Tan Joon Wei Wesley *v* Lee Kim Wei
[2013] SGHCR 24

Case Number : Suit No 180 of 2011(Registrar's Appeal No 1 of 2011)

Decision Date : 01 November 2013

Tribunal/Court : High Court

Coram : Elisha Lee James AR

Counsel Name(s) : Ms Lim Kim Hong (M/s Kim & Co.) for the plaintiff; Mr Simon Goh and Ms Wang Ying Shuang (M/s Rajah & Tann LLP) for the defendant

Parties : Tan Joon Wei Wesley — Lee Kim Wei

Damages – Assessment

1 November 2013 Judgment reserved.

AR James Elisha Lee:

Introduction

1 This is a personal injuries claim arising from a road traffic accident which had occurred on 10 August 2009. The suit against the Defendant was commenced on 17 March 2011. Interlocutory judgement was entered by consent on 14 June 2011 in the Plaintiff's favour at 100%. The Notice of Appointment for Assessment of Damages was filed on 2 May 2013. For the present hearing, the Plaintiff called a total of 11 factual witnesses and 1 expert witness, while the Defendant called 1 expert witness. Only the Plaintiff and both expert witnesses testified at the hearing. The Defendant had agreed to dispense with the attendance and oral testimony of the factual witnesses.

Background facts

2 On 10 August 2009, at about 1pm, the Plaintiff was riding his motorcycle on the leftmost lane along the KJE towards SAFTI Military Institute at Jurong West when the Defendant, who was driving a lorry, encroached onto the Plaintiff's path and collided with the right side of the Plaintiff's motorcycle. The Plaintiff sustained head injuries and multiple superficial abrasions as a result of the accident. He was admitted to the National University Hospital ("NUH") from 10 August 2009 to 22 August 2009. He was discharged on 22 August 2009 and given hospitalisation leave until 18 September 2009.

3 The Plaintiff was 22 years of age at the time of the accident. He was a pilot trainee with the Republic of Singapore Air Force ("RSAF"). Following the accident he was found to be unsuitable by the RSAF to continue with flying training due to risk of post-traumatic epilepsy arising from head injuries. The Plaintiff was consequently released from the RSAF on 27 October 2009. He subsequently applied and was accepted for a 4-year degree course in Management at Purdue University in the United States. The Plaintiff commenced his studies in August 2010 and is expected to graduate in September 2014. He has intimated at the hearing that he intends to pursue a career in the Human Resource ("HR") industry after graduation.

4 The various heads of claim which the Plaintiff now seeks to recover against the Defendant are as follows :

Pain and suffering and loss of amenities	$90,000
Future medical expenses	$10,000
Cost of spectacles and contact lenses or photorefractive keratectomy (PRK) surgery fees	$5,000 / $2,478.12
Pre-trial loss of earnings	$217,793.35 or $191,379.65
Loss of future earnings	$3,339,120 or $2,486,523 or $2,001,948
Overseas education expenses	$260,006.80

5 I will now deal with each of the heads of claim.

Pain and suffering

6 The Plaintiff produced a total of 4 medical reports from 3 doctors. They were Dr Yeo Tseng Tsai ("Dr Yeo"), a Senior Consultant Neurosurgeon and Head of the Division of Neurosurgery, Department of Surgery, NUH, Dr Anthony Tang Poh Huat ("Dr Tang"), an Associate Consultant from the Department of Surgery, NUH and Dr Adrian Loh Seng Wei ("Dr Loh"), a Medical Officer from the Department of Psychological Medicine, NUH.

7 According to the medical report dated 5 March 2010 by Dr Yeo ("the first report"), the Plaintiff was observed to be drowsy but stable on admission. An urgent CT scan of the head revealed the following injuries :

(a) acute haematoma at the posterior limb of the left internal capsule;

(b) traumatic subarachnoid haemorrhage;

(c) subdural haematoma at the tentorium cerebelli;

Chest, cervical and pelvic X-rays were normal and the Plaintiff was treated conservatively and made "a slow progressive recovery". Dr Yeo confirmed in his second report dated 12 August 2011 ("the second report") that no surgery was performed on the Plaintiff at the time. The first report also stated that the Plaintiff had, during the course of recovery, developed "behavioural disturbances and emotional liability" and was referred to the psychiatrist. He was also reviewed by the head injury rehab specialist.

8 Following his discharge from NUH on 22 August 2009, the Plaintiff was reviewed on 22 September 2009. According to the first report, a repeat CT scan "showed resolution of the previously seen haemorrhages". He also noted that the Plaintiff's "motor power was good in all his limbs". In the second report, Dr Yeo opined that behavioural disturbances and emotional liability are "common occurrences in the acute / subacute phase of patients with significant head injury" and that they are "transient in the majority of cases", including the Plaintiff in this case. Dr Yeo further opined that the Plaintiff "does not seem to have any long term sequelae for this".

9 Dr Tang's report dated 29 March 2010 showed the following injuries sustained by the Plaintiff:

(a) Acute haematoma at the posterior limb of the left internal capsule;

(b) Subarachnoid haemorrhage at the high right frontal lobe;

(c) Multiple abrasions, mostly superficial, over the left chest, right and left abdominal walls, the left hand, the right thigh and both knees.

10 In his affidavit, Dr Tang confirmed that there were "some behavioural changes observed" while the Plaintiff was under the care of NUH.

11 According to Dr Loh's report dated 3 December 2009, the Plaintiff underwent detailed cognitive assessment on 17 August 2009 and was found to have a traumatic brain injury with possible post-concussion syndrome. There was "no evidence" of post-traumatic stress disorder or depression, and that the Plaintiff's behaviour "gradually improved". At the follow-up psychiatric assessment on 17 September 2009 the Plaintiff was assessed to have incomplete post-traumatic amnesia of 12-day duration. Dr Loh also noted in his report that in the review by the Plaintiff's rehabilitative physician on 29 September 2009, he was similarly found to have anterograde amnesia of 11 days and retrograde amnesia of 1 day, which according to Dr Loh was indicative of severe traumatic brain injury. The Plaintiff underwent detailed neuropsychological assessment on 20 October 2009 which showed no major deficits, with memory more likely to be affected compared to other areas. At the last psychiatric review with Dr Loh on 29 October 2009, the Plaintiff "reported being his usual self with no significant psychological symptoms" and that Mental State Examination was normal. The Plaintiff was then discharged with an open review date.

12 The physical injuries sustained by the Plaintiff are not in dispute.

Claim for Head Injuries

13 Both the Plaintiff and the Defendant had adopted the "component approach" in deriving their respective quantum of damages pertaining to the head injuries sustained by the Plaintiff. The approach is clearly set out in *Tan Yu Min Winston v Uni-Fruitveg Pte Ltd* [2008] 4 SLR(R) 825 ("*Tan Yu Min Winston*") (at [25] – [26]) cited with approval by the Court of Appeal in *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587 ("*Chai Kang Wei Samuel*") (at [48]):

> 25 The correct and perhaps more scientific way to look at the head injuries to the brain resulting from an accident is to properly classify them into the following three separate domains: structural, psychological and cognitive:
>
> (a) "structural" injury (*eg*, brain oedema, subdural, extradural subarachnoid haematoma, brain contusion, loss of consciousness), which is the specialisation of neurosurgeons;
>
> (b) "psychological" injury (*eg*, depression, mood swings, anger, anxiety), which is the specialisation of psychiatrists; and
>
> (c) "cognitive" impairment (*eg*, loss of spatial, visual, long and short term memory, intellect (in terms of IQ), learning ability), which is the specialisation of clinical psychologists.
>
> 26 The deficits in each of the above domains are clearly separate and distinguishable and in my view should be assessed separately if it is possible to do so. I can see another benefit that this approach can bring from an evidentiary point of view. I believe that it will be clearer and more streamlined for the experts from each of the three different specialisations to give evidence within their own specialisation as to the degree of pain, suffering and loss of amenities due separately to the "structural" injury, the "psychological" injury and the "cognitive" impairment

arising from the accident injury, trauma or damage to the brain. Quantification of the loss for each of the three quite different types of injuries can then be made.

14 In *Chai Kang Wei Samuel*, Chao JA held further (at [49]) that:

> … Properly applied, the component approach could indeed prevent over-compensation rather than encourage it. Nevertheless, in awarding damages by way of the component approach, courts should always be mindful that the overall quantum must be a reasonable sum reflective of the totality of the injury.

15 And more recently in *Lee Wei Kong (by his litigation representative Lee Swee Chit) v Ng Siok Tong* [2012] 2 SLR 85 ("*Lee Wei Kong*") (at [14]), the Court of Appeal held that :

> … the component approach is no more than a systematic instrument to aid the court to determine what would be a fair and reasonable quantification for a particular injury or disability, having regard to precedents. Therefore, previous cases will still remain relevant in so far as the particular injuries or post-accident residual disabilities are sufficiently similar: they provide the backdrop in which the court can place the award in order to determine whether it represents a reasonable sum reflective of the totality of the injury.

Structural Injury

16 Under the "structural" component, the Plaintiff has referred me to several precedent cases, of which only three are of relevance in terms of the nature of the head injuries sustained:

(a) In *Siti Rabiah Bte Ahmad v Abu Bin Nachak* Suit No. 1328 of 1997 (High Court) ("*Siti Rabiah*") (reported in *Assessment of Damages: Personal Injuries and Fatal Accidents* 2nd Edition at page 142), the plaintiff had suffered the following head injuries:

(i) Diffuse brain injury with traumatic subarachnoid haemorrhage

(ii) Injury to third cranial nerve

(iii) Right parieto-occipital scalp haematoma and left periorbital haematoma with disabilities

(iv) Diplopia

(v) Nerve palsy

(a) The plaintiff developed disabilities in the form of diplopia (double vision) and impairment of her higher mental functions including poor memory. She was awarded $55,000 for injuries (i) to (iii). The damages for injuries (iv) and (v) were agreed.

(b) In *Jeya v Lui Yew Kee* [1992] 1 SLR(R) 240 ("*Jeya*"), the plaintiff sustained head injury with fracture of the frontal bone and damage to the frontal lobe. The injury had affected the plaintiff's personality (e.g. apathy and emotional instability), reduced her IQ and caused her to suffer occasional lapses of short term memory. There was also a possibility that the plaintiff might never regain her previous level of functioning. The plaintiff was awarded $50,000.

(c) In *Mullaichelvan s/o Perumal v Lee Heng Kah* [2013] SGHCR 3 ("*Mullaichelvan*"), the head

injuries involved were traumatic subarachnoid haemorrhage, left temporal lobe contusion and fracture of the left frontal skull bone. The plaintiff, who did not suffer any psychological or cognitive impairment, was awarded $45,000.

17 The Plaintiff submitted that the appropriate quantum for structural damage in the present case should be $55,000 based on the precedent cases cited.

18 I observed that the injuries sustained by the plaintiffs in these precedent cases were all more serious than those sustained by the Plaintiff. It is also pertinent to note that in *Koh Chai Kwang v Teo Ai Ling (by her next friend Chua Wee Bee)* [2011] 3 SLR 610 ("*Teo Ai Ling*"), where the plaintiff had suffered very serious head injuries, namely extensive fractures to the skull, a large extradural haematoma and intracranial injuries, the award of $70,000 for the physical head injuries was upheld by the Court of Appeal. The claim of $55,000 for the structural component submitted by the Plaintiff thus appears to me to be proportionately excessive in comparison.

19 The Defendant in turn referred me to *Tan Kim Lee v Mohd Yusoh Bin Hussain* DC Suit No. 3084 of 2000 ("*Tan Kim Lee*") (reported in *Assessment of Damages: Personal Injuries and Fatal Accidents* 2nd Edition at page 151) where the plaintiff had suffered, amongst other physical injuries, a left subdural haematoma, left temporal lobe contusion, and traumatic subarachnoid haemorrhage. Craniectomy was performed on him, resulting in the craniectomy site being sunken which would require subsequent surgery to replace the skull bone defect. The plaintiff was awarded $25,000 for his head injuries. The Defendant submitted that the quantum for structural damage in this case should be similar to that awarded in *Tan Kim Lee* given the similarity in the injuries sustained.

20 I note that the injuries in *Tan Kim Lee* were relatively less extensive and severe as those sustained by the Plaintiff. The injuries there were confined largely to the left side of the brain while the Plaintiff had sustained injuries to the left, right frontal lobe and back of the brain, where the tentorium cerebelli is located. The Plaintiff had also sustained acute haematoma on the left side of the brain. The plaintiff in *Tan Kim Lee* had, however, undergone a craniectomy while no surgery was performed on the Plaintiff.

