

THE RETIREMENT AGE ACT 1993 AND DAMAGES FOR LOSS OF FUTURE EARNINGS

THE Retirement Age Act of 1993¹ (hereafter “the Act”), which raises the minimum retirement age to 60, is a major piece of legislation in terms of both social and economic policy. The Act also has an impact on the assessment of damages for the loss of future earnings over a period that span a person’s working life. This is because it might extend the remaining period of a living plaintiff’s working lifetime.

The essence of the Act can be found in section 4(1), which states that “[n]otwithstanding anything in any other written law, contract of service or collective agreement, the retirement age of an employee shall not be less than 60 years or such other age, up to 67 years, as may be prescribed by the Minister.” To buttress the provision, section 4(2) goes on to state that no employer may dismiss “on the ground of age any employee who is below 60 years of age or the prescribed retirement age.” Under section 5, any term of a collective agreement which provides for a lower retirement age is void. Under section 6, any contract term which excludes or limits the operation of the rule is also void. To date, the Minister has not exercised his power to extend the prescribed age of 60.

The raising of the retirement age to 60 means that multipliers used in straight multiplier times multiplicand computations for loss of future earnings that span a working lifetime might be increased accordingly.² The increase should, in theory, be less than the full increase of 5 as it has to be discounted to take into account various factors including the fact of advance payment and the contingencies of life. It is difficult to specify the exact discount as the discounting for such factors cannot be based on a precise mathematical formula. However, a numerical discount of at least 1 or 2 can be expected.

Even though the retirement age here is now very much closer to if not on par with those in industrialised countries like England, the case law

¹ Act 14 of 1993.

² For a general discussion of the way such damages are computed, see Rutter, *Handbook on Damages for Personal Injuries and Death in Singapore and Malaysia* (2nd ed, 1993), Ch7.

from these countries on the relevant multipliers to use for individuals of varying ages remain equally unhelpful. This is because the multipliers are discounted on the basis of various factors (for example, the expected change in the value of money or the expected rate of return on investment) which remain different in Singapore.

Most of the existing relevant local cases of the last ten years are based on the prior retirement age of 55. The existing case law should therefore be used with some caution when they are resorted to for guidance in ascertaining the multipliers to use for plaintiffs of similar age. A numerical increase of 2, 3 or even 4 to the multipliers used in previous cases can be expected in new cases where the plaintiff can be shown to benefit from the operation of the Act.

However, it should be pointed out that an increase across the board would be wrong. Not all employees come within the change, and some will not be able to advance an argument that they can now expect to work for five more years at the same salary. These workers may nevertheless, independently of the Act, advance an argument that they are likely to be able to do some other work which may not necessarily earn them the same salary. The Act does not raise the retirement age for everyone under all circumstances, and it does not guarantee a job for everyone until the age of 60. Those on fixed term contracts of employment do not need to be dismissed as their term of service would expire without any action on the part of the employer. Existing contracts of service that expire on a date which coincides with the time when the worker attains the age of 55 seem, on a literal interpretation, to be unaffected by the Act as well. Also, some types of work require an amount of physical stamina and strength that older workers cannot provide. For example, a professional football player cannot (at least for earnings as a professional football player) claim that his working lifespan is now until the age of 60. The Act does not bar dismissal on the ground of inability to perform the duties associated with the job. The position of parties (for example, doctors and lawyers) who can reasonably be assumed (even prior to the Act), to work past the age of 55 is of course unaffected by the Act.

Prior to the Act, an argument could already have been made in some cases for a slight increase in the multipliers on account of the fact that an increasing number of people do not stop working at the age of 55. Some do in fact carry on working even after they “retire” from their careers at 55. Others may move on to another type of employment in later life, albeit at a lower salary. This could involve an additional separate computation with a lower multiplicand.

In summary, it can be said that the Act extends the availability of the “I will work until I am 60” argument to many more employees. In terms of effect on damages for loss of future earnings that span a working lifetime,

the Act would have the greatest significance in cases where the living plaintiff would not otherwise have been able to carry on working at a significant salary past the age of 55.

The Act can also have an impact on dependency actions under section 12 of the Civil Law Act³ if the period of financial dependency can be lengthened as a result of the deceased being able to work for a longer period of time. However, this is fairly limited because in most cases there will not be an increase in the period of dependency, particularly when children are involved. Some spouses and parents may however, benefit from such an extension. Estate claims (under section 7 of the Civil Law Act) are not affected by the Act as there can now be no claim for lost income attributable to any period of time after death (see section 7(2)(ii) of the Civil Law Act which applies only to an estate claim but not a claim by a living plaintiff). Claims by living plaintiffs⁴ for the income that they have lost with respect to any period of time that they would not live (*ie*, a shortened lifespan as a result as the wrong for which the defendant is legally responsible) could be increased if there is an overlap between the additional five years with the "lost" period of life.

An increase in the multiplier on account of the Act can be applied to all pending first instance cases and not just to cases where the cause of action accrues after the commencement of the Act. This is because when the court quantifies the loss at the trial, all factors that are known should be taken into account, even if they are not known at the time of the breach of duty. The position of pending appeal cases is more difficult as the damages would already have been quantified. There is, however, some case law⁵ that will allow fresh evidence to be admitted on appeal if there are exceptional circumstances. Since the increase of the multiplier can significantly increase the overall awards for loss of future earnings, a case can be made for such new evidence to be admitted. One may further argue that it is not even necessary to introduce fresh evidence as legislation is involved.

The greatest significance of the Act in terms of damages for lost future earnings is in the potential extension of the retirement age to 67 under the Act. The Minister is empowered by the Act to raise the age to 67. In fact, the Minister declared the government's intention to do so "within the next seven to ten years".⁶ The average life expectancy in Singapore is already

³ Cap 43, 1988 Rev Ed.

⁴ Under *Pickett v British Rail Engineering* [1980] AC 136 and *Low Kok Tong v Teo Chan Pan* [1982] 2 MLJ 299.

⁵ *Eg, Mulholland v Mitchell* [1971] AC 666.

⁶ *Singapore Parliamentary Debates, Official Report*, 12 April 1993, Vol 61 No 1, Col 29-30.

76. Also, 25% of the population would be aged 60 and above by the year 2030,⁷ and from an economic point of view, it would be a necessity to raise the retirement age to beyond 60. Given these facts, and the declared intention of the government, one can confidently expect the age to be raised to 67 (whether in stages or in one step) within the next ten years.

The likely increase to 67 is potentially relevant to any plaintiff who will be aged 60 or below in ten year's time, *ie*, those who are 50 years of age and below today. If the present base of 55 is used, these plaintiffs can in fact argue for an additional loss of not 5 but 12 years of purchase. The figure of 12 would of course be discounted, but the overall impact will be a substantial increase in awards for loss of future earnings that span a plaintiff's working lifetime. This will not, however, be across the board because the number who will be able to actually benefit from the further increase (as discussed earlier) will decrease with age. After the age of 60, more workers will not be able to engage in the type of work that they are now involved.

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⁷ *Ibid.*

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