Tian Shaokai *v* Tiong Hwa Steel Sructures Pte Ltd
[2013] SGHCR 13

Case Number : Suit No 689 of 2011

Decision Date : 13 May 2013

Tribunal/Court : High Court

Coram : Tan Teck Ping Karen AR

Counsel Name(s) : Mr Eric Liew Hwee Tong (Gabriel Law Corporation) for the plaintiff; Mr Subramaniam Sundaram and Mr Savliwala Fakhruddin Huseni (Bogaars & Din) for the defendant.

Parties : Tian Shaokai — Tiong Hwa Steel Sructures Pte Ltd

Damages – Assessment

13 May 2013 Judgment reserved.

Tan Teck Ping Karen AR:

Introduction

1 The defendant is a Singapore company engaged in, inter alia, the business of manufacture of steel structures, tables and chairs and related products, equipment rental and leasing services. The plaintiff, Tian Shaokai, is a Chinese national who was employed by the defendant as a driver. The plaintiff arrived in Singapore on 4 July 2010. Shortly after his arrival, the plaintiff was involved in an accident on 11 August 2010 and now claims for damages arising from the injuries suffered from this accident.

Background facts

2 The plaintiff was born on 27 September 1987. At the time of the accident, he was 22 years old. At the time of the assessment, he was 25 years old.

3 The plaintiff worked as a truck driver in China before coming to Singapore on 4 July 2010. The plaintiff's evidence is that he planned to work in Singapore for as long as he could to provide for his family.

4 The plaintiff suffered injuries from the accident on 11 August 2010 and was on medical leave from 11 August 2010 to 16 December 2010 and from 11 January 2011 to 11 March 2011. He was on light duties from 17 December 2010 to 10 January 2011.

5 The plaintiff's evidence is that after the period of his medical leave, he returned to work and was assigned the job of cutting strings and stacking table cloth. The plaintiff's work permit was subsequently terminated and he returned to China on 4 May 2011.

6 After his return to China, the plaintiff says that he was not able to find employment as a driver or any other labour intensive jobs as he continued to experience pain and stiffness in both ankles. The plaintiff eventually found a job as a kitchen helper in a small eatery and started work from 1 November 2012.

Agreed items

7 The parties have agreed on the following items:

(a) General damages for closed fracture of left medial malleolus of tibia, fracture of left talar neck with subluxation (dislocation) of the subtalar joint (left ankle); and

(b) Special damages for transport and medical expenses in Singapore.

8 I now move on to the items in dispute.

General Damages

Open fracture right distal tibia and fibula fracture (right leg)

9 Dr Tang Zhi Hao ("Dr Tang") a medical officer of the Department of orthopaedic surgery of Khoo Teck Puat Hospital had attended to the plaintiff from the time of the accident till the time the plaintiff returned to China in May 2010. He stated in his medical report dated 1 April 2011 that the plaintiff "underwent wound debridement of right lower leg, open reduction and internal fixation of the right tibia...on 12 August 2010" and that on follow up, it was observed that the "fractures were healing well and he was put on partial weight bearing with clutches'.

10 Dr S R E Sayampanathan ("Dr Nathan"), an orthopaedic surgeon, examined the plaintiff on 22 March 2011. Dr Nathan confirmed in his medical report dated 22 March 2011 that, from x-rays of the right tibia and fibula done on 11 January 2011, the fracture had callus (new bone formation) and was uniting. Dr Nathan noted that the movement of the right ankle was decreased and that the plaintiff complained of pain, weakness and stiffness in both ankles.

11 The plaintiff was also reviewed by Dr Wong Yue Shuen ("Dr Wong"), a specialist orthopaedic surgeon, on 15 May 2012. In his report dated 24 May 2012, Dr Wong stated that he had ordered new x-rays and the x-rays showed "on the right lower limb, a healed fracture of the right tibia and fibula". Dr Wong was of the opinion that the fractures in the right distal tibia and fibula have fully healed. However, the clinical range of motion on both lower limbs was "markedly limited".

12 The medical evidence from all the doctors are that the fracture of the right tibia and fibula is fully healed with decreased movement in the right ankle. There also appears to be some residual pain and stiffness as reported by the plaintiff.

