded to publish the words complained of recklessly and maliciously without communicating with the Plaintiff beforehand to ascertain the truth or accuracy of the words complained of and/or statements published in the impugned comments or posting.



- (c) Despite the gravity of the words complained of made by the Defendant as a part of the impugned comments, the Defendant posted the impugned comments containing the words complained of without affording the Plaintiff any opportunity to comment beforehand on the proposed comments;
- (d) The impugned comments were posted on a platform namely Facebook enabling access to a wide spectrum of readership both locally and abroad consisting of members of the public, lawyers, architects, engineers, quantity surveyors and all those others including but not limited to the practice of construction law and arbitration.
- (e) Notwithstanding the fact that the Plaintiff had made it clear in the pre-action Letter of Demand to the Defendant that the impugned comments contain statements which are false and defamatory, it is to be inferred that the refusal to offer any apology or retraction is because the Defendant is indifferent to the truth and does not wish to damage his credibility by apologising to the Plaintiff.
- (f) The Defendant knew or ought to have known that the allegations comprising the said words complained of are untrue.



- (g) This Court will be asked to infer that the Defendant published the words complained of in the knowledge that they were defamatory and/or with a reckless disregard as to whether or not they were defamatory.
- (h) The impugned comments were plainly likely to damage the Plaintiff's reputation. Notwithstanding the fact that the Defendant could easily have contacted the Plaintiff prior to posting the impugned comments, in order to confirm the veracity of the factual matters and was aware that this would constitute normal responsible practice, he deliberately and cynically decided not to do so. This I say is because his only concern was to post the impugned comments containing the words complained of in a hard-hitting manner to cause maximum damage to the Plaintiff's personal and/or professional reputation.
- (i) The impugned comments containing the words complained of continues to remain posted on page '**Shahrir Samad – Tok Uban**' under the posting entitled '**Kerana dendam, imej negara terjejas**' dated 16.10.2021 and is hence accessible and continues to remain accessible despite the Plaintiff's pre-action letter of demand requesting for their removal.
- (j) There is therefore a real risk that the Defendant, unless restrained, will continue to publish the words complained of or similar words defamatory of and concerning the Plaintiff.



The Law

[24] The “Principles on Damages” is as follows:

“310. General damages in a defamation claim serves three purposes –

310.1. Consolation for the personal distress and hurt caused to the Plaintiff’s by the publication.

310.2. Reparation for the harm done to the appellant’s personal and (if relevant) business reputation.

310.3. Vindication of the Plaintiff’s reputation.

*See: **MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun** [1995] 2 MLJ 493 at 526.*

311. In terms of the purpose of vindication, the sum awarded must be at least the minimum necessary to signal to the public the vindication of the Plaintiff’s reputation.

*312. To put things into context, in **Liew Yew Tiam & Ors v Cheah Cheng Hoc & Ors** [2001] 2 CLJ 385 at 395, the Court of Appeal held that injury to reputation is as, if not more, important to a member of our society than the loss of a limb.*



313. In assessing the quantum of damages against the three purposes as submitted above, several considerations must be looked at. The Federal Court in **Datuk Harris Mohd Salleh v Datuk Yong Teck Lee (sued in his personal capacity and as an officer of the second respondent) & Anor** [2017] 6 MLJ 133 at 186-187 and 190, paragraphs 76 and 82 held that the following considerations are relevant to be considered assessing compensatory damages–

- 313.1. The gravity or seriousness of the allegation;
- 313.2. The size and influence or extent of the circulation;
- 313.3. The effect of the publication;
- 313.4. The extent and nature of the claimant's reputation;
- 313.5. The behaviour or conduct of the defendant including absence of remorse; and
- 313.6. The behaviour of the claimant.

(see **Big Man Management Sdn Bhd v TNB** [2020] 11 MLJ 472 at 508, paragraph 142; **Mox-Linde Gases Sdn Bhd v Wong Siew Yap** [2015] 10 MLJ 413 at 526, paragraph 35; and **Chin Choon @ Chin Tee Fut v Chua Jui Meng** [2005] 3 MLJ 494 at 498, paragraph 5)

314. In considering the above factors in assessing damages for a defamation suit, the actual standing and reputation of the plaintiff in the community prior to the libel is one relevant factor. The higher the reputation the plaintiff has, the greater the damages. Similarly, the more the libel gets away from the truth, the greater is the effect on the award of damages.