21 In the light of the precedent cases, I am of the view that the appropriate sum to be awarded under the structural component should be $30,000.

Psychological Injury

22 For psychological injury, there is no dispute that the Plaintiff had suffered behavioural disturbances and emotional liability during his hospitalisation. This was clear from the medical reports. The injuries, according to Dr Yeo, are transient in the majority of cases, and it would appear to have been the case for the Plaintiff as during his last review with Dr Loh on 29 October 2009, the Plaintiff had reported being his usual self. Dr Loh had also reported that the Plaintiff had, on that occasion, showed no significant psychological symptoms and that his Mental State Examination was normal. The Plaintiff asserted during his evidence at the assessment hearing that he was "somewhat depressed" after the accident up till August 2010, a period of about a year. This assertion, though, is not supported by the evidence. According to Dr Loh, he had found no evidence of post-traumatic stress disorder or depression when he first assessed the Plaintiff on 17 August 2009. The Plaintiff's assertion is also inconsistent with Dr Loh's observation and diagnosis of the Plaintiff at the last review. I am therefore of the view that the Plaintiff's assertion should be disregarded.

23 The Plaintiff's claim under this limb is for the sum of $5,000. In support of his claim, he has referred to the case of *Ng Chee Wee v Tan Chin Seng* [2013] SGHC 54 ("*Ng Chee Wee*") where the

plaintiff was awarded $10,000 for depression and cognitive impairment. The sum of $5,000 was derived on the basis that the award of $10,000 in *Ng Chee Wee* had covered cognitive impairment as well.

24 In *Ng Chee Wee*, there was clinical evidence that the plaintiff had suffered from "extremely severe" stress and moderate depression. The clinical psychologist had also observed that the plaintiff seemed to have difficulties coping with his emotions and life in general. The assessment was conducted more than 8 years after the accident. The plaintiff also suffered from moderate cognitive impairment, which included significant impairment of his visual memory. The plaintiff's wife had also testified that after the accident the plaintiff suffered from frequent mood swings and a slowing down in his manner of speech. It is apparent that the psychological injury suffered by the plaintiff in *Ng Chee Wee* is more severe in terms of the nature and duration of the injuries.

25 The Plaintiff has further referred me to 2 cases where the plaintiffs had suffered from post-concussion syndrome – *Samsor Bin Mohamed Shah v Chang Wee Ching* (DC Suit No. 1948 of 1997) (reported in *Practitioners' Library, Assessment of Damages: Personal Injuries and Fatal Accidents* at page 226) and *Deepika Sharma v Lee Zhihui* [2007] SGDC 276 ("*Deepika*"). The awards in those cases were, however, given on a global basis together with other injuries sustained and thus provide limited guidance on what the appropriate quantum under the psychological injury limb should be. It is pertinent to note as well that according to Dr Loh's report, the Plaintiff was found to have a traumatic brain injury with *possible* post-concussion syndrome. There is no evidence adduced of any confirmation of actual post-concussion syndrome suffered by the Plaintiff. This further distinguishes the present case from these 2 precedent cases.

26 I am of the view, having considered *Ng Chee Wee*, that the appropriate sum to be awarded for psychological injury in this case should be $3,000.

Cognitive Impairment

27 With regard to cognitive impairment, the Plaintiff has claimed the sum of $10,000 in respect of the anterograde and retrograde amnesia which the Plaintiff suffered for 12 days. The case of *Leong Wah Toh v Panner Selvam Lakshmanan & Anor* (MC Suit No. 9958 of 1997) ("*Leong Wah Toh*") (reported in *Practitioners' Library, Assessment of Damages: Personal Injuries and Fatal Accidents* at page 226) was cited by the Plaintiff in support. In that case the plaintiff had sustained head injury with retrograde amnesia and other minor facial injuries. There were no further details regarding the retrograde amnesia reported. The parties agreed on the sum of $6,000 as overall damages for all of the injuries sustained. In *Ong Zern Chern Philip v Wong Siang Meng* [2004] SGHC 258 ("*Ong Zern Chern*"), a case referred to by the Defendant, the plaintiff had, amongst other injuries, sustained retrograde amnesia with headaches, similarly with no further details of the retrograde amnesia reported. The agreed quantum was $5,000.

28 The Plaintiff has argued that as he had suffered both anterograde and retrograde amnesia, the appropriate award should be $10,000. I note that the Plaintiff had suffered predominantly from anterograde amnesia with only 1 day of retrograde amnesia. While it may be reasonable to assume that a patient who suffers from both anterograde and retrograde amnesia would be in a worse situation than one who suffers only from only one of either type of amnesia, it may not be so to assume the same of a patient who had sustained anterograde amnesia over one suffering from retrograde amnesia. It would be difficult to determine that anterograde amnesia - the inability to form new memory, is a greater impairment than retrograde amnesia - the inability to recall memory, in the absence of any supporting evidence. I am, as such, unable to find that the Plaintiff, who suffered predominantly from anterograde amnesia, was in a worse situation than the plaintiffs in *Leong Wah*

Toh and *Ong Zern Chern* to the extent as to justify the award of a sum which represents twice of what was awarded in the 2 cases (if we consider the sum of $6,000 in *Leong Wah Toh* to be inclusive of his other injuries and that $5,000 would be the appropriate portion for the head injury). I am of the view therefore that the appropriate quantum should be $5,000.

Risk of post-traumatic epilepsy

29 The Plaintiff had been deemed unsuitable by the RSAF to continue with his flying training due to his "significant" risk of post-traumatic epilepsy. This is according to Cpt (Dr) Zhuang Kun Da of the ARMC Medical Centre in his letter dated 19 February 2010 ("the ARMC letter") [note: 1] . Dr Zhuang also explained in the same letter that post-traumatic epilepsy is a "major concern after head injury due to the presence of iron in the brain tissues deposited from the bleed" and that "a seizure in flight would cause acute incapacitation and pose an adverse safety impact to" the Plaintiff. Following the accident, the Plaintiff's Physical Employment Status (PES) was downgraded from B to E9L9. According to a letter by Dr Zhuang dated 28 April 2010 [note: 2] , the Plaintiff had no prior medical history before the accident. Accordingly, the Plaintiff has claimed $14,000 for having developed post-traumatic epilepsy risk on the ground that it has caused "an adverse change in his lifestyle".

30 The Defendant raised the question whether Dr Zhuang had in fact examined the Plaintiff and pointed out that the letter did not state that Dr Zhuang or the ARMC Medical Centre had carried out any tests or examination which led to their assessment of the Plaintiff's post-traumatic epilepsy risk. The Defendant contended that Dr Zhuang's comments were based on nothing more than a general perceived correlation between head injuries and post-traumatic epilepsy. Dr Zhuang was not called as a witness in these proceedings, although the admissibility of the ARMC letters has not been challenged by the Defendant. I should also point out at this juncture that there are 2 medical certificates tendered which show that the Plaintiff had attended at the Clinical Aviation Medicine Branch, Aeromedical Centre for medical examination on 2 occasions after his discharge from hospital [note: 3] ; although they do not show that the Plaintiff had been specifically assessed for post-traumatic epilepsy. As for the downgrading of the Plaintiff's PES, the Defendant's contention is that there is no evidence that it was due to the head injuries sustained and/or the risk of post-traumatic epilepsy.

31 The thrust of the Defendant's argument is that there is no clear evidence that the Plaintiff had developed post-traumatic epilepsy. None of the medical reports produced had alluded to it. There is also no evidence of the condition ever manifesting during the period of nearly 5 years since the accident. There is, as such, no basis for the Plaintiff's claim.

32 It is clear that the evidence adduced does not show that the Plaintiff had in fact developed post-traumatic epilepsy, or that the Plaintiff will develop post-traumatic epilepsy at some time in the future. The ARMC letter merely stated that the Plaintiff is at significant risk of developing post-traumatic epilepsy. Although the Plaintiff has claimed that being subject to such a risk itself has caused an adverse change in his lifestyle, no evidence was adduced or explanation furnished regarding how the Plaintiff's lifestyle had been adversely affected as a result. The Plaintiff has also failed to explain how the figure of $14,000 is derived.

33 I am of the view, therefore, that it would not be appropriate to award any damages under the head of pain and suffering in respect of the Plaintiff's risk of post-traumatic epilepsy.

Abrasions

34 The Plaintiff has claimed a sum of $6,000 for the multiple abrasions suffered. According to Dr Tang's report, the Plaintiff had sustained mostly superficial abrasions over the left chest, right and left abdominal walls, the left hand, the right thigh and both knees. Having considered the precedent cases referred to me, I am of the view that the appropriate quantum should be $4,000.

35 The total award in respect of the Plaintiff's head injuries is thus $38,000, and the overall quantum for pain and suffering is $42,000.

Future medical expenses and cost of spectacles and contact lenses / photorefractive keratectomy (PRK) surgery fees

36 The Plaintiff's claim of $10,000 for future medical expenses was initially based on the medical reports tendered, and in particular, Dr Tang's report dated 29 March 2010 which stated that the Plaintiff was discharged with follow-up plans with the psychiatrist and neuro psychologist. The Plaintiff conceded, however, during cross-examination by counsel that he had already attended all of the follow-up appointments referred to in Dr Tang's report and that the relevant expenses had already been included in his claim for medical expenses (settled as between parties). There is also no evidence that the Plaintiff would need to attend any further follow-up treatment or examination in the future. The Plaintiff subsequently changed tact during submissions and argued that his risk of post-traumatic epilepsy "will eventuate" and that substantial medical costs arising from hospitalisation and medication will be incurred as a result. As pointed out in [32] above, there has not been any evidence adduced that the Plaintiff has developed or will develop post-traumatic epilepsy in the future. There has also not been any information furnished on the specifics of the treatment required for the condition and estimated costs involved. I am of the view therefore that no damages for future medical expenses should be awarded.

37 Similarly, with respect to the claim for cost of spectacles and contact lenses / photorefractive keratectomy (PRK) surgery fees, no evidence was adduced to support the Plaintiff's assertion that if he had remained on the pilot training programme, the RSAF would have arranged and paid for him to undergo PRK surgery to correct his short-sightedness before commencement of the Basic Wings Course. It would have been open for the Plaintiff in his communications with the Ministry of Defence ("MINDEF") and the RSAF to seek clarification on the matter. Unfortunately, this was not done. In the circumstances, I am unable to order any damages for this aspect of the Plaintiff's claim as well.

Prospect of the Plaintiff completing his flying training and becoming a full-fledged RSAF pilot

38 The remaining heads of the Plaintiff's claim hinges upon the central issue of the prospect of the Plaintiff making it through the RSAF flying training programme and graduating as a full-fledged pilot with the RSAF, as there is a chance that the Plaintiff may not make it pass the subsequent phases of the flying training he was undergoing at the time of the accident. Any calculation of the Plaintiff's pre-trial loss of earnings would have to take into account this prospect. The issue takes on greater significance when it comes to determining loss of future earnings / loss of earning capacity ("LFE / LEC"), which in turn affects the question of whether the Plaintiff's pursuit of his Purdue University education can be considered a reasonable act of mitigation of his loss of future earnings for which he would be entitled to claim the relevant expenses incurred.

39 I will proceed, as such, to deal with this issue before delving into the Plaintiff's remaining claims for pre-trial loss of earnings, LFE / LEC, and expenses from his overseas education at Purdue University.

40 The Plaintiff commenced his pilot training programme sometime in April 2009. He completed the

Air Grading Course in end May 2009 and was amongst 6 trainees from a batch of 12 who passed. The Plaintiff was ranked 4th. At the time of the accident, the Plaintiff was undergoing the Air Force Officer Cadet School ("Air Force OCS") course. The next phase of training awaiting the Plaintiff would be a 9-day jungle survival course in Brunei, followed by about 2 months of Ground School, which is a preparatory course for the Basic Wings Course. The final phase of the training programme would be the Advance Wings Course, a specialised phase which comprises either the Fighter Wings, Rotary Wings or Transport Wings Course. Trainees are streamed at the end of the Basic Wings Course. Upon passing the Advance Wings Course, a trainee would become a full-fledged RSAF pilot. According to the RSAF, the complete pilot training programme would usually take about 25 to 28 months.