13 The plaintiff claims the amount of $25,000 for this item based on the case of *Goh Eng Hong v Management Corporation of Textile Center and another ("Goh Eng Hong") [2003] 1 SLR(R) 209*. In this case, a 51 year old host *mamasan* suffered an open compound fracture of the left tibia and fibula. There was a delayed union of the fractured left tibia which required posterolateral bone grafting and x-rays showed poor fracture union. Acute shortening and Ilizarov distraction osteotomy of the left tibia and limited bone grafting were conducted. The plaintiff had to wear a shoe with a shoe raise and walked with a mild limp. She was awarded $40,000 for the fracture of the left tibia and fibula *as well as* the fracture of the medial malleolus of left ankle.

14 I am of the view that *Goh Eng Hong* may be distinguished as injuries and disabilities suffered by the plaintiff were significantly more severe than this case.

15 In *Koh Lu Kuang v Abdul Jalil bin Kader Hussein ("Koh Lu Kuang") DC Suit No 4293 of 1998*, the

amount of $14,000 was awarded for fracture of the left tibia and fibula which was treated by open reduction and internal fixation for fracture to tibia and fibula.

16 I am of the view that the amount awarded in *Koh Lu Kuang* is more in line with the injury suffered by the plaintiff in this case and award the sum of **$14,000** for this item.

Osteoarthritis of left ankle

17 Dr Nathan in his medical report dated 22 March 2011 was of the view that "*the left ankle injury was an intra-articular injury. As such, [the plaintiff] would be expected to develop post-traumatic osteo-arthritis of the left ankle*".

18 Dr Wong stated in his medical report dated 24 May 2012 that the plaintiff "*has no obvious evidence of arthritis on his x rays. However, the left sided injuries in particular may develop arthritis in both the ankle and subtalar joints, as the fractures have involved these joints*".

19 I agree with the defendant's submission that there has been no manifestation of osteoarthritis yet and there is no certainty that the plaintiff would indeed develop osteoarthritis. Since the plaintiff only has a pre-disposition to developing osteoarthritis of his left ankle, I accept the defendant's submission that the sum of **$3,000**, based on *Tan Swee Khoon v Balu a/l Sinnathamby DC Suit No 225 of 1998*, is a fair amount to be award for this item.

Scars

20 The plaintiff has various scars arising from the injuries as follows:

(a) 18.5 cm scar over medial aspect of right ankle;

(b) 8 cm scar over medial aspect of left ankle; and

(c) Two separate scars of 1 cm over dorsum of the left ankle.

21 The plaintiff submits that $10,000 should be awarded for the scars based on the range provided for multiple scars which is between $5,000 to $15,000 at page 57 of the *Guidelines for the Assessment of General Damages in Personal Injury Cases (Academy Publishing, 2010).*

22 The defendant relies on *Aw Ang Moh v OCWS Logistics Pte Ltd [1998] SGHC 167* where the amount of $4,000 was awarded for 2 scars from skin grafts measuring 9 cm x 8cm and 7cm x 2cm, a 3 cm surgical scar, 10 cm laceration scar and 4cm x 2 cm abrasion scar. The defendant submits the amount of $3,000 as the scars in this case as the scars on this authority is more severe than that of the plaintiff here. I agree with the defendant's submission as the authority relied on provides details of the scars that were suffered and accordingly award **$3,000** for this item.

Loss of Future Earnings v Loss of Earning Capacity

23 The issue is whether loss of future earnings, as submitted by the plaintiff, or loss of earning capacity, as submitted by the defendant, should be made.

24 In *Teo Sing Keng & Anor v Sim Ban Kiat [1994] 1 SLR 634 ("Teo Sing Keng")*, the Court of Appeal stated at p646:

> Although loss of earnings and loss of earning capacity have sometimes been used

interchangeably, they are separate heads of damage. Lord Denning MR in *Fairley v John Thompson (Design & Contracting Division) Ltd* at p42 alluded to this difference:

> It is important to realise that there is a difference between an award for loss of earnings as distinct from compensation for loss of earning capacity. Compensation for loss of future earnings is awarded for real assessable loss proved by evidence. Compensation for diminution in earning capacity is awarded as part of general damages.

