AOD (a minor suing by his litigation representative) *v* AOE
[2015] SGHC 272

Case Number	: Suit No 1054 of 2012 (Registrar's Appeals Nos 377 and 383 of 2014)
Decision Date	: 20 October 2015
Tribunal/Court	: High Court
Coram	: George Wei J
Counsel Name(s)	: Michael Han Hean Juan (Hoh Law Corporation) for the plaintiff; Teo Weng Kie and Shahira Anuar (Tan Kok Quan Partnership) for the defendant.
Parties	: AOD (a minor suing by his litigation representative) — AOE

Damages – measure of damages – personal injuries cases

Damages – assessment – lost years claim

Damages – provisional damages

20 October 2015 Judgment reserved

George Wei J:

1 On 6 July 2011, a 9-year old boy, the plaintiff in this case (hereinafter, "the Plaintiff"), was knocked down by a vehicle driven by the defendant (hereinafter, "the Defendant") along Jurong East Avenue 1. He sustained severe, permanent injuries from the accident. He is now a quadriplegic who requires constant care. His life expectancy has been greatly reduced; doctors estimate that he would live only to the age of 38.

2 On 13 December 2012, the Plaintiff (via his litigation representative) commenced a suit against the Defendant. By consent, interlocutory judgment was entered against the Defendant on 31 July 2013. It ordered that judgment "be entered in this action in favour of the Plaintiff for 100% against the Defendant with damages and interest and costs to be reserved to the Registrar".

3 The matter went before the learned assistant registrar ("the AR") for an assessment of damages. The AR delivered her judgment on 21 November 2014, awarding the Plaintiff a global sum of $1,252,825.86 with interest, and making an award for provisional damages (see [2014] SGHCR 21, hereinafter referred to as "the AR's Judgment"). Dissatisfied with the AR's decision, the parties both filed appeals and the matter came before me.

The AR's order and the parties' appeals

4 I now summarise the AR's order, as well as the parties' appeals.

AR's order

5 For special damages, the AR awarded the Plaintiff the following:

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

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

(c) Mother's pre-trial loss of earnings and employer's Central Provident Fund ("CPF") contribution at $43,882.80; and

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

Total: $97,578.77

6 For general damages, the AR awarded the Plaintiff the following:

(a) pain and suffering assessed at $190,000;

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

(c) future medical expenses assessed at $317,380.75;

(d) future expenses for daily consumables and essentials assessed at $46,800;

(e) mother's loss of future earnings and employer's CPF contributions assessed at $235,248;

(f) cost of future nursing care assessed at $106,420.20;

(g) future transport expenses assessed at $23,520; and

(h) future cost of Mental Capacity Act application assessed at $2,000.

Total: $1,155,247.09

Grand total: $97,578.77 + $1,155,247.09 = **$1,252,825.86**

7 For interest, the AR ordered that 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.

8 The AR also ordered that the Plaintiff may apply for future damages to be assessed if he requires a permanent tracheostomy as a result of contracting pneumonia within three years of her order ("Provisional Damages Order").

9 Costs of the assessment of damages hearing was fixed at $85,000, plus Goods and Services Tax ("GST") and disbursements to be agreed or taxed.

Plaintiff's appeal

10 In Registrar's Appeal No 377 of 2014, the Plaintiff appeals against part of the AR's award.

11 In relation to special damages, the Plaintiff appeals against the AR's award of S$43,882.80 for the mother's pre-trial loss of earnings and employer's CPF contribution.

12 In relation to general damages, the Plaintiff appeals against the following awards:

(a) the Plaintiff's loss of future earnings assessed at $233,878.14;

(b) future medical expenses assessed at $317,380.75;

(c) future expenses for daily consumables and essentials assessed at $46,800;

(d) mother's loss of future earnings and employer's CPF contributions assessed at $235,248;

(e) cost of future nursing care assessed at $106,420.20;

(f) future transport expenses assessed at $23,520; and

(g) future cost of Mental Capacity Act application assessed at $2,000.

13 The Plaintiff also appeals against the AR's award of interest. However, no submissions were made on this before me. I therefore find no basis to vary the AR's award of interest.

