# Tan Harry and Another v Teo Chee Yeow Aloysius and Another
# [2003] SGHC 275

**Case Number** : Suit 814/2001, RA 162/2003, 164/2003, 165/2003

**Decision Date** : 04 November 2003

**Tribunal/Court** : High Court

**Coram** : Woo Bih Li J

**Counsel Name(s)** : Daniel John and Marc Wang (John, Tan and Chan) for plaintiffs; Myint Soe and Deepak Raja (MyintSoe Mohamed Yang and Selvaraj) for first defendant; Christopher Chong (Rodyk and Davidson) for second defendant

**Parties** : Tan Harry; Yeo Kwee Cheng Veronica (suing as Dependants and the Administrators of the Estate of Tan Kok Leong Philip (Chen Gouliang) deceased — Teo Chee Yeow Aloysius; Gleneagles Hospital Ltd

*Courts and Jurisdiction – Appeals – Appeal from registrar to judge – Role of appellate judge – Multiple defendants who advanced different grounds of appeal in respective Notices of Appeal – Whether one defendant should have benefit of success of appeal of other defendant*

*Damages – Aggravation – Tort – Negligence – Whether aggravated damages should be awarded*

*Damages – Measure of damages – Tort – Negligence – Deceased died after anaesthetic procedure – Liability conceded by defendant anaesthetist and defendant hospital – Whether damages awarded to plaintiffs as dependants should be increased – Whether multiplicand and multiplier should be increased*

*Damages – Measure of damages – Tort – Negligence – Whether award for pain and suffering should be increased*

*Damages – Rules in awarding – Whether any benefit accruing to dependant by reason of deceased's death must be deducted from dependency claim – Exclusions*

*Damages – Special damages – Special damages not pleaded – Whether plaintiffs should be entitled to claim special damages – Whether plaintiffs' costs in respect of Coroner's Inquiry into death of deceased claimable as special damages*

**Introduction**

1 The first and second plaintiffs, Harry Tan ("Mr Tan") and Veronica Yeo Kwee Cheng ("Mdm Yeo"), were the father and mother respectively of one Philip Tan Kok Leong ("Philip"). He died intestate on 1 October 1999 at the hospital of the second defendant Gleneagles Hospital Limited ("Gleneagles") after an anaesthetic procedure administered by the first defendant, an anaesthetist by the name of Aloysius Teo Chee Yeow ("the Anaesthetist"). Philip was 35 years of age when he died. Mr Tan was 73 and Mdm Yeo was 60 at the time of his death.

2 The Plaintiffs issued the present Writ of Summons claiming damages, both as dependants as well as administrators of Philip's estate, for negligence against the Anaesthetist and Gleneagles.

3 Liability was conceded by the Defendants and on 4 January 2002, interlocutory judgment was entered on the basis of 100% liability against the Defendants. Interest and costs were reserved to the Registrar conducting the hearing for assessment of damages.

4 After hearing evidence and submissions, an Assistant Registrar ("AR") made the following orders on 26 May 2003:

1. The 1st and 2nd Defendants pay the Plaintiffs the dependency claim amounting to S$180,580.80;

2. The 1st and 2nd Defendants pay the Plaintiffs the estate claim of S$54,252.86, derived as follows:-

(a) Special Damages amounting to S$37,513.90;

(b) Interest on Special Damages at 3% p.a. from the date of death to date of trial, amounting to $3,938.96;

(c) Pain and suffering amounting to $2,500;

(d) Interest on General Damages at 6% p.a. from the date of Writ to date of trial, amounting to $300;

(e) Bereavement amounting to S$10,000.

3. The Plaintiffs pay costs to the 1st and 2nd Defendants on an indemnity basis from 5 March 2003 to be agreed or taxed save that the 1st and 2nd Defendants are to pay the costs of the half-day hearing on 26th May 2003 fixed at $3,000; and

4. The 1st and 2nd Defendants are to pay the Plaintiffs' costs of these proceedings up to and including 4 March 2003 on a standard basis to be agreed or taxed.

5 Each of the different sides was dissatisfied with a certain aspect or aspects of the order and three appeals were filed.

6 The Plaintiffs' appeal covered various aspects:

(a) that the damages awarded to them as dependants should be increased,

(b) that the special damages awarded to the estate should be increased,

(c) that the amount awarded for pain and suffering should be increased,

(d) that aggravated damages should have been awarded,

(e) that the costs order in favour of both the Defendants should be reversed in favour of the Plaintiffs. However, this would only apply if the Plaintiffs succeeded on various items to the extent that the damages awarded to them exceeded the sum mentioned in a joint offer to settle.

7 The Anaesthetist's appeal was in respect of one point ie that certain assets inherited by the Plaintiffs should be deducted from the damages awarded to them as dependants.

8 Gleneagles' appeal was also in respect of one item only ie that the special damages should be reduced by $20,000 being a sum which the AR had allowed as part of the Plaintiffs' costs in respect of a Coroner's Inquiry ("CI") into the cause of Philip's death.

9 After hearing submissions, I dismissed the appeal of the Plaintiffs and allowed the appeals of the Anaesthetist and Gleneagles respectively.

**The arguments and my reasons**

***Whether the award of damages to the Plaintiffs as dependants should have been increased***

10 The Plaintiffs were represented by two counsel in the appeals before me. They were Mr Daniel John and Mr Marc Wang, both of whom advanced arguments as to why the damages awarded to the dependants should be increased, that is:

(a) the multiplicand should be increased,

(b) the multiplier should also be increased.

11 They also argued that the apportionment between Mr Tan and Mdm Yeo of whatever was awarded to the Plaintiffs should be varied from 40:60 respectively to 30:70 respectively.

***The Multiplicand***

12 On the multiplicand, the AR concluded that the annual salary of Philip would be calculated as follows:

(a) Philip's last drawn salary x 12 (less 20% for CPF)

(b) Add one month's salary (less 20% for CPF) as ex gratia bonus

(c) Add carpark allowance

(d) Add average dividends from Philip's stocks and shares

(e) Add back 10% of CPF (from employee and employer). Since the CPF contributions from employee and employer are credited into Philip's account with the Central Provident Fund, I will refer to such contributions as "Philip's CPF".

The aggregate was about $66,390 per annum.

13 Plaintiffs' Counsel submitted that the multiplicand should be increased for post-trial damages and on this point raised many arguments.

14 First, Plaintiffs' Counsel submitted that account should be taken of the likelihood of an increase each year in Philip's salary. Using past increases as a guide, as well as market surveys, Plaintiffs' Counsel submitted that a median salary of $6,350 per month, instead of the last drawn salary of $5,850 per month, should have been used.

15 In *Ho Yeow Kim v Lai Hai Kuen & Anor* [1999] 2 SLR 246, the Court of Appeal relied on evidence from the Institute of Technical Education ("ITE") to estimate the deceased's future income. This evidence was in turn based on a survey. While Plaintiffs' Counsel relied heavily on this case, I was of the view that there was one significant difference between that case and the one before me. There, the deceased was still a student in ITE and had undergone about three months of his course in ITE before he was killed. Therefore, he was not earning an income at the time of his death. In such a situation, it was understandable why a court should rely on a survey of income which he might have earned. In the present case, Philip was already earning an income with KPMG as a tax manager and Mrs Helen Chiang, a representative from KPMG had given evidence. In such a situation, I was of the view that market surveys were irrelevant.

16 While it was true that Philip had enjoyed some increases in the three years he had been with KPMG before he died, and while it would not be illogical per se to take into account future increases to derive a median salary which would be higher than the last drawn salary, I was mindful of the point that it is all too easy to assume that salaries would always increase. The past few years of financial turmoil have showed otherwise. Not only have salaries not increased, they have in many instances decreased and in some cases, jobs have been lost. To be fair, there was no evidence about a decrease in salaries for KPMG or a loss of jobs although bonus for 2002 had been reduced from two months to one month for an above average performer. However, on the other hand, Helen Chiang of KPMG was not inclined to be dogmatic about the likelihood of salary increases. She would say only that "the salary increment here is also very dependent on the economic situation and results of the firm" (NE 83).