The above passage was quoted with approval by Browne LJ in the leading English case on loss of earning capacity, *Moeliker v A Reyrolle & Co Ltd* at p 15, where the learning judge said:

> This court made it clear in *Robert v Heavy Transport (EEC) Ltd* and *Herod v Birds Eye Foods* that *Smith v Manchester Corp* laid down no new principle of law, and I entirely agree. *Smith v Manchester Corp* is merely an example of an award of damage under a head which has long been recognized – a plaintiff's loss of earning capacity where, as a result of his injury, his chances in the future of getting in the labour market work (or work as well paid as before the accident) have been diminished by his injury. This court made an award under this heard in *Ashcroft v Curtin* three years before *Smith v Manchester Corp.* This head of damage generally arises where a plaintiff is, at the time of the trial, in employment, but there is a risk that he may loss this employment at some time in the future and may then, as a result of his injury, be at a disadvantage in getting another job or an equally well paid job. It is a different head of damages from an actual loss of future earnings which can be proved at the time of trial.

...

An award for loss of earning capacity, as opposed to an award for loss of earnings, is generally made in the following cases:

> (1) where, at the time of trial, the plaintiff is in employment and has suffered no loss of earnings, but there is a risk that he may lose that employment at some time in the future, and may then, as a result of his injury, be at a disadvantage in getting another job or any equally well-paid job;
>
> (2) where there is no available evidence of the plaintiff's earnings to enable the court to properly calculate future earnings, for example young children who have no earnings on which to base an assessment for loss of future earnings.

25 In *Liu Haixiang v China Construction (South Pacific) Development Co Pte Ltd [2009] SGHC 21("Liu Haixiang")*, Prakash J referred to the above quote from *Teo Sing Keng* and observed at [25]:

> It can be seen from the above discussion that where there is a measurable loss of earnings, the correct award is for loss of future earnings. In this case, there was a measurable loss of earnings because, due to his injury, the plaintiff was no longer able to work as a construction in Singapore and at the time of the trial he was, in fact, no longer in such employment.

26 Prakash J emphasised at [27] that:

> It would be recalled that in *Teo Sing Keng*, the court of Appeal opined that a loss of earning capacity award would also be appropriate where there was no available evidence of the plaintiff's earnings to enable the Court to properly calculate future earnings. This was not the case here.

The documentation established what the plaintiff earned during his stay in Singapore. The plaintiff also gave evidence of what he earned in China prior to coming to Singapore and that evidence was not challenged. Whilst there may be some gaps in the evidence relating to the possible salary that the plaintiff might achieve in the future, such gaps mean that the calculation of the plaintiff's damages might lead to a lower figure than the plaintiff would like but those gaps do not make it impossible to derive an award on the basis of loss of future earnings. The evidence in this case supports the plaintiff's claim that the proper award would be future earnings.

27 In this case, following *Liu Haixiang*, I similarly find that there is a measurable loss of earnings because, due to his injury, the plaintiff was no longer able to work as a driver in Singapore and at the time of the assessment of damages, he was, in fact, no longer in such an employment. Dr Nathan stated in his medical report that he was of the view that the plaintiff would not be able to take up a vocation such as a driver due to the disabilities in his ankles. This was affirmed when he gave evidence in court. Dr Wong stated in his medical report dated 20 September 2012 that he was of the opinion that the plaintiff may be able to drive a vehicle but he clarified when he gave evidence in court that his opinion in the said report was in relation to whether the plaintiff can drive a taxi or a normal car. Dr Wong went on to clarify that the plaintiff will find it hard to drive a heavy goods vehicle and climbing in and out of such a vehicle will pose difficulties for him.

28 The plaintiff was injured just over a month after his arrival in Singapore but there are the pay slips and the insurance claim form to establish what the plaintiff earned during the short time he worked before the accident and to calculate what he would have earned but for the accident.