Defendant's appeal

14 In Registrar's Appeal No 383 of 2014, the Defendant appeals against the following awards and orders:

(a) the Plaintiff's loss of future earnings assessed at $233,878.14;

(b) mother's loss of future earnings and employer's CPF contributions assessed at $235,248;

(c) the Provisional Damages Order; and

(d) costs fixed at $85,000.00 plus GST.

The issues

15 In this judgment, I propose to deal with the issues raised on appeal in the following order:

(a) mother's pre-trial loss of earnings and employer's CPF contribution at $43,882.80;

(b) future medical expenses assessed at $317,380.75;

(c) cost of future nursing care assessed at $106,420.20;

(d) mother's loss of future earnings and employer's CPF contributions assessed at $235,248;

(e) future transport expenses assessed at $23,520;

(f) future expenses for daily consumables and essentials assessed at $46,800;

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

(h) the Provisional Damages Order;

(i) future cost of Mental Capacity Act application assessed at $2,000; and

(j) costs fixed at $85,000 plus GST and excluding disbursements.

16 Dealing with the issues in this sequence generally enables me to dispose of the issues which are relatively less complex and more factual in nature, before discussing the heads of appeal that involve more complex questions of law.

17 For the sake of clarity, I note that there is *no appeal* on the following awards made by the AR:

(a) pre-trial medical expenses agreed at $35,201.12;

(b) pre-trial transport expenses agreed at $6,500;

(c) pre-trial domestic help expenses agreed at $11,994.85; and

(d) damages for pain and suffering assessed at $190,000.

High Court's role in a Registrar's Appeal on assessment of damages

18 As a preliminary, it is important to clarify the role of a High Court judge who hears an appeal from an assistant registrar on assessment of damages under O 56 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC").

19 The authorities establish that the judge in chambers hears the matter not as an appeal in the true sense of the word, but deals with the Registrar's Appeal on assessment of damages as if the matter came before him for the first time: *Chang Ah Lek v Lim Ah Koon* [1998] 3 SLR(R) 551 at [20], affirmed in *Tan Boon Heng v Lau Pang Cheng David* [2013] 4 SLR 718 ("*Tan Boon Heng*") at [16].

20 Indeed, the Court of Appeal helpfully explained in *Tan Boon Heng* at [16] that in assessing damages, the assistant registrar is "exercising powers and jurisdiction devolved to him from those vested in a High Court judge". Therefore, "a judge in chambers who hears a Registrar's Appeal is not exercising an appellate jurisdiction - for that term would only be accurate and applicable where the appealed decision emanates from an inferior court or tribunal - but *confirmatory* jurisdiction instead".

21 There are practical implications to the fact that the judge in chambers exercises a *confirmatory*, rather than *appellate*, jurisdiction. For one, the judge is not confined to interfering with the assistant registrar's exercise of discretion only if damages were assessed on wrong principles of law or misapprehensions of fact: *Tan Boon Heng* at [18]. Instead, the judge is entitled to exercise his discretion afresh, while giving due weight to the assistant registrar's decision: *Tan Boon Heng* at [21]. Second, the judge also has a wider discretion to admit new evidence and even recall witnesses: *Lassiter Ann Masters v To Keng Lam (alias Toh Jeanette)* [2004] 2 SLR(R) 392 at [10] and [22]. Indeed, both parties helpfully brought the case *Swiss Butchery Pte Ltd v Huber Ernst and others and another suit* [2013] 4 SLR 381 to this court's attention, where the High Court did recall witnesses in a Registrar's Appeal on assessment of damages.

22 Whilst the judge can exercise his discretion afresh, unfettered by the assistant registrar's decision, it must be borne in mind that the assistant registrar still has the advantage of having heard the oral evidence of the witnesses first hand. As the Court of Appeal noted in *Tan Boon Heng* at [24], a distinction must be drawn between findings of fact based solely on affidavit and documentary evidence, and findings based partly or wholly on oral evidence. The Court of Appeal had made the following observations:

(a) Where the assistant registrar's findings of fact are based on oral evidence, the standard of review "should be the same as that applied to a trial judge's factual findings on appeal to the

Court of Appeal - so that these findings may be overturned only if they are plainly wrong or against the weight of the evidence": *Tan Boon Heng* at [43].