17 In addition, I accepted the argument of Counsel for the Anaesthetist, Mr Deepak Raja, and for Gleneagles, Mr Christopher Chong, that an increase in salary did not necessarily mean an increase in the amount given to or spent on the Plaintiffs. In *Ang Song Huay v Chu Yong Thiam* (Suit No 196 of 1993), Chao Hick Tin J (as he then was) said that, "It would have been quite natural that if the deceased earned more he would contribute more". With respect, I agree, but the dependants there were the wife and two children. The same would not necessarily apply to aged parents. It all depends on the particular circumstances of the case.

18 In the present case, Philip had worked for about eight years as a tax/audit assistant and then was promoted eventually to the post of manager with Ng Lee & Associates-DFK. On 19 May 1997, he joined KPMG as a Tax Supervisor and was then promoted to a Tax Manager. However, there was no real evidence that the amounts he had given to or spent on the Plaintiffs correspondingly increased, especially in the context of the last few years of his life. There was only a bare assertion by the Plaintiffs that as his income increased, his financial support would also have increased and a bare assertion about how his contributions to the Plaintiffs or for household expenses increased from $400 or $500 per month to $2,500 per month. Moreover, it was not as though the Plaintiffs were without any income. Mr Tan, the father, was drawing a pension of between $800 to $900 per month. In addition, apparently the eldest son Bernard was giving them $200 a month.

19 In view of the absence of a positive assertion by KPMG about salary increases and more concrete evidence from the Plaintiffs of an increase in what they were receiving from Philip over the years and bearing in mind that the burden of proof was on the Plaintiffs, I declined to adopt a median figure to calculate the multiplicand. I was of the view that the AR was correct in using Philip's last drawn salary as the basis for such a calculation.

20 However, Plaintiffs' Counsel sought to increase the multiplicand in other ways:

(a) By taking into account the value of alleged services provided by Philip for the Plaintiffs,

(b) By taking into account 50% of Philip's savings in addition to 10% of Philip's CPF which had already been allowed by the AR, and

(c) By taking into account Philip's contributions to renovations of the terrace house he and the Plaintiffs were living in at 5 Libra Drive, Singapore.

21 On the question of Philip's services, it was submitted that they amounted to $2,000 per annum for driving the Plaintiffs around especially on week-ends and $1,000 per annum as he had managed the house and handled the household finances including preparing tax returns, Mr Tan's CPF

account, arranging for repairs and maintenance, re-financing loans to get the best interest rate, insurance policies and investments. On this point, Plaintiffs' Counsel relied on, inter alia, Butterworths Personal Injury Litigation Service, at page II/101 which states:

> **B Reasonable expectation of pecuniary benefit**
>
> *1 Meaning of "reasonable expectation of pecuniary benefit"*
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> [51]
>
> (1) **The principle** Damages are calculated 'in reference to a reasonable expectation of pecuniary benefit, as of right, or otherwise, from the continuance of life:' *Kassam v Kampala Aerated Water Co Ltd* [1965] 2 All ER 875, PC.
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> [52]
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> (2) **What does "pecuniary benefit" mean?** Pecuniary benefit clearly includes monetary loss. But its meaning is broader and may include money, property and services. It covers, for example, the loss in replacing services gratuitously rendered by the deceased, provided such services can be translated into money's worth: *Franklin v South Eastern Rly Co* (1853) 3 H & N 211; for example, if the deceased was a handyman about the house.
>
> [53]
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> (3) **Mere nominal loss is not sufficient** A mere nominal loss will not amount to a reasonable expectation of pecuniary benefit: *Pym v Great Northern Rly Co* (1862) 2 B & S 759.

22 Plaintiffs' Counsel also relied on *Ng Siew Choo v Tan Kim Choon* [1990] SLR 331. In that case, Yong Pung How J (as he then was) allowed the claim of the deceased's mother in respect of her reasonable expectation of pecuniary benefit from her deceased son. However, the deceased there had been helping his mother to run an ice-water stall which appeared to have been a fairly successful business.

23 On the evidence before me, Philip had driven the Plaintiffs to fish farms on week-ends but it was his hobby to rear fish, in particular, koi. He also brought the Plaintiffs to restaurants and to buy grocery.

24 As for the allegation that Philip had been handling the household finances and preparing tax returns etc, the evidence on this was scanty. He had contributed to household expenses but there was hardly any evidence that he had managed them or did all the other work alleged for the benefit of the Plaintiffs. Philip had issued a cheque for Mr Tan's CPF account but that was probably a gift by Philip. In any event, I did not think that he was rendering a service for which a claim could be made when he wrote the cheque. I accepted Mr Chong's argument that Plaintiffs' Counsel were trying to extend the scope of Philip's services from this one act.

25 I was prepared to accept that Philip had helped out a little bit around the house. For example, he did help to paint the house on which I will say more later. However, this was not the kind of service for which the Plaintiffs were claiming. Besides, in the two joint affidavits of evidence-in-chief of the Plaintiffs, they themselves did not assert that they had enjoyed any of the alleged services mentioned in paragraphs 23 to 25 herein, such as to have a reasonable expectation of pecuniary benefit therefrom.

26 Accordingly, I declined to add anything to the multiplicand for the alleged services rendered by Philip.

27 As for taking into account Philip's savings in addition to his CPF, Plaintiffs' Counsel relied on, inter alia, Personal Injury Litigation Service, p 134:

> **1 Deceased's savings**
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> **(1) The situation** But for his death the deceased may have saved part of his income which may then have been expected to accrue to the dependants by way of inheritance upon his natural death (and if he had save such income, it would not automatically form part of the multiplicand - because it was not available to the dependants day to day, for their use).
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> **(2) How to calculate loss of savings** There is no 'rule' as to calculating loss under this head but either of the following approaches may be adopted:
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> (a) the sums which the deceased would regularly have saved may be added to the multiplicand, or
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> (b) a separate additional sum may be calculated.
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> **(3) The calculation in practice - example** The operation of both these methods was demonstrated in *Taylor v O'Connor* [1971] AC 115, [1970] 1 All ER 365, HL. Lords Morris, Guest and Pearson added the savings to the multiplicand, whereas Lord Reid and Viscount Dilhorne calculated such savings as a separate sum (however, all 5 of their Lordships calculated as a separate sum, the savings which the deceased would have specifically built up in the partnership capital account, over the years).

28 However, it must be borne in mind that in *Taylor v O'Connor*, the dependants were the deceased's wife, who was one year younger than him, and his daughter who was 18 years of age at the time of his death. The House of Lords was therefore prepared to take into account the savings of the deceased because the savings would ultimately have gone to the wife and the daughter. For example, at p 477, Lord Reid said:

> There remains to be taken into account the savings which he would have made during his working life out of his free spendable income of £6,000 per annum …. I think that a conservative estimate would be that he would have accumulated £20,000 capital which would ultimately have come to the respondent or her daughter. …

At p 488, Lord Pearson said:

> The savings would have provided some present financial security not only for the deceased but also for the respondent and the daughter, and probably the savings or the residue of them would ultimately have been inherited by the respondent and the daughter or one of them. …

29 As regards Philip's CPF, Plaintiffs' Counsel relied on two cases. The first was *Singapore Bus Service (1978) Ltd v Lim Soon Tong* [1985] 1 WLR 1075, but there again the dependants were the deceased's younger wife and children. There the Court of Appeal said:

> We are unable to accept the contention of the appellants. C.P.F. contributions are not chargeable with estate duty. The money does not go to the estate of the contributor. In this

case it goes to the widow and the parents of the deceased. Had the deceased lived to the age of 55 he would have withdrawn the sum standing to his credit in the C.P.F. and the widow and children would necessarily have benefited from the deceased having this money if not for this accident. In our view, therefore, the C.P.F. contributions do form part of the widow's dependency claim.

30 On further appeal, the Privy Council said:

To the extent that he did not spend it he would have saved it and his dependants, particularly his widow who was younger than he was, would reasonably have expected to inherit from him.