29 The plaintiff has also provided evidence that, prior to coming to Singapore, he worked as a truck driver in China earning approximately $800 per month and has produced a Certificate of Income from his ex-employer in China. The defendant has challenged this evidence on basis that the plaintiff has failed to call his ex-employers from China to corroborate this evidence. However, the fact remains that this document has been produced and the defendant has not produced any documentary evidence to contradict this. Even if this evidence has not been corroborated, this might mean that the calculation of the plaintiff's damages might lead to a lower figure but this does not make it impossible to derive an award on the basis of loss of future earnings. See Prakash J in *Liu Haixiang* at [27].

30 Therefore, I am of the view that there is sufficient evidence in this case to calculate the plaintiff's loss of earning and to award loss of future earnings.

Loss of Future Earnings

31 The first issue to be determined is the appropriate multiplier.

32 The plaintiff was 22 years old at the time of the accident and presently, he is 25 years old. I am of the view that a multiplier of 18 would be appropriate and are in line with the following cases:

(a) In *Teo Seng Kiat v Goh Hwa Teck [2003] 1 SLR 333* (cited in the *Practitioner's Library - Assessment of Damages: Personal Injuries and Fatal Accidents (Lexis Nexis, 2nd Ed, 2005 ("Practitioner's Library")* at p657), a multiplier of 18 years was applied in respect of the plaintiff, a male, who was injured at the age of 25.

(b) In *Wu Liang Zhu v Chan Yue Ming & Anor [2002] SGHC 91* (cited in the *Practitioner's Library* at p676), a multiplier of 17 years was applied in respect of the plaintiff, a male, who was injured at the age of 28.

33 As the plaintiff is a foreigner working in the manufacturing industry, which is similar to the construction industry, I am of the view that the Singapore portion should be awarded 8 years and the China portion should be awarded 10 years. This would "more accurately reflect the vicissitudes of life and particularly of working life for a foreigner in the construction industry who needs a work permit and has to complete for jobs with younger foreign workers". See *Liu Haixiang* at [31].

34 The second issue is to determine the multiplicand. In calculating this, I follow the method laid down by Prakash J in *Liu Haixiang* at [33].

35 In line with the High Court in *Liu Haixiang* and the Court of Appeal in *Poh Huat Heng Corp Pte Ltd and others v Hafizul Islam Kofil Uddin [2012] 3 SLR 1003 ("Poh Huat Heng")*, I am of the view that a split multiplicand should be adopted with part of the multiplicand calculated on the basis of the plaintiff's wages in Singapore and the other part on his possible wages in China.

36 First, I determine what the plaintiff would be able to earn in China in his present condition. As mentioned above, the plaintiff has produced a Certificate of Income from his ex-employer in China stating that he earned $800 per month as a driver. The defendant has challenged this evidence on the basis that it has not been corroborated as the plaintiff has not called his ex-employer to give evidence on the same.

37 In *Wee Sia Tian v Long Thik Boon [1996) 2 SLR(R) 420 ("Wee Sia Tian")* at [12] and [15], the plaintiff produced documentary evidence that showed his salary before the accident as $677 a month. No evidence was called to contradict the employer's letter or the attached income tax forms. Neither did any one from the plaintiff's present employer testify. The court was of the view that in the absence of any evidence contradicting the documentary evidence before the court, the plaintiff had only been able to establish that he earned $677 a month before the accident.

38 The decision of the court in *Wee Sia Tian* above will apply in relation to the Certificate of Income that has been produced by the plaintiff as proof of his income prior to the accident. As there is no contradictory evidence before the court, the plaintiff has established that he earned $800 before the accident.

39 Both Dr Nathan and Dr Wong have given evidence that the plaintiff cannot return to driving a lorry. Dr Wong has expressed the opinion that the plaintiff can still drive a normal car or a taxi. This would mean that employment as a chauffeur or a taxi driver is still an option for the plaintiff. There is no evidence on what the plaintiff would earn as a chauffeur or taxi driver in China. The only evidence before the court is that the salary of a lorry driver is $800 a month. I am of the view that the salary of a chauffeur or taxi driver should at the minimum be equal to that of a lorry driver and so take the figure of $800 a month as the amount the plaintiff can earn in his present condition in China. I then deduct the amount of $200 that the plaintiff is present earning as a kitchen assistant, from the notional salary of $800.