41 The Plaintiff's position is that he had a more than even chance of completing his flying training and becoming a full-fledged pilot with the RSAF had the accident not occurred. The following evidence were adduced in support :

i) affidavit evidence from 2 of the Plaintiff's course mates during the Air Grading Course, namely Loy Shi Bin ("Shi Bin") and Gerard Tan Yi Qiang ("Gerard"), both of whom had progressed to the Advance Wings Course and were *en route* to becoming full-fledged RSAF pilots as at 5 March 2012 – the date of their respective affidavits of evidence-in-chief ("AEICs"). Shi Bin had stated that in his batch of 14 trainees for the Basic Wings Course, only 2 did not make it to the Advance Wings Course, while according to Gerard, in his batch of 15, 5 were axed after the Basic Wings Course. Both Shi Bin and Gerard also provided testimonial evidence regarding the Plaintiff's aptitude and potential for making it through the pilot training programme based on their observations and interaction with him during the Air Grading Course;

ii) the affidavit testimonial evidence of Major Lee Chee Heng ("Major Lee"), the course commander for the Air Grading Course which the Plaintiff attended;

iii) the RSAF's records on the Plaintiff's performance during the Air Grading Course;

iv) the affidavit evidence of Willie Chew Swee Lim ("Willie Chew"), a retired RSAF fighter pilot, on the chances of a trainee making it through the remaining phases of the pilot training programme after he has passed the Air Grading Course.

Evidence of Shi Bin, Gerard and Major Lee

42 Objections were lodged by the Defendant against certain portions of the AEICs of Shi Bin, Gerard and Major Lee (all 3 had not testified at the assessment hearing) on the grounds that they are speculative and/or constitute inadmissible opinion evidence :

Paragraph	**Statement objected to**	**Grounds of objection**
Shibin's AEIC		
6(f)	*"At the Advanced Phase of training, the trainees are all likely to graduate with the RSAF Wings."*	Speculation and/or opinion
6(g)	*"I believe that had the accident not occurred, Wesley would have certainly passed out of the Basic Wings Training Course and completed the Pilot Training Programme."*	Speculation and/or opinion
Gerard's AEIC		

5(e)	*"At the Advanced Phase of training, the trainees are all likely to graduate with the RSAF Wings."*	Speculation and/or opinion
5(f)	*'It is my opinion that had the accident not occurred, Wesley had a high probability of passing out of the Basic Wings Course."* *"I think Wesley is very confident as a person and he has very natural abilities and good dexterity. During flying training, I could see that Wesley has good situational awareness and appears to me as someone who is able to remain calm in stressful situations."*	Speculation and/or opinion Opinion
Major Lee's AEIC		
11	*"With his maturity and diligence, Wesley may have made it as an RSAF pilot if he had continued with the training and passed all the tests."*	Speculation and/or opinion

43 In response, the Plaintiff had sought to justify their admission via section 32B(3) of the Evidence Act (Cap 97) ("EA") which states :

> (3) Where a person is called as a witness in any proceedings, a statement of opinion by him on a relevant matter on which he is not qualified to give expert evidence, *if made as a way of conveying relevant facts personally perceived* by him, is admissible as *evidence of what he perceived*.
>
> [emphasis]

44 The Defendant has raised the argument that as the AEICs were affirmed and the Notice of Objection lodged prior to 1 August 2012, section 32B(3) would not apply. I disagree with the position. The issue of admissibility only arises at the hearing as that is when the affidavit would be admitted as evidence. The Supreme Court Practice Directions Part VI Paragraph 62(4) also specifically provides that adjudication on the material objected to in AEICs should only be sought at the trial or hearing of the cause or matter. As such, it would have to be determined according to the rules of evidence in force at the time of the hearing. Since section 32B(3) had already come into effect by the time of the hearing, I am of the view it would apply.

45 Section 32B(3) of the EA applies to the situation where the opinion or inference is a way of communicating facts which the witness had seen. An example would be when a witness to a traffic accident may be allowed to testify that the driver involved was intoxicated, the witness's opinion that the driver was intoxicated being inferred from what he had observed, for example the driver had blood-shot eyes, an unsteady gait and slurry speech. The opinion would provide clarity to the witness' testimony. It makes sense as such to allow for its admission. There would be little risk in admitting such evidence as the court will be able to assess the opinion against evidence of the facts upon which it is based. Such evidence was previously only admissible in criminal cases under section 385(3) of the old Criminal Procedure Code ("CPC") and section 277(3) of the CPC 2010. Section 32B(3) of the EA is *in pari materia* with the now repealed section 277(3). The effect of the introduction of section 32B(3) and corresponding repeal of section 277(3) is that the admission of such opinion evidence is now possible in both civil and criminal cases – see 8.79 to 8.84 of *Evidence*

and the Litigation Process by Jeffrey Pinsler, SC (3rd Edition).

46 With the exception of the second part of paragraph 5(f) of Gerrard's AEIC, I am of the view that none of the other statements of Shi Bin and Gerard set out in the table at [42] above falls within the category of opinion evidence envisaged under section 32B(3) of the EA, or are otherwise admissible under any other provision in the EA. In any case, although both Shi Bin and Gerard has stated in their respective affidavits their observations of certain positive qualities and traits which the Plaintiff possesses which may suggest strong aptitude for flying, it is difficult to ascertain, objectively, how those observations can lead to the conclusion that the Plaintiff will "certainly" or had a "high probability" of passing the pilot training programme in the absence of any information regarding the content of the Basic Wings Course and Advance Wings Course, and in particular the requirements or criterion for passing. Moreover, they are both speaking from their perspectives and experience as trainees rather than as, for example, an instructor or someone who has experience in the conduct of the pilot training programme who, based on their knowledge of the programme and experience running it, may be in a position to render more reliable opinion on the prospect of any particular trainee making it through the programme. The same can be said regarding their statement that trainees in the final advance phase of training are all likely to graduate from the programme. In fact the statement appears to be a mere assertion as there is nothing in Shi Bin and Gerard's AEICs regarding the basis for their opinion. I am of the view, therefore, that the said portions of Shi Bin and Gerard's AEICs, with the exception of the second part to paragraph 5(f) of Gerard's AEIC, should not be admitted into evidence.

47 With regard to the second part to paragraph 5(f) of Gerard's AEIC, I am of the view that it is admissible under section 32B(3). There would, however, be limited weight accorded to it in the absence of evidence on the facts supporting those qualities which Gerard had purportedly observed in the Plaintiff. For the same reason, I would accord limited weight to Shi Bin's statements regarding the Plaintiff's qualities and aptitude for flying even though the Defendant had withdrawn their objection to them. Shi Bin had opined in his affidavit that the Plaintiff was a "very stable person" and "very strong flyer" who had "the presence of mind" during flying training. There is no evidence adduced, however, on the basis for his opinion.

48 The statement of Major Lee in [42] above is, in my view partially an opinion and a statement of fact. While he has expressed an opinion that the Plaintiff possesses the qualities of maturity and diligence, his subsequent statement is nothing more than a neutral statement of fact. Quite obviously any trainee who continued with the pilot training programme and passes all the tests would become a RSAF pilot. It is also difficult to relate the first part of his statement to the second as it must be the case that even if a trainee possesses those qualities, he would still not be able to pass out as a RSAF pilot if he does not remain on the programme and pass all the tests. The first part of his statement would, in my view, be admissible under section 32B(3) of the EA. The second part of the statement would be admissible as a statement of fact, although it would have little or no effect in advancing the Plaintiff's case given its neutral character.

49 Major Lee's opinion that the Plaintiff possesses the traits of maturity and diligence appears to be based predominantly on his ability to handle additional responsibilities as the course in-charge for his batch during the Air Grading Course. He has also given affidavit evidence that the Plaintiff's performance for the Air Grading Course is good. Major Lee was the instructor who took the Plaintiff for his final flight test and had passed him.

RSAF's records

50 The RSAF's records on the Plaintiff's performance consists of the following :

i) a letter dated 12 April 2010 [note: 4] stating that the Plaintiff was a mature and hardworking student who has no problems flying with any instructor;

ii) a letter dated 18 October 2011 [note: 5] stating that the Plaintiff was a mature and hardworking student whose flying was of "average to low standard and has shown good improvement toward the later part of training".

51 These statements are of limited assistance in my view in terms of shedding light on the Plaintiff's prospects of making it as a RSAF pilot.

Willie Chew's evidence

52 Willie Chew joined the RSAF in 1970 and served for 34 years. He retired in 1999 holding the rank of Major. He was a fighter pilot and flight instructor. His last appointment before retirement was as Commanding Officer of the Standards Squadron. His main responsibilities included training of the pilots and instructors, conducting flight examination and formulating flight training operational concepts, procedures and syllabi. According to Willie Chew, the average attrition rate for the Air Grading Course could be as high as 70%. Once a trainee completes Air Grading, his chances of making it through the programme are about 70% to 80%. He further opined that it is rare for those who graduate from Air Grading to be subsequently attrited as those not competent for pilot training would have already been attrited during the Air Grading Course. According to him, no one fails the Air Force OCS unless they volunteer to do so, and that during Ground School, trainees who fail any test at the first instance would be allowed to re-sit the various tests until they pass. And finally, it would be rare for trainees to fail or be forced to drop out from the Advance Wings Course.

53 The most important aspect of Willie Chew's affidavit evidence for the purpose of the assessment hearing would be his opinion that trainees who pass the Air Grading Course had a 70% to 80% chance of making it through the pilot training programme. The Plaintiff has relied on Willie Chew's opinion in support of his contention that he had more than an even chance of making it as a RSAF pilot. Although the Defendant has not raised any objection to this aspect of Willie Chew's affidavit evidence, I am of the view that there is an issue concerning admissibility of the evidence. There is no evidence, and in fact no submission before me that he is an expert in the area. Although he was a flight instructor, it is not clear from his AEIC whether he was an instructor in the RSAF pilot training programme. There is also no evidence of his involvement in the planning and running of the programme. I am, as such, unable to regard Willie Chew as an expert witness. In the circumstances, his evidence that trainees who pass the Air Grading Course had a 70% to 80% chance of making it through the pilot training programme would be inadmissible opinion evidence. In any case, it is not stated anywhere in his affidavit what the basis was for the percentage figures. There is also, in my view, a serious ambivalence in his evidence. In this regard, it would be useful to reproduce the entire sub-paragraph :

"Once a trainee completes the Air Grading Course, his chances of succeeding in the rest of [the] course under the Programme are about 70% to 80%. The remaining 20% depends on the rest of the course in the Programme including Basic Wings and Advanced Wings."

54 The second sentence in the sub-paragraph presents, in my view, a perplexity somewhat. After rendering his opinion that a trainee successful in Air Grading has a 70% to 80% chance of making it through the rest of the course under the Programme, which must presumably include the Basic Wings Course and Advanced Wings Course, Willie Chew goes on to opine that the remaining 20% depends on the rest of the course including Basic Wings and Advanced Wings. The subsequent statement has, in

my view, thrown his opinion into disarray as it is now impossible to make out exactly what he is saying. This absence of clarity, in my view, casts a doubt on the reliability of Willie Chew's opinion. Unfortunately, Willie Chew was not called to testify at the hearing and hence, there was no opportunity to seek clarification from him. The Plaintiff has sought to demonstrate that Willie Chew's view is corroborated by the evidence that in Shi Bin's batch of 14 trainees for the Basic Wings Course, 2 did not make it to the Advance Wings Course which represented a percentage of about 86%, and that in Gerard's batch 5 of the 15 trainees were axed after the Basic Wings Course which represented a percentage of about 67%. With respect, I find the Plaintiff's attempt overly simplistic and convenient. Firstly, Willie Chew's opinion appears to be in respect of the chances of a trainee making it through the entire pilot training programme and not merely that of a trainee passing the Basic Wings Course. Secondly, the numbers in respect of only 2 batches of trainees from a single component of the pilot training programme would not be sufficient empirical support, in my opinion, for any conclusion to be drawn as to the chances of a trainee making it through the entire pilot training programme.

55 In the circumstances, I am not inclined to admit Willie Chew's evidence that a trainee who passes the Air Grading Course has a 70% to 80% chance of making it through the remaining courses in the pilot training programme.