31 The second case was *Tay Say Moi & Ors v Mua Hin Poultry Farm Pte Ltd* (Suit No 558 of 1989), an unreported decision of Lim Teong Qwee JC. There again, the dependants were the deceased's wife, who was of the same age as him, and a daughter who was only three years of age at the time of his death. Furthermore, it appears that it was undisputed there that the contributions to the deceased's CPF account should be taken into account in the dependants' claim.

32 In the case before me, the dependants were aged parents of Philip. But for the incident at Gleneagles, Philip would have probably out-lived them and this was accepted by Mr Tan. Philip's savings then would probably have gone to his siblings or sibling instead. Mdm Yeo had two daughters from an earlier marriage and three sons from her marriage with Mr Tan. I have already referred to Bernard as the eldest son. Philip was the second son and Cornelius was the youngest.

33 Indeed, Plaintiffs' Counsel acknowledged in their written submissions that Philip would have probably out-lived the Plaintiffs. Hence, they did not claim 100% of his savings or of the CPF contributions he would have acquired (see Amended Annex A, para 6, of their Submissions).

34 The AR took into account 10% of Philip's CPF but nothing for the savings. As I have said, Plaintiffs' Counsel sought 50% from the savings in addition to the 10% from Philip's CPF already awarded. The reason from Plaintiffs' Counsel for the differentiation between 50% and 10% was that Philip's CPF would not be available whereas the savings would be. However, this reasoning was not correct because on the death of Philip, his CPF would be immediately available. Accordingly, I did not see why there should be a difference between his savings and CPF. In principle, if a percentage is allowed, the same percentage should apply to each.

35 Mr Chong had submitted that the Practitioners' Library, Assessment of Damages, Personal Injuries & Fatal Accidents, did not suggest that savings be taken into account. However, neither did it assert that savings be excluded.

36 It seemed to me that savings is generally not mentioned as a factor to be taken into account in dependency claims because the usual approach is to split the deceased's income into what he would have spent on himself and on his dependants ie a two-way split instead of a three-way split which would then include savings. Indeed the Practitioners' Library recognises the two-way split as the alternative approach to adding up all the benefits received by dependants (see p 708). However, in the case before me, the AR had split Philip's income three ways including savings and the parties had proceeded on a three-way split.

37 So, coming back to savings, as well as Philip's CPF, one could argue that nothing should be added to increase the multiplicand since in all likelihood, Philip would have outlived the Plaintiffs, but for the incident. On the other hand, it could also be argued that they should be given something, although much less than 50% to reflect that there was some likelihood of their surviving him, even

though such a likelihood was slim. In other words, it should not be nil or zero since he could have died from an illness before his parents passed away. However, if I were to attribute, say, a 5% figure for this slim chance then conversely, where the dependant is a younger spouse, I might have to attribute, say, 10% to 25% for the chance that she might not in fact survive the deceased. In the latter situation, 10% to 25% of the inherited assets might then have to be deducted from the dependency claim, unless excluded by legislation or the case-law. I will say more later on the question of deducting assets inherited, outside of an estate claim, from a dependency claim.

38 After some reflection, I decided not to allow even a small percentage for the possibility that the Plaintiffs might have outlived Philip in the absence of the incident. The assessment of damages is complex enough without such fine and arbitrary distinctions being made. I would also not have increased the multiplicand by adding anything from Philip's CPF. However, as neither Defendant appealed against the AR's decision to do so nor sought that item to be excluded, that item remains.

39 I now come to the point about renovations. As I have said, Plaintiffs' Counsel argued that the multiplicand should be increased because Philip had paid for renovation expenses. The Plaintiffs had also claimed that Philip had discussed with them about future renovations.

40 The past renovations were in 1996. It turned out that only the car porch was built (NE 48 line 12) and even then this was not for the Plaintiffs but for Philip as he was driving a car (NE 48). Even when the house was repainted, Philip paid for the paint but the painting was done by him and his parents. So, the paint itself cost a minimum amount (NE 48).

41 As for future renovations, I accepted Mr Chong's argument that Mr Tan's evidence had shifted. In para 23 of the Plaintiffs' first joint AEIC, it was asserted that in or around 1997, Philip had discussed his plans to repair the roof and renovate the backyard and a quotation of around $60,000 was obtained. However, the quotation was not adduced in evidence and in cross-examination, Mr Tan said he received a quotation for $360,000 instead.

42 To reinforce the point that Mr Tan was not credible, Mr Chong also drew my attention to another aspect of Mr Tan's evidence. When Mr Tan was asked whether Cornelius was staying in a hostel, Mr Tan denied this. Yet in the joint AEIC, a bill from NTU demonstrated that hostel charges were being billed for Cornelius. When this was drawn to Mr Tan's attention, he said the hostel charges were actually for Cornelius' friend whose name he did not know (NE 40).

43 In the circumstances, I was not minded to accept that Philip's alleged contributions to renovations should increase the multiplicand.

44 The next argument of Plaintiffs' Counsel was that the AR was wrong in attributing 40% of Philip's aggregate annual income as surplus available to the Plaintiffs, with 33% being spent on himself and 26% being saved by Philip.

45 Plaintiffs' Counsel submitted that the percentage should be more ie 65% instead of 40% because of the following special circumstances:

(a) There was a special bond between Philip and the Plaintiffs, especially Mdm Yeo,

(b) Philip was unlikely to get married because he had a long history of rheumatoid arthritis, he was a homebody and he had said he wanted to remain single,

(c) Philip had been very frugal.

46 On this point, Mr Raja submitted that there was no case in which parents as dependants had received more than 40%. In *Ho's* case, the dependent parents received 40%.

47 Mr Raja also argued that the alleged bond and the allegation that Philip was unlikely to get married had to be translated into something concrete.

48 I noted that the initial evidence of the Plaintiffs was that Philip had supported them with an average monthly sum of $2,500 ie $1,200 per month for Mr Tan and $1,300 per month for Mdm Yeo. Therefore, even if it was true that there was a special bond between Philip and the Plaintiffs, especially Mdm Yeo, this would already be factored into the Plaintiffs' assertion of $1,200 and $1,300 per month for Mr Tan and Mdm Yeo respectively. Furthermore, the $2,500 per month was about 49% of Philip's take-home pay, including one month's bonus ie (80% of $5,850) x 13 months ÷ 12 = $5,070 per month ie $2,500 is about 49% of $5,070. Although this calculation excluded car park allowance, it also excluded income tax. According to Mr Chong, the Plaintiffs' appeal for 65% was an attempt to ask for more than the $2,500 per month they had initially alluded to. I agreed.

49 I was also of the view that the Plaintiffs' assertion that Philip had contributed an average of $2,500 per month was itself suspect, to put it mildly. The evidence from Philip's bank accounts did not support a regular withdrawal of any sum, whether it be $2,500 or smaller sums if he was contributing at shorter intervals than a month. The evidence from his bank accounts was too vague. Significantly, there was also no evidence from the Plaintiffs' bank accounts to support their assertion.

50 On this point, I digress to mention that the Plaintiffs had sought to introduce further evidence on some bank accounts for pre-1999 during submissions after evidence had been given, but the attempt was rightly rejected by the AR. I also rejected the admissibility of such evidence when the same attempt was made before me.

51 I would add that Mr Tan had also given a list of expenses which Philip had purportedly paid for. Even if this approach was to be taken, instead of using a percentage of Philip's income to determine his contribution to the Plaintiffs, I was of the view that much of the expenses was exaggerated or not applicable for the detailed reasons advanced by Mr Chong. I need not say more on this as neither side was really relying on this approach.

52 As for the unlikelihood of Philip getting married, this was only an unlikelihood and not a certainty. Besides, as Mr Chong had submitted, the unlikelihood of marriage would not increase the amount Philip would have provided the Plaintiffs. He was already single. While the prospect of marriage, if likely, would reduce the amount he was providing the Plaintiffs, the converse did not apply.

53 As for Philip's frugality, I accepted Mr Chong's argument that this frugality worked against, rather than for, the Plaintiffs. It meant that Philip's regular contributions to them would then be less, not more. Whether part of his savings should be taken into account to increase the multiplicand was a separate matter which I have already dealt with above.