40 As for the Singapore portion for the loss of earnings, I used the amount of $1,029.29 that was declared by the defendant as the plaintiff's gross monthly earnings for July 2010 in the Work Injury Compensation Insurance Claim form submitted by the defendant. Firstly, this is a document prepared by the defendant and Ms Kan Phui Chun ("Ms Kan"), the defendant's representative, confirmed under cross examination, that the plaintiff's gross monthly earning which is stated in this document as $1,029.29 is not disputed. Secondly, while the evidence is that the plaintiff's monthly basic salary is $700, Ms Kan admitted that the plaintiff would be guaranteed overtime if he worked for the defendants. For these reasons, I am of the view that the sum of $1,029.29 is the appropriate figure to calculate the Singapore portion for the loss of earnings. I then deduct the sum of $800, which is

the notional amount the plaintiff would earn in China, from $1,029.29.

41 Therefore, the award for loss of future earnings, is:

(a) Singapore : ($1,029.29 - $800) x 8 years = $22,011.84

(b) China: ($800 - $200) x 10 years = $72,000

(c) The total award would be **$94,011.84**.

42 There is one final point I wish to address before I leave this item. The plaintiff is employed as an unskilled worker and the defendant has argued that with the recent changes in the increase levy for unskilled worker, it is more probable that the plaintiff's work permit, will not be renewed by the defendant and therefore, the defendant could not continue to work in Singapore after the expiry of this current work permit. In my view this is pure speculation. While Ms Kan has testified that given the change in rules, the defendant is likely to employ skilled rather than unskilled workers, I am of the view that not much weight should be placed on this. This is because Ms Kan earlier admitted that, while she was aware of the change in rules, she was not very familiar with the same and so it cannot be inferred that the defendant has made a definitive decision to employ skilled workers only and will not continue to employ the plaintiff when his permit expires. This is especially since the amount of increase is not prohibitive (the levy is currently $300 and will be $350 in July 2013, $370 in 2014 and $400 in 2015) and there is nothing to suggest that the defendant will not continue to employ the plaintiff despite the increase in levy.

Future medical care

43 The Court of Appeal in *Poh Huat Heng* observed at [64] that when the plaintiff is a foreign national and has returned to his home country and is receiving medical treatment there, it follows "*as a matter of logic and common sense that the cost of medical care in his home country should be the basis upon which to calculate the multiplicand to be used in determining the amount to be awarded for future medical expenses*".

44 The plaintiff has provided a Certificate of Diagnosis Dezhou Municipal Hospital by Dr Wan Lingmin ("Dr Wan") providing the costs for the removal of metal implants, surgery for arthritis, medial reviews and physiotherapy.

45 Despite the fact that the defendant was fully aware that the plaintiff was seeking an award for future medical care and that an award for this should be based on the costs of medical care in China, the defendant only raised this issue during submissions with the defendant urging the court to disregard Dr Wan's certificate as Dr Wan has not been called to give evidence and to award $5,000 for costs of future medical treatment. In light of this, no evidence was led from the Singapore doctors on their views on whether the medical expenses stated in Dr Wan's certificate were reasonable.

46 As stated above, the court will not disregard documentary evidence simply because it has not been corroborated especially since the defendant has not produced any evidence to the contrary. Therefore, Dr Wan's certificate will be taken into consideration when assessing the amount to be awarded for future medical care in China.

47 Both Dr Nathan and Dr Wong agree that an operation should be carried out to remove the implants in both lower limbs. Dr Nathan gives the figure of $8,000 while Dr Wong gives the figure of between $8,000 to $11,000. Dr Wan's Certificate states that the costs of this surgery in China is

$8,000. Accordingly, I award $8,000 for the removal of metal implants.

48 Both Dr Nathan and Dr Wong opined that the plaintiff did not have arthritis at present but was at risk of developing it at a future date and surgery will be required to fuse the ankle. Dr Nathan gives the figure of $22,000 while Dr Wong gives the figure of $14,000 to $30,000. Dr Wan gives the figure of $24,000. Since arthritis is only a potential risk, I award the sum of $5,000 for this item.