315. Considering the above factors, we submit that–

315.1. *the accusations made by the Defendant against the Plaintiff are serious libels constituting an attack on the Plaintiff's dignity and moral character especially emphasizing on his religious faith.*

315.2. *The size and influence of the circulation of the publication is wide in view of the Defendant's status as a celebrity with a huge number of followers on her social media where the Impugned Statements are published on.*

315.3. *The effect of the publication has caused the Plaintiff huge embarrassment such that his friends and acquaintances have questioned him about the allegations and the publics who condemned the Plaintiff with harsh words by commenting under the Impugned Statements.*

315.4. *The behaviour of the Defendant is disrespectful and shows no remorse. This can be seen that actions were already initiated against the Defendant by the Plaintiff based on earlier publications and undertakings were given by the Defendant. There has been no apology by the Defendant after the publication as well.*



316. Another relevant factor in assessing damages in a defamatory action is the fact that the defence of justification has been raised. It is a maxim in the law of libel that 'damages multiply when justification fails'. (see: **MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun** [1995] 2 MLJ 493 at 525; **Dato Seri Mohammad Nizar bin Jamaluddin v Sistem Televisyen Malaysia Bhd** [2014] 4 MLJ 242 at 580, paragraph 18).

317. We further submit that aggravated damages and exemplary ought to be awarded in the present case.

318. Aggravated damages is merited in the event the Defendant has no genuine belief in the truth and deliberately avoids to ascertain the truth or was guilty of wilful blindness that although there were strong grounds of suspicion that what was being published was false, the defendant deliberately avoids making further inquiries in order to forestall the suspicion turning into certainty. In assessing this, the conduct of the Defendant, and her state of mind should be considered. We submit that this is a clear case as the Defendant had showed an express malice in publishing the Impugned Statements. (see: **Lim Guan Eng v Ruslan bin Kassim and another appeal** [2021] 2 MLJ 514 at 574, paragraph 188)



319. Another factor which warrants the grant of aggravated damages is that the Defendant is a celebrity who is active in the social media. Being a celebrity in social media, the Defendant is in the position to disseminate information widely through the internet. Therefore, aggravated damages ought to be granted in order to send a strong message to the Defendant to exercise a proper degree of care and diligence not to injure others. (see: **Mox-Linde Gases Sdn Bhd v Wong Siew Yap** [2015] 10 MLJ 413 at 434, paragraph 36)

320. We further submit that exemplary damages ought to be awarded in the present case. The Defendant's gain and profit as a celebrity is proportionate to her exposure and extent of discussion by the public. On this, we submit that the gain of the Defendant would be better off financially by making accusations and publications on her family matter involving the Plaintiff. (see: **Lim Guan Eng v Ruslan bin Kassim and another appeal** [2021] 2 MLJ 514 at 575, paragraph 189)

321. However, the form of advantage gained by the Defendant need not be in monetary terms. It is sufficient as long as the publication would produce an immediate non-pecuniary advantage that may translate itself into a monetary reward sometimes later. On this, the Defendant's gain of exposure in the public had in fact been improved due to the circulation relating to her accusations victimising herself. This advantage is crucial to a celebrity and can be translated into monetary reward in terms of securing more ambassadorship. This can be seen in the Sixth Posting in which the Defendant had mentioned her family matters relating to the Plaintiff



*and the children when the interview was on her experience in terms of religion (see **Chin Soon @ Chin Tee Fut v. Chua Jui Meng** [2005] 3 MLJ 494 at page 500 para 12).*

Evaluation & Findings of this Court

[25] It is pleaded by the Plaintiff that the impugned comments were made by the Defendant some 4 months after the Federal Court's grounds of judgment clearly shows that he has no regard for the findings of the highest court of the land and/or was reckless as to its existence.

[26] Whether the Defendant's comments are due to "he has no regard for the findings of the highest court of the land and/or was reckless as to its existence" or the Defendant is not happy with and criticize the highest court of the land's decision?

[27] As far as the issue is only for quantum of damages to be assessed by this Court, is the Plaintiff entitle to receive **RM800,000.00** as **General Damages** including **Aggravated Damages** against the Defendant since there were 3 defamatory publications in the form of the impugned comments on 16.10.2021 and 1 defamatory publication on 17.10.2021?