Defendant's arguments

56 The Defendant has argued that the Plaintiff had a "less than reasonable chance" of becoming a full-fledged pilot. The Defendant pointed out that the Plaintiff had only been on the pilot training programme for about 7 months, which represents about 30% of the pilot training programme based on the duration of 25 to 28 months for the entire programme. The Air Grading Course which the Plaintiff had passed is merely a first selection test to gauge the trainee's actual flying skills. The remaining phases of the programme would be much more gruelling and selective. The Defendant has also pointed out that the Plaintiff's flying during Air Grading was assessed to be of "average to low standard", although I would have to add that the assessment by the RSAF also included a comment that the Plaintiff had "shown good improvement toward the later part of training". The Defendant further highlighted that the Plaintiff was ranked only 4th out of 6 during Air Grading. This, however, would have to be viewed with the perspective firstly, that the Plaintiff was amongst 6 out of 12 trainees who passed the Air Grading Course, and secondly that 1 of those 6 trainees besides the Plaintiff, Jui-sern who ranked higher than him, was attrited subsequently during the Basic Wings Course. Finally, the Defendant alluded to the letter dated 18 October 2011 from Air Manpower Department of the RSAF which had stated that it would be "speculative" to assess if the Plaintiff would have attended the Advanced Wings Course and pass out from pilot training.

57 In the overall analysis, the only evidence which this court can rely on to determine the Plaintiff's chances of making it through the pilot training programme can be summarised as follows:

(a) the anecdotal opinion evidence of his performance during the Air Grading Course from Shi Bin, Gerard and Major Lee;

(b) the evidence that the Plaintiff was 1 out of 6 trainees who passed the Air Grading Course in his batch and was ranked 4th, and that of these 6 trainees, only 1 other (besides the Plaintiff) had failed to complete the pilot training programme;

(c) the evidence that in 2 separate batches of trainees for the Basic Wings Course, 2 out of 14 did not make it to the Advance Wings Course in the first and 5 out of 15 trainees did not make it in the second.

58 With regard to (a), considering that the Air Grading Course is only a month-long course in the entire programme which lasts 25 to 28 months, and that it is predominantly to test the trainee's aptitude for flying, it would in my view be difficult to form any meaningful assessment of the Plaintiff's chances of making it through the entire programme and passing out as a full-fledged RSAF pilot based on the opinions. As for (b) and (c), the assessment would be largely arithmetical, although the figures *per se* show that the Plaintiff would have had a better than even chance of making it through the programme.

59 The Plaintiff has cited 2 cases to support their contention that based on the evidence adduced the court would be justified in finding that the Plaintiff had, on a balance of probabilities, more than an even chance of becoming a pilot. In *Lee Wei Kong (by his litigation representative Lee Swee Chit) v Ng Siok Tong* [2012] 2 SLR 85 ("*Lee Wei Kong*"), the plaintiff was 18 years of age at the time of the accident and was just about to commence his second and final year at a junior college. In assessing LEC and LFE, the court found that he had more than an even chance of obtaining a university degree based on the following evidence :-

(a) plaintiff's 'O' Level examination results and the results of his "*Promotional*" examination at the end of his first year;

(b) evidence from his secondary school and junior college teachers that he was a bright and determined person; and

(c) a projection of his 'A' level examination results by his junior college principal based on the Plaintiff's "*Promotional*" examination results.

And in *Lai Chi Kay and Ors v Lee Kuo Shin* [1981] SGHC 7 ("*Lai Chi Kay*"), the plaintiff was a fourth year medical student at the University of Singapore. The court found that there was "no doubt" that he would complete his studies and graduate as a doctor as he had good passes in his yearly examination.

60 I note that in both *Lee Wei Kong* and *Lai Chi Kay*, there was objective qualitative evidence which the court could rely upon in making the respective findings regarding the chances of them graduating from university and medical school respectively. The same cannot be said about the present case.

61 The Defendant, on the other hand, has argued that on the evidence, the Plaintiff has not established on a balance of probabilities that he would complete the pilot training programme or that he had a reasonable chance of becoming a pilot. While I agree that on the evidence before me, it is difficult to reach the conclusion that the Plaintiff would have on a balance of probabilities make it as a pilot, what is clear to me is that the Plaintiff had a chance to do so which is neither remote nor speculative.

62 In *Mallet v McMonagle* [1970] A.C. 166, Lord Diplock in his judgement at 176 said :

> The role of the court in making an assessment of damages which depends upon its view as to what will be and what would have been is to be contrasted with its ordinary function in civil actions of determining what was. In determining what did happen in the past a court decides on the balance of probabilities. Anything that is more probable than not it treats as certain. But in assessing damages which depend upon its view as to what will happen in the future or would have happened in the future if something had not happened in the past, the court must make an

estimate as to what are the chances that a particular thing will or would have happened and reflect those chances, whether they are more or less than even, in the amount of damages which it awards.

63 This was echoed by Lord Reid in *Davies v Taylor* [1974] A.C. 207 who said in his judgement at 213 :

> When the question is whether a certain thing is or is not true - whether a certain event did or did not happen - then the court must decide one way or the other. There is no question of chance or probability. Either it did or it did not happen. But the standard of civil proof is a balance of probabilities. If the evidence shows a balance in favour of it having happened then it is proved that it did in fact happen.
>
> …. You can prove that a past event happened, but you cannot prove that a future event will happen and I do not think that the law is so foolish as to suppose that you can. All that you can do is to evaluate the chance. Sometimes it is virtually 100 per cent.: sometimes virtually nil. But often it is somewhere in between. And if it is somewhere in between I do not see much difference between a probability of 51 per cent and a probability of 49 per cent.

64 In *Allied Maples Group Ltd v Simmons & Simmons* [1995] 1 WLR 1602, Stuart-Smith L.J. drew a distinction between three types of "loss of a chance" situations. In the first were cases which consisted of some positive act or misfeasance, and the question of causation was one of historical fact. In the second would be cases which consisted of an omission where causation depended upon the answer to the hypothetical question "what would the plaintiff have done if there had been no negligence?". In both types of cases, proof on the balance of probabilities would apply. For the third type of cases, however, in which the plaintiff's loss depended upon the hypothetical action of a third party, whether in addition to action by the plaintiff or independently of it, the plaintiff need only show that he had a substantial chance, which could be less than likely, of the third party acting in such a way as to benefit him.

65 On the evidence before me, I am of the view that the Plaintiff had a chance of making it through the pilot training programme and becoming a full-fledged RSAF pilot prior to the accident which was not insignificant. This chance would, in my opinion, have to be taken into account in computing the pre-trial loss of earnings as well as LFE/LEC. Parties have primarily been submitting for an all or nothing approach in this case. The Plaintiff has argued for full damages to be awarded on the basis that the Plaintiff would have completed the pilot training programme and gone on to become a full-fledged pilot. The Defendant, on the other hand, has argued that the chances are too speculative for any objective assessment of damages to be possible. Adopting such an approach in the present case, in my view, would not be consistent with the objective of *restitutio ad integrum*, which is to restore the plaintiff, as much as possible, to the position he was in before the accident. An all or nothing approach would result either in over or under compensation for the Plaintiff in this case.

Pre-trial loss of earnings

66 The Plaintiff's claim for pre-trial loss of earnings is in respect of the following time periods :-

(a) the period between November 2009 and commencement of the Basic Wings Course in April 2010;

(b) the period of the Basic Wings Course (May 2010 to January 2011 – 9 months);

(c) estimated waiting period before commencement of the Advanced Wings Course (February 2011 to July 2011)

(d) the period of the Advanced Wings Course (August 2011 to May 2012 – 9 months);

(e) the period where the Plaintiff would have become a full-fledged pilot (May 2012 to May 2013).

67 At the time of the accident, the Plaintiff was undergoing Air Force OCS which appears to have commenced on 6 July 2009 based on the RSAF's letter dated 30 May 2011 [note: 6] which informed that the Plaintiff resumed his military training on 6 July 2009 after his Air Grading Phase. According to the Plaintiff, the Air Force OCS would last about 11 weeks. This would be followed by 9 days of jungle survival training in Brunei and 2 months of Ground School before the Basic Wings Course which lasts for 9 months. I am of the view that the Plaintiff would in all probability have completed the Air Force OCS, jungle survival training, Ground School and eventually the Basic Wings Course but for the accident. As such, I am of the view that he should be compensated in full for his loss of earnings during this period. The Plaintiff had joined the pilot training programme on 30 March 2009. He only commenced his Air Grading Course a month later on 29 April 2009. Thereafter, he had to wait for another month before commencing his Air Force OCS. I note from the evidence that Shi Bin had started receiving his flying pay supplement – training only in June 2010. This suggests to me that Shi Bin had commenced his Basic Wings Course in that month as otherwise it would be difficult to comprehend the rationale for paying such an allowance. I am prepared, as such, to adopt the position that the Plaintiff would have commenced his Basic Wings Course in June 2010 as well. On that basis, the period to be applied for computation would be from November 2009 to March 2011 (Basic Wings Course from June 2010 to February 2011). I accept therefore the Plaintiff's claim for the periods in (a) and (b) at [66] above, save that the respective periods be adjusted accordingly.

68 Although the RSAF has provided estimated earnings of a pilot trainee for the Basic Wings Course and Advanced Wings Course, these figures do not appear to cover the Air Force OCS, jungle survival course, Ground School and waiting period. The figures also do not include CPF and bonuses. Since there is evidence available regarding the Plaintiff's detailed earnings prior to his discharge, as well as the earnings of a fellow course mate, namely Shi Bin, I am of the view it would be more accurate to compute the Plaintiff's pre-trial loss of earnings up to completion of the Basic Wings Course based on these salary figures rather than to rely on the RSAF's estimates.

Period up to completion of Basic Wings Course

69 The Plaintiff was holding the rank of Lieutenant during this period and his last drawn monthly gross pay was $2,564.88. During the 14-month period from October 2009, he would have received a year-end bonus for December 2009, a mid-year bonus for July 2010 and another year-end bonus for December 2010. The Defendant has argued that it would be speculative to assume that the Plaintiff would receive bonuses, which are dependent on performance, and has cited the RSAF's refusal to comment on whether the Plaintiff would have received any bonus in support of their argument. I am prepared, however, to factor in these bonuses as the Plaintiff would have been undergoing the same pilot training as Shi Bin during that period, and there would be no reason why the Plaintiff would not have received the same bonuses as Shi Bin did. Similarly, I am of the view that the Plaintiff would have received the gross flying pay supplement-training component from June 2010 onwards, just as Shi Bin did. In addition, the RSAF has also confirmed that the Plaintiff would have received an estimated overseas allowance of $13,000 for the Basic Wings Course, which would be held in Perth, Australia. As for the various lump sum payments and adjustments of pay reflected in Shi Bin's pay information, I am not prepared to take them into consideration since no evidence had been adduced

regarding the nature of these payments, as well as how the figures were derived. In particular, there is no evidence whether these payments were specific only to Shi Bin or general payments made to every trainee. Besides, given that the Plaintiff was holding a higher rank than Shi Bin, there would not be basis for me to assume that the same payments would have been made to him. For the same reasons, I am not prepared to derive any pay increment based on Shi Bin's pay information given the absence of evidence as well regarding the nature of these increments.

70 The Defendant has argued for a 30% deduction from the flying pay supplement-training and overseas allowance to account for the Plaintiff's overseas expenditure during the Basic Wings Course and has referred me to the case of *Tan Shwu Leng v Singapore Airlines Ltd* [2001] SGHC 51 ("*Tan Shwu Leng*"). In *Tan Shwu Leng*, the court had allowed a 40% deduction of the cabin crew allowance which the plaintiff would have received as part of pre-trial loss of earnings based on evidence that cabin crew would spend about that portion of their allowances on expenses while flying. On that basis, the Defendant submitted that a deduction of 30% would be reasonable in the present case. I am of the view that it would be fair and reasonable for an appropriate deduction to be made from the overseas allowance for the expenses the Plaintiff would have likely incurred whilst undergoing the Basic Wings Course overseas. I will also have to take into consideration the possibility that the Plaintiff's basic necessities, including meals would have been provided for by the RSAF given that the training would have taken place at a military airbase and that the Plaintiff would have been residing within or near it. This would be unlike the situation of airline cabin crew where their meals and other expenses like transport would have to be paid out of their monthly allowances. In the circumstances, I agree that a deduction of 30% from the overseas allowance to account for expenses would be appropriate. With regard to the flying pay supplement-training, it appears to me to be a component of the salary of a pilot trainee rather than an allowance for expenditure incurred during overseas training. As such, I am of the view that a deduction would not be appropriate.