(b) Where the assistant registrar's findings of fact are based on affidavit and documentary evidence, the judge is in no less advantageous a position, and hence, may make his own findings afresh, unfettered by the assistant registrar's judgment: *Tan Boon Heng* at [44].

23 It is with the above principles in mind, that I consider the present appeals before me.

Mother's pre-trial loss of earnings

24 The AR awarded the Plaintiff damages of $43,882.80 for his mother's pre-trial loss of earnings. I briefly set out her reasoning, which can be found at [102]–[103] of the AR's Judgment:

> 102 Prior to the accident, the mother was working as a receptionist in a law firm … 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. …
>
> 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.

25 The Plaintiff appeals against the multiplier of 29 months and three days used by the AR. He submits that "the multiplier should be assessed from the date of the accident [*ie*, July 2011] to the end of the assessment hearing in April 2014 (being a period of 33 months and 24 days)". According to the Plaintiff, the AR was wrong to award the Plaintiff damages under this head *only* up to the date of the commencement of the assessment hearing on 10 December 2013.

26 At the hearing before me, the Defendant made no objections to the Plaintiff's appeal and submissions on this front.

27 I agree with the Plaintiff that he should have been awarded damages for his mother's pre-trial loss of earnings up to the end of the assessment hearing in April 2014. The following statement in *British Transport Commission v Gourley* [1956] AC 185 at 206 is helpful:

> In an action for personal injuries the damages are always divided into two main parts. First, there is what is referred to as special damage, which has to be specially pleaded and proved. This consists of out-of-pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation. Secondly, there is general damage which the law implies and is not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future.

28 Special damages are accordingly those which at trial are capable of substantially exact calculation. This particular head is recoverable on the basis that it is part of the Plaintiff's loss (see discussion at [86] below). If his mother did not stop work, the Plaintiff would have had to engage a full-time nurse. I note in passing that what is important is that there should be no overlap with the claim for loss of future earnings for the mother (which is dealt with later).

29 Therefore, I award the Plaintiff $50,970.40 for his mother's pre-trial loss of earnings. I derive

the figure in the following way:

$1,508 x 33 months + $1,508 x 24 days / 30 days = **$50,970.40**

Appropriate multiplier for future expenses

30 Before discussing the Plaintiff's appeal on the damages awarded for the different types of future expenses he would incur, I first deal with the Plaintiff's appeal on the *multiplier* that should be applied for future expenses generally. My decision on this would affect the damages awarded for all the heads of claim relating to the Plaintiff's future expenses.

31 The AR determined the multiplier for future expenses based on the Plaintiff's life expectancy at the date of trial. The parties' medical experts agreed that the Plaintiff had 27 more years to live. The AR's decision was therefore based on a life expectancy of 27 more years. After considering the case authorities, the AR applied a discount and held that a multiplier of 12 years was fair and reasonable. It is worth noting that before the AR, the Defendant submitted that a multiplier of 12 years should apply, while the Plaintiff submitted that a multiplier of 18 years should apply (27 years subject to a 33% reduction in view of accelerated payment).

32 The Plaintiff appeals against the AR's decision that a 12-year multiplier should apply for future expenses generally. On appeal, the Plaintiff submits that the appropriate multiplier should at least be 16 years. The Plaintiff relies on the Court of Appeal's *dicta* in *Lai Wai Keong Eugene v Loo Wei Yen* [2014] 3 SLR 702 ("*Lai Wai Keong Eugene*") at [43] that a 15-year multiplier for an appellant with a lifespan of 30 years "while perhaps on the low side, remains within the range contemplated by the authorities". On this basis, the Plaintiff argues that if a 15-year multiplier is "on the low side" for a plaintiff with 30 years to live, a 16-year multiplier is more appropriate in the present case.

33 The Court of Appeal in *Poh Huat Heng Corp Pte Ltd and others v Hafizul Islam Kofil Uddin* [2012] 3 SLR 1003 ("*Hafizul*") at [48] and [54] endorsed two possible approaches to determining the appropriate multiplier: the first, is to "fix the multiplier by looking at the multipliers used in comparable cases" (see [48(a)]), and the second, is to "apply a pure arithmetical discount" for accelerated payment, contingencies, inflation, and other vicissitudes of life (see [48(b)]). This was affirmed in *Lai Wai Keong Eugene* at [19]–[22]. In particular, the Court of Appeal in *Lai Wai Keong Eugene* clarified that:

(a) The second approach is not invariably to be preferred over the first approach (see [22]).