[28] As for the damages sought by the Plaintiff i.e. general damages and aggravated damages, the authority of cases on damages for libel can be read in the decisions by the apex Court till the High Court, namely –



- Federal Court in **Tenaga Nasional Bhd v. Evergrowth Aquaculture Sdn Bhd & Other Appeals** [2021] 9 CLJ 179.
- Federal Court in **Ling Wah Press (M) Sdn Bhd & Ors v. Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals** [2000] 3 CLJ 728.
- Court of Appeal in **Yang Dipertua Majlis Daerah Gua Musang v. Pedik Busu & Ors** [2014] 3 CLJ 847.
- Court of Appeal in **Mahadevi Nadchatiram v. Thiruchelvasegaram Manickavasegar** [2001] 3 CLJ 65.
- Court of Appeal in **M.G.G. Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun & 2 Other Appeals** [1995] 2 CLJ 912.
- High Court in Malaya at Ipoh in **Al Maarif Travel & Tours Sdn Bhd v. Nur Farhana Yeop Hussin & Anor.** [2022] 1 LNS 69.

[29] In the case of **Lim Guan Eng v. Ruslan Kassim & Anor Appeal** [2021] 4 CLJ 155 it was held –

“Now, aggravated damages are classified as a species of compensatory damages, which are awarded as additional compensation where there has been intangible injury to the interest of personality of the plaintiff, and where this injury has been caused or exacerbated by the exception conduct of the defendant.”.



And also, it was held –

“[122] Now, the award of damages is meant to be compensatory and not a scheme for untold wealth. In a case where there is damage to reputation, the compensation must include such sum as would vindicate his or her good name and take into account the distress, hurt and humiliation which the defamatory publication has caused. The primary aim of a remedy in defamation came up for discussion in **Anwar Ibrahim v. NST**, supra, with the following outcome:

[82] However, compensation in defamation is not quite the same as in other torts. Compensation for a successful plaintiff in most areas of the law involves the intention to place such plaintiff, as far as money is capable of doing so, in the position the plaintiff would have been but for the defendant's wrongdoing. The tort of defamation, however, exposes the defendant to a monetary remedy that includes both vindication of the plaintiff to the public and as consolation to him for a wrong done (see **Uren v. John Fairfax & Sons Pty Ltd** (1966) 117 CLR 118 at p 150).

Compensation in this sense might also include an element of social disapproval of the defendant's conduct not unlike punishment in criminal cases. This is probably why although the law presumes harm to reputation, there will invariably be lengthy accounts in defamation trials of the plaintiff's hurt, outrage, distress, dignity and the like rather than proof of any actual damage to reputation.



Lord Diplock in **Cassell & Co Ltd v. Broome & Anor** [1972] AC 1027 at p 1125 lent credence to this idea in a seminal passage where he said:

‘The harm caused to the plaintiff by the publication of a libel upon him often lies in his own feelings, what he thinks other people are thinking of him, then in any actual change made manifest in their attitude towards him.’

[83] To muddy the waters further, although there can be no action in defamation for a publication merely because it injures a person’s feelings, damages can be awarded for the plaintiff’s injured feelings including the hurt, anxiety, loss of self-esteem, the sense of indignity and the outrage felt by the plaintiff once it is established that such person’s reputation has been harmed. Of course, such damages are awarded because these are consequences that flow naturally from the publication of the defamatory matter (see **Carson v. John Fairfax & Sons Pty Ltd** (1993) 178 CLR 44 at p 71).

[84] The question that arises is therefore this. Should the primary aim of a remedy in defamation be in satisfying the plaintiff’s hurt feelings etc or should it be in vindicating his or her standing in the community? In my respectful view, if we concern ourselves primarily with putting the plaintiff in the position he or she was before the defendant’s



wrongdoing, vindication of his or her standing in the community should be the focus of the remedy rather than any award of large sums of money for the plaintiff's hurt feelings. Plaintiff may however also feel that only substantial damages may vindicate or restore their reputation and good name. But I think that vindication of reputation can also be achieved through non-monetary means. For example, the best vindication would be an almost immediate and prominent apology, correction or retraction by the defendant after publication of defamatory material. In that situation, there would be minimal damages. It should also follow that a court-ordered correction on a defendant after a trial would serve just as well if not better in the vindication or restoration of a damaged reputation than large money damages.”.

