AOD, a minor suing by the litigation representative *v* AOE
[2014] SGHCR 21

Case Number	: Suit No 1054 of 2012
Decision Date	: 21 November 2014
Tribunal/Court	: High Court
Coram	: Jean Chan Lay Koon AR
Counsel Name(s)	: Mr Michael Han (Hoh Law Corporation) for the plaintiff; Mr Teo Weng Kie and Ms Shahira Anuar (Tan Kok Quan Partnership) for the defendant.
Parties	: AOD, a minor suing by the litigation representative — AOE

Damages – Assessment

21 November 2014 Judgment reserved.

Jean Chan Lay Koon AR:

Background facts

1 This is an assessment of damages arising from a very unfortunate road traffic accident that occurred on 6 July 2011 along Jurong East Avenue 1. The plaintiff was crossing the road at a signalised pedestrian crossing when he was knocked down by the vehicle driven by the defendant. At the time of the accident, the plaintiff was only nine years of age. He sustained severe traumatic brain injury from the accident and he was conveyed to the National University of Singapore Hospital ("NUH") in an unconscious state. At the point of admission, his Glasgow Coma Score was six.

2 On 13 December 2012, the plaintiff commenced Suit No 1054 of 2012 against the defendant. By consent, interlocutory judgment was entered on 31 July 2013 at 100% in the plaintiff's favour with damages and interest and costs to be reserved to the Registrar.

3 The plaintiff was born on 4 March 2002. He was a primary three student at the time of the accident. At the time of the assessment, he was 12 years old. As a result of the accident, the plaintiff suffered from irreparable brain damage which caused him severe permanent disabilities. He became a quadriplegic and required constant care for all his activities of daily living. His mother had to quit her job as a receptionist in a law firm to take care of him at home on a full time basis. She is currently assisted by a domestic maid.

4 The various heads of claims sought by the plaintiff against the defendant are as follows:

(a) Pain and suffering and loss of amenities;

(b) Loss of future earnings of the plaintiff;

(c) Future medical expenses;

(d) Future expenses for daily consumables and other essentials;

(e) Loss of pre-trial and future earnings of the mother;

(f) Future cost of nursing care;

(g) Future transport expenses;

(h) Cost of Mental Capacity Act application; and

(i) Special damages.

5 I shall now deal with each of the heads of claims.

Pain and suffering and loss of amenities

6 It is trite law that the award for the head of damage called pain and suffering compensates victims for the pain they endure, the distress of knowing their disablement and the loss of enjoyment of life generally. The victim's awareness of pain and distress is a major factor to be taken into account: *Lim Poh Choo v Camden and Islington Area Health Authority* [1980] AC 174; [1979] 2 All ER 910.

7 Damages in respect of pain and suffering is awarded for both future pain and suffering as well as for what the plaintiff has already endured: *Birkett v Hayes* [1982] 1 WLR 816; *TV Media Pte Ltd v De Cruz Andrea Heidi & Anor Appeal* [2004] 3 SLR(R) 543 ("*TV Media Pte Ltd*") at [166]. As far as future pain and suffering is concerned, the Court has to bear in mind these factors in awarding damages: (a) the risk of future deterioration or improvement in the plaintiff's condition; (b) how long any pain and suffering is likely to be endured; (c) how long the plaintiff is likely to live; and (d) whether any future treatment is likely to be necessary and if so, the nature of such treatment and how it will affect the plaintiff.

8 It is also well-established that in deciding the proper quantum of damages, reference should be made to the precedents available. However, as observed by the Court in *Nirumalan V Kanapathi Pillay v Teo Eng Chuan* [2003] 3 SLR(R) 601, the application of precedents to a specific case is not a straightforward exercise. There are often only brief descriptions of the injuries and residual disabilities sustained by the plaintiffs in the cases and allowances have to be made for the ages of the awards and the injured persons.

9 While as a matter of practice the courts in Singapore have often lumped the claim for "pain and suffering" together with that for "loss of amenities", they are not the same and neither is one subsumed under the other: *Tan Kok Lam (next friend to Teng Eng) v Hong Choon Peng* [2001] 1 SLR(R) 786 ("*Tan Kok Lam*"). The Court of Appeal in *Tan Kok Lam* held at [28]:

> "We recognise and accept that for a claim for pain and suffering, unconsciousness on the part of the victim would negative that claim and thus render an award in respect of that claim inappropriate. A claim for pain necessarily suggests that the victim has consciousness, otherwise there is no question of him enduring any pain for which he should be compensated. However, the same cannot be said for loss of amenities. Whether or not there is loss of amenities is an objective fact. It cannot and should not depend on an appreciation of the loss by the victim… There is no greater injury or loss, as far as a living person was concerned, than to be turned into a cabbage."

10 The above was subsequently clarified by the learned Judith Prakash J in *Tan Juay Mui (by his next friend Chew Chee Kim) v Sher Kuan Hock and another (Liberty Insurance Pte Ltd, co-defendant; Liberty Insurance Pte Ltd and another, this parties)* [2012] 3 SLR 496 ("*Tan Juay Mui*") at [30] that

what the Court of Appeal meant in *Tan Kok Lam* was that the greatest loss of amenities which a living person can suffer was to be put into a vegetative state and that such loss must be properly compensated, although the sufferer would not be entitled to a substantial award for pain and suffering due to his inability to feel the same.

11 Bearing the above principles in mind, I now turn to the facts of present case. A total of five medical experts were called to testify at the assessment hearing. The plaintiff called four medical experts as his witnesses:

(a) Associate Professor Ong Hian Tat ("Professor Ong"), Senior Consultant, Division of Paediatric Neurology, NUH;

(b) Dr David Low Chyi Yeu ("Dr David Low"), Consultant, Department of Neurological Service, KK Women's and Children's Hospital ("KKH");

(c) Dr Goh Yu-Ching Keith ("Dr Keith Goh"), Consultant Neurosurgeon, International Neuro Associates Pte Ltd;

(d) Associate Professor Henry Tan Kun Kiaang ("Professor Henry Tan"), Head and Senior Consultant, Department of Otolaryngology, KKH.

The defendant called one medical expert, Dr Ho Kee Hang ("Dr Ho"), Consultant Neurosurgeon, K H Ho Neurosurgery, as his witness.

12 Based on the NUH medical report prepared by Professor Ong, preliminary CT brain scan and X-ray results showed that the plaintiff sustained the following main injuries from the accident:

(a) Several haemorrhagic contusions with acute subarachnoid haemorrhage with intraventricular involvements as well as small amount of subdural bleeding;

(b) Cerebral edema and early hydrocephalus;

(c) Multiple pulmonary contusions with small pneumothoraces seen on CT thorax; and

(d) Abrasions over the left forehead and temple;

13 The plaintiff underwent emergency insertion of a right external ventricular drain ("EVD") on the same day of the accident. Neuroprotective measures were employed in the Paediatric Intensive Care Unit ("PICU") to reduce cerebral edema and to maintain adequate cerebral perfusion pressure. This included the initiation and maintenance of thiopentone coma for 11 days. He also required inotropic support in the PICU, which was weaned off after discontinuation of the thiopentone coma. He was also started on valproic acid as his electroencephalogram ("EEG") test showed severe diffuse encephalopathy with multiple epileptogenic foci.

14 The plaintiff also suffered from several complications during his stay at the PICU, which included blockage of EVD with resultant raised intracranial pressures, requiring two further revisions of EVD on 17 July 2011 and 22 July 2011. Eventually, a right ventriculo-peritoneal shunt was inserted on 3 August 2011. He also required ventilatory support in PICU and this was complicated by an episode of ventilator associated pneumonia on 10 July 2011. In view of prolonged ventilation, he underwent tracheotomy on 17 July 2011. He was successfully weaned off ventilatory support on 21 July 2011.

15 The plaintiff subsequently had spontaneous eye movement and occasional movements of his

upper limbs. Inpatient neurological rehabilitation was later commenced. The plaintiff was unable to track visually and had bilateral palsy of the 6th cranial nerves. Visual and auditory tests conducted suggested that the plaintiff suffered from cortical blindness and right-sided hearing loss. He also developed significant hypertonia in all four limbs with contractures in his upper and lower limb joints. His head was slightly rotated to the left due to contraction of the left sternocleidomastoid muscle. He had Botox injection of the left wrist joint to lessen the spasticity and he was started on baclofen and clonazepam.

16 The plaintiff was transferred from PICU to the general ward on 19 August 2011 for continued rehabilitation. The plaintiff's mother was given caregiver training in tracheostomy care, suctioning and change, nasogastric tube feeding and limb physiotherapy during the plaintiff's stay in the general ward. After more than three months of in-patient treatment and rehabilitation in NUH, the plaintiff was discharged on 19 October 2011. At the time of discharge, the plaintiff was non-ambulant and required constant care and assistance in all aspects of his activities of daily living. Sometime in June 2012, the plaintiff was transferred to KKH for follow-up and treatment. He has since been under the care and treatment of KKH.

17 Clearly, the accident had adversely affected the plaintiff and the lives of his family members. Prior to the accident, the plaintiff was a healthy and active boy who loved to cycle, play football and video games. He was able to perform his daily activities without much problem or assistance. He is now a quadriplegic and is on nasogastric tube feeding. He previously required a tracheostomy tube for breathing. Between the first and second tranches of the assessment hearing, the plaintiff was successfully decannulated i.e. the tracheostomy tube was removed, in April 2014.

18 There was consensus between the plaintiff's and the defendant's medical experts that the plaintiff would have a life expectancy of 27 years and he would live up to 38 years old. In terms of motor skills, the plaintiff was like a six-month-old baby; and in terms of sensory, thinking and language skills, he was assessed to be the equivalent of a 12-month-old baby.