49 Dr Nathan also recommends medical reviews. Dr Wong does not mention this. There is also no estimate of costs in Dr Wan's Certificate for this item. However, I acknowledge that there will be some pre and post operation review for the removal of metal implants and I am of the view that $200 will be a fair amount for this review and award this sum.

50 Dr Nathan recommends physiotherapy. Dr Wong is silent on this item. Therefore, no award is made for this item as it does not appear to be a treatment that is necessary.

51 Therefore, the total amount awarded for future medical treatment is **$13,200**.

Special Damages

Pre-trial medical expenses in China

52 The plaintiff claims $11,400.40 for this item and has produced receipts and documents in support of the same. It is trite law that special damages have to be strictly proven, otherwise they are not recoverable. See *Wee Sia Tian*.

53 The defendant submits that it is unclear from the receipts what these payments for. I agree. While the receipts state that it is for payment of treatment, the treatment is not specified and it is unclear whether the treatment received is related to the injuries suffered by the plaintiff arising from the accident in Singapore. Therefore, no award is made for this item.

Pre-trial loss of earnings

54 Pre-trial loss of earnings is separated into the following time frames for consideration:

(a) From the date of accident (11 August 2010) to date plaintiff returned to China (4 May 2011);

(b) From the date of return to China (5 May 2011) to expiry of the work permit (24 June 2012)

(c) From after expiry of the work permit (25 June 2012) to before commencement of new job (30 October 2012)

(d) From commencement of new job (1 November 2012) to 7 February 2013.

From the date of accident (11 August 2010) to date plaintiff returned to China (4 May 2011)

55 This period is divided into two sub-periods. The first period of 11 August 2010 to 11 March 2011 is when the plaintiff was on medical leave and light duties. The second period is from the expiry of the medical leave and light duty on 12 March 2011 to the plaintiff's return to China on 4 May 2011.

(a) Medical leave and light duty from 11 August 2010 to 11 March 2011

56 The plaintiff was on medical leave from 11 August 2010 to 16 December 2010 and from 11 January 2011 to 11 March 2011. The In-principle approval for work permit issued to the defendant in respect of the plaintiff states the plaintiff's basic salary as $700. The plaintiff also admitted during cross examination that this was his basis salary. Therefore, the amount the plaintiff is to be paid when on medical leave is $700 a month.

57 The plaintiff was on light duty from 17 December 2010 to 10 January 2011. During this period, the evidence is that the defendant prescribed the plaintiff the jobs of folding table clothes, cleaning the area in the workshop and shredding papers in the office ("Light Duty jobs").

58 Since the plaintiff was medically certified to be only fit to do light duty during this period, it would follow that the plaintiff was similarly entitled to his basic salary of $700 during this period. A perusal of the plaintiff's payslips for this period show that the plaintiff was paid a lower salary during this period. When queried on the pay slip for December 2010 during cross examination, Ms Kan explained that a lower amount was paid because the plaintiff "did not work for the whole month and we pay what he clocked in". This was the first mention of the fact that the plaintiff was expected to clock in during the period he was on light duty and I note that none of the time sheets for this period have been produced in evidence. In the absence of such evidence, the assertion that the plaintiff was paid for the hours he worked when on light during is nothing more than a bare assertion. Accordingly, I find that the plaintiff is entitled to his basic salary of $700 during the period he was on light duty.

59 Therefore, the plaintiff is entitled to his basic salary of $700 per month for the period of 11 August 2010 to 11 March 2011 when he was on medical leave and certified to be on light duty. This amounts to $4,922.60.

(b) From the expiry of medical leave and light duty to the return to China: 12 March 2011 to 4 May 2011

60 The plaintiff ceased to be on light duty from 12 March 2011. However, the defendant continued to assign the plaintiff the Light Duty jobs even though he was fit to return to work.

61 The plaintiff's evidence is that he was not informed by the defendant that it would be happy to continue to employ him after he returned from medical leave. His evidence is that it was the defendant who informed him that it was cancelling his work permit. He denies that he was the one who informed the defendant that he did not wish to continue working for them.