[30] As a further example, the Court of Appeal in **Sambaga Valli K R Ponnusamy v. Datuk Bandar Kuala Lumpur & Ors And Another Appeal** [2017] 1 LNS 500; [2018] 1 MLJ 784 through the judgment of Mohd Zawawi Salleh JCA noted as follows:

“[32] Now, aggravated damages are classified as a species of compensatory damages, which are awarded as additional compensation where there has been intangible injury to the interest of personality of the plaintiff, and where this injury has been caused or exacerbated by the exceptional conduct of the defendant.”.



[31] The learned counsel for the Plaintiff submits that in order for this Court to assess the size of the amount of damages to be awarded to the Plaintiff in respect of the vindication and injury to his reputation and professional standing, this Court is required to consider, amongst others, the following non-exhaustive set of guidelines, as was alluded to by the Court of Appeal in the case of **Chin Chooi v. Chua Jui Meng** [2005] 2 MLJ 569 –

- (i) The gravity of the allegations;
- (ii) The size and influence of the circulation;
- (iii) The extent and nature of the Plaintiffs' reputation;
- (iv) The behaviour of the Plaintiff; and
- (y) The behaviour of the Defendant.

[32] The learned counsel for the Plaintiff submits that the general (compensatory) damages awarded to the Plaintiff ought to be on the relatively higher side due to his professional reputation and standing both locally and abroad as a leading arbitrator, writer and advocate and solicitor which have been tarnished.



[33] The factual matrix as laid out in the statement of claim is pleaded that –

- the Defendant could have approached the Plaintiff to seek verification of the words complained of to ascertain its veracity. This he did not do. He hence published the same recklessly and maliciously.
- the Defendant posted the impugned comments without giving the Plaintiff any prior opportunity to comment on the same. Had the Plaintiff been given the opportunity to comment beforehand, he would have informed the Defendant that the Federal Court had found in his favour 4 months ago, and as such, the impugned comments have no basis.

[34] For comparison, the learned counsel for the Plaintiff cited the following cases where the Courts held on damages:

- (a) in the case of **Nurul Izzah Anwar v. Tan Sri Khalid Abu Bakar & Anor** [2018] 7 CLJ 622, the High Court awarded the Plaintiff as damages for defamation the sum of RM400,00.00 against the First Defendant and the sum of RM600,000.00 against the Second Defendant after conducting an analysis of (a) the seriousness of the libel; (b) the extent of the publication; (c) the plaintiff's reputation and the adverse impact of the defamatory statements on her reputation; (d) the defendants' lack of remorse; and (e) recent award of damages for libel. Costs were awarded in the sum of RM80,000.00.



- (b) in the case of **Jahara Hamid v. Lim Guan Eng** [2015] 6 CLJ 328, the High Court awarded RM500,000.00 as general damages including aggravated damages as well as an injunction and costs of RM40,000.00 for a publication appearing in the Malay Mail Online in which the Defendant, the then Chief Minister of Penang and a State Assemblyman had called the Plaintiff, also a State Assembly woman a ‘racist grandmother’.
- (c) in the case of **Tan Sri Dato’ Lim Guan Teik v. Tan Kai Hee** (2013] 10 CLJ 771, the High Court awarded the Plaintiff a sum of RM200,000.00 as general damages including aggravated damages plus costs of RM100,000.00 in respect of two publications appearing in Nanyang and Sin Chew newspapers as a result of a press conference given by the Defendant.

Therefore, the learned counsel for the Plaintiff aver that from the above cases, it will be seen that the damages awarded ranges from RM200,000.00 to RM600,000.00 for general damages and aggravated damages.

[35] This Court refer to a paragraph from **Mc Gregor on Damages (16th Ed, 1997) at page 287–**

“The primary object of an award of damages is to compensate the plaintiff for the harm done to him; a possible secondary object is to punish the defendant for his conduct in inflicting that harm.



Such a secondary object can be achieved by awarding, in addition to the normal compensatory damages, damages which are variously called exemplary damages, punitive damages, vindictive damages or even retributory damages, and comes into play whenever the defendant's conduct is sufficiently outrageous to merit punishment as where it discloses malice, fraud, cruelty, insolence or the like."

[36] The decision of the Court of Appeal in **Sambaga Valli a/p K.R Ponnusamy v. Datuk Bandar Kuala Lumpur & 2 Ors and Datuk Bandar Kuala Lumpur & 2 Ors v. Sambaga Valli a/p K.R Ponnusamy** [2017] 1 LNS 500, YA Dato' Zawawi Salleh, Court of Appeal Judge (Yang Arif as he then was), has delivered a comprehensive judgment for me to apply to this case and to guide me on the assessment of damages. The relevant portions of the grounds are, – [*emphasize added*]

"Appeal 55 is an appeal by the plaintiff against the whole of the learned JC's decision while Appeal 56 is an appeal by the defendants against the part of the decision involving the award of exemplary and aggravated damages.