71 Finally, a deduction of 3% for income tax (excluding employer's CPF contribution) would be appropriate based on the actual tax liability of the Plaintiff for the Years of Assessment 2009 to 2011 – *Teo Sing Keng v Sim Ban Kiat* [1994] 1 SLR(R) 340 ("*Teo Sing Keng*"), *Ho Yiu v Lim Peng Seng* [2004] SGHC 28.

72 I will, as such, allow the Plaintiff's claim for the pre-trial loss of earnings quantum in respect of the period following his discharge from the RSAF to the time he would have completed his Basic Wings Course as follows :-

Month	**Income**	**Employer's CPF contribution (% of gross pay)**	
November 2009	$2,564.88	$279.57 (10.9%)	
December 2009	$4560.57*	$497.10 (10.9%)	
January 2010	$2,564.88	$279.57 (10.9%)	
February 2010	$2,564.88	$279.57 (10.9%)	
March 2010	$2,564.88	$279.57 (10.9%)	
April 2010	$2,564.88	$279.57 (10.9%)	
May 2010	$2,564.88	$279.57 (10.9%)	

June 2010	$2,810.01**	$306.29 (10.9%)	
July 2010	$4,215.02***	$459.44 (10.9%)	
August 2010	$2,810.01	$306.29 (10.9%)	
September 2010	$2,810.01	$317.53 (11.3%)	
October 2010	$2,810.01	$317.53 (11.3%)	
November 2010	$2,810.01	$317.53 (11.3%)	
December 2010	$8,430.03****	$952.59 (11.3%)	
January 2011	$2,810.01	$317.53 (11.3%)	
February 2011	$2,810.01	$317.53 (11.3%)	
Total :	$61,955.30	$5,786.78	$67,742.08
Deduct 3% for income tax :			($1,858.66)
Add Overseas allowance (with 30% deduction) :			$9,100
Total :			$74,983.42

* Inclusive of bonus derived from Shi Bin's pay information for December 2009. Shi Bin's bonus was $1,587.29 for that month based on a gross pay of $2,040. The Plaintiff's bonus is thus $1,587.29 ÷ $2,040 x $2,564.88 = $1,995.69. The Plaintiff's total pay for December 2009 is therefore $2,564.88 + $1,995.69 = $4,560.57.

** Inclusive of gross flying pay supplement-training of $245.13.

*** Inclusive of bonus derived from Shi Bin's pay information for July 2010. Shi Bin's bonus was $1,142.57 for that month based on a gross pay of $2,285.13 (inclusive of gross flying pay supplement). The Plaintiff's bonus is thus $1,142.57 ÷ $2,285.13 x $2,810.01 = $1,405.01. The Plaintiff's total pay for December 2009 is therefore $2,810.01 + $1,405.01 = $4,215.02.

**** Inclusive of bonus derived from Shi Bin's pay information for December 2010. Shi Bin's bonus was $4,570.26 for that month based on a gross pay of $2,285.13 (inclusive of gross flying pay supplement). The Plaintiff's bonus is thus $4,570.26 ÷ $2,285.13 x $2,810.01 = $5,620.02. The Plaintiff's total pay for December 2010 is therefore $2,810.01 + $5,620.02 = $8,430.03.

Period from after completion of Basic Wings Course to completion of Advanced Wings Course

73 After the Basic Wings Course, the Plaintiff would have progressed to the Advanced Wings Course. He would also have been streamed either to the Fighter Wings, Rotary Wings or Transport Wings Course at the end of the Basic Wings Course. It is not in dispute that of the three, the Fighter Wings Course would generally be more prestigious. The Plaintiff had made his claim on the basis that he would be selected for the fighter pilot programme, that is, by claiming for the overseas allowance payable only to trainees on the Fighter Wings Course which is conducted either in France or the

United States. As the quantum of the overseas allowance is relatively low, I am of the view that it would not be necessary, for our purpose, to differentiate between the earnings the Plaintiff would have received based on whichever course he would have been streamed to. There would consequently be no necessity as well for dwelling into the issue of the Plaintiff's chances of making it to the Fighter Wings Course. The appropriate manner of computing the Plaintiff's pre-trial loss of earnings for the period after the Basic Wings Course would therefore be to do so by following the same trajectory of Shi Bin and Gerard's progress, that is, on the assumption that the Plaintiff would make it to the Fighter Wings Course, and thereafter apply a deduction to account for the chance that he may not make it beyond the Basic Wings Course. Having considered the totality of the evidence regarding the Plaintiff's chance of making it through the pilot training programme, I am of the view that a 30% deduction would be appropriate.

74 An issue arose during the hearing regarding the duration of the Advanced Wings Course. The Plaintiff had initially given evidence that the course would last for 18 months. He subsequently claimed that it should be 9 months, before conceding eventually that he is unsure of the exact duration of the Advanced Wings Course [note: 7]. In an email dated 12 January 2011 [note: 8], the RSAF had provided a figure in response to Plaintiff counsel's query for the salary her client would have earned for the Advanced Wings Course in the United States "for 9 months". The Defendant has argued against drawing the inference from the RSAF's response that the duration for the Advanced Wings Course is indeed 9 months given the manner in which the question was posed. I should point out that in the same email, in response to Plaintiff counsel's query on the likely salary for the Basic Wings Course "for 6 months", the RSAF had clarified that the Basic Wings Course is usually for 9 months. It would be reasonable, as such, to infer that if the duration of the Advanced Wings Course was not 9 months, just as the duration of the Basic Wings Course was not 6 months as wrongly alluded to in Plaintiff counsel's query, the RSAF would likely have made a similar clarification.

75 The Defendant has argued that the duration would more likely be 18 months based on the Plaintiff's earlier evidence at the hearing and the evidence that both Shi Bin and Gerard were still undergoing the Advanced Wings Course in France at the time they affirmed their affidavits, which was on 5 March 2012. The Defendant's contention is that if the course duration was indeed only 9 months as claimed by the Plaintiff, Shi Bin and Gerard ought to have completed their training and become full-fledged pilots by March 2011. The fact that they are both still undergoing the Advanced Wings Course on 5 March 2012 shows that the course duration could not have been merely 9 months.

76 On the basis that the Basic Wings Course took place from June 2010 to February 2011, if the Advanced Wings Course had commenced only in June or July 2011, assuming a waiting time of 2 to 3 months, which would be reasonable in my view, it would have ended only in March or April 2012 assuming a duration of 9 months. As such, I am unable to accept the Defendant's argument that the fact that both Shi Bin and Gerard were still undergoing the Advanced Wings Course as at March 2012 must of necessity lead to the conclusion that the course duration could not have been 9 months. I note further that the overseas allowance payable only during the Advanced Wings Course was only reflected in Shi Bin's payslip for January 2012. The payslips for August 2011 to December 2011 were not available whilst the payslip for July 2011 did not reflect such an allowance. It can therefore be inferred that Shi Bin had commenced his Advanced Wings Course only after July 2011, in which case it would then explain why Shi Bin was still undergoing his Advanced Wings Course in March 2012.

77 I am, as such, of the view that the duration of the Advanced Wings Course is likely to be 9 months rather than 18 months. I am also of the view that it would be reasonable to adopt the position that the Plaintiff would have commenced the Advanced Wings Course only in August 2011, which would then end only in April 2012. The Plaintiff would have become a full-fledged RSAF pilot from May 2012 onwards. Based on this projection, the entire period of the pilot training programme

would be 36 months (May 2009 to April 2012). According to the RSAF, the programme would usually take about 25 – 28 months to complete. The remaining period of 8 months can in my view, be reasonably attributed to waiting time during the various transitions between the various phases of the programme.

78 At the assessment hearing, the Plaintiff disclosed that during his summer vacation in June 2011, he had worked part time and was paid a total of about US$203 (approximately S$255). The Plaintiff and Defendant are in agreement that this amount should be deducted from the quantum to be awarded for pre-trial loss of earnings. The quantum in respect of the pre-trial loss of earnings for the period after the Basic Wings Course to completion of the Advanced Wings Course (March 2011 to April 2012) would thus be as follows :-

Income + Employer's CPF Contribution for March 2011 to April 2012:		
[$2,810.01 + $325.96 (11.6%)] x 15 months*	=	$47,039.55
plus		
*Bonus for the month of July 2011***	=	$1,356.30
plus		
*Overseas allowance for Advanced Wings Course****		
$666.50 x 9mths	=	$5998.50
Total	=	$54,394.35
After deduction of US$203 ($255) from part-time work during summer vacationin June 2011	=	$54,139.35
After 3% income tax deduction (employer's CPF contribution & overseas allowance excluded from deduction)	=	$52,515.20
After 30% deduction	=	$36,760.60

* Inclusive of 13th month AWS for December 2011

** Shi Bin's bonus was $1,242.57 for that month based on a gross pay of $2,574.39 (inclusive of gross flying pay supplement). The Plaintiff's bonus is thus $1,242.57 ÷ $2,574.39 x $2,810.01 = $1,356.30.

*** The Plaintiff has indicated that they will not be claiming for the other component of the overseas allowance consisting of €313.72 per month to factor in the fact that the Plaintiff would have expended part of his allowance.

Period after Advanced Wings Course

79 For the period from May 2012 to May 2013, the Plaintiff would have already become a full-fledged pilot, on the assumption that he had passed the pilot training programme. According to the RSAF, the estimated starting salary of a full-fledged pilot would be $5,864.67 per month [note: 9]. On this basis, the Plaintiff's loss of earnings for the period would be as follows:

[$5,864.67 + $680.30 (employer's CPF contribution at 11.6%)] x 14 months*

=$91,629.58

After 3% income tax deduction = $89,166.42

(employer's CPF contribution & overseas allowance excluded from deduction)

After 30% deduction = $62,416.50

*Inclusive of 13th month AWS for the month of December 2012.

80 The total pre-trial loss of earnings for the period from November 2009 to May 2013 is therefore as follows :

(a) $74,983.42 + $36,760.60 + $62,416.50 = $174,161

(b) (rounded to nearest dollar)

Plaintiff's failure to mitigate

81 The Defendant has argued for a deduction from the total quantum of damages awarded for pre-trial loss of earnings to account for the Plaintiff's failure to mitigate his losses for the period between his discharge from the RSAF on 29 October 2009 to the commencement of his studies at Purdue University in August 2010. The Plaintiff had elected to remain unemployed during this period. The Defendant contended that an amount, to be derived by multiplying the mean starting monthly salary of an aerospace technology diploma holder, the Plaintiff's qualification at the time of the accident, with the duration of the period, should be deducted.

82 The Plaintiff had explained, during cross-examination that he had not engaged in any employment at that time as he was preparing for his SAT examination and dealing with his university applications. He also expressed that he had just lost his childhood dream of becoming a pilot and needed to re-evaluate his career options at that time [note: 10].

83 It is trite law that a claimant is required only to take reasonable steps to mitigate the loss to him consequent upon the defendant's wrong – *British Westinghouse Co v Underground Ry* [1912] AC 673 at 689, *The "Asia Star"* [2010] 2 SLR 1154 at [24], *Sim Ban Kiat v Teo Sing Keng* [1993] 1 SLR(R) 111 at [21] ("*Sim Ban Kiat*"). The test for reasonableness is an objective one, but also takes into account subjective circumstances. It is premised upon "fact-sensitive" fairness and the reasonableness inquiry is "very much a factual one" – *The "Asia Star"* at [30] to [34]. Although *The "Asia Star"* was a case involving a contractual dispute, the principles on mitigation, and in particular the test for reasonableness, would be equally applicable in a personal injury case.

84 I am of the view that it would not be reasonable in this case to expect the Plaintiff to engage in full-time employment in the aerospace industry, or any form of full-time employment, during the period given his intention to further his studies. It is likely in my view that he might not have been able to secure any such employment if he were to disclose to any potential employer that he intended to leave for further studies in a few months. As such, the Defendant's proposed deduction based on the mean starting monthly salary of an aerospace technology diploma holder would not be fair. While the Plaintiff could have reasonably been expected to secure temporary or part-time employment, no

evidence has been placed before me as to what those employment options may be, as well as the corresponding remuneration. In any case, it is unlikely that such remuneration from temporary or part-time work would be significant. I am therefore not prepared to make any deduction to account for the Plaintiff's failure to mitigate his losses during the period between his discharge from the RSAF and commencement of his university education.

LFE / LEC

85 The Plaintiff has argued that LFE ought to be awarded in this case as he was already on the pilot training programme when the accident occurred, and had a more than even chance of completing the programme and passing out as a full-fledged RSAF pilot. He is currently studying for a degree in Management and has expressed an interest in pursuing a career in the HR industry. The Plaintiff has submitted for these 2 career models to be adopted and LFE to be awarded based on the difference between the career earnings of a pilot and a HR professional.