19 The plaintiff claimed $280,000 for pain and suffering and loss of amenities. In support of the claim, the plaintiff relied on the following cases. In the first case of *Toon Chee Meng Eddie v Yeap Chin Hon* [1993] 2 SLR 536 ("*Eddie Toon*"), a seven-year-old boy was awarded $160,000 for pain and suffering and loss of amenities of life after a road accident left him with irreparable brain damage, paralysis on the right side and a very slim chance of being able to speak again. He needed assistance to micturate and defecate. He similarly had the intellectual ability of a six-month-old to one-year-old baby and was wheelchair-bound.

20 In the second case of *Kwok Seng Fatt Jeremy v Choy Chee Hau* ("*Jeremy Kwok*") [2003] SGHC 308, the court awarded $202,000 for fracture dislocation of T7 vertebrae resulting in paralysis below T6, fracture of right clavicle, fracture of right 2nd, 4th and 5th ribs with right haemopneumothorax, multiple abrasions, right brachial plexus injury, loss of sexual functions and reactive depression. In the third case cited by the plaintiff, *Lai Wai Keong Eugene v Loo Wei Yen* ("*Lai Wai Keong Eugene*") [2012] SGHCR 8, the Court awarded $200,000 for complete spinal cord injury from traumatic T4/T5 fracture with cord compression, causing paraplegia from upper chest downwards; multiple fractures of thoracic spine; fractures of bilateral ribs; bilateral pneumothoraxes, and left haemothorax.

21 Finally, in *Ramesh s/o Ayakanno (suing by the committee of the person and the estate, Ramiah Naragatha Vally) v Chua Gim Hock* ("*Ramesh s/o Ayakanno*") [2008] SGHC 33, the court awarded the sum of $185,000 for severe head injuries to both sides of the brain, requiring bilateral craniectomies, shunting defects requiring VP shunting, refractory seizures and sepis trachypnoea; bilateral cord palsy

requiring tracheostomy; difficulty in swallowing requiring PEG tube insertion; deranges liver functions and sepis; left iliac bone fracture; disc protrusions at different levels of dorsal spine causing cord compression, for which laminectomy was performed; and contractures of lower limb requiring tendorachilles lengthening.

22 The plaintiff submitted that the injuries in this case were more severe than the foregoing cases and the total compensation for this head of claim should therefore be $280,000. The defendant contended that the sum of $180,000 was adequate compensation for the pain and suffering and loss of amenities caused in this case. The defendant highlighted that the injuries in this case were mainly neurological-related and the plaintiff did not sustain any fracture to his cervical spine, lumbar spine, chest, abdomen or pelvis. The defendant similarly relied on the case of *Eddie Toon* and submitted that there were many similarities between the cases and like cases should be treated alike. However, the case of *Ramesh s/o Ayakanno* should be distinguished as the plaintiff in the present case did not sustain additional injuries to his liver or fractures to his pelvis (iliac bone) and spinal cord, which injuries were sustained by the plaintiff in *Ramesh s/o Ayakanno*. The additional injuries would have been taken into account by the High Court in its final award of $185,000. In summary, the defendant contented that the injuries sustained in *Ramesh s/o Ayakanno* were more severe and the award in this case should therefore be less than $185,000. Given the similarities between this case and *Eddie Toon* which was decided in 1993, the defendant submitted the appropriate compensation for pain and suffering and loss of amenities should be $180,000.

23 The defendant further distinguished the cases of *Jeremy Kwok* and *Lai Wai Keong Eugene* on the basis that the plaintiffs in these two cases were adults who had sustained severe orthopaedic injuries which left them paralysed. They did not suffer from any brain injuries which would have rendered him unaware of their difficult circumstances. In fact, the two plaintiffs were fully aware of their physical disabilities and suffered from depression as a result. The defendant cited the case of *Chong Hwa Yin v Estate of Loh Hon Fock, deceased* ("*Chong Hwa Yin*") [2006] 3 SLR(R) 211, where the High Court held at [7]:

> The severity of pain and suffering escalates according to the length of time the plaintiff will continue to feel the pain or suffer from it. And that, naturally would depend on whether the plaintiff was conscious of the pain and suffering. A person who no longer feels pain by reason of an injury to the brain may appear to be a much more sorry case than a person who is debilitated but mentally alert (often spinal cord injury type of cases) because the latter would be fully conscious of his disability and continue to suffer it as a result. The former may attract as much, if not more, sympathy, but compensation for pain and suffering must be made on principle. In determining the award, sympathy has its place in the rounding off on a higher end of the range, but no further. The pain that one feels for an injured person is the pain of the sympathiser. It is not the pain of the patient. The law compensates the patient, not the sympathiser, for his pain. Thus, the only justifiable distinction between the brain damage (of the Eddie Toon *type*) and liver damage (of the De Cruz Andrea *type*) case is that in the former, the patient was no longer conscious of the pain and suffering nor his loss of amenities, great and prolonged as they might be, because of the injury to his brain.

24 I agreed with the defendant that the cases of *Jeremy Kwok* and *Lai Wai Keong Eugene* were not suitable case precedents as the injuries and the consequences resulting from the injuries sustained were different from the present case. The plaintiffs were young adults in their prime at the time of their accidents and as a result of their severe orthopaedic injuries, both plaintiffs were severely paralysed but their mental faculties were unaffected. Their life expectancies were also not significantly reduced. The plaintiff in *Jeremy Kwok* was 21 years old at the time of the accident and he was expected to live up to 60 years old. The plaintiff was about 34 years old and he was

estimated to live up to 70 years old. In short, they had a much longer life expectancy of about 40 years and for the rest of their lives, the two plaintiffs would essentially be "locked in" to their bodies with no modes of escape.

25 It is a well-established principle that the factors which the Court must take into account in assessing the quantum of pain and suffering is the victim's awareness of the pain and distress he is in and the future pain and suffering that he would have to endure: see [6] above. In the present case, the plaintiff's awareness and appreciation of his plight is definitely more limited than the plaintiffs in the two previous cases. The duration of his pain and suffering is also shorter as his life expectancy has been shortened to 27 years. As such, the plaintiff's claim for $280,000 to be awarded for pain and suffering, which is way above the awards in *Jeremy Kwok* ($203,000) and *Lai Wai Keong Eugene* ($185,000), cannot be supported.

26 On the other hand, I found the case of *Eddie Toon* to be particularly instructive as it also involved a young seven-year-old victim who sustained severe brain damage from a road accident. The nature and consequences of the injuries were very similar and their life expectancies were also similarly reduced to 27 years. In upholding the award of $160,000 for pain and suffering and loss of amenities, the High Court reiterated the views of the learned Assistant Registrar at [27] of the Judgment that the plaintiff only possessed a limited awareness of his plight and condition. The fact that he could indicate pain and pleasure, frustration and discomfort and that he responded more positively to some individuals (e.g. his mother) was an indication that he had some insight and awareness of his plight. However, that insight was found to be very limited. In order to have proper insight, there had to be a capacity to relate the present with the past and to those who were around him. The plaintiff had, at best, 'islands of insights" and would not be able to appreciate the full extent of the catastrophe that had befallen him and his family.

27 The above observation would be equally applicable to the present case. As such, I was of the view that the starting point for the award of pain and suffering and loss of amenities should be at least $160,000. I then turned to consider the defendant's submissions the award in this case should be less than the award in *Ramesh s/o Ayakanno* as there were other additional injuries to the liver and fractures of the spinal cord in the latter. Although there were some merits to this submission, the defendant failed to consider the fact that the plaintiff in *Ramesh s/o Ayakanno* had a significantly shorter life expectancy of about ten years. Given the significant differences in life expectancies, I did not accept the defendant's submission that the award in this case should be less than that of *Ramesh s/o Ayakanno*. Considering that there were no added injuries of fractures or deranged liver functions but a significantly longer period of pain and suffering, I was of the overall view that $190,000 was a fair and reasonable amount of compensation for this head of claim.

Loss of future earnings of the plaintiff

28 I now turn to the next head of claim which is the loss of future earnings ("LFE") of the plaintiff.

29 It is well-established that there is nothing in principle which precludes the award of LFE to an injured party who is a young child or student who has yet to embark on a career provided that there are sufficient objective facts or evidence to enable the court to reasonably make the assessment. It does not necessarily follow that just because an injured party was still studying at the time the injury was sustained it would not be possible to award him damages based on LFE. There has been a number of previous cases where damages based on LFE have been awarded to an injured party who has yet to enter the employment market: *Koh Chai Kwang v Teo Ai Ling (by her next friend, Chua Wee Bee)* [2011] SGCA 23 ("*Teo Ai Ling*") at [38] – [39]. The Court of Appeal in *Teo Ai Ling* further held that the civil service career model would be a reasonable model to base an award for LFE, where the

claimant is a student with a broad range of career opportunities ahead of him and it is unclear which career path he would eventually take: at [34].

30 The principle that the Court can give an award of LFE to young injured plaintiff was subsequently affirmed by the Court of Appeal in *Lee Wei Kong (by his litigation representative Lee Swee Chit) v Ng Siok Tong* [2012] SGCA 4 ("*Lee Wei Kong*") at [33]:

> In Singapore, the courts have also, in appropriate cases, awarded LFE to injured plaintiffs who were young at the time of the accident and had yet to commence work at the time of the trial: see, e.g., *Peh Diana v Tan Miang Lee* [1991] 1 SLR(R) 22 and *Eddie Toon* ([12] supra). As is to be expected, the main difficulty with quantifying LFE in such cases is in determining the multiplicand, as many imponderables come into play. Undeniably, in this exercise, the court is being asked to look into the future.