54 There is one other observation I wish to make. The AR had included dividends from Philip's shares and stocks in his calculation of the multiplicand. As the shares and stocks would be inherited by the Plaintiffs, they would get the dividends directly. Accordingly, the dividends should not have been included in the calculation of the multiplicand. However, the dividends were not the subject of appeal or argument by either of the Defendants.

55 In summary, I did not think that the multiplicand should be increased.

***The Multiplier***

56 On the multiplier, Plaintiffs' Counsel suggested that this should start from the date of assessment of the damages in respect of post-trial damages, relying on *Gul Chandiram Mahtani v Chain Singh* [1995] 1 SLR 155. There the court said, at para 28 of the judgment, that the multiplier to be used in assessing the post-trial damages was to be applied from the date of trial, meaning the date of assessment. Plaintiffs' Counsel were claiming 5½ years for Mr Tan and 19½ years for Mdm Yeo from the date of assessment. As the assessment was some three and a half years after the date of Philip's death, Plaintiffs' Counsel were effectively seeking 9 and 23 years respectively from the date of death.

57 The AR had awarded five years and eight years to Mr Tan and Mdm Yeo respectively from the date of death.

58 Mr Raja submitted that the multiplier should be computed from the date of death as stated in *Muthan Sinnathambi v Puran Singh* [1992] 2 SLR 103 at p 107 at F where Yong Pung How CJ followed the House of Lords' decision in *Cookson v Knowles* [1979] AC 556. Mr Raja distinguished *Gul Chandiram* on the basis that no pre-trial damages were awarded there. Mr Raja also said that *Muthan Sinnathambi* was cited in the Practitioners' Library at p 710 for the proposition that the calculation of a multiplier is from the date of death.

59 Plaintiffs' Counsel also submitted that some reliance should be placed on actuarial tables as suggested in *Wells v Wells* [1999] AC 345. Counsel then referred to tables recommended by the UK Law Commission in Report No 263. For Singapore, they relied on a Straits Times article dated 15 April 2000 entitled "Longer life, healthier life". However, that was not an actuarial table as such. Plaintiffs' Counsel also conceded that, so far, Singapore courts had not relied on actuarial tables although they submitted that there was no express rejection of actuarial tables either.

60 Plaintiffs' Counsel then sought to rely on the same factors ie the alleged close bond between Philip and his mother and the unlikelihood of his marrying to increase the multiplier.

61 Mr Raja submitted that UK actuarial tables were not applicable to Singapore. As for the Straits Times article, he submitted that the author was not called and that in any event the life expectancies mentioned therein were based on those taking hormone supplements.

62 On his part, Mr Chong relied on statistics from the Ministry of Health to counter the Straits Times article. He also submitted that based on a number of past local precedents, the AR's multiplier of five years and eight years for the father and mother respectively were fair. He stressed that Plaintiffs' Counsel had not produced any local precedent different from his precedents.

63 I noted that the approach of using the date of death for the multiplier has been criticised. Butterworths Personal Injury Litigation Service states, at p II/403 to 404:

> **(5) Criticisms of the conventional approach**
>
> (a) The Law Commission disagrees with Lord Fraser's assertion in *Cookson* that the multiplier should inevitably be selected "once and for all" as at the date of death. First, it is unnecessarily exclusive even in cases where the deceased's life expectancy controls the multiplier. Second, it has no application at all to cases where the duration of the Claimant's needs controls the multiplier. In the former case, there may be circumstances arising after death such as advances in medical science which will affect the accuracy of any multiplier calculated as at the date of

death. In the latter, the Law Commission concludes that the selection of a multiplier as at the date of death has no logic whatsoever as it is the Claimant's circumstances not the deceased's which are relevant to selection of the multiplier and the Claimant's circumstances are best viewed in the light of all the facts known at trial (paras 4.8 and 4.10).

(b) In *Corbett v Barking Havering and Brentwood Health Authority* [1991] 2 QB 408, the CA considered itself bound by the conventional approach of calculating the multiplier as at date of death even though the multiplier in that case was affected primarily by the Claimant's needs (the Claimant being a child who would have been dependent on his deceased young mother only until adulthood). When the trial took place, the Claimant was 11 with a dependency until the age of 18. As the multiplier calculated as at the date of death was 12 there was only ½ a year left of the future dependency. The CA addressed this anomaly by increasing the multiplier to 15 by adjusting it to take into account facts which had arisen from the delay before the trial took place, namely the survival of the infant Claimant. The multiplier was therefore not fixed at the date of trial but left as at the date of death and then adjusted to take account of new facts. Lord Justice Ralph Gibson in dissenting said that the majority's conclusion was in effect to calculate the multiplier as at the date of trial and hence departed for the reasoning in *Graham v Dodds*.

(c) The Law Commission points out that if a discount is to be made from the multiplier selected as at death, as in *Corbett*, the discount should only be made from the proportion of the multiplier to be used in the calculation of the Claimant's future loss and that any adjustment made to the date of death calculation at trial would be insufficient to counteract the erroneous discount for early receipt. So, even with *Corbett* the conventional approach is subject to two major criticisms:

(i) it is irrational and unduly complex to calculate the Claimant's life expectancy at the time of death, only to make an adjustment to the inaccurate 'date of death' figure to take account of information relevant to the original calculation;

(ii) the approach in *Corbett* may still result in the adoption of a lower multiplier than the simple date of trial calculation and is inaccurate (para 4.13).

(d) Moreover, the Law Commission conclude that after *Wells v Wells*, the Courts should have no difficulty in applying a new more scientific approach using the actuarial tables despite *Cookson*.

64 Although there was some force in the criticisms of the conventional approach, I was of the view that it was too well-entrenched for the High Court to depart from it. Accordingly, the multiplier was to be from the date of death.

65 I would add that if the multiplier was to be computed from the date of assessment, then the multiplier would probably be reduced although, even with the reduction, the Plaintiffs would probably still have gotten more after taking into account the pre-trial damages.

66 As for actuarial tables, Singapore courts have not relied on such tables as recognised by Plaintiffs' Counsel. Aside from the vagaries or contingencies of life which the House of Lords in *Wells v Wells* has criticised as a factor having to be taken into account, there is also the question of accelerated payment in one lump sum. In any event, as the Plaintiffs had not proved the actuarial tables applicable for Singapore, it was not necessary for me to decide whether to adopt the same.

67 As for the alleged special bond and unlikelihood of marriage, I was of the view that these factors were irrelevant to the multiplier.

68 In view of the local precedents cited by Mr Chong, I was of the view that the AR's multiplier for each of the Plaintiffs was fair, if not a bit generous.

***The apportionment between Mr Tan and Mdm Yeo***

69 As I have mentioned, the AR had apportioned the multiplicand 40:60 between Mr Tan and Mdm Yeo respectively. However, Plaintiffs' Counsel sought the apportionment to be 30:70 respectively. In view of the fact that the Plaintiffs themselves had asserted that Philip had contributed $1,200 to Mr Tan and $1,300 to Mdm Yeo monthly, there was clearly no basis for their Counsel to seek a 30:70 apportionment. This submission was made only because the multiplier for Mdm Yeo was higher than for Mr Tan.

***Costs pertaining to Coroner's Inquiry ("CI")***

70 The Plaintiffs appealed for a further sum to be allowed as part of their costs in respect of the CI. The Plaintiffs had instructed a firm of solicitors who in turn had instructed a Senior Counsel to attend the CI. The Plaintiffs had also engaged an expert to attend and give his opinion at the CI. The AR took a broad approach and allowed $5,000 a day for four days of CI, amounting to $20,000. Apparently, the AR did not elaborate whether this included the costs of the Senior Counsel or of the Plaintiffs' expert.

71 As I have mentioned, Gleneagles also did appeal on the costs pertaining to the CI. Its position was that nothing should have been allowed for any costs in attending the CI.