(b) The court may have to apply the first approach exclusively if evidence on interest rates, inflation rates, possible contingencies *etc*, are lacking (see [21]).

(c) Even in the application of the second approach, the figure derived should be "cross-checked with the multipliers used in past cases so as to achieve consistency with cases involving similarly-situated plaintiffs" (see [20]).

34 It is also worth noting the court's remarks in *Hafizul* at [54]:

… That said, a blind adherence to the multipliers in previous cases is not desirable. The court should consider in each case whether the previous cases are truly comparable, and should not hesitate to depart from the multipliers used in previous cases if the circumstances call for it.

35 Indeed, it seems to me that in the absence of specific evidence on interest rates, inflation *etc*,

the court has no choice but to rely exclusively on past precedents. Deducing a figure from past cases is undoubtedly not an exact science. There must be no illusion of mathematical precision. There is no rule of law in Singapore stipulating specific rates of discount. The court therefore only has the principles of consistency, proportionality, and its own sense of fairness and justice to guide it in determining the appropriate multiplier.

36 In the present case, no evidence was provided to the court below, or to me, on the factors a court may consider under the second approach in *Hafizul*. Neither party attempted to adduce evidence on, for example, the contingencies the Plaintiff was at higher risk of suffering from pre-accident, deposit interest rates, or inflation rates in their submissions on the appropriate multiplier for future expenses. Nothing about the specific facts of the Plaintiff's case was brought to my attention by either side for especial consideration in determining the appropriate multiplier. I am thus left to broadly decide the appropriate multiplier for future expenses based on case precedents and the general facts before me. I repeat that such an exercise of discretion inevitably involves a broad-brushed exercise of judgment.

37 In coming to my decision, I took into account the following case precedents:

(a) In *Lai Wai Keong Eugene*, the Court of Appeal affirmed a 15-year multiplier for a plaintiff with a life expectancy of 30 years, notwithstanding it noted that this was a bit low (see [43]). The plaintiff was 34 years old at the time of the accident.

(b) In *Haifizul*, the Court of Appeal affirmed an 18-year multiplier for a plaintiff with a life expectancy of 34 years. The plaintiff was 29 years old at the time of the accident (see [72] and [76]).

(c) In *TV Media Pte Ltd v De Cruz Andrea Heidi* and another appeal [2004] 3 SLR(R) 543 ("*TV Media*"), the court awarded a 17-year multiplier for a plaintiff with a remaining life expectancy of 51 years. The plaintiff was 27 years old when her liver failed.

(d) In *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)* [2012] 3 SLR 496 ("*Tan Juay Mui*"), the court affirmed a 17-year multiplier for a plaintiff with a life expectancy of 32 years.

(e) In *Ang Leng Hock v Leo Ee Ah* [2004] 2 SLR(R) 361, a 15-year multiplier (reduced from 20) was awarded to a plaintiff with a life expectancy of approximately 25 to 30 years. The plaintiff was 41 years old at the time of the accident.

38 I observe that courts seem to generally award a multiplier that is roughly half of the plaintiff's expected life expectancy. In making this observation, I do not intend in any way to lay down a rule. The circumstances of a particular case may justify deviations and indeed, "outliers" such as *TV Media* do exist.

39 Based on the authorities, the AR's decision on the multiplier of 12-years cannot be said to be wrong as a matter of principle. Nevertheless, I repeat that in the appeals before me, I am entitled to exercise my discretion afresh. Due deference need only be paid to the AR's judgment where findings of fact based on oral evidence are concerned. The decision on the multiplier certainly was not based on any oral evidence heard by the AR. Bearing in mind the general facts of the present case and the past decisions, the appropriate multiplier in my judgment, is 14 years.

40 I thus allow the Plaintiff's appeal (in part), and find that the appropriate multiplier for the Plaintiff's future expenses *generally* should be 14 years, and not 12 years.