62 In her affidavit of evidence in chief, Ms Kan stated that the plaintiff "was managing to carry out his tasks very well and [she] was happy that he was managing his task very well". It was further stated that the defendant "would have been in a position to continue to engage the plaintiff to carry out [the Light Duty jobs] up to the end of his work permit and might even have extended his work person if the plaintiff continued to carry out his task properly". However, during cross examination, Ms Kan gave a different story. Ms Kan stated that it was not the defendant's intention to assign the plaintiff the jobs he was doing when on light duty on a long term basis and that the plaintiff could go out with his disabilities and perform his job as a tent erector by assisting on the ground and he will get his basic salary and overtime. The evidence is that though the plaintiff had been employed as a driver, he has not obtained a Singapore driving licence and so was being trained as a tent erector pending the next driving test.

63 Ms Kan acknowledged that the plaintiff had requested to return to work on the field but the defendant did not allow him to do so. Ms Kan said that the reason for this was that the defendant

was of the view that the plaintiff had not fully recovered and so, out of goodwill, it continued to assign him the Light Duty jobs. Ms Kan further admitted that the reason the plaintiff was kept on Light Duty jobs was that the defendant wanted to keep the plaintiff around while he pursued his workmen compensation claim with the Ministry of Manpower. It was admitted that the reason the plaintiff's work permit was subsequently terminated was that the plaintiff had decided to withdraw the workmen compensation claim and to pursue his claim under the common law.

64 The plaintiff's and the defendant's version of the reason the plaintiff returned to China is at polar opposites. The plaintiff says that it was the defendant who told him that the work permit will be terminated. The defendant says that it was the plaintiff who called and said that he did not wish to work further for the defendant.

65 From my observation of the plaintiff and Ms Kan, I am of the view that they are both not credible witnesses. The plaintiff gave evidence that he required clutches to move around up to the time he returned to China. However, Ms Toh Chuee Hin, an employee of the defendant, gave evidence of meeting the plaintiff on the bus after work and learning that the plaintiff was going to Little India to meet friends. The plaintiff was not using clutches on this trip. The plaintiff's explanation for this was that he was training himself to move around without clutches and had to take rest frequently during this trip. The plaintiff was also observed by Ms Kan to move around the defendant's premises without clutches when he thought that he was not observed.

66 Ms Kan's evidence is also contradictory. In her affidavit of evidence in chief she states that the plaintiff was managing the task she had assigned him to do while on light duty very well and she was happy that he was managing the task well. However, during cross examination, Ms Kan described the plaintiff as "being a bit slack" and that "he would be lazy doing" the jobs that he was assigned when he was on light duty. She also gave different evidence on what jobs the plaintiff would be assigned to do if he were to stay to work with the defendant.

67 Though the plaintiff and Ms Kan both appear to be unreliable witnesses, I prefer the plaintiff's version of events because the plaintiff came to Singapore to work and support his family. There is no incentive for him to voluntarily quit and return to China where the prospect of obtaining employment with his injuries is uncertain. Second, the plaintiff's work permit was terminated just after the plaintiff decided to withdraw the workmen compensation claim and to commence the common law claim. The timing appears to support the plaintiff's position that it was the defendant who terminated his employment. Third, though Ms Kan says initially that she was happy with plaintiff's work, a different picture emerged during cross examination where Ms Kan said that plaintiff was lazy and did not want to work. Bearing all this in mind, I am of the view that it is more probable that it was the defendant who terminated the plaintiff's work permit on hearing that plaintiff had decided to commence the common law claim.

68 Even if it is true that it was the plaintiff who informed the defendant that he did not wish to continue working for the defendant, I am of the view that the plaintiff was forced to do so due to the work assignments and pay he received when on light duty and then subsequently after his medical leave had expired. The evidence from Ms Kan is that, though the plaintiff had requested to return to work in the field and earn his basic salary with overtime after the expiry of his medical leave and light duty, it was the defendant who had decided not to send him out but had kept him in the office to continue with his light duty task at a drastically reduced salary. The initial evidence from the defendant was that it intended to continue to employ the plaintiff in this capacity and at this reduced pay till the end of his work permit. However, the plaintiff was not informed of this. It was later clarified during the assessment of damages that the plaintiff would be allowed out to the field and would earn his basic salary with overtime. However, it appears that none of this was told to the

plaintiff prior to his return to China. Therefore, I am of the view that, even if the plaintiff was the person who had indicated that he did not wish to continue working for the defendant, the defendant had created a working environment that so unfavourable that the plaintiff was justified in doing so.