72 Mr Chong pointed out that in so far as Plaintiffs' Counsel were relying on the unreported judgment of the High Court in *Chong Khin Ngen & another as administrator/administratrix respectively of the Estate of Chong Yun Jing, deceased v Lim Djoe Phing,* Suit 791 of 1987, in which the High Court allowed a claim for Counsel's fees for attendance at the CI, the defendant in that case was not present before the court and hence no argument to the contrary was presented. There Amarjeet Singh JC said:

> I wish further to discuss briefly two heads of special damages which the Plaintiffs claimed:
>
> i) a claim of $50,914.20cts in respect of Counsel's fees in connection with Counsel's attendance of the Coroner's Inquiry which lasted for 36 days and the other ii) a claim for $30,300/- as Counsel's fees for attending the Medical Council Disciplinary Inquiry against the Defendants which lasted for 14 days.
>
> The issue was whether Counsel's fees in respect of these two Inquiries could be recoverable as special damages.
>
> I allowed the first claim but disallowed the second claim.
>
> In Halsbury's Laws of England 4th Edn. Vol. 12 pg 423 para 1120, it is clearly stated that "where as a result of the Defendant's wrong, the Plaintiff has incurred costs in other proceedings, the Plaintiff may, subject to the rules of remoteness, recover those costs from the Defendant as damages". The proceedings before the Coroner were an adjunct and necessary step leading to the present proceedings. The Coroner's Inquiry proceedings flowed from the wrongful act of the Defendant and the Plaintiffs were entitled to retain Counsel for the effective presentation of the evidence there; see also McGregor on Damages (14th Edition) The Common Law Library No. 9 pg 338. Further, in Hammond & Co. vs. Bussey <1887> 20 QBD 81, the Court of Appeal held that

where a Plaintiff had to defend a previous action under reasonable circumstances, the costs incurred by the Plaintiff as Defendant in such action were recoverable under the rule in Hadley vs Baxendale (9 Ex.341) as being damages which might reasonably be supposed to have been in contemplation of the parties, at the time when they made the contract, as the probable result of a breach of it.

As such, I allowed Counsel's costs in respect of attending the Coroner's Inquiry as Plaintiffs' Counsel Mr Nathan Isaac legitimately appeared as Counsel for the next-of-kin and as such was entitled to be represented and heard in the Coroner's Inquiry and further Counsel is entitled to cross-examine witnesses and he did participate in the proceedings. I was of the opinion therefore that fees or costs incurred as such are reasonably incurred and may properly be recovered. I awarded the full quantum claimed as being reasonable in view of the very protracted hearing.

I disallowed the costs in respect of the Medical Council Disciplinary Inquiry as those proceedings were of a domestic nature and such where the Plaintiff's Counsel had no right of audience. Counsel's attendance at the Inquiry was on the basis of a bare watching brief. Counsel could in due time inform himself of the result and could obtain the record of the evidence of the Inquiry if he wished to further his getting up on the facts of the case relating to these proceedings. Counsel's costs of attendance at the Disciplinary Inquiry were, in my opinion, not reasonably incurred, and were remote, the question of whether costs being reasonably incurred or not or their remoteness always being a question of fact.

73 Mr Chong submitted that such costs were not claimable generally. First, the CI was a formal public investigation whose findings were not binding on the parties. Then, he cited Bingham and Berrymans' Motor Claims Cases, Tenth Edition, 1994, p 477 which states:

INQUEST

The costs of attending an inquest are not damages resulting from the death and were disallowed by Hilbery J in *Gryce v Tuke* at Winchester Assizes on 1 March 1940. However see *Schneider v Eisovitch,* above, for travelling expenses.

Mr Chong also relied on *Carpenter v Beck* 145 DLR ($4^{th}$) 574, where the Manitoba Court of Appeal disallowed a claim for Counsel's costs in attending an inquest into the death of the victim. Mr Chong also submitted that neither the Anaesthetist nor Gleneagles were named as potential defendants. Thirdly, the Coroner's findings did not attribute any negligence to either the Anaesthetist or Gleneagles.

74 Lastly, Mr Chong submitted that the Plaintiffs' claim for this item was in the nature of special damages which had not been pleaded. Moreover, Plaintiffs' Counsel, Mr Wang, had withdrawn this item as special damages below, saying he would claim it as part of costs. However, after evidence had been given, Mr Wang produced various bills including that of the solicitors and of Senior Counsel. Notwithstanding Mr Chong's objection, the AR allowed Mr Wang to adduce the bills as evidence.

75 In my view, Mr Wang should not have been allowed to adduce the bills as evidence in view of the pleadings and his initial withdrawal of this item as special damages. The Plaintiffs should not have been awarded anything by way of special damages for costs in respect of the CI. Accordingly, it was not necessary for me to decide whether, as a matter of principle, costs for attending a CI are claimable as special damages and, if so, whether such costs should be allowed where the Coroner's findings do not attribute any negligence to any party.

***Pain and Suffering***

76 There was some unchallenged evidence that Philip was in tears at some point in time during the day before he died although he was supposed to be comatose. The AR awarded $2,500 for pain and suffering while the Plaintiffs had sought and continued to seek $25,000.

77 Plaintiffs' Counsel relied heavily on *Thangavelu v Chia Kok Bin* [1981] 2 MLJ 277 where $20,000 was awarded for pain and suffering. However, as Mr Raja pointed out, the victim there had responded to stimuli for one year before he died. Mr Raja then relied on *See Ah Hwa & anor v Ong Hock Thian* [1985] 2 MLJ 7 in which the victim lived for a day before he died. There, the award for pain and suffering was reduced from $3,000 to $1,000.

78 In the circumstances, I was of the view that the AR's award of $2,500 for pain and suffering was not too low.

***Aggravated Damages***

79 In the appeal before me, the Plaintiffs claimed $20,000 as aggravated damages. Mr Chong resisted this claim on various grounds.

80 First, neither this item nor the grounds for claiming it was pleaded. Bullen & Leake & Jacob's Precedents of Pleadings, Fourteenth Edition, 2001, states at para 2-07, "If the claimant wishes to claim aggravated or exemplary damages the Particulars of Claim must include a statement to that effect and the grounds for making those claims".

81 Secondly, aggravated damages were claimable in instances of assault, false imprisonment, malicious prosecution, libel and slander and trespass but not in negligence. Hence, while Plaintiffs' Counsel relied on *Appleton & others v Grant* 34 BMLR 23, the question of such damages was considered there in the context of trespass to the person and not negligence. Indeed, in that case, Dyson J said:

> It is necessary but not sufficient condition for the entitlement to recover aggravated damages in this case, that the plaintiffs establish that the defendant's conduct amounted to a trespass to the person, that is assault and battery and not mere negligence: see Kralj v McGrath [1986] 1 All ER 54 at 61, approved by the Court of Appeal in AB v South West Water Services Ltd [1993] 1 All ER 609 at 625, sub nom Gibbons v South West Water Services Ltd [1993] QB 507 at 528.

82 Thirdly, Dyson J also said:

> In Rookes v Barnard Lord Devlin said that aggravated awards were appropriate where the manner in which the wrong was committed was such as to injure the plaintiff's proper feelings of pride and dignity or gave rise to humiliation, distress, insult or pain. Examples of the sort of conduct which would lead to these forms of intangible loss were conduct which was offensive Or which was accompanied by malevolence, spite, malice, insolence or arrogance. In other words the type of conduct which had previously been regarded as capable of sustaining a punitive award. It would therefore seem that there are two elements relevant to the availability of an aggravated award, first, exceptional or contumelious conduct or motive on the part of the defendant in committing the wrong and second, intangible loss suffered as a result by the plaintiff, that is injury to personality.

83 According to Mr Chong, there was no evidence of such conduct or motive on the part of

either of the Defendants. I agreed. I also did not accept that actions or omissions per se on the part of the Anaesthetist and/or the staff of Gleneagles constituted such conduct. Accordingly, the omissions to insert a laryngeal mask airway, called an "LMA", and to use a fresh tracheotomy tube did not amount to arrogance. Also, the argument that Philip had put his absolute trust in the Anaesthetist had nothing to do with the Anaesthetist's conduct. In view of the absence of evidence as well as the point that this claim and its grounds were not pleaded, I did not allow the Plaintiffs' claim for aggravated damages. Accordingly, it was also not necessary for me to decide whether a claim for such damages was allowable in principle in respect of a negligence claim.