31 In the present case, the task of assessing what should be the appropriate multiplier and multiplicand is made even trickier as the plaintiff was only nine years old at the time of the accident. As observed by the Court of Appeal in *Teo Ai Ling* (at [45]):

> …there is a distinct difference between a young child of five years old and a student like the Respondent who has completed her "O" levels and has embarked on tertiary education, i.e., a polytechnic course. In the case of a five-year-old child, admittedly it would be difficult to reasonably predict what that child would become. Will he graduate from university and become a doctor, lawyer or engineer? Is medical science able to provide an answer? Fortunately, we are not here concerned with such a child.

32 The present case unfortunately involved such a child. The Court must now make an estimate of how well the plaintiff, if uninjured, would have fared in his working life as an earner on attaining adulthood. It is faced with the immensely difficult task of having little or no material upon which to assess the plaintiff's future earning potential, since he has not even embarked on any form of post-secondary or tertiary education. In these circumstances, it is almost impossible to estimate the plaintiff's ability with any degree of objectivity and certainty. To adopt the language of the Court of Appeal in *Teo Ai* Ling, ultimately, the Court has to engage in "crystal ball gazing and peering into the future" in the present case.

The multiplier

33 The plaintiff proposed a multiplier of 16 years after taking into consideration that he would live up to 38 years old and assuming that he would complete his National Service ("NS") at 22 years old. It is well-established principle that to avoid over-compensation, the chosen multiplier must embed discounts for two factors: the vicissitudes of life (the contingencies and uncertainties of life which might have cut short the plaintiff's working life in any event) and accelerated receipt of a lump sum award which can be invested to yield a return. This is the conventional approach for LFE assessment endorsed by the Privy Council in *Lai Wee Lian v Singapore Bus Service (1978) Ltd* [1983-1984] SLR(R) 388 and the Court of Appeal in *Tay Cheng Yan v Tock Hua Bin and another* [1992] 1 SLR(R) 779. As such, I did not accept the plaintiff's proposal of a 16-years multiplier as that would be too excessive and not in line with the established principle.

34 The defendant submitted that the appropriate multiplier in this case should be 8 years. The defendant cited the case of *Eddie Toon* as a supporting precedent, where the High Court affirmed the 9 years' multiplier given by the Assistant Registrar. The defendant contended that a multiplier of 8 years was appropriate based on the assumption that he would have about 16 years of working life

after NS and after taking into consideration the contingencies and uncertainties of human life as well as accelerated receipt. It was submitted by the defendant that a discount of about half is usually applied by the courts when it comes to a lengthy period of balance working life. In support of this contention, the defendant relied on the case of *Lee Wei Kong* where the Court applied a multiplier of 20 years in a case where the plaintiff was expected to have about 40 years of working life. In the High Court case of *Teo Ai Ling (by her next friend Chua Wee Bee) v Koh Chai Kwang* [2010] 2 SLR 1037, a multiplier of 20 years was also applied for a plaintiff who was expected to have about 40 years of balance working life.

35 Relying on the case of *Eddie Toon*, I was of the view that a multiplier of 9 years was a fair and reasonable one to adopt.

The multiplicand

36 The plaintiff submitted that had it not been for the accident, the plaintiff would most probably have been able to complete his tertiary education and join the workforce. Although the plaintiff's academic performance had not been excellent or outstanding, his mother testified that he was making steady progress in his studies and it was always her intention that all her children should at least complete their polytechnic studies.

37 On the other hand, the defendant contended that the plaintiff's academic results were poor and he was clearly a below average, or at best an average, student. The plaintiff's academic grades for the first two and a half years of primary school education were highly inconsistent. Despite the tuition received by him since early 2011, the plaintiff only managed to score 59% in the first semester of primary three, just before the accident. Coupled with his less than ideal family background, the defendant submitted that the plaintiff was unlikely to attain tertiary education or even complete his polytechnic studies.

38 In my view, little weight should be given to the plaintiff's primary school results. As rightly observed by the High Court in *Eddie Toon (*at [49] *supra)*, in a case involving a very young plaintiff, his primary school grades cannot be a reliable guide in assessing his academic abilities or be used to predict what his achievements would have been at "O" or "A" level if he had not met with the accident. It is equally possible for the plaintiff to either obtain a university education or to drop out from school in his teens. This is completely a matter for speculation. It is, of course, only natural for every parent to expect that her child will do well in school but whether or not a child can in fact achieve academic excellence in school depends on many other factors.

39 In arriving at the appropriate multiplicand , the High Court in *Eddie Toon* used the mean commencing salaries of all occupations for young workers and relied on the data published by the then Ministry of Labour. It was held at [51] and [52]:

> Even if I adopt the learned assistant registrar's basis for the assessment of the loss of future earnings, then in arriving at the multiplicand, I would use the mean commencing salaries of all occupations for young workers and not the average monthly earnings of a Singaporean for all occupations. The average monthly earnings of a Singaporean would have taken into account the salaries of those employees nearing retirement age.
>
> Mr Rashid produced a copy of the *Report on Wages in Singapore 1991* published by the Ministry of Labour which shows that the monthly commencing basic wage for all occupational groups in 1991 ranged from a high of an average of $1,490 for all professionals to a low of an average of $534 for plant and machine operators and assemblers. *The average commencing wage for all*

occupations works out to only $783.85: see p 17 of the Report on Wages in Singapore 1991. This in my view is a better reflection of the national average wage of a young person in Singapore and if I round that upwards to $800, I think that would have been a fair and reasonable multiplicand to adopt for the plaintiff in the present case. [emphasis added]

40 Both parties relied on the above approach adopted by the High Court in *Eddie Toon* and did not rely on any civil service career models as benchmark, which was the approach adopted by the Court in *Teo Ai Ling*. Parties tendered various labour statistics published by the Ministry of Manpower ("MOM") in the *Report of Wages in Singapore 2011 ("MOM Wage Report")* for the Court's consideration. It was undisputed between parties that the MOM no longer published any statistics for the mean commencing salaries of all occupations for young workers, which was the benchmark used by the High Court in *Eddie Toon*. As such, parties had no choice but to rely on the other labour statistics published in the *MOM Wage Report*.

41 In deriving the appropriate multiplicand, the plaintiff proposed two alternate approaches. For the first approach, the plaintiff sought to rely on Table 9 of the *MOM Wage Report*, which basically sets out the median monthly gross starting salaries of graduates from the various institutions of higher learning, such as the universities, polytechnics and Institutes of Technical Education ("ITE") in 2011:

Graduates	**Median monthly gross starting salaries**
Universities graduates	$3,000
Polytechnics (Post-NS graduates)	$2,100
ITE (Post-NS Graduates)	$1,600

In deriving the multiplicand, the plaintiff took the average of the above three figures to arrive at the average median starting salary of all graduates plus 16% of employer's CPF contribution, which worked out to be $2,600.

42 In the second approach, the plaintiff proposed to rely on Table 1.4 of the *MOM Wage* Report, which sets out the median monthly basic and gross wages of common occupations by age in all industries for June 2011. The table below sets out the median monthly basic wages of each common occupational group for the age group of 25 to 29 years old, which is the youngest of all the age groups surveyed:

	Occupational group	**Median monthly basic wage**
1.	Managers	$3,663
2.	Professionals	$3,300
3.	Associate Professionals and Technicians	$2,460
4.	Clerical Support Workers	$1,730
5.	Service and Sales Workers	$1,374
6.	Craftsmen and Related Trades Workers	$1,457

7.	Plant and Machine Operators and Assemblers	$1,400
8.	Cleaners, Labourers and Related Workers	$1,090
	Total	$16,474

The plaintiff then took the average of the above figures plus 16% employer's CPF to arrive at the multiplicand of $2,400, which was computed as follows:

($16,474 ÷ 8) + 16% = $2,059.25 + 16% = $2,388.73 (which was rounded upwards to $2,400)

43 The defendant, on the other hand, while relying on the statistics in Table 1.4, contended that, on the balance of probabilities, the plaintiff would be unlikely to attain tertiary education. As such, the Court should not include in its computation the two highest categories of occupations, *i.e.*, Managers and Professionals. The defendant took the position that the minimum prerequisite of these two occupational groups was a university degree and given the plaintiff's below average academic performance and less than ideal family background, it would be unlikely that he could be a university graduate. Therefore, these figures should not be included in the computation of the multiplicand. The defendant, hence, took the average of the six remaining occupational groups and computed the average basic wage for workers in the age range of 25 to 29 years as $1,585.17. Further, as workers in this age group would have been in the work force for some time, the defendant submitted that a fair estimate of the commencing wage of the plaintiff at 22 years old (after NS) would be $1,200. No statistics or data was furnished by the defendant to explain how the downward adjustment to $1,200 was derived.

44 The Court in *Balanalagirisamy Gowri Rajeswari and another (administrators of the estate of Radhkrishnan Hari Babu, deceased) v Wong Si Wah* [2008] SGHC 174 ("*Balanalagirisamy*") adopted a staged approach by applying different multiplicands to different stages of a person's career lifespan as it considered the likelihood of increments and promotions as a person would get more experienced in his job. The learned Andrew Ang J observed at [15]:

> …In my view, the use of three multiplicands would allow for the factoring in of the Deceased's prospects of increases in earnings and yield a figure likely to be closer to what he would have earned than if one multiplicand was used. It would not be correct to freeze the multiplicand at the level of the Deceased's earnings at the time of the accident, *as the evidence adduced before the AR indicated clearly that the Deceased was a hardworking and capable worker with prospects of promotions*… there is much guesswork involved in estimating the probable earnings of a young man; the younger the deceased the greater the risk of error… the use of different multiplicands can serve to mitigate the risk of error.
>
> [emphasis added]

45 In view of the foregoing principle, the defendant proposed applying a similar three-stage approach with increments being added to each consecutive stage to mitigate against the risk of error. The defendant also cited the case of *Man Mohan Singh s/o Jothirambal Singh v Zurich Insurance (Singapore) Pte Ltd* [2008] 3 SLR(R) 735 ("*Man Mohan Singh*") where the Court of Appeal applied a three-stage process when assessing the prospective careers of two young deceased brothers and allowed an average of 9.4% increase in pay for each of the stages. The defendant argued that the respective career paths of the two teenage brothers were clearer in *Man Mohan Singh* as the two brothers were already in secondary school at the time of the accident. As such, the figure of 9.4% was reasonable in the circumstances of *Man Mohan Singh*. However, the plaintiff in this case was very

young and the defendant proposed a more conservative figure of 5% increment. Again, no data or explanation was furnished by the defendant to back up the basis for this proposed increment of 5%. Applying the proposed 5% increment to each stage, the defendant submitted that the appropriate multiplicands to be applied to the three stages are as follows:

(a) Stage 1: $1,200;

(b) Stage 2: $1,260; and

(c) Stage 3: $1,323.