[6] The defendants' main contention is that aggravated damages ought not to have been awarded at all or alternatively the award of RM2,000,000 is excessive and ought to be reduced.

...



[10] Secondly, it is fundamental and trite that a plaintiff claiming damages must prove his damage. A plaintiff cannot simply make a claim without placing before the Court sufficient evidence of the loss it has suffered even if it is otherwise entitled in principle to recover damages. The law, however, does not demand that the plaintiff prove with complete certainty the exact amount of damage that he has suffered.

Thus, the learned author of **McGregor on Damages** states as follows (at para 8-002):

*“[W]here it is clear that some substantial loss has been incurred, the fact that an assessment is difficult because of the nature of the damage is no reason for awarding no damages or merely nominal damages. As Vaughan William L.J put in in *Chaplin v. Hick* [[1911] 2 KB 786], the leading case on the issue of certainty: “The fact that damages cannot be assessed with certainty does not relieve the wrongdoer of the necessity of paying damages.” Indeed, if absolute certainty were required as to the precise amount of loss that the claimant had suffered no damages would be recovered at all in the great number of cases. This is particularly true since so much of damages claimed are in respect of prospective, and therefore necessarily contingent, loss.”. (emphasis added).*



[11] Thirdly, the assessment of damages in action in this nature does not admit of fixed rules and mathematical precision, but is a matter left to the sound discretion to the judges. The courts refuse to lay down any rules or mathematical formula by which such damages are to be assessed by judges. The fairness and reasonableness of the award cannot be subjected to any recognised test or measure by any certain standard. If the award is manifestly inadequate or excessive, or there are indications that the award was influenced by improper considerations or the mistake was too plain, the appellate court should not hesitate to remedy the trial court's error. All the courts should do are to award sums which is reasonable, moderate and conventional.

...

[14] It is trite that a person injured by another's wrong is entitled to general damages for non-pecuniary such as his pain and suffering, hardship, discomfort, mental distress and loss of amenities of life. There is no standard rule to measure the damage in such cases. The Courts usually determine the amount based on a fair and reasonable standards, free from sentimental or fanciful standards, and based upon evidence adduced. The Court should also consider the age, health and condition of the injured party pre-injury as compared with his condition after the injury. The Court also consider the need for medical, psychological or physical symptoms, and the impact on the plaintiff's conduct and lifestyle before apportioning the amount of damages.

...



Aggravated and Exemplary Damages

[32] Now, aggravated damages are classified as a species of compensatory damages, which are awarded as additional compensation where there has been intangible injury to the interest of personality of the plaintiff, and where this injury has been caused or exacerbated by the exceptional conduct of the defendant.

...

[41] *In the same vein, the **Singapore Court of Appeal in Koh Sin Chong Freddie v. Chan Cheng Wah Enterprise [2012] 4 SLR 129** stated at page 652 –*

... we are nonetheless of the view that there should be some semblance of proportionality between the quantum of damages and aggravated damages awarded...”; and ... Aggravated damages are meant to compensate for the aggravation of the injury; they are not an arbitrary top-up unrelated to the desire of the court to compensate the plaintiff for the aggravation.”.

[37] Last but not least, the High Court at Kuala Lumpur in **Sundra Rajoo A/L Nadarajah v. Leaderonomics Sdn Bhd & Anor [2023] 5 MLRH 284**, Leong Wai Hong JC, after a defamation trial heard over 4 days from 10-04-2023 to 13-04-2023 dismiss the suit against the 1st defendant with costs of RM50,000 to the 1st defendant subject to allocator.



Conclusion

[38] In conclusion, it is my judgment that having evaluated the evidence adduced at the trial for the assessment of damages, I find that the award for general damages and aggravated damages of RM80,000.00 and with costs of RM4,000.00 subject to allocator fee are reasonable and appropriate.

Dated: 23 July 2023.

Rozi Bainon

(ROZI BINTI BAINON)
Judicial Commissioner
High Court NCvC12
Shah Alam

Counsels:

For the Plaintiff:

Rueben Mathiavaranam

Tetuan Suflan T H Liew & Partners, Kuala Lumpur