***Whether certain assets inherited by the Plaintiffs, outside of an estate claim in court, should be deducted from their dependency claim***

84 As Philip had died intestate and had no spouse and children, his parents were his sole beneficiaries. They inherited the following:

| | |
|---|---|
| (a) NTUC life policy of Philip | $150,750.00 |
| (b) KPMG Group Insurance payment ($5,850 x 24) | $140,400.00 |
| (c) CPF Moneys (total of all accounts) | $134,628.76 |
| (d) Bank account of Philip | $78,461.85 |
| (e) Value of public listed shares | $93,308.52 |
| (f) Value of Honda Civic | $18,000.00 |
| (g) Fish tanks and Koi (40 fish) | $5,000.00 |
| Total | $620,479.13 |

85 Dr Myint Soe, who presented arguments on this issue for the Anaesthetist accepted that by statute, assets (a) to (c) were not deductible. However, he argued that assets (d) to (g) were deductible. Assets (d) to (g) totalled $194,770.37. This issue was the most significant to the dependency claim. It was not disputed that, where the beneficiaries are the same, amounts received as general damages under an estate claim in court would be deducted from the dependency claim. However assets (d) to (g) were not part of an estate claim by the Plaintiffs.

86 In *Davies v Powell Duffryn Associated Collieries Limited* [1942] AC 601, Lord Russell said, at p 606:

> The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Acts is well settled namely, that any benefit accruing to a dependant by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a dependant by the death must be ascertained, the position of each dependant being considered separately.
>
> It is rightly conceded that the general rule must apply unless some statutory exception to it prevents its application. …

87 The AR did not agree that *Davies v Powell* was authority for the proposition that any pecuniary benefit must be deducted from the dependency claim, without more. He cited from the judgment of Lord Macmillan, at p 609 of *Davies v Powell:*

> It was common ground that, except where there is express statutory direction to the contrary, the damages to be awarded to a dependant of a deceased person under the Fatal Accidents Acts must take into account any pecuniary benefit accruing to that dependant in consequence of the death of the deceased.

88 In the AR's view, a benefit "in consequence of the death of the deceased" meant a benefit payable on a claim because of the tort and not an inheritance outside of a claim.

89 The AR also said:

> … . *Powell Duffryn* never stood for the authority that the entire inheritance by the beneficiary/dependant would for some reason have to be deducted from the dependency claim. Indeed, to have done so would have offended the primary principle of a tortious claim, which is that the claimant is to be restored to his original position but for the tortious act. Similarly, a dependant is entitled to his dependency claim and should not be deprived of it just because the same event of death triggered an inheritance. If that were so, the beneficiary/dependants of a deceased with deep pockets would always be deprived of a dependency claim. It cannot be that the liability of a tortfeasor should depend upon something so arbitrary as the wealth of the deceased, or the provisions made by the deceased (or by the law) for his dependants. Similarly, it would be quite absurd to say that the tortfeasor would face a greater or lesser liability depending on whether the deceased happened to have willed his estate to someone other than the dependant.

90 The AR was also of the view that when, in England, the Administration of Justice Act 1982 abolished the estate claim for lost years, there was a quid pro quo, because s 4 of that Act specifically excluded "the deduction of such a claim from the dependant's claim". However, he recognised that in Singapore, the estate claim for lost years was abolished by an amending legislation in 1987 but Singapore did not adopt s 4 of the Administration of Justice Act 1982. Notwithstanding that Singapore had not adopted s 4, the AR said he would not draw any inference from this omission.

91 I would add that in *Davies v Powell*, the issue was actually whether damages under the Law Reform Act in respect of an estate claim would have to be taken into account in assessing damages for a dependency claim under the Fatal Accidents Acts. The question was not whether an inheritance would have to be taken into account in assessing a dependency claim. Notwithstanding that, *Davies v Powell* appears to have been considered to be of a much wider application than the AR favoured. That is why over the years judicial and legislative intervention came into play. If it was of the limited application favoured by the AR, such intervention would have been unnecessary.

92 For example, McGregor on Damages, Sixteenth Edition, 1997, states at para 1816 to 1818:

> 3. THE NON-DEDUCTIBILITY OF COLLATERAL BENEFITS
>
> (1) *The development of the law*
>
> **1816**The path taken by the collateral benefits issue in fatal accident claims has been curiously different from the path it has followed in the field of personal injury. Whereas there was for long general acceptance of the rule that the damages in a personal injury claim were not to be

reduced because benefits had been conferred upon the plaintiff by third parties which mitigated his loss, the general rule was the exact opposite where the claim was in respect of a fatal injury, and it became accepted, without any real dispute, that only the net pecuniary benefit accruing to the dependants was recoverable as damages. This undoubted general rule finds its clearest and most authoritative expression in the speeches of their Lordships in *Davies v. Powell Duffryn Collieries*. Lord Macmillan put it thus:

> "Except where there is express statutory direction to the contrary, the damages to be awarded to a dependant of a deceased person under the Fatal Accidents Acts must take into account any pecuniary benefit accruing to that dependant in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages."

**1817** Thus, while not strictly a collateral benefit but rather a collateral liability, the income tax which would have been paid on the deceased's earnings was always deducted in calculating the damages for the dependants' loss of support even in the pre-*Gourley* days when no deduction was made in respect of income tax in the calculation of damages for the loss of earning capacity of a physically injured plaintiff. And there was similarly never any question but that, in calculating the dependants' damages, the money saved on the deceased's maintenance fell to be deducted from the earnings he would have made. But beyond this, it was soon established that deductions fell to be made in relation to private insurance moneys, while subsequently the requirement of deduction became accepted in relation to pensions and was even extended to certain gratuitous payments. Only a few benefits managed to escape this *wide general requirement* by being held not to have resulted from the death.

Gradually, however, serious inroads were made by statute upon this rule of deduction of collateral benefits. …

[Emphasis added]

93 Similarly, p 151 and 152 of Damages for Personal Injuries and Death by John Munkman, Tenth Edition, 1996, states:

**4 Benefits arising out of death**

***Total disregard after 1982***

Under the original Fatal Accidents Act of 1846, the damages were strictly for the net financial loss, so all financial benefits which arose on the death were set off against the damages. This principle was gradually eroded both by legislation, which created exceptions for insurance money and pensions, and by judicial decisions which excluded such things as a house or a car already enjoyed, jointly with the deceased, before his death. Finally it was enacted that all benefits are to be left out of account where death occurs after 1982. Section 4 of the Fatal Accidents Act 1976, as re-enacted by the Administration of Justice Act 1982, provides as follows:

> 'In assessing damages in respect of a person's death in an action under this Act, benefits which have accrued or will or may accrue to any person from his estate or otherwise as a result of his death shall be disregarded.'

94 I digress to mention that according to McGregor on Damages, Fourteenth Edition, 1980, at paras 1328 and 1329, s 4 of the Fatal Accidents Act 1976 excluded only four categories of benefits ie

insurance money, benefit under enactments relating to social security, pension or gratuity paid or to be paid as a result of death. This appears to be borne out upon a consideration of s 4 of the 1976 Act. Accordingly, s 4 of the Administration of Justice Act 1982 was not merely a re-enactment of s 4 of the Fatal Accidents Act 1976.

95 In any event, s 4 of the Administration of Justice Act 1982 was not confined to the exclusion of a claim for lost years. In my view, it was not a quid pro quo for the abolition of the estate claim for lost years. Once the claim for lost years was abolished, there was no need to deduct it from a dependency claim. Moreover, s 4 of the Administration of Justice Act 1982 effectively excludes all benefits which have accrued or will accrue to any person from a deceased's estate or otherwise as a result of his death in assessing damages under that Act. Furthermore the history of the amendments to our Civil Law Act in respect of assessment of damages for death suggests that often we had followed amendments in English legislation but not in respect of s 4 of the Administration of Justice Act.