86 The Defendant's position is that an award of LFE would not be appropriate. The first reason cited is the highly speculative prospect of the Plaintiff making it as a pilot. The second is the possibility of the Plaintiff embarking on a career which may offer a higher remuneration than a pilot given the spectrum of career options available to the Plaintiff upon graduation from Purdue University. The Defendant contended, as such, that an award for LEC would be more appropriate in this case.

87 The law on LFE and LEC has been considered and clarified in *Chai Kang Wei Samuel* where the Court of Appeal held that LFE and LEC compensated different losses and are not strictly alternative to each other. Referring to the English Court of Appeal case of *Smith v Manchester Corporation* [1974] 1 KIR 1, Chao JA said at [14]:

> Although Scarman LJ did not expressly define it as such, it was clear that he viewed loss of future earnings as referring to a loss arising from a situation where a victim of an accident finds that he or she can no longer, as a result of the accident, earn his or her pre-accident rate of earnings... In other words, loss of future earnings refers to the difference between post-accident and pre-accident income or rate of income. Obviously, if the victim earns a post-accident income or rate of income which is more than his or her pre-accident income or rate of income, no award for loss of future earnings should be made. In contrast, loss of earning capacity, as Scarman LJ indicated, addresses the loss arising from the weakening of the plaintiff's competitive position in the open labour market…

88 In *Teo Ai Ling v Koh Chai Kwang* [2010] 2 SLR 1037 ("*Teo Ai Ling (HC)*"), Steven Chong JC (as he then was) said, after surveying relevant local and English cases, including *Smith v Manchester Corporation* said at [49] :

> Arising from the above cases, the following principles can be extracted:
>
> (a) Loss of future earnings is awarded for real and assessable loss which must be proved by evidence.
>
> (b) Loss of earning capacity is typically awarded when the plaintiff retains employment post-accident and has not suffered any immediate loss of earnings but may as a result of the injury be at a disadvantage in securing an equally well paid job should he subsequently lose that employment. This is sometimes referred to as "handicap" or "loss of competitive edge" or "weakening of his competitive position" in the labour market.

(c) Loss of earning capacity may be awarded if there is no available evidence of the plaintiff's earnings to facilitate a proper computation of future earnings.

89 It is clear that the Plaintiff bears the burden of proving real and assessable loss to support an award for LFE. In our present case, the specific issues to be considered would be :

(a) whether there was sufficient evidence to find that the Plaintiff would have, but for the accident, completed his pilot training and become a full-fledged RSAF pilot, and thereafter transit to become a commercial pilot;

(b) whether it is reasonable, based on the evidence available, to adopt the HR career model as the basis for assessing the Plaintiff's future earnings upon his graduation from Purdue University;

(c) whether based on the evidence available it would be too speculative to calculate the Plaintiff's LFE using the multiplicand-multiplier formula.

Whether there was sufficient evidence to find that the Plaintiff would have, but for the accident, complete his pilot training and become a full-fledged RSAF pilot, and thereafter transit to become a commercial pilot?

90 I have dealt with the issue of the Plaintiff's chances of completing his pilot training and becoming a full-fledged RSAF pilot in [38] to [65] above. The conclusion was that he had a chance that was not insignificant, and which would have to be taken into account in computing LFE or LEC. The question that arises now, as such, would be the prospect of the Plaintiff transiting to commercial flying. This issue is relevant as the Plaintiff has premised his claim for LFE on the basis that he intends to keep on flying for as long as possible and would be prepared to transit to commercial flying in order to be able to do so. He has also in computing his future loss of income, referred to the salary figures of commercial pilots.

91 It is not disputed that upon completion of the pilot training programme and becoming a full-fledged pilot with the RSAF, the trainee would be offered an initial 12-year contract. The retirement age for a RSAF pilot is 45 years, but in exceptional cases, it may be extended to 50 years.

92 There is affidavit evidence from Willie Chew that most RSAF pilots would switch over to become commercial pilots due to the higher retirement age for commercial pilots and better remuneration. Willie Chew also stated that in his experience, about 60% of RSAF pilots switch over to commercial flying after serving out their 12-year contracts [note: 11]. He has not, however, clarified his basis for the figure of 60%, neither has he explained how he came to the view that most RSAF pilots would transit to commercial flying. The Plaintiff's expert witness Peter Lee Kim Pong ("Peter") also opined that most RSAF pilots would transit to become commercial pilots, although his view on this aspect is purely anecdotal and unsupported by any evidence as well. He highlighted, however, the various on-going schemes RSAF and SIA have in place under which RSAF pilots can cross over to SIA. These include the RSAF-SIA Pilot scheme which applies to RSAF pilots under the age of 39, the RSAF-SIA Senior Pilot Scheme which applies to RSAF pilots in the age bracket of 41 to 43 years, and the schemes for RSAF pilots to transit to Silkair or SIA Cargo [note: 12]. The existence of these schemes is not in dispute, neither has evidence been produced to show that they are no longer in place. Given that it would be mostly up to the individual to decide whether to transit, I am of the view that the question of whether most RSAF pilots transit to commercial flying would be of little relevance. In our present case, the Plaintiff has stated that he would want to do so in order to prolong his flying career. The issue then would be the prospect of him being able to do so.

93 In this regard, the Defendant has pointed out that the current economic climate has resulted in SIA having in response to business slowdown, to adopt cost cutting measures such as reducing the number of pilots and freezing pilot recruitment. This would result in a significantly reduced probability of RSAF pilots transiting to SIA or other commercial airlines.

94 On the evidence, it is clear that an RSAF pilot would have the opportunity to transit to a commercial airline, in particular SIA, between the time after he has completed his 12-year contract to age 45 when he is due to retire from the RSAF. It would be reasonable to expect them do so whether for higher remuneration or to prolong their flying career. While I accept the Defendant's argument that the prospect of transition has diminished due to current economic conditions, there is no evidence before me to suggest that it will no longer be possible for RSAF pilots to do so. There would also be no basis for assuming that the current economic climate would persist indefinitely for the foreseeable future. I am of the view, therefore, that the Plaintiff would still have had a real prospect of transiting to become a commercial pilot if he had become a RSAF pilot.

Whether it is reasonable, based on the evidence available, to adopt the HR career model as the basis for assessing the Plaintiff's future earnings upon his graduation from Purdue University?

95 In *Teo Ai Ling*, the Court of Appeal had observed at [35] that:

> … we would emphasise that where a claimant had indicated a clear intention to enter a particular occupation, where there is a strong probability that he would be able to enter that occupation, and where that occupation provides a sufficiently certain career model for the estimation of LFE, the court would adopt that occupation as the appropriate career model…

96 The Plaintiff has indicated in his affidavit that a class he had taken on "Organizational Behaviour and Human Resource" at Purdue University had captured his interest and that he intends to pursue a career in the HR industry. He also expressed his belief that a career in HR will provide him the option and flexibility to further his career in any sector [note: 13]. He was candid, however, in his oral evidence at the assessment hearing that he has not decided on the option but is "leaning towards HR" [note: 14].

97 According to the MOM's Report on Wages in Singapore 2010, the average monthly gross starting salary of a graduate with a Bachelor in Business Management from NUS or SMU was $3,277 [note: 15]. Although there is no information available on the gross starting salary of a Management graduate from Purdue University in Singapore, considering that the university is relatively well ranked in the United States (23rd out of 62 universities), and taking into account the Plaintiff's positive existing Grade Point average of 3.7, I am of the view that he would be able to command a starting salary commensurate with that of a Business Management graduate from NUS or SMU. The starting gross starting salary of a HR manager between 25 – 29 years was $3,700, according to the MOM's report for 2011 [note: 16]. The proximity in the average starting gross salaries between the two is, in my opinion, relevant consideration regarding the suitability of the HR career model as a model upon which the Plaintiff's future earnings after graduation from Purdue University may be assessed. It provides basis, in my view, for the position that even if the Plaintiff eventually decides not to join the HR industry, he is likely to be able to find alternative employment at a similar level of remuneration. The HR career model would thus be sufficiently representative of the Plaintiff's potential future earnings upon graduation from Purdue University.

98 The Defendant has raised the possibility that given the versatility of the modules the Plaintiff

has taken in Purdue University, a spectrum of career opportunities would be available to him which may include those which would offer a higher remuneration than a pilot, such as a trader or investment banker. This, in my view, is speculation as the same argument can be made that it is equally possible for the Plaintiff to embark on less lucrative careers. The versatility of the subjects taken by the Plaintiff is in my opinion a neutral factor. The Defendant has not adduced any evidence regarding the prospect or probability of the Plaintiff embarking on a career as a trader or investment banker. The Plaintiff has, on the other hand testified that finance is not his passion and that given his susceptibility to epilepsy, he would not be keen to join the high stress finance industry [note: 17].

99 The pilot career is a highly specialised and exclusive career given the nature of the job and the highly selective process in the training of a pilot. Although evidence on the remuneration of a RSAF pilot is not available other than the starting salary, it would not be unreasonable, in my view, to assume a degree of commensurability with that of a commercial pilot given the similarity in skills set. In fact, I note that the starting pay of a fresh RSAF pilot is slightly higher than that of the start point of a First Officer's pay scale based on the SIA Collective Agreement 78 of 2009. A quick survey of MOM's Reports on Wages (2010 and 2011) also reveals that there are not many other careers with similar or higher remuneration than that of a pilot. The chances or prospect of the Plaintiff embarking on a more lucrative career must therefore, logically, be correspondingly slim. It would be unfair, as such, to simply postulate the possibility of the Plaintiff embarking on a more lucrative career.

100 I am therefore of the view that on the evidence available, it would be reasonable to adopt the HR career model as the basis for assessing the Plaintiff's future earnings upon his graduation.

Whether based on the evidence available it would be too speculative to calculate the Plaintiff's LFE using the multiplicand-multiplier formula?

101 The Court of Appeal has, in the case of *Teo Ai Ling* enunciated that the method for assessing damages for loss of future is the multiplicand-multiplier approach where Chao JA said at [37] :

> Normally, damages on the basis of LFE are awarded when the injured party is unable to go back to his pre-accident employment and has to take on a lower paying job. *In such a case, the loss will be calculated based on a multiplier and a multiplicand, the multiplicand being the monthly loss in pay and the multiplier being the appropriate period over which to compute the loss*. In contrast, where the injured party does not suffered an immediate wage reduction (*eg*, due to the compassion of the then employer: see *Smith* ([9]*supra*)) but there is a risk that he may lose that employment at some point in the future and he may, as a result of his injury, be at a disadvantage in getting another job or getting an equally well-paid job in the open market, then the LEC would be the correct basis to compensate him for the loss.
>
> [emphasis added]

102 The position has been endorsed by the Court of Appeal in *Poh Huat Heng Corp Pte Ltd v Hafizul Islam Kofil Uddin* [2012] 3 SLR 1003 ("*Poh Huat Heng*") at [38]. In *Lai Wai Keong Eugene v Loo Wei Yen* [2013] SGHC 123 ("*Lai Wai Keong*"), Vinodh Coomaraswamy J held that the conventional multiplicand-multiplier approach ought to be applied as a matter of precedent, principle and policy. In his judgement at [24] and [25], he said :

> We do not live in this hypothetical world. Economic conditions are not static. And the court is sadly not omniscient. Where the principle of *restitutio in integrum* is applied in the real world to assessing lump sum compensation for LFE, the assessment exercise is by its very nature fraught with imponderables. The Court of Appeal has described it as an exercise in "crystal ball gazing

and peering into the future": see *Koh Chai Kwang v Teo Ai Ling (by her next friend, Chua Wee Bee)* [2011] 3 SLR 610 at [48] ("*Koh Chai Kwang*"). The Privy Council has said that "the assessment of future economic loss involves a double exercise in the art of prophesying not only what the future holds for the injured plaintiff but also what the future would have held for him if he had not been injured" (see *Paul v Rendell* (1981) 55 ALJR 371 at 372).

The innumerable imponderables include contingencies *related* to a particular plaintiff and contingencies *unrelated* to a particular plaintiff.

103 Vinodh J's comments are especially poignant in the present case where this court is faced with the task of assessing 2 sets of potential future earnings, the first being what the Plaintiff could have earned as a pilot had the accident not occurred, and the second, what he is now likely to earn after graduating from university.