46 As explained in [38] above, the Court must be careful not to engage in the speculation of whether the plaintiff will be able to attain tertiary education or complete his education in an institute of higher learning. As such, any proposed computation based on such speculations cannot be right or supported. In the circumstances, I rejected both the plaintiff's first approach of taking into account only the salary ranges of graduates from higher institutes of learning, as well as the defendant's submission that the Court should not include the median basic wages of the two highest categories of occupation. There is an equal chance of the plaintiff becoming a professional or a labourer. The Court is not in the position to decisively conclude whether the plaintiff is more likely than not to be unable to attain tertiary education and vice-versa. In fact, it cannot. In my view, it is fairest and most equitable to take into account all eight categories of occupational groups for purpose of computation. Such an approach is also be in accordance with the principle enunciated in *Eddie Toon*, where the High Court adopted the mean commencing salaries of *all occupations* for young people in arriving at the appropriate multiplicand.

47 I then took the average of all the figures set out in Table 1.4 and arrived at the average median monthly basic wage across all eight occupational groups as $2,059.25. I took into consideration the defendant's submission that the figures reflected in Table 1.4 are not *commencing* salaries as most Singaporean males commence work before age 25. The question was how to ascertain the *commencing salary* of the plaintiff at age 22. No data or benchmarks were provided by the defendant to explain how the downward adjustment from $1,500 (from age 25 to age 29) to $1,200 (at age 22) was arrived at. As such, I referred to the Income Summary Table published on the MOM's website, <http://stats.mom.gov.sg/Pages/Income-Summary-Table.aspx> (accessed 3 September 2014), which sets out the annual basic wage changes, excluding employer's CPF contribution, from 2003 to 2013:

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Basic Wage Change	1.2%	2.7%	3.1%	3.6%	4.3%	4.4%	1.3%	3.9%	4.4%	4.5%	5.1%

48 Taking the average of the annual basic wage changes from 2003 to 2013, I arrived at the figure of 3.5% as the average annual basic wage change over the 10-year period. I then applied the average annual wage change of 3.5% per year to the average median monthly basic wage of $2,059.25 across all eight occupational groups for a period of 5 years, starting from age of 27 years old, being the average of the age group of 25 to 29 years old, to 22 years old. The average median commencing salary for all eight occupational groups at the *age of 22* was then computed to be $1,723.24. I adopted this figure as the appropriate multiplicand as I found this to be the best estimate and the closest comparison to the benchmark adopted by the High Court in *Eddie Toon*.

49 In computing the award for LFE, I allowed for loss of employer's CPF contributions at 16% and the usual 13th month bonus which would be commonly given to most workers in Singapore. I accordingly arrived at the sum of $233,878.14 for this head of claim, which was computed as follows:

($1,723.24 x 13) + 16% of ($1,723.24 x 13) x 9-year multiplier = $233,878.14

Future medical expenses

50 It was undisputed that future medical, surgical treatments, rehabilitation and physiotherapy sessions would be required to treat, amongst others, the plaintiff's limb spasticity and contractures. Unlike a normal child, the plaintiff would have a higher chance of contracting upper respiratory tract infections ("URTI") and pneumonia. Due to his bed-ridden condition, provisions should also be made for treating skin pressure ulcers and other potential medical conditions. Since the plaintiff's discharge from NUH, he had been admitted to hospital on various occasions for ailments such as epilepsy, URTIs, pneumonia and gastroenteritis.

The multiplier

51 It is trite law that the multiplier for future expenses is determined according to circumstances prevailing at the date of the trial. In relation to future medical expenses, the average life expectancy, rather than the retirement age, would be the measure of the period of the loss: *Ang Leng Hock v Leo Ee Ah* [2004] 2 SLR 361 ("*Ang Leng Hock*") at [59].

52 The plaintiff contended that a multiplier of 27 years should be adopted in the computation of his future losses and expenses, subject to the appropriate discount for accelerated payment at 33% reduction. The defendant submitted that the appropriate multiplier should be 12 years.

53 In *TV Media Pte* Ltd, the High Court at first allowed a multiplier of 34 years for the respondent's medical expenses, which was two-third of her remaining life expectancy of 51 years. However, the Court of Appeal found this to be too high and lowered it to 17 years. In *Tan Juay Mui v Sher Kuan Hock* [2012] 3 SLR 496, the High Court upheld the multiplier of 17 years for a plaintiff who had a life expectancy of about 32 years. In the recent High Court decision of *Lai Wai Keong Eugene v Loo Wei Yen* [2013] 3 SLR 1113, the learned Coomaraswamy J affirmed the Assistant Registrar's decision that a 15-year multiplier was appropriate for future medical expenses in respect of a plaintiff who was expected to live for about 30 years. On appeal to the Court of Appeal, the multiplier remained unchanged. In *Ang Leng Hock*, the Assistant Registrar awarded a multiplier of 20 years for a plaintiff who was expected to live for another 33 years. On appeal, the learned Prakash J found the 20-year multiplier to be on the high side and reduced it to 15: at [59].

54 In light of the above case precedents and considering the plaintiff's life expectancy of 27 years, I was of the considered view that a multiplier of 12 years, as submitted by the defendant, was fair and reasonable.

The appropriate multiplicand to be applied

55 In relation to the appropriate multiplicand to be applied, the Court had to carefully consider the evidence of the medical experts who were called to testify at the assessment hearing. The plaintiff's claim for future medical expenses ("FME") was primarily based on the anticipated present and future treatment and estimate costs listed in Annex A of Dr Keith Goh's specialist medical report ("Annex A"). The defendant's medical expert, Dr Ho Kee Hang, also agreed with the anticipated treatments and estimated costs listed by Dr Keith Goh in Annex A.

56 There were essentially seven items of claims in Annex A. Although there were not many disputes as to the items of anticipated treatments and costs, there were many disputes surrounding the quantum of each claim. As such, I shall reproduce Annex A in its entirety below:

Annex A: Anticipated present and future treatment and estimated costs: -

Surgical treatment

1. Surgery to treat limb spasticity and contractures

    a. Hospitalisation (1 week), procedures (e.g. Botox, tenotomy): $10,000 - $20,000;

    b. Hospitalisation (1 week), procedures (e.g. Baclofen infusion): $10,000 - $20,000.

2. Surgery to treat skin pressure ulcers

    a. Hospitalisation (1 week), procedures (e.g. dressings, debridement): $10,000 - $15,000;

    b. Hospitalisation (1 week), procedures (e.g. skin graft, muscle flap): $25,000 - $30,000.

    Estimated requirement: 1 operation per year for first 3 years.

Medical treatment

3. Frequent infections (Urinary tract, pneumonia)

    a. Medication (outpatient): antibiotics: $10 - $20/ day (x 1 week for each episode of infection) = $70- $140;

    b. Hospitalisation (1 week), related investigations and treatment: $5,000 - $7,000.

    Estimated requirement: 1-2 episodes per year.

4. Limb problems (Muscle atrophy, limb contractures)

    a. Physiotherapy: $80 - $100 per session

    Estimated requirement: 2 sessions per week (for life)

    b. Limb splints: $100 - $300 per splint (for life)

    Estimated requirement: 4 splints every 2 years (for life)

    c. Wheelchair: $10,000

    Estimated requirement: 1 wheelchair every 5 years (for life)

5. Skin pressure sores

    a. Home environment modifications: hospital bed, special mattress: $5,000

    Estimated requirement: 1 replacement every 5 years.

6. Medical consultations

    a. review by doctors: $100 - $150 per consultation

    Estimated requirement: 1 consultation every 3 months (for life)

7. Nursing care

    a. Minimum one full-time care-giver, with nursing background: $1,000 per month

    Estimated requirement: 1 care-giver daily (for life)

Private hospital rate vs. restructured hospital rate

57 The first point of contention was the appropriate type of hospital rate that the Court should adopt in assessing the quantum of each medical expense. Dr Keith Goh testified that the rates reflected in Annex A were those of a private hospital such as the Mount Elizabeth Medical Centre. I agreed with the defendant that plaintiff had consistently been treated at KKH since his transfer from NUH and as such, the totality of evidence suggested that he would continue to be under the care and treatment of KKH. Dr Keith Goh also agreed that it would be reasonable for the plaintiff to continue treatment at a restructured hospital. As such, the rates reflected in Annex A would have to be accordingly adjusted to reflect restructured hospital rates.

58 In respect of the differences in costs between a private hospital and a restructured hospital, there was much consensus between Dr Keith Goh and Professor Ong. Dr Keith Goh informed that ward charges do not differ much between a private hospital and restructured hospital and there would only be about 10% difference for the same class of ward. However, the big differences would lie in doctors' fees, medication and other ancillary charges. The differences could, generally, be in the region of about 50% to 60%, prior to government grants. In other words, the final bill rendered by a restructured hospital after taking into account government grants would be *less than 50% to 60%* of a private hospital. Professor Ong from NUH expressed similar views that the differences in costs between a private hospital and restructured hospital could be about 50% or so. However, no evidence was adduced from Professor Ong whether his estimate included or excluded government grants.