69 Since the evidence is that the plaintiff could have returned to the field to work and earn his basic salary and overtime after his medical leave and light duty leave had ceased, I am of the view that he should be awarded the sum of $1,029.29 per month for the period of 12 March 2011 to 4 May 2011. This amounts to $1,792.89.

From the date of return to China (5 May 2011) to expiry of the work permit (24 June 2012)

70 In light of my decision that it was the defendant who had terminated the work permit or alternatively, that the plaintiff was justified in terminating his employment with the defendant, it would follow that the plaintiff should be paid the salary he had earned if he had return to normal duties.

71 However, the plaintiff is under a duty to mitigate his loss by looking for alternative employment. Bearing in mind that the plaintiff was still recovering from his injuries and had just returned to China, I am of the view that it would reasonable to allow him four months to seek alternative employment and the plaintiff should have found a job by September 2011.

72 Therefore, I will award the plaintiff the full amount of $1,029.29 per month for the four month period from 5 May 2011 to the end of August 2011 spent looking for a job. For the balance of this period, the plaintiff is under a duty to mitigate his loss by trying to find alternative employment. As there is no evidence of any attempts to find alternative employment, the plaintiff is not entitled to any payment for loss of earnings from September 2011 to 24 June 2012.

73 Therefore, I award the sum of $1,029.29 for the period of 6 May 2011 to 30 August 2011. This amounts to $3,917.87.

From after expiry of the work permit (25 June 2012) to before commencement of new job (30 October 2012)

74 The onus is on the plaintiff to provide evidence that he would have stayed on in Singapore after the expiry of his work permit. While I am mindful of the fact that the plaintiff has given evidence that he intended to stay on in Singapore for as long as possible, the reality is that it would be difficult for the plaintiff to find employment with another employer with his disabilities. There is also no evidence of the efforts by plaintiff to find alternative employment during this period. Therefore, no award is made for this period.

From commencement of new job (1 November 2012) to 7 February 2013

75 The evidence is that the plaintiff has commenced employment as a kitchen assistant from 1 November 2012 at the salary of $200. I had earlier found that the plaintiff would be able to work as a chauffeur or taxi driver at the salary of $800. Therefore, the amount that he would be entitled to for this period is the difference between $800 and $200.

76 Accordingly, the award for this period is $600 per month for the period of 1 November 2012 to 7 February 2013. This amounts to $1,949.80.

77 Therefore, the total amount for pre-trial loss of earning awarded is $12,583.16.

Conclusion

78 For the reasons stated above, I award the plaintiff the following amount on a 100% basis:

A General Damages:	
(a) Open fracture right distal tibia and fibula fracture (right leg)	$14,000
(b) Closed fracture of left medial malleolus of tibia, fracture of left Talar neck with subluxation (dislocation) of the subtalar joint (left ankle)	$30,000 (agreed)
(c) Potential osteoarthritis of left ankle	$3,000
(d) Scars	$3,000
(e) Loss of Future Earnings	$94,011.84
(f) Future medical expenses	$13,200
B Special Damages:	
(a) Pre-trial medical expenses (Singapore)	$30.50 (agreed)
(b) Pre-trial medical expenses (China)	Nil
(c) Transport	$100.00 (agreed)
(d) Pre-trial loss of earnings	$12,583.16
Less salary received	*($5,040.05)*
Sub -total:	$7,543.11
TOTAL:	**$164,885.45**

C Interest at half of 5.33% on special damages from the date of service of the writ to the date of judgment and interest at 5.33% on general damages for pain and suffering from the date of the service of the writ to the date of judgment.

D Costs on the District Court scale to be agreed or taxed.

79 Interlocutory judgment of 85% was entered in favour of the plaintiff. Accordingly, the amount awarded to the plaintiff on 85% basis is $140,152.63.