Multiplicand

104 There are 2 components to the appropriate multiplicand for the present case. The first would be in respect of the pilot career model (hereinafter referred to as the "pilot multiplicand"), and the second the HR career model (hereinafter referred to as the "HR multiplicand"). The difference between the 2 multiplicand will be the multiplicand to be adopted for computation of the Plaintiff's LFE.

Pilot Multiplicand

105 The evidence on the remuneration of a RSAF pilot is unfortunately limited to the starting pay which is $5,864.67 (excluding bonus). No information is available regarding the estimated salary of a RSAF pilot at the conclusion of the 12-year contract period or when he reaches 45 years of age. As such, it would not be possible to work out an appropriate multiplicand for a RSAF pilot career without engaging in speculation on the likely career progress and salary points at the 12-year or 45-year marks. The Plaintiff has submitted that this would not be an issue as he would have been able to transit to commercial flying, and as such, the multiplicand can be derived by reference to the salary scales of a commercial pilot. I agree with the Plaintiff that it would be appropriate to do so, given the prospect of a RSAF pilot transiting to commercial flying. As I have indicated at [99], it would not be unreasonable to assume a degree of commensurability between the salaries of a RSAF pilot and that of a commercial pilot. I do not think, as such, the point of transit, which can occur at any point between the 12-year or 45-year mark, would be an issue as it would be unlikely that a RSAF pilot would have to incur a drastic pay cut, or enjoy a substantial pay raise upon transition. It would be reasonable, as such, to assume a gradual upward trajectory in the remuneration of a RSAF pilot transiting to become a commercial pilot.

106 The Plaintiff has referred to several sources on the remuneration of commercial pilots. These include MOM's Report on Wages for 2003, and the various collective agreements between SIA and the Airline Pilots' Association. I have adopted the SIA Collective Agreement 78 of 2009 on the basis that it represents the most current salary figures for airline commercial pilots available before me. According to the SIA Collective Agreement 78 of 2009, the basic salary scale of a Captain is between $11,200 / $11,650 to $19,250 per month [note: 18]. The pilot multiplicand can thus be derived by taking the difference between the starting salary of a RSAF pilot and the mean of the Captain's salary scale. The pilot multiplicand would thus be as follows :

(a) {$5,864.67 + [($11,200 + $11,650) / 2 + $19,250] / 2} / 2

= $10,600 (rounded to nearest dollar)

107 The Plaintiff has submitted for bonuses and allowances to be worked into the multiplicand. I am of the view that it would not be appropriate to do so as no evidence has been adduced before me regarding the nature of these bonuses and allowances, as well as how they are derived. There is no evidence before me concerning the bonuses and allowances a RSAF pilot can expect to receive. As for the bonuses and allowances of a commercial pilot, although Peter Lee has given oral evidence that SIA's bonuses has been typically 4 months in the last 10 years, this is not supported by any evidence. I am therefore not prepared to accept his evidence. While the SIA collective agreements may have set out the various types of allowances payable, it is difficult to estimate how much would have been paid on a monthly or yearly basis given that it would depend on actual deployment of the pilot. Given the above, it would be entirely speculative to estimate the total bonuses and allowances a RSAF pilot transiting to become a commercial pilot will receive during the course of his career. I am of the view, though, that it would be reasonable to include a 13th month AWS component. This would be in accord with the Civil Service remuneration. In the SIA Collective Agreement 67 of 2005, there is provision as well for a fixed AWS at [55] [note: 19]. As such, the final pilot multiplicand would be :

(a) ($10,600 x 13) / 12 = $11,483 (round to the nearest dollar)

HR Multiplicand

108 Both the Plaintiff and Defendant led evidence from their respective experts regarding the potential future earnings of a HR professional. The Plaintiff's expert, Peter based his calculation on MOM's Report on Wages in Singapore 2011. The MOM occupational wage survey, which is based on all CPF-paying jobs, covers 3,869 private sector establishments and more than 262,000 employees [note: 20]. The Defendant's expert, Edmund Tan Peng Yew ("Edmund") based his calculations on consultant survey market data reports from 2 consultant survey companies, Concentric Human Capital Pte Ltd and Mercer Singapore Pte Ltd. The sample size for the database adopted by Edmund is narrower covering 92 to over 107 Singapore-based companies representing 132 to 144 employees. The overall database is from 730 organisations. There is, however, a fundamental difference, in my view, in the respective terms of reference of the 2 experts. Peter was retained to provide an opinion on the total average career earnings of a HR professional in Singapore, while Edmund's instruction was to provide an opinion on the earnings potential of a Purdue University graduate employed in Singapore within the HR industry.

109 The criticisms levied by Peter on Edmund's approach can be summarised as follows :

i) consultant surveys, which are conducted for the main purpose of salary benchmarking, typically suffers from bias such as participating companies being selective in the companies they would like to benchmark themselves against in order to justify upward salary adjustments;

ii) the sample size of the database of 107 and 92 companies is too small and does not sufficiently represent HR jobs and salaries in Singapore;

iii) the career trajectories compiled are unrealistic and elitist based on the number of major promotions assumed over the career life span.

110 Edmund's comments, regarding the MOM Report which Peter adopted in his approach are, in turn, as follows :

i) the salary information provided to MOM by employers is based on job titles and may not sufficiently distinguish and hence accurately reflect the different levels of skills and experience

employees possess;

ii) the wage information in MOM's report does not provide any distinction based on academic qualifications;

iii) the report only covers CPF contributors in full-time employment in the private sector and ignores employees in the public sector and employment pass holders which makes up about 300,000 employees;

iv) although the MOM survey covers 3,869 companies, there were only 1,204 salary data points for the job of HR manager.

111 I am of the view that the difference in approach by both experts can be attributed largely to their different terms of reference. Given the more specific terms of Edmund, his approach using consultant surveys instead of the MOM survey data is reasonable. For the purpose of the present assessment, Edmund's terms would, in my view, be closer to the objective of assessing the Plaintiff's potential future earnings should he join the HR industry for the reason that it takes into account the profile of the Plaintiff as a graduate from a relatively reputable university who would be inclined towards obtaining employment in the types of companies and organisations covered by Edmund in his sample data, namely multi-national companies, large local companies, government ministries, statutory boards, linked private companies and larger firms in the Small and Medium Enterprises group [note: 21]. It is pertinent that the Plaintiff has agreed during cross-examination that he would want to pursue a career in the types of organisations covered in Edmund's sample data :

Counsel : Your parents spent nearly $300k, and you said they actually took a loan, wouldn't you agree that you'd want to seek a job with higher earnings?

Plaintiff : Yes

Counsel : You agree that you are likely to look for a job with a medium or large company or even MNC?

Plaintiff : Can't say for sure now, I'm still very unsure about what's going to happen.

Counsel : Following up on your point about maximising your parent's investment in your education, it would be logical that you'd want to pursue a career in companies such as Apple, IBM etc that will pay you better?

Plaintiff : Yes, if they should pay more

112 Although Peter has strongly criticised consultant surveys as being biased and subject to manipulation, it does not appear that the criticism extended to the salary data relied upon in consultant surveys. He agreed that the salaries reflected in such surveys are salaries paid in real life [note: 22]. It would also appear during the course of his evidence at the assessment hearing that his criticism was directed at the consultant surveys rather than the salary data applied in these surveys [note: 23] :

Counsel: Numbers are numbers, and the data is there. It depends on how people use them, when consultant surveys use them, there's a certain direction or slant?

Lee: Depending on the target customer, *the processing of the data would be customised specifically to the customers' parameters or needs*. So in other words, there are reports and there are reports. You may have someone preparing a main report, but certain customers may require specific reports to fit their purpose, so the processing will be different.

Tan: Pertinent to 5.2.3 then *would Mr Lee be saying that the survey information used was custom written for my analysis*?

Lee: *The comment is supposed to apply to consultant surveys in general*. This is a fact. I would say this to the whole wide world. So I don't understand your question.

[emphasis added]

113 It is noteworthy that Peter has not at any point in time suggested that Edmund had manipulated the salary data to achieve any particular outcome. Given the nature of Edmund's terms of reference, which, in my view, is different from the typical objectives of the consultant surveys, I am of the view that the criticism levied by Peter against consultant surveys has no bearing on the reliability of Edmund's report.

114 With regard to the seemingly narrow range of the salary data relied upon by Edmund, I note that he had in fact reviewed data from over 700 odd companies with a total of 1,805 observations or data points [note: 24], out of which a snapshot of 107 companies and 144 employees were taken. As such, in terms of the scope of his survey at least, it would be comparable to that of the MOM's report which contained 1,204 data points. The adoption of a narrower range to match the profile of the Plaintiff is, in my view, legitimate as it would logically lead to greater accuracy in projecting potential future earnings of someone with a particular profile as compared to merely looking at a set of broad brushed salary data. It is also pertinent in my view that the data adopted by Edmund contains differentiation by job sizes and levels, compared to MOM's data which are differentiated only by job title. This would tend to offer a more accurate picture of the salaries currently being paid in the HR industry.

115 As for the criticism by Peter that the career trajectories compiled by Edmund are unrealistic and elitist based on the number of major promotions assumed over the career life span, I note that Peter has not explained why he considers the number assumed to be unrealistic. His explanation for his view that the trajectories were "elitist", which is that companies would prefer to benchmark themselves against higher wages in order to justify paying higher salaries, also appears to be related to his views regarding the general susceptibility of consultant-surveys to bias and manipulation [note: 25].

116 Having considered the reports of both experts, as well as their testimony at the assessment hearing, I am of the view that Edmund's approach in assessing the Plaintiff's earnings potential in the HR industry is to be preferred over the broad brushed approach adopted by Peter.

117 Edmund has worked out 2 possible career trajectories in his report. The first postulates that the Plaintiff would achieve the apex position of a HR director or equivalent. The second has a lower apex of a Senior Manager. In the sample database he had adopted, the number of HR director level

positions comprises only 2% of the total number of salary data points. It would also be logical to assume that the chances of an individual attaining the apex position of a HR director would be significantly lesser than a HR manager or senior manager. In the circumstances, I am not prepared to adopt the first trajectory for the purposes of deriving the HR multiplicand. I take the view that the second trajectory would be a more realistic model of the Plaintiff's potential career in the HR industry.

118 The second trajectory projects an entry level annual salary of $37,000 and the apex position of a Senior Manager with an annual salary of $162,000. The HR multiplicand would therefore be:

(a) [($162,000 + $37,000) / 2] / 12 = $8,292 (rounded to the nearest dollar)

119 The eventual multiplicand for calculation of the Plaintiff's LFE would thus be:

(a) $11,483 - $8,292 = $3,191

Multiplier

120 The principles for determining the appropriate multiplier has been clearly set out in *Poh Huat Heng*. It would be useful to reproduce the relevant portion of Chao JA's judgement at [46] to [47]:

> 46 It is common ground between the parties that the task of the court in assessing damages in personal injury cases is to arrive at a lump sum which represents as nearly as possible full compensation for the injuries which the plaintiff has suffered. This means that an award for loss of future income should, as far as reasonably possible, provide the plaintiff with the income that he would have earned but for the accident which caused his injuries (referred to hereafter as "the accident" for short). Therefore, the starting point for determining the appropriate multiplier must be the likely duration, after the trial, for which the plaintiff would have been expected to earn an income but for the accident (see the decision of the Privy Council in *Lai Wee Lian v Singapore Bus Service (1978) Ltd* [1983-1984] SLR(R) 388 ("*Lai Wee Lian*") at [20]). The underlying objective in fixing the multiplier is to derive a final award that provides the plaintiff with *full compensation* to the nearest extent possible (see the House of Lords decision of *Wells v Wells* [1999] 1 AC 345 ("*Wells*") at 363).
>
> 47 The duration for which the plaintiff would have been expected to earn an income if not for the accident must, however, be discounted to account for three contingent factors so that the plaintiff will not be over-compensated (see *Wells* at 364-365 and 372):
>
> > (a) *First*, the plaintiff might well have stopped working for reasons other than the accident (see also *Lai Wee Lian* at [20]). Admittedly, where there is an *agreed* life expectancy, that in itself would take into account some contingencies such as premature death (see *Wells* at 378-379). But, that is not all. A discount may also be appropriate, even in the context of an agreed life expectancy, if there is a need to account for other contingencies such as the possibility that the plaintiff might not have been able to find work despite being physically able to work.
> >
> > (b) *Second*, the plaintiff will be receiving a lump sum award in advance of the dates when he would have actually received his future income but for the accident (see *Lai Wee Lian* at [20] and *Wells* at 364-365). Therefore, the multiplier must be discounted to account for the possible investment gains that the plaintiff would be expected to attain as a result of the accelerated receipt of his future earnings.