96 I was of the view that the AR had erred when he effectively adopted s 4 of the Administration of Justice Act 1982 when our Parliament had not done so. As our Civil Law Act stood at the material time and still stands, only the following are not to be taken into account in assessing general damages on a dependency claim:

(a) any sum paid or payable on the death of the deceased under any contract of assurance or insurance;

(b) any sum payable as a result of the death under the Central Provident Fund Act (Cap. 121); or

(c) any pension or gratuity which has been or will or may be paid as a result of the death.

97 The question therefore was whether the common law excluded assets like (d) to (g) from deduction. The AR was concerned that if inherited assets were to be deducted from a dependency claim, dependants of a deceased with deep pockets would always be deprived of their dependency claim. However, I was of the view that he had not distinguished between dependants who were older and those who were younger than the deceased. In the latter situation, no deduction should be made because the dependants would in any event ultimately inherit the assets, although at a later time. Whether there should be a deduction for acceleration of benefit would be a different question. This was answered in the negative by the Privy Council in *Kassam v Kampala Aerated Water Co Ltd* [1965] 2 All ER 875 which was cited with approval by Choor Singh J in *Ng Siew Cho v Tan Kian Choon* [1990] SLR 331.

98 The case for dependants who are aged parents is not necessarily the same as that for younger dependants. Hence, Dr Myint Soe relied, inter alia, on para of 1255 of McGregor on Damages, Thirteenth Edition, 1972. That passage is reiterated in its Fourteenth Edition, 1980, at para 1347 and it states:

> **1347** Cases will also arise where, but for the death, the dependants would probably never have received the estate: this will be so, for instance, in the case of a claim by aged parents who would otherwise in all probability have predeceased their children. In such a case the proper course will be to deduct something approaching the whole amount of the estate received by the parents; the value of the acceleration is irrelevant here. And intermediate cases can readily be imagined.

99 However, Plaintiffs' Counsel sought to rely on the next para which states:

> **1348** Of course, where the deceased's sole property consists of unearned income out of which he supported the dependant, and the whole estate from which he derived this income passes to the dependant, the dependant's claim fails as there is no pecuniary loss. All that the dependant could lose was the support from that income, and since the death he has the income himself. This has been clear since the early case of *Pym v. Great Northern Ry.,* but that decision is sometimes wrongly taken as establishing the far wider, and erroneous, principle that money received from the deceased's estate must be deducted.

100 In my view, the last clause of para 1348 of McGregor does not contradict or subvert para 1347. What I believe it means is that not every asset or sum received from the deceased's estate must be deducted.

101 As Munkman has mentioned, assets like a family home have been judicially excluded. Hence cases like *Heatley v Steel Co of Wales* [1953] 1 All ER 489, *Daniels v Jones* [1961] 3 All ER 24 and *Neo Sun Thun & Anor v Ng Peng Hui* [1975-1977] SLR 345 did not really advance the Plaintiffs' case. In the first and third cases, the question was whether a family home should be deducted. In any event, in all the three cases, the dependants were not aged parents.

102 In so far as the AR had sought to rely on *Ng Siew Cho v Tan Kian Choon* [1990] SLR 331 and *Hongkong Bank Trustees (Singapore) Ltd v Rajinder Singh* for his conclusion, those two cases did not actually deal with the question of deducting inherited assets from a dependency claim where the assets were outside of an estate claim in court.

103 With respect, I also did not agree with the AR's view that it would be quite absurd for a tortfeasor's liability to vary depending on whether the deceased happened to have willed his estate to someone other than the dependant. The very nature of a dependency claim is such that a tortfeasor's liability and the extent thereof are dependent on many fortuitous circumstances, for example,

(a) the act or omission causing the death is often accidental. Even where negligence is involved, it is not deliberate, and

(b) the quantum of the tortfeasor's liability varies depending on whether the deceased is a high income earner or not, the age of the deceased and the extent to which the dependants had depended on the deceased.

104 So, here, in the present case before me, the dependants were aged parents who in all probability would have pre-deceased Philip but for his untimely death. Secondly, assets (d) to (g) were not the family home, although asset (f) was a car which had been excluded before, according to Munkman. I was of the view that, in principle, para 1347 of McGregor should apply. There was no reason in principle why monies received on an estate claim in court should be deducted from a dependency claim where the beneficiary of both was the same but monies, or assets, received through inheritance but outside of an estate claim in court should not be deducted from a dependency claim. This was subject to the qualification mentioned above ie no such deduction should be made where the dependants would eventually have received the monies or assets anyway, for example, where the dependants were a younger spouse and children.

105 As for the car, no authority was cited in Munkman for excluding the car from deduction. In any event, it seemed to me that the reference to a car "already enjoyed" was probably to a family

car ie one used frequently, if not daily, for the benefit of the deceased and his immediate family. In the case before me, the car was mainly used by Philip. His parents had a limited enjoyment of the car when he brought them to fish farms on week-ends or to restaurants or to buy grocery. After Philip's death, they were not using the car and could sell it. If they wanted to allow any of the other children to use the car, that would be a different matter but the Defendants should not have to pay for their generosity. In the circumstances, I was of the view that the value of Philip's car should in principle also be deducted from the dependency claim.

106 As the dependency claim is less in value than assets (d) to (g) inherited, the end result is a nil amount for the general damages under the dependency claim.

**Summary**

107 In summary,

(a) The Plaintiffs' appeal was dismissed.

(b) The Anaesthetist's appeal was allowed.

(c) Gleneagles' appeal was allowed.

**Consequential Orders**

108 Subsequent to my oral decisions on the various appeals, Counsel for each Defendant took the position that each Defendant was entitled to the benefit of the other's successful appeal.

109 Mr Raja submitted that as the appeals to me were really a fresh hearing, and I was not fettered by the decision of the AR, I could and should allow each Defendant the said benefit notwithstanding the omission in each Defendant's Notice of Appeal to specify that it was appealing against that part of the decision which the other Defendant had included in its Notice of Appeal. Mr Raja went so far as to say that even if, for example, both the Defendants had not filed any Notice of Appeal, they would have been entitled to argue that the deduction for assets (d) to (g) should have been made and the $20,000 CI costs should not have been allowed. He submitted that this was because once the Plaintiff had appealed against the AR's order, all of these matters would be relevant before me.

110 Mr Raja relied on Mallal's Digest of Malaysian and Singapore Case Law Fourth Edition 2001 Reissue Volume 2(1) Civil Procedure which refers to *MBA Life Assurance v Yeo Hua San & Ors* Civil Suit No. D5-22-380-91. At page 141 it states:

> In this appeal from the decision of the deputy registrar, the issue which arose for decision was whether the deputy registrar could enter a judgment following an application made by summon-in-chambers even if the procedural requirements in O 32 rr 1 and 13(2)(a) of the Rules of the High Court 1980 ('the RHC') had not been followed by the plaintiff. The plaintiff had on 7 December 1993 filed a summon-in-chambers without any affidavit or grounds in support of the application. The affidavit in support was only filed on 22 December 1993. Both the summons and the affidavit were finally served on the fourth defendant on 10 January 1994. In objecting to the appeal, the plaintiff contended that the argument of the fourth defendant should not be accepted as he had not raised it before the deputy registrar. **Held**, allowing the fourth defendant's appeal: (1) an appeal from the decision of a deputy registrar was to be dealt with by way of a rehearing. The parties to the appeal were entitled to raise all issues pertaining to facts,

procedure or law as were relevant to the application before the deputy registrar; (2) the plaintiff did not state any grounds in support of his application. Clearly the mandatory requirements of O 32 r 1 and Form 62 of the RHC had not been complied with by the plaintiff; (3) O 32 r 13(2)(a) of the RHC provides that an affidavit intended to be used in support of an application must be filed and served on the other party within 14 days from the date of the filing of the application. In this case, the affidavit was only served on the fourth defendant more than one month after the filing of the summon-in-chambers. Thus the mandatory requirements of O 32 r 13(2)(a) had not been complied with and the affidavit in support could not be considered for the purpose of the application before the deputy registrar.