59 On the above basis, the defendant submitted that a fair reduction of 50% should be given to the figures in Annex A. Furthermore, historical evidence suggested that the plaintiff had been receiving treatment as a subsidised patient and would continue to receive government grants for his future treatment. A fair estimate of how much government grant the plaintiff would get for his future treatment could be obtained by looking at his prior admission invoices. As a percentage of the total charges reflected in the invoices submitted by the plaintiff, the defendant computed that the average percentage of the total charges for the amount of government grants the plaintiff had been receiving was about 43.59% of the total charges incurred. The defendant therefore contended that a further 40% reduction for government grant should be imputed after giving a 50% discount to the private rates set out in Annex A.

60 The plaintiff, on the other hand, submitted that he should be entitled to Class B1 rate and according to a print-out from the Ministry of Health's website attached as Tab A to the plaintiff's closing submissions, Class B1 patients are entitled to 20% government subsidy.

61 A perusal of the KKH's invoices submitted by the plaintiff showed that the he had been receiving treatment either as a Class B2+ patient and/or Class B2 patient. Given the general practice

of allowing award for FME at the default B1 hospitalisation rate, I did not accept the defendant's submission that a further 40% discount should be imputed in the calculation because this was based on bills rendered at Class B2+ and Class B2 rates. Nonetheless, I was of the view that a further 20% discount should be imputed as potential government subsidy after the first 50% discount to the private rates in Annex A.

62 With the above parameter in mind, I went on to consider each of the items set out in Annex A.

Surgery to treat limb spasticity and contractures

63 Dr Keith Goh recommended in Annex A that there should be one surgery per year for the first three years to treat limb spasticity and contractures. However, as Dr Keith Goh was not the plaintiff's treating doctor, the views of his treating doctor in this regard would have more weight. Professor Ong confirmed that the plaintiff did not undergo any tenotomy or botox treatment during his stay at NUH. There were plans to discuss these treatment options with the family but NUH did not have a chance to do so as the plaintiff was subsequently transferred to KKH. Professor Ong informed the Court that in the plaintiff's case, he would recommend one tenotomy now and another tenotomy procedure at the end of puberty.

64 In this regard, Dr David Low from KKH also agreed with Professor Ong's assessment that the plaintiff would require two tenotomy procedures for the balance of his life. As for the issue of costs, Dr David Low testified during cross-examination that each tenotomy surgery would cost about $2,000 to $3,000 all in, based on subsidised rates:

> Q: Surgery for tenotomy – how much will it cost based on subsidised rate?
>
> A: Unable to give an accurate rate as it is done by Orthopaedic. But about $2 to $3 K all in. Estimate.

65 The defendant submitted that it would be reasonable to take $2,500 per treatment as the average cost of each tenotomy and imputed a 40% discount for government grant. As Dr David Low's estimate was on an "all-in" basis, I was unable to agree with the defendant's submission that a further reduction should be given for government grants. The defendant's counsel also did not clarify with Dr David Low whether his estimate included or excluded government grants. Taking a more favourable view of the matter, it was considered that an estimate given on an "all in" basis would have included the necessary government subsidies. As such, I awarded the sum of $5,000 for the two tenotomy procedures for the plaintiff's remaining lifespan.

66 As for botox and baclofen infusion, the plaintiff submitted that the Court should provide for two such treatments and the defendant submitted that only one such treatment be provided. Dr David Low testified that there was very little effective treatment for limb spasticity and contractures. The two most effective treatments were botox injections and baclofen infusion which helped to reduce the severity of abnormal muscular contraction. Although tenotomy helped to prevent the muscles from acting on the joint, the procedure had its side effects as it rendered the movement of the joint paralysed. In light of Dr David Low's evidence that botox injections and baclofen infusions were the two most effective treatments, the plaintiff's submission that provision should be made for two such treatments for the entire life span of the plaintiff, was accepted.

67 Dr Keith Goh estimated that the total cost of each botox injection or baclofen infusion would be about $10,000 to $20,000. The average of these two figures worked out to be $15,000. I then applied a 50% discount plus a further 20% reduction for Class B1 government subsidy and arrived at

the figure of $12,000 as the award for these two treatment costs.

Surgery to treat skin pressure ulcers

68 There was consensus among the medical experts that provision should be made for treating skin pressure ulcers in light of the plaintiff's bed-ridden condition. Both Dr David Low and Professor Henry Tan agreed that the Court should provide a sum of $15,000 as a ballpark figure for non-surgical conservative care to treat skin pressure ulcers for the remaining balance of the plaintiff's life. However, in the event of surgery, the total medical cost would be higher.

69 The plaintiff asked for provision to be made for one such surgery but the defendant contended that no such provision should be made as the mother had been providing very good care to the plaintiff. Thus far, historical evidence suggested that the plaintiff had not been suffering from any skin pressure ulcers and it was more likely than not that the good home care would continue in his case. As such, it was unlikely that the plaintiff would suffer from skin pressure ulcers that would require surgical intervention.

70 I was of the considered view that provision should be made for such surgery. As time passes, the plaintiff would get heavier and bigger; whereas, the mother would grow older. She might not be able to handle or turn the plaintiff in bed as easily. As such, the chances or likelihood of the plaintiff getting skin pressure ulcers requiring surgery would increase with time and hence, it would only be prudent that a provision be made for this. This was further fortified by the evidence of Dr David Low who testified:

> Q: When AOD becomes an adult, are you able to say whether or not he will need surgery for skin pressure ulcers on a balance of probabilities?
>
> A: I can say that the chances of him requiring surgery will be higher in adulthood than a child. But predictability is uncertain.
>
> Q: Skin pressure ulcer will cost about $2,000 based on B1 rate?
>
> A: Based on subsidised rate – B2 and below. B1 will be higher.

After taking into account the undisputed ballpark figure of $15,000 as the total cost for conservative treatment (at [68] above), the total award for skin pressure ulcer treatment was worked out to be $17,000.

Frequent infections (URTI and pneumonia)

71 It was clear from the overall evidence that the plaintiff had been frequently admitted to the hospital for URTI and pneumonia. The KKH's discharge summaries revealed that the plaintiff had been admitted for URTI for a total of seven occasions between November 2012 and October 2013. Professor Ong and Dr David Low also agreed that it was fair to use the plaintiff's previous URTI admissions as an estimate to determine how frequently the plaintiff would be likely to be admitted for URTI. Professor Ong estimated that, as a child, the plaintiff would be admitted for URTI on an average of about four to seven times a year, but the frequency would reduce to about two to four times a year in his adulthood.

72 Dr David Low was of the view that the historical trend of seven admissions a year was a good estimate for the plaintiff's future but he disagreed that the frequency of URTI admissions would

reduce as the plaintiff gets older. In any event, both the plaintiff and the defendant adopted Dr David Low's estimate in their submissions and as such, I worked out my calculation on that basis.

73 Counsel for the defendant helpfully summarised the details of each of the plaintiff's seven previous URTI admissions in a table, which was admitted and marked as "D2". D2 sets out the duration and hospitalisation cost for each of the seven admissions. The average cost per day was derived from dividing the total hospitalisation costs by the total number of hospitalisation days and it was worked out to be $523. Based on Professor Ong's estimation that each URTI admission would likely last about three to five days, I estimated that each stay would last a total of 4 days. Applying a multiplier of 12 years, I arrived at a total sum of $175,728, being the award for FME for URTI:

$523 x 4 days x 7 admissions in a year x 12 years = $175,728

74 On the issue of FME for pneumonia, microlaryngobronchoscopy ("MLB") and excision of suprastomal granuloma ("SSG"), the Court had to take into consideration the fact that the plaintiff had been decannulated. The plaintiff submitted two alternate approaches for the Court's consideration. The plaintiff's first approach sought a present award for permanent tracheostomy on the basis that there would likely be an event of onset of pneumonia in the near future. On the basis that permanent tracheostomy would be necessary, the plaintiff claimed for the cost of treatment of pneumonia at the rate of three times a year, based on Professor Henry Tan's recommendation, and the requirement for MLB scope to detect and simultaneously treat SSG (the "MLB-SSG procedure"), which would have to be carried out at least twice a year for the rest of the plaintiff's life.

75 In the second approach, the plaintiff sought provisional damages in the event that the decannulation process turned out to be unsuccessful in the near future and a permanent tracheostomy would be needed for life. The plaintiff submitted that a provisional period of five years was fair to monitor the plaintiff's prognosis and his condition post-decannulation. At the five-year mark, the Court would have to assess the frequency of pneumonia treatment as well as the MLB-SSG procedure. In the meantime, under this second approach, the plaintiff claimed for 10 pneumonia treatments for the rest of the plaintiff's life, based on the assumption that he would not require a permanent tracheostomy in the future.

76 On the issue of provisional damages, the evidence of Professor Henry Tan was critical as he was the only expert witness to testify at the second tranche of the hearing after the plaintiff was successfully decannulated. Parties did not elect to recall any of the medical experts who had earlier testified at the first tranche. As there was much contention as to whether an award for provisional damages should be made in this case, the material aspects of Professor Henry Tan's evidence are set out below:

At evidence-in-chief

Q: A very brief background by the neurosurgeons who have testified – estimated the balance of his lifespan to be 27 years. Now, for the avoidance of doubt, can I say that he will not need any MLB for the balance of his lifespan?

A: It is very hard to say. He is quite wasted meaning he is very skinny. His lungs are very weak. If he has a lung infection, he may need his tracheo back and he may need MLB again. But if he has no lung infection, then he may not need MLB. We know that he may have pneumonia. He cannot breathe well and cannot get out of it. He may need his tube back and he may need tracheo again.