(c) *Third*, the plaintiff should be protected against the effects of future inflation (see *Wells* at 372-373). The real value of the lump sum awarded to the plaintiff will be reduced with time as a result of inflation.

The Court of Appeal then held at [48], after reviewing the approaches adopted in the U.K., Canada, Australia and New Zealand, that the appropriate approaches to adopt in Singapore should be :

(a) One approach is to fix the multiplier by looking at the multipliers used in comparable cases. This is the approach adopted in some Singapore cases (see, for example, *Loh Chia Mei v Koh Kok Han* [2009] SGHC 181 at [41]). As the Appellants have pointed out, this is also the approach taken by the Hong Kong courts (see, *eg*, the decision of the Hong Kong Court of Appeal in *Chan Pui-ki v Leung On* [1996] 2 HKLR 401 at 421C-421I).

(b) Another approach is to apply a pure arithmetical discount. The multiplier may be determined by discounting the plaintiff's stream of income over his expected working life by an appropriate rate (see *Lai Wee Lian Revisited* at 368-370). A further discount may be applied to account for contingencies, which was the approach taken in the Singapore High Court decision of *Shaw Linda Gillian v Chai Kang Wei Samuel* [2009] SGHC 187 ("*Shaw Linda Gillian (HC)*") at [31]. In that case, the High Court judge applied a further discount for "the vicissitudes of life" (at [31]). The defendant's appeal against the High Court's decision was allowed in part, but the High Court's decision on the loss of future earnings award was not disturbed (see *Shaw Linda Gillian (CA)* ([32]*supra*) at [32]).

121 The Plaintiff is presently 26 years of age. Adopting a retirement age of 62, the remaining years of working life would be 36. The comparable cases for reference in determining the appropriate multiplier are as follows :

(a) In *Lai Chi Kay*, the plaintiff was 24 years old at the time of the accident with 29 remaining years of working life. A multiplier of 15 was applied;

(b) In *Teo Seng Kiat v Goh Hwa Teck* [2003] 1 SLR(R) 333, the plaintiff was 26 years of age at the time of the accident with 39 remaining years of working life. A multiplier of 18 was applied;

(c) In *Teo Sing Keng*, a multiplier of 15 was applied where the plaintiff was 25 years old at the time of the accident;

(d) In *Teo Ai Ling(HC)* - the plaintiff was 20 years of age at the time of the accident. A multiplier of 20 was applied;

(e) In *Lee Wei Kong* - the plaintiff was 22 years of age at the time of the hearing. The Court of Appeal endorsed the multiplier of 20 after referring to *Teo Ai Ling(HC)*;

(f) In *Poh Huat Heng* - the plaintiff was 27 years of age at the time of the accident and would have worked for a further 38 years till 65 years of age. A multiplier of 17 was adopted;

(g) In *Lai Wai Keong* - the plaintiff was 39 years of age at the time of the accident and had 23 remaining years of working life based on the retirement age of 62. A multiplier of 13 was applied.

122 Based on the cases above, I am of the view that a multiplier of 18 would be appropriate. There would, however, be a need to impose an additional reduction to the multiplier to reflect the chance of the Plaintiff not making it through the pilot training programme and becoming a full-fledged pilot. I am

of the view that the multiplier should be reduced to 13.

123 The total LFE to be awarded to the Plaintiff would therefore be :

$3,191 x 12 x 13 =$497,796

Overseas education expenses

124 The Plaintiff has claimed for damages for his overseas education expenses on the premise that these were reasonably incurred in order to mitigate his loss of future earnings. These include the Purdue University fees, lodging and living expenses in the United States, and other related expenses. The total quantum is $260,006.80.

125 The meaning and scope of mitigation in the context of assessment of damages can be found at para 7-003 to 7-006 of *McGregor On Damages* (18th Edition). It comprises 3 rules :

(1) the claimant must take all reasonable steps to mitigate the loss to him and cannot recover for any such loss which he could have avoided;

(2) where the claimant takes reasonable steps to mitigate his loss, he can recover for loss incurred in taking such steps;

(3) where the claimant does take reasonable steps to avoid loss and is successful in doing so, he cannot claim for the loss avoided.

126 It is trite that the question of mitigation of damage is a question of fact – *Payzu v Saunders* [1919] 2 K.B. 581 CA at 588.

127 At the time of the accident, the Plaintiff had only a diploma in aerospace technology. It is not in dispute that with that qualification, the Plaintiff would have been able to command a starting salary of about $2,300. This would be about 30% lower than the starting salary a Business Management graduate from NUS or SMU can expect to earn and about 38% lower than the starting pay of a HR professional. There is no information before me regarding the potential future earnings of someone with a diploma in aerospace technology. It would not be possible, as such, to estimate the total loss the Plaintiff would avoid. But it is clear, nevertheless that the Purdue University education has mitigated the Plaintiff's loss of future earnings. The issue that arises then would be the reasonableness of the step taken by the Plaintiff in pursuing his further education at Purdue University.

128 As set out at [83] above, a claimant is required only to take reasonable steps to mitigate the loss to him, and that the test for reasonableness is objective, but takes into account subjective factual circumstances – *The "Asia Star"*, *Sim Ban Kiat*. The standard of reasonableness is, however, not high – *Bamco de Portugal v Waterloo & sons, Limited* [1932] 1 AC 452 where Lord Macmillan said at 506:

> …The law is satisfied if the party placed in a difficult situation by reason of the breach of a duty owed to him has acted reasonably in the adoption of remedial measures, and he will not be held disentitled to recover the cost of such measures merely because the party in breach can suggest that other less burdensome to him might have been taken.

129 In *Darbishire v Warren* [1963] 1 WLR 1067, Pearson LJ said at 1075:

> The plaintiff is not under any actual obligation to adopt the cheaper method: if he wishes to adopt the more expensive method, he is at liberty to do so and by doing so he commits no wrong against the defendant or anyone else. The true meaning is that the plaintiff is not entitled to charge the defendant by way of damages with any greater sum than that which he reasonably needs to expend for the purpose of making good the loss. In short he is fully entitled to be as extravagant as he pleases but not at the expense of the defendant.

130 The Defendant has contended that it was unreasonable for the Plaintiff to have elected to pursue his further education abroad when there are local universities to which he could have applied to. These include NUS, NTU, SMU and SIM/RMIT. A table [note: 26] setting out the comparative expenses the Plaintiff would have incurred if he had pursued a local degree programme was furnished by the Defendant. The figures showed that the Purdue University education cost between 40% and 70% more.

131 The Plaintiff has claimed that with his GPA of only 2.25 out of 4 at the material time, it would not have been possible for him to get into the business degree programme in NUS, NTU or SMU, which was why he did not even attempt to apply. It is clear from the evidence adduced that the Plaintiff would be unlikely to have qualified for any of the courses in NUS, NTU or SMU at the time based on his GPA. As for the SIM/RMIT management business programme which, besides costing less, would have also allowed the Plaintiff to obtain his degree in 2 years rather than 4 given his diploma qualification, the Plaintiff claimed that he believed he would not be able to command as high a salary as a Purdue University graduate. In this regard, the Plaintiff referred to an article on the Straits Times ("ST") which reported that graduates from SIM were paid lower starting salaries than their counterparts from NUS, SMU and NTU. According to the article, SIM graduates were typically paid a starting salary of between $2,400 and $2,600 while graduates from the other 3 universities enjoyed starting salaries of $3,000 and above [note: 27]. SIM has also confirmed that starting salaries for their graduates start approximately from $2,000 [note: 28].

132 Based on the evidence adduced, I am of the view that the Plaintiff had not acted unreasonably in not applying to NUS, NTU or SMU as it would have been highly probable that he would not be accepted. As for the SIM/RMIT option, it would be useful to compare the starting salary of a holder of a diploma in aerospace technology, which was the Plaintiff's qualification at the time of the accident, with the starting salaries of SIM graduates. The former can command a starting salary of about $2,300. This is nearly commensurate with the starting salaries of a SIM global education graduate of between $2,400 to $2,600, and higher than the starting salary of $2,000 for a fresh SIM graduate in the HR industry, as informed by SIM [note: 29]. The Plaintiff's belief that he would not be able to command as high a salary is thus justified. It would not therefore have been unreasonable, in my opinion, for the Plaintiff not to have taken up the option even if he had considered it at the time.

133 A Purdue University degree, in contrast, would have enabled the Plaintiff to command a starting salary commensurate with those of business graduates from NUS, NTU or SMU – see [97] above. The evidence is clear, however, that the Plaintiff had not explored any alternative options to pursuing a degree in Purdue University, including the option of pursuing his degree in another country such as Australia or the United Kingdom. The failure to do so by the Plaintiff may be a ground for finding that the Plaintiff had not acted reasonably. There is, however, no evidence before me regarding the options available in these other countries and the relative expenses likely to be incurred. I am, as such, unable to assess the reasonableness of the Plaintiff's decision in comparison with pursuing his further education in another country. Given the lack of local options available to the Plaintiff at the time, I am of the view that his decision to pursue his further education in Purdue University is not unreasonable. The relevant expenses incurred should therefore be recoverable.

134 The quantum of $260,006.80 claimed by the Plaintiff consists of 3 components, namely university and related administrative fees, living expenses and air ticket expenses. The living expenses in turn consist of the sub-components accommodation, books/supplies, transportation and miscellaneous expenses. I am of the view that a deduction of 50% should be applied to the transportation and miscellaneous expenses to reflect the expenses the Plaintiff would have incurred anyway during the same period if he had not gone to Purdue University. I am further of the view that it would not be appropriate for the award to cover return airfare for every year of study. I will only allow the flight expenses for the trip to the United States in 2010 and the return trip to Singapore upon completion of the degree programme to be included. The final quantum awarded would therefore be $249,241 (rounded to nearest dollar).

Conclusion

135 The damages to be awarded on a 100% basis to the Plaintiff is thus as follows :

Pain and suffering	$42,000
Pre-trial loss of earnings	$174,161
Loss of future earnings	$497,796
University education expenses	$249,241
Total	$963,198

136 I will award interest at 5.33% per annum from the date of service of the writ to the date of judgement on general damages for pain and suffering, and interest at 2.67% per annum from the date of the accident to the date of judgement on special damages already incurred excluding any interim payment made.

137 Costs to be agreed or taxed. The usual consequential orders will apply.

[note: 1] See page 27 of ABD.

[note: 2] See page 31 of ABD.

[note: 3] See MCs dated 29/9/09 and 5/10/09 at page 103 of ABD.

[note: 4] See page 40 of ABD.

[note: 5] See page 68 of ABD.

[note: 6] See page 62 of ABD.

[note: 7] See NE (20/05) at page 28 lines 20 – 25.

[note: 8] See page 56 of ABD.

[note: 9] See email dated 12 January 2011 at page 56 of ABD.

[note: 10] See NE (20/05) at page 16 lines 7 – 13.

[note: 11] See Willie Chew's affidavit at [29] to [31].

[note: 12] Peter's expert report at paragraph 6.3.2, page 56 of BOA1.

[note: 13] See Plaintiff's AEIC at [20] and [72].

[note: 14] See NE (20/05) at page 20 Lines 17 – 18.

[note: 15] See page 224 of ABD.

[note: 16] See page 153 of BOA1.

[note: 17] See NE (20/05) at page 21 lines 2 – 4.

[note: 18] See exhibit 14 to Peter's report at 171 of BOA1.

[note: 19] See page 225 of BOA1.

[note: 20] See MOM Report (2011) at page 83 of DBD1.

[note: 21] See response no. 9 of Edmund's report titled "Answers to Plaintiff's Questions" at page 362 of BOA2.

[note: 22] NE (21/05) page 26 lines 26 - 32

[note: 23] NE (21/05) page 4 lines 27 – 32 and page 5 lines 1 – 10

[note: 24] See Appendix D to Edmund's report at page 333 to 343 of BOA2

[note: 25] See paragraph 5.3.3 of Peter Lee's report at page 45 of BOA1

[note: 26] See D1.

[note: 27] See P4 – ST article dated 8 June 2012.

[note: 28] See P5 - email dated 22 May 2013.

[note: 29] See P4.