111 In my view, paragraph (1) of the holding, which Mr Raja relied on, did not help the Defendants.

112 The fact that an appeal from a registrar operated as a rehearing did not necessarily mean that a party should be allowed to argue against that part of the registrar's decision which he was dissatisfied with, without filing a Notice of Appeal. Accordingly, Mr Raja's reliance on other cases for the general proposition that the hearing before me was a rehearing did not advance the matter any further.

113 However, Mr Raja also relied on Singapore Civil Procedure 2003 at para 56/1/3 which states:

> Although O.56 contains no provision for a formal notice of cross-appeal, the judge's discretion on hearing an appeal from a registrar is in no way hindered by the previous exercise of the registrar's discretion; hence when a defendant appeals against a registrar's order under O.14 giving conditional leave to defend, and the judge is satisfied that there is no defence to the action, he may properly give summary judgment for the plaintiff notwithstanding that no formal notice of cross-appeal has been given by the plaintiff (*Europa Property & Finance Services Ltd. v. Stubbe*r t (1991) *The Times*, November 25, CA).

114 This passage appears to have been adopted from the English The Supreme Court Practice 1997 Vol. 1 at para 58/1/2.

115 The Times Law Reports of 25 November 1991, in referring to *Europa Property*, states:

> LORD JUSTICE BALCOMBE said that Order 58, dealing with appeals from the master to the judge in chambers, contained no provision for a formal notice of cross-appeal.
>
> Further, the judge's discretionary jurisdiction under Order 14, rule 3 was in no way hindered by the previous exercise of the master's discretion: *Evans v Bartlam* ([1937] AC 473, 478).
>
> The judge was therefore wrong in declining to accede to the plaintiff's request for summary judgment. Accordingly, their Lordships would exercise the discretion, which the judge failed to exercise, and give summary judgment for the plaintiff.

116 Mr Raja submitted that the approach in *Europa Property* had been followed in other cases.

117 In *Silverlink (Hong Kong) Finance Ltd v Zhang Sabine Soi Fan* (1999) 85 HKCU 1, the plaintiff's claim was for non-payment of a cheque drawn by the defendant for HK$38,434,600. On the plaintiff's application for summary judgment, the Master ordered judgment to be entered for HK$7 million and gave unconditional leave to the defendant to defend the balance. The defendant appealed

contending that the unconditional leave should have applied to the whole claim. The defendant's Notice of Appeal was filed apparently within the prescribed time-frame. The plaintiff did not file any Notice of Appeal but by a letter some three weeks after the defendant had filed the Notice of Appeal, informed the defendant's solicitors that since the appeal was a complete rehearing, the plaintiff would be seeking judgment for the full sum claimed at the hearing of the appeal.

118 Suffiad J mentioned *Europa Property* with approval and, after taking into account the letter from the plaintiff, said that the defendant was not taken by surprise or prejudiced and he would treat the plaintiff 's submissions as a cross-appeal for judgment for the full sum. However, his conclusion was to allow the defendant unconditional leave to defend the entire claim.

119 In *Shade v Compton Partnership* (2000) PNLR 218, the plaintiff had issued a writ against his former solicitors for negligence. The defendants then applied to strike out the statement of claim on various grounds. The Master made an order striking out paragraphs 7 and 8 of the prayer on the basis of time-bar. Some eight and a half months later, the plaintiff filed an appeal against the Master's decision. Instead of objecting, the defendants sought to rely on *Europa Property*. The judge before whom the appeal was heard found that the defendants had given notice to the plaintiff that if he pursued his appeal, they would seek to persuade the judge to strike out the entire claim. The judge dismissed the plaintiff's appeal and struck out the entire claim. The plaintiff was granted leave to appeal to the Court of Appeal.

120 The Court of Appeal cited *Europa Property* with approval. Robert Walker LJ said that the defendants had assumed that their letter would be accepted as sufficient notice of cross-appeal and therefore did not oppose the plaintiff's appeal on the basis of long delay. He also said that the judge below was well within his case management powers in treating the letter as an informal notice of cross-appeal. The plaintiff was not ambushed at all. Brookes LJ said that Balcombe LJ's decision in *Europa Property* was not confined to an Order 14 application. In the view of Brookes LJ, when the plaintiff filed his appeal, "he threw open for consideration by the judge in chambers to whom he was appealing the whole of the issues which were raised on that part of the summons".

121 I must say that I was surprised by the passage from Singapore Civil Procedure which was cited by Mr Raja and the cases he referred to.

122 As Mr Raja conceded, it has not been the practice of Singapore courts in civil proceedings to adopt an approach similar to the one in *Europa Property*. I was not quite sure what was meant therein by there being no provision for a formal notice of cross-appeal. If that meant that the other party could not subsequently file a cross-appeal out of time in response to the first notice of appeal filed, that is also the position in Singapore. However, if that meant that an unsuccessful plaintiff could not file a notice of appeal to the judge-in-chambers in an O.14 application, that is not the position in Singapore.

123 In Singapore, an unsuccessful litigant, whether plaintiff or defendant, may file an appeal to the judge-in-chambers from a decision of a registrar. This applies generally and is not confined to O.14 applications.

124 If an unsuccessful plaintiff does not file an appeal, then, as far as I am aware, he is precluded from raising any argument before the judge-in-chambers which would effectively allow him to appeal out of time. A letter sent out of time will not, generally speaking, suffice to constitute as an appeal filed within time. To allow the letter to constitute such an appeal would be to allow the litigant to circumvent the time-frame for filing the appropriate Notice of Appeal.

125 In *Shade*, the Court of Appeal was prepared to treat the defendants' letter as sufficient notice of appeal because the plaintiffs' own notice of appeal was filed out of time.

126 Although there was no prejudice to the Plaintiffs in the sense that Plaintiffs' Counsel did have the opportunity to and did address the arguments raised in respect of each of the Defendant's appeals, this did not mean that there would be no prejudice to the Plaintiffs whatsoever if I were to allow one Defendant to have the benefit of the success of the appeal of the other Defendant. Obviously there would be prejudice to the Plaintiffs if I were to do so. For example, if Gleneagles was not entitled to the benefit of the Anaesthetist's appeal, Gleneagles would still be liable to pay the dependency claim of the Plaintiffs. Likewise, the Anaesthetist would still be liable to pay the Plaintiffs the $20,000 in respect of the CI.

127 Secondly, if I were to allow one Defendant to have the benefit of the success of the appeal of the other Defendant, then he/it would have the benefit without having undertaken the risk of paying the costs of the appeal had the appeal of the other Defendant been unsuccessful.

128 Thirdly, each of the Defendants did in fact file a Notice of Appeal. Each had elected to confine his/its Notice of Appeal to a particular item, leaving aside the point that the Notice of Appeal of the Anaesthetist was not well-drafted in the first place.

129 Fourthly, in the course of arguments before me, each Counsel had kept to the ambit of the Notice of Appeal of his client.

130 As for Mr Chong, he argued that since the liability of the Defendants under the interlocutory judgment was effectively joint and several, each must be entitled to the benefit of the other's successful appeal. Otherwise the liability of each would be several and not joint, in so far as he/it was not given the benefit of the other's success. In my view, while it was true that the liability of both Defendants under the interlocutory judgment was intended to be joint and several (although not specifically stated as such), the ultimate liability for various sums would still depend on what transpired at the assessment of damages and any appeal therefrom. In the circumstances, I was of the view that the Defendants should not be allowed to use the interlocutory judgment as an excuse to get what they did not seek in their respective Notices of Appeal.

131 Mr Chong also submitted that paragraphs 6 and 7 of the judgment of the Court of Appeal in *Chang Ah Lek* suggested that the High Court had, in that case, allowed a claim for future medical expenses even though this was not part of an appeal. However, it was not clear to me whether this was in fact the case. Moreover, it appeared that the point was not in issue before the High Court or the Court of Appeal in that case.

132 In the circumstances, I was not minded to allow one Defendant to have the benefit of the success of the appeal of the other Defendant and I ruled accordingly.

133 I also made various orders on costs of the appeals and below.