Q: Let us talk about pneumonia. In his estimated lifespan of 27 years, in your opinion, how frequent do you think he may get pneumonia?

A: When he had the tracheo tube, he can have 2-3 times a year. Now that it has been taken out, his respiratory status are not too bad at the moment, it is very hard to predict. But if he had an infection because he is more dependent than other people, but I really cannot predict. But 1 or 2 a year is a possibility. If he keeps his lungs very healthy and he becomes stronger, he may not even have 1 or 2 a year. So over a lifespan of 27 years, if I say 10 incidences over 27 years, honestly, it is likely. And pneumonia is a very serious disease. If you have it, you can die of it. Because he is not as strong, he will need help to ventilate. He may need his tracheo back again.

Q: In this lifespan of 27 years, will you make any provisions for any need for tracheo tube because of the onset of pneumonia.

A: If our child is getting stronger and no pneumonia, then no need. But if he gets weaker get one bad infection and I need a tracheo again, then I am unlikely to take it out again anymore. I will have to make provision for it. But if he had it the second time then I will not remove it anymore.

Q: With reference to this patient, considering that he had weak mental and physical constitution, you gave evidence that you foresee that he may have pneumonia in 27 years, what are the likelihood or chances that these pneumonia will cause him to need a tracheo again?

A: I know it is likely. He is quadriplegic, he is dependent even his respiratory system can be dependent. They are not active. With a simple flu it is very likely that it will progress to pneumonia.

Q: With a tracheo put in, what will be the rate of pneumonia?

A: It will increase. Depending on the care. 2-3 times a year.

Q: For the balance of his life?

A: Correct .

Q: If a tracheo is permanent, then we have to look at MLB to investigate the possibility suprastomal granuloma?

A: Suprastomal granuloma is a lump of tissue above the tube inside the airway- reaction to a foreign body. If a permanent tube is put in, then he will need MLB every 6 months. It is a routine.

Q: For the excision of the granuloma, it is stated at PSBD 354 - cost?

A: Cost is the same as MLB. As we do the scope, we also do the excision. Two in one. The cost of excision generally does not add to the cost of MLB unless it is complicated and extra surgical intervention is needed. But it is seldom.

Q: For the avoidance of doubt, MLB will be about twice a year for the rest of the life?

A: You can say so.

At cross-examination

Q: Should this court make a provision on the basis that this boy will have or not have a tracheo which will be permanent taking into account your knowledge of the case and this boy being well looked after and this Hon Court will make provision for this family?

A: I have not seen the patient. Just from my general expertise, the provision should be given.

Court:When you have a tracheo, number of incidences of pneumonia over a lifespan of 27 years?

A: About 2-3 times a year. Exactly what AOD has in the past. In 2013, he had 3 admissions.

Q: We want to be fair to the child. You are saying more likely than not he will need a tracheo, just substantially more than not or more likely than not?

A: More likely than not. My evidence is that he is more likely than not he will not need a permanent tracheo. But if he gets sick and he gets into problem and he cannot get treated medically, he will need a tracheo and that will be permanent.

Q: Will he likely require a permanent tracheo and your answer is hard to predict?

A: Yes.

At re-examination

Q: You said that more likely than not he will not need a permanent trache. But you also said that provision should be made for a trache. Can you clarify?

A: True that we know he is good enough for decannulation so we remove the tube. For quadriplegic, he cannot recover. A provision should be made for this child.

77 The defendant submitted that the plaintiff had failed to discharge the burden of proof that he would need a permanent tracheostomy and the associated cost of MLB-SSG procedures under the first approach. In this respect, I am in agreement with the defendant that the plaintiff's first approach, which sought a present award for permanent tracheostomy and the associated costs on the basis that there would likely to be an event of pneumonia in the near future, cannot be supported. It did not make sense to give a present day award for permanent tracheostomy and to meet the associated costs as the plaintiff was already decannulated by the second tranche of the hearing.

78 The next question is whether provisional damages should be awarded under the second approach. At the outset, the defendant contended that provisional damages had not been sufficiently pleaded by the plaintiff. In this regard, the Court had to be mindful of the fact that plaintiff was only decannulated between the two tranches of hearing and the plaintiff's counsel could not have anticipated such a turn of event when filing the statement of claim. In any case, reference to a claim for provisional damages was made in the statement of claim at paragraph 6(g).

79 The defendant further argued that the requirements for the Court to grant an order for provisional damages have not been fulfilled in this case. The defendant submitted that, during cross-

examination, Professor Henry Tan was only asked to express a view on the usual evidentiary test of whether, on a balance of probabilities, the plaintiff would need a permanent tracheostomy. The defendant's concern was to deal with a claim for permanent tracheostomy and the costs associated with a permanent tracheostomy, and it was not to provide assistance to the Court on provisional damages.

80 Paragraph 16 of the First Schedule of the Supreme Court of Judicature Act (Cap 332) ("SCJA") provides the Court with the "power to award in any action for damages for personal injuries, provisional damages on the assumption that a contingency would not happen and further damages at a future date if the contingency happens". Correspondingly, O 37 r 8 of the Rules of Court (Cap 332, R 5, 2006 Rev Ed) states:

> **Order for provisional damages (O 37 r 8)**
>
> 8. —(1) The Court may, on such terms as it thinks just and subject to the provisions of this Rule, make an award of provisional damages if the plaintiff has pleaded a claim for provisional damages.
>
> (2) An order for an award of provisional damages shall specify the contingency in respect of which application may be made at a future date, and shall also, unless the Court otherwise determines, specify the period within which such application may be made.

81 The legal test for granting of provisional damages is set out in the High Court decision of *Tan Juay Mui (by his next friend Chew Chwee Kim) v Sher Kuan Hock and another (Liberty Insurance Pte Ltd, co-defendant;Liberty Insurance Pte Ltd and another, third parties)* ("*Tan Juay Mui*") [2012] 3 SLR 496, where the learned Prakash J observed at [83]:

> In this connection, I would emphasise that the Singapore legislation uses the word "contingency" and refers to damages being assessed on the assumption that such contingency "will not happen", in which case further damages may be given if the contingency "happens" at a future date. In the English legislation, in contrast, in order to get an order for provisional damages there must be proved or admitted to be a chance that in the future the injured person will "develop some serious disease or suffers some serious deterioration" in his physical or mental condition. Our language is considerably wider and does not impose such conditions. Having said that, I agree that not every contingency could justify an award for provisional damages. The contingency must be one of a serious nature in order to prevent legal resources being expended when only insubstantial damages can be recovered.

82 The learned Prakash J then went on to set out the following legal principles for provisional damages in the remaining paragraphs of the judgment:

> (a) The risk of development of the contingency must be a clear risk and not one that is fanciful (at [90]);
>
> (b) The contingency must be objectively identifiable and, subsequently, objectively determined to have occurred, then when it does occur, a provisional damages award may be made. In order to prevent future dispute, one must be able to define the precise contingency, upon which further damages should be awarded (at [84]);
>
> (c) There must be a clear-cut event. If you cannot specify at what point the contingency has occurred, then the contingency cannot be objectively determined as the law requires (at [87]);

(d) There must be some evidence as to the degree of such risk or when such changes were likely to occur. The evidence must support a finding that there was a reasonable likelihood of the condition occurring within the not too distant future (at [86]); and

(e) A time frame based on medical evidence should be specified for the plaintiff to return to apply for further damages (at [90]).

83 Bearing the above principles in mind, I went on to consider whether this was an appropriate case to make an order for provisional damages. Professor Henry Tan testified in his evidence-in-chief that, despite the decannulation, the plaintiff's lungs were still much weaker as compared to a normal child and the plaintiff had a higher tendency of contracting lung infection and pneumonia. Given the plaintiff's weak constitution, he would need more help and medical intervention with ventilation in the event of a lung infection. As regards to the chances or likelihood of the plaintiff contracting pneumonia to such an extent that he would require a tracheostomy again, Professor Henry Tan expressed the view that it was likely as a simple flu could easily develop into pneumonia in the case of the plaintiff. With a permanent tracheostomy, the rate of pneumonia occurring would naturally increase and regular MLB-SSG procedures would have to be conducted for the plaintiff to investigate and treat SSG.

84 However, at cross-examination, the defendant's counsel put forward to Professor Henry Tan the legal standard of proof and asked the doctor whether his evidence meant that it was more likely than not that the plaintiff would need a tracheostomy. For ease of reference, I reproduced the relevant cross-examination question and answer below:

Q: We want to be fair to the child. You are saying more likely than not he will need a trachea, just substantially more than not or more likely than not?

A: More likely than not. My evidence is that he is more likely than not he will not need a permanent tracheo. But if he gets sick and he gets into problem and he cannot get treated medically, he will need a tracheo and that will be permanent.

85 With respect, I do not find cross-examination questions based on technical legal standards of proof helpful as they can sometimes be confusing to non-legally trained witnesses. Whether the plaintiff has established his case on a balance of probabilities is a finding that the Court has to make based on the facts and circumstances of the case. It is not the prerogative of the witnesses but that of the Court. The evidence of medical expert is important but the finding is one that has to be made by the Court. In any event, Professor Henry Tan stood by his evidence at re-examination that a provision should be made for a permanent tracheostomy in this case although the plaintiff had been decannulated.

86 The question is whether the legal principles for an award of provisional damages as set out in *Tan Juay Mei* have been satisfied. Taking Professor Henry Tan's evidence as a whole, it would appear that there is a clear risk of the plaintiff developing pneumonia to such an extent that he will need a permanent tracheostomy. The totality of Professor Henry Tan's evidence suggested that there is a reasonable likelihood of the plaintiff requiring a permanent tracheostomy in the future. In other words, the risk of the plaintiff's requiring a permanent tracheostomy is a clear risk and not one that is fanciful in light of his quadriplegic condition. The contingency in this case, being the requirement of a permanent tracheostomy, is also objectively identifiable and can be objectively determined to have occurred. It is, as such, a clear-cut event.