Future medical expenses

41 The AR awarded the Plaintiff $317,380.75 for future medical expenses. For clarity, I cite the breakdown of the AR's award for future medical expenses found at [97] of the AR's Judgment:

Item	Award
Tenotomy	$5,000
Botox and baclofen infusion	$12,000
Treatment for skin pressure ulcers	$17,000
Treatment for upper respiratory tract infections ("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

42 The Plaintiff is only appealing against the awards highlighted in bold. Obviously, his main complaint is that the quantum awarded by the AR is too low for various reasons. The Plaintiff additionally appeals against the AR's failure to award any damages for outpatient medication. The Defendant is not appealing against the AR's award for future medical expenses.

43 I shall consider the Plaintiff's appeal on future medical expenses in the following order:

(a) limb splints;

(b) treatment for pneumonia;

(c) physiotherapy sessions; and

(d) outpatient medication.

44 It may have been noted that I did not include in the above outline the appeal relating to the costs for the treatment for URTI, the wheelchair, and medical consultations. This is because the Plaintiff's appeal in relation to those three aspects of future medical expenses relates *only* to the appropriate multiplier to be applied. The Plaintiff only objects to the AR's award on the grounds that

she applied a 12-year multiplier, rather than their desired 16-year multiplier. Given that I have already decided that the appropriate multiplier for future expenses is 14 years, there is no need for me to further discuss the Plaintiff's appeal on the costs for treatment for URTI, the wheelchair, and medical consultations. I make the following awards in relation to these three items:

(a) For treatment for URTI, I award the Plaintiff $205,016 instead of the $175,728 awarded by the AR. I derive the figure in the following way:

$523 x 4 days x 7 admissions per year x 14 years = $205,016

(b) For wheelchair costs, I award the Plaintiff $14,000 instead of the $12,000 awarded by the AR. I derive the figure in the following way:

$5,000 per wheelchair x (14-year multiplier / 5 years) = $14,000

(c) For medical consultations, I award the Plaintiff $3,500 instead of the $3,000 awarded by the AR. The evidence was that the rates of each medical review would cost about $100 to $150 for a private hospital. The AR therefore took the average rate of $125 in her calculations. Further, this rate was to be discounted by 50% to reflect lowered rates in restructured hospitals (see [61] of the AR's Judgment). Bearing the above numbers in mind, I derive the figure in the following way:

50% x $125 x 4 medical consultations a year x 14 years = $3,500

45 I now proceed to deal with the other types of future medical expenses.

Limb splints

46 The AR awarded $2,400 for limb splints on the basis that Dr Keith Goh estimated the cost of each limb splint to be in the range of $100 and $300. She therefore used the sum of $200 as the average cost of each limb splint. Because these rates were the rates at private hospitals, a 50% discount was applied. Each limb splint was therefore estimated to be $100 (being 50% of $200). The medical evidence was that the Plaintiff would require four limb splints every two years. Thus, using a multiplier of 12 years, the AR calculated the future medical expense on limb splints as follows:

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

47 On appeal, the Plaintiff objects to the multiplier used, as well as the cost of $100 ascribed to each limb splint. The Plaintiff submits that the multiplier should be 16 years, and the cost of each limb splint should be $150, being half of the maximum cost of $300.

48 I see no basis for departing from the AR's calculation of the cost of each limb splint. The medical evidence is clear that each limb splint costs an average of $100 to $300 at private hospitals (see [56] of the AR's Judgment). The Plaintiff does not dispute this in his submissions. Rather, the Plaintiff simply asks that the court uses the "maximum range" of $300 in awarding damages. There is no basis to do so. The Plaintiff has given me no reason to assume that the limb splints he will need will all cost $300 or close to $300.

49 Therefore, taking into account a modified 14-year multiplier, I award the Plaintiff $2,800 for limb splints. I derive the figure in the following way:

$100 per limb splint x 4 limb splints x (14-year multiplier / 2 years) = $2,800.

Treatment for pneumonia

50 In determining the future medical expenses that should be awarded for the Plaintiff's pneumonia treatment, the AR allowed for seven incidences of pneumonia across the rest of the Plaintiff's life. This was reduced from the medical expert estimate of 10 incidences across the remaining 27 years of the Plaintiff's life to take into account accelerated payment and vicissitudes of life. The AR then took into account the medical evidence that each incident of pneumonia would require about seven to 10 days of hospitalisation. She therefore took