87 The remaining question is whether there is evidence to specify a certain time frame for the

plaintiff to return to apply for further damages. In *Tan Juay Mui*, there was medical evidence that the plaintiff was at risk of developing complications of renal failure, glaucoma, blindness, gangrene and coronary heart diseases from diabetes in three to five years' time. The Court therefore made an order that the plaintiff may apply for further damages to be assessed if within five years she develop any of the above complications as a result of diabetes.

88 In this respect, there was no clear evidence from Professor Henry Tan as to the time frame the plaintiff would be at risk of developing pneumonia to such an extent that a permanent tracheostomy would be required. However, I am of the considered view that this should not be fatal to the plaintiff's claim for provisional damages given Professor Henry Tan's testimony that a provision should be made for such an event as there is clear and obvious risk of the plaintiff contracting pneumonia and requiring a permanent tracheostomy in future. It is undisputed that with the insertion of a permanent tracheostomy tube, the incidences of pneumonia will naturally increase and the plaintiff will have to undergo regular MLB-SSG to track his progress and to treat potential SSG. The medical expenses in such a situation will shoot up and it will be patently unfair to the plaintiff and his family that they should be left with little or no recourse in such a situation. The potential inequity of not making an order for provisional damages in this case far outweighs the potential injustice that may be caused to the defendant who is insured. In any event, any potential injustice caused to the defendant can be mitigated by specifying a shorter time frame for which the plaintiff can apply to the Court for further damages to be assessed.

89 In the circumstances, I make an order that the plaintiff may apply for further damages to be assessed if within three years of today he requires a permanent tracheostomy as a result of contracting pneumonia.

90 Having made the order for provisional damages, I now consider the amount of FME that should be awarded for the plaintiff's pneumonia treatment on the basis that he had already been decannulated and no longer required a tracheal tube. Professor Henry Tan estimated that the plaintiff was likely to contract pneumonia ten times over the remaining balance of his life. As submitted by the defendant, I allowed for seven incidences to take into account accelerated payment and vicissitudes of life. Professor Henry Tan also estimated that each admission of pneumonia would require about seven to 10 days of hospitalisation. Taking the average of the range, it was estimated that each hospital stay would last about 8.5 days. This estimate was also in line with Dr David Low's estimate that each admission for pneumonia is usually longer than that of URTI and would cost about twice as much. In the circumstances, I find the estimate of 8.5 days for each pneumonia hospitalisation to be fair and reasonable. Applying the average hospitalisation cost of $523 per day (see [73] above), I worked out the award of FME for pneumonia treatment to be $31,564.75:

$530.50 x 8.5 days x 7 incidences over remaining lifespan = $31,564.75

Item 4 – Limb problems (Muscle atrophy, limb contractures)

91 Both Professor Ong and Dr David Low expressed the view that it was fair to rely on the historical data derived from the plaintiff's previous rehabilitation sessions as a guide to estimate how frequently the plaintiff should attend physiotherapy. Professor Ong was of the view that a provision of about two physiotherapy sessions a month for the rest of the plaintiff's future was fair. Dr David Low testified that during the period of intensification of rehabilitation, the number of sessions could be about two to four times a month, but this would reduce to the historical baseline of about 1.5 sessions a month after the period of intensive rehabilitation.

92 As such, I allowed for an estimation of two physiotherapy sessions a month for the rest of the

plaintiff's life. In the course of the hearing, the defendant's counsel helpfully prepared a table of the plaintiff's rehabilitation costs, which was admitted and marked as "D1". On average, each physiotherapy session cost about $176. By applying this average cost of rehabilitation, I arrived at the sum of $50,688 as the total award for the plaintiff's future physiotherapy expenses, being made out as follows:

$176 x 2 sessions x 12 months x 12-year multiplier = $50,688

93 In respect of limb splints, Dr Keith Goh estimated that the plaintiff would require about four limb splints every two years for the rest of his life. He estimated the cost of each limb splint to be in the range of $100 - $300 as set out in Annex A. As the cost range set out in Annex A reflected the cost of private hospitals, a 50% discount would have to be applied to the rate. The cost of each limb splint was therefore estimated to be $100. Assuming that the plaintiff would require about four limb splints in every two years, I applied the multiplier of 12 years to the cost of each limb splint and arrived at the figure of $2,400 for this claim:

$100 for each limb splint x 4 limb splints x (12-year multiplier / every 2 years) = $2,400

94 Dr Keith Goh also estimated that the plaintiff would require a change of wheelchair every five years and each wheelchair would cost about $10,000. I similarly applied a discount of 50% and a multiplier of 12 years to this figure and arrived at the sum of $12,000:

$5,000 for each wheelchair x (12-year multiplier / every 5 years) = $12,000

Home modifications and medical consultation

95 It was also undisputed that the plaintiff should be provided with the costs of a hospital bed and special mattress to reduce the incidences of skin pressure sores. Dr Keith Goh estimated that the plaintiff would require one replacement of hospital bed and special mattress every five years. I awarded the amount of $6,000 for this claim after applying the 50% discount rate and 12-year multiplier to the figure of $5,000 reflected in Annex A.

96 As for the cost of future medical consultations, both parties accepted Dr Keith Goh's estimate that the plaintiff would require about one consultation every three months for the rest of his life. Dr Keith Goh estimated that each medical review would cost about $100 to $150 for a private hospital. I accordingly made an award of $3,000 for this claim, which was made up as follows:

50% x [(100+150) ÷2] x 4 times a year x 12-year multiplier = $3,000

97 Evidence from Professor Henry Tan was also led that the closure of the tracheostomy hole in this case would cost about $2,000 and the defendant did not appear to dispute this figure. As such, I allowed this claim of future medical expenses in my calculation. In summary, a total of $317,380.75 was awarded for the plaintiff's future medical expenses, which was made up as follows:

Item	Award
Tenotomy	$5,000
Botox and baclofen infusion	$12,000
Treatment for skin pressure ulcers	$17,000

Treatment for URTI	$175,728
Treatment for pneumonia	$31,564.75
Physiotherapy session	$50,688
Limb splints	$2,400
Wheelchair	$12,000
Modifications required to prevent skin pressure sores – hospital bed and special mattress	$6,000
Medical consultations	$3,000
Closure of tracheostomy hole	$2,000
Total	$317,380.75

Future expenses for daily consumables

98 The plaintiff also made a claim for daily consumables and other necessities such as nasogastric tubes, suction tubes, diapers, liquid diet, daily dressings and wipes. A provision should be made for this claim. The question is the multiplicand. The plaintiff relied on the average costs of consumables and daily necessities for the months of October 2013 to December 2013 and set out the monthly summaries of these costs at pages 42 and 43 of the closing submissions. However, as pointed out by the defendant in their further reply submissions by way of their letter dated 12 November 2014, the bulk of these monthly costs were fully paid for through the KKH Health Endowment Fund and the Medifund Junior Scheme. The historical evidence also suggested that the plaintiff had been entitled to such benefits because of the financial position of his family and as such, he and his family would more likely than not continue to enjoy such benefits in the future. As such, the Court would have to take into account these benefits and subsidies in determining the appropriate multiplicand.

99 The defendant suggested a sum of $300 a month as a fair estimate. I decided to take reference from the monthly summaries set out at pages 42 and 43 of the plaintiff's closing submissions. After deducting the invoices which were fully paid for through the KKH Health Endowment Fund and Medifund Junior Scheme, the balance amounts for October 2013, November 2013 and December 2013 were $338.85, $382.20 and $254.35 respectively. Taking the average of these three figures, I worked out the multiplicand to be $325. Although I was aware that these earlier invoices would have included purchases of tracheostomy tubes and suction equipment etc. which the plaintiff no longer required after decannulation, I was of the view that $325 was a fair and reasonable sum to award as the monthly cost of daily consumables and other necessities. I therefore made the award of $46,800 for this head of claim.

Loss of pre-trial and future earnings of the mother

100 It is well-established that this head of damage is recoverable not because it is the mother's loss but because it is the plaintiff's loss, being the reasonable cost of meeting the need created by the tort: see *Donnelly v Joyce* [1974] QB 454 ("*Donnelly*") and *Kuan Kian Seng v Wong Choon Keh* [1995] SGHC 43. As observed by Megaw LJ in *Donnelly* (at 461H – 462C):

> We do not agree with the proposition… that the plaintiff's claim, in circumstances such as the present, is properly to be regarded as being… 'in relation to someone else's loss,' merely because

> someone else has provided to, or for the benefit of, the plaintiff – the injured person – the money, or the services to be valued as money, to provide for the needs of the plaintiff directly caused by the defendant's wrongdoing. The loss *is* the plaintiff's loss… The plaintiff's loss, to take this present case, is not the expenditure of money to buy the special boots or to pay for the nursing attention. His loss is the existence of the need for those special boots or for those nursing services, the value of which for purposes of damages – for the purpose of the ascertainment of the amount of his loss – is the proper and reasonable cost of supplying those needs. That, in our judgment, is the key to the problem. So far as the defendant is concerned, the loss is not someone else's loss. It is the plaintiff's loss.

101 The above observation was cited with approval by the Court of Appeal in *Lee Wei Kong* at [53]. It was further held by the High Court in *Chong Hwa Yin* at [11] that no award could be made for a claim for LFE of a third party unless there was medical evidence that the services of that third party was crucial to the plaintiff's recovery and rehabilitation. In the present case, it was undisputed by the defendant that the care of the mother was and still is crucial to the plaintiff's recovery and rehabilitation. In fact, it was always the defendant's case that the mother had been rendering very good care to the plaintiff as the defendant had no sign of skin pressure sores.

102 Prior to the accident, the mother was working as a receptionist in a law firm Keystone Law Corporation and was drawing a monthly salary of $1,300, excluding employer's CPF contribution of $208. As a result of the accident, she had to quit her job to take care of the plaintiff full-time. The mother was given caregiver training at NUH on how to provide homecare to the plaintiff after his discharge. The mother continued to take care of the plaintiff at home, together with the assistance of a domestic maid.

103 In respect of the mother's pre-trial loss of earnings, I allowed the claim at $1,508 (including employer's CPF) per month for a period of 29 months and 3 days, being the time from the date of the accident to the commencement of the assessment hearing on 10 December 2013. I arrived at the sum of $43,882.80.

104 The main issue in dispute was the award for the mother's LFE, in particular, the multiplicand to be applied in this case. The plaintiff submitted that but for the accident, the mother would have continued to work and earn a monthly salary of $1,508, inclusive of CPF. The defendant, on the other hand, argued that it was always the mother's true intention and calling to be a stay home mum. She only re-joined the workforce in 2007 as her second husband had become irresponsible after quitting his job. In light of her intention and calling, the multiplicand in this case should not be pegged to her monthly salary of $1,508 but a sum of $300 per month, which was the same figure imputed by the Court in *Eddie Toon*.

105 I did not accept the defendant's submission in this respect. The starting point to compute this head of claim is always the mother's loss of income, which she would otherwise have earned. As observed by the High Court in *Lee Wei Kong* (at [63]):

> …We should, at this juncture, reiterate that (see [53] above) the rationale for this claim is not so much for the Respondent to pay compensation to the mother as such, who has suffered no injury, but rather to compensate the Appellant for the cost of having someone take care of him in the future, which role the mother is fulfilling. *The mother's loss of income, which she would otherwise have earned, is taken as the starting point to compute the reasonable expense which the Appellant would have to incur to obtain such care*.
>
> [emphasis added]

106 It is common knowledge that, in light of our country's tight labour condition, women are constantly encouraged to remain in the workforce after marriage. Measures are constantly being implemented by the government to help working mothers to remain in the workforce after pregnancy and also to encourage non-working mothers to re-join the workforce. This observation was similarly made by the learned Steven Chong JC (as he then was) in *Teo Ai Ling (by her next friend Chua Wee Bee) v Koh Chai Kwang* [2010] 2 SLR 1037, where he held at [74]:

> I am mindful that the plaintiff is a woman and that she may marry and stop work before the normal retirement age. However, as rightly observed by Chao J in *Peh Diana* ([42] *supra*), the court cannot ignore the fact that the government is constantly encouraging women to join the workforce and to contribute positively to the economic growth of the country. Therefore, no reduction to the multiplier should be made on account of the fact that the plaintiff may stop work after marriage…

107 In light of the foregoing, I was of the view that it was complete speculation on the part of the defendant to suggest that the mother would have chosen to be a homemaker in any event, even if the plaintiff had not been struck down by the accident. I saw no basis to make any reduction to the multiplicand of $1,508, which was the mother's monthly salary (including employer's CPF) prior to the accident. I therefore made the award of $235,248 as the mother's LFE after taking into account the usual 13th month bonus and 12-year multiplier.

Cost of future nursing care

108 It was undisputed that provision should be made for the cost of a domestic maid in taking care of the plaintiff. The plaintiff submitted that no discount should be given for the cost of domestic help as this was care given on a full time basis and the domestic maid was engaged exclusively for the care of the plaintiff and no one else. The defendant, on the contrary, contended that a 50% discount should be given in this case as evidence adduced during the hearing showed that the maid was not primarily hired for the sole purpose of taking care of the plaintiff. The mother was the one who was mainly involved in the caring of the plaintiff. The maid was hired to do most of the household chores for the family so that the mother could concentrate on caring for the plaintiff. The mother admitted during cross-examination that, after taking care of the plaintiff and her two children, she had very little time left for household chores and the maid had to do most of the chores.

109 I accepted the defendant's submission that a discount should be given in this case as it was clear from the mother's evidence that the maid was not solely taking care of the plaintiff. The mother was the main person in charge of taking care of the plaintiff and she would only call upon the assistance of the maid during feeding, bathing, diaper changing and sucking of phlegm. The maid helped to lighten the mother's overall household load so that she could concentrate on providing good care to the plaintiff. Having made an award for the full cost of the mother's service above, I was of the considered view that a 50% discount, as submitted by the defendant, was not unreasonable.

110 Based on the documents enclosed at PBD-298 and 299, the maid's monthly salary was $480 and the maid levy was $83.85. I allowed for the monthly sum of $80, being the nominal sum for the costs of the maid's food, medical bills and lodging: *Kwok Seng Fatt Jeremy v Choy Chee Hau* [2003] SGHC 308 at [15]. I also accepted the plaintiff's submission that he would have to incur contract renewal fee of $200 once in two years as well as the cost of the maid's return air ticket estimated at about $300 and maid's insurance premium of $321.

111 In light of the foregoing, after applying a 50% discount, I awarded $48,820.20 for this item of claim, which was derived from the following computation:

($480 + $83.85 + $80) x 12 months x 12-year multiplier = $92,714.40

($200 + $300 + $321) x 12-year multiplier/ every 2 years = $4926

50% x ($92,714.40 + $4926) = $48,820.20

112 It was accepted by both parties 30 days of respite care a year should also be given so that the mother and the maid would not suffer from caregiver burnout. It was also the medical evidence of Professor Ong and Dr David Low that a private nurse would have to be engaged for a total period of one month in a year to care for the plaintiff so that the caregiver could get some time-off. Based on internet research finding, the defendant submitted that the cost of nursing care would be in the range of $100 to $200 per day for a 12-hour shift. The plaintiff submitted that $220 should be provided instead. I took the average of these two ranges to arrive at the multiplicand of $160. After applying the 12-year multiplier, I awarded $57,600 for the cost of a third auxiliary helper.

Future cost of transport

113 During cross-examination, the mother confirmed that the plaintiff's claim of $400 per month was for the cost of private ambulance to transport the plaintiff for non-emergency cases and follow-ups. She further confirmed during re-examination to her counsel that for emergency cases, the cost of ambulance would be included in the hospitalisation bill.

114 In the circumstances, I accepted the defendant's submission that provision for this claim should only be confined to non-emergency cases, such as physiotherapy sessions and regular medical consultations. At [92] and [96] above, it was estimated that the plaintiff would attend physiotherapy sessions twice a month and require medical consultation four times a year. Based on the private ambulance invoices enclosed in the mother's affidavit at MA-12, the cost of private ambulance service ranged between $50 and $90. I took the average of this range and accordingly awarded $23,520 for this head of claim.

Cost of Mental Capacity Act application

115 A provision should also be made for the cost of an application under the Mental Capacity Act once the plaintiff turns 21 years of age. The plaintiff submitted for the sum of $10,500 but provided no evidence of the necessary cost of such application. The defendant contended that a sum of $2,000 would be sufficient. Barring any unforeseeable changes in family circumstances, it is unlikely that the application in this case will be a highly contentious matter. As such, I agree with the defendant that the plaintiff's claim for $10,500 is excessive and should not be allowed. I therefore allowed the award at $2,000.

Special damages

116 The plaintiff claimed the following under special damages: (a) medical expenses; (b) transport expenses; (c) mother's pre-trial loss of earnings and CPF's contributions; and (d) cost of pre-trial domestic help expenses.

117 Item (c) has been dealt with earlier in [103]. In respect of item (a), the plaintiff included costs incurred for the purchase of aromatherapy oils and apparatus. The defendant contested the inclusion of these expenses as there was no medical evidence to suggest that the plaintiff would benefit from such therapy. I agreed with the defendant. There was no evidence of any advice from any medical

doctor on the advantages or benefits of aromatherapy. In fact, Dr Ho Kee Hang testified that he was unaware how these essential oils would benefit someone like the plaintiff. In the premises, I disallowed the claims for purchase of aromatherapy oil and apparatus.

118 The parties were, however, able to agree on the total pre-trial medical expenses incurred from the date of the accident to the completion of the final tranche of hearing at $35,201.12. The total pre-trial domestic help expenses and total pre-trial transport expenses were also agreed between the parties at $11,994.85 and $6,500 respectively.

Conclusion

119 In summary, the damages to be awarded on a 100% basis to the plaintiff is as follows:

(a) Special damages:

(i) Pre-trial medical expenses agreed at $35,201.12

(ii) Pre-trial transport expenses agreed at $6,500

(iii) Mother's pre-trial loss of earnings and employer's CPF contribution at $43,882.80

(iv) Pre-trial domestic help expenses agreed at $11,994.85

Total: $97,578.77

(b) General damages:

(i) Pain and suffering assessed at $190,000

(ii) Plaintiff's loss of future earnings assessed at $233,878.14

(iii) Future medical expenses assessed at $317,380.75

(iv) Future expenses for daily consumables and essentials assessed at $46,800

(v) Mother's loss of future earnings and employer's CPF contributions assessed at $235,248

(vi) Cost of future nursing care assessed at $106,420.20

(vii) Future transport expenses assessed at $23,520

(viii) Future cost of Mental Capacity Act application assessed at $2,000

Total: $1,155,247.09

120 I also made an order that the plaintiff may apply for future damages to be assessed if within three years of today, he requires a permanent tracheostomy as a result of contracting pneumonia.

121 Interest is to be applied at half of 5.33% on special damages from the date of service of writ to the date of judgment, and interest at 5.33% on general damages for pain and suffering from the date of service of writ to the date of judgment. The usual consequential orders are to apply.

122 I will hear parties on the issue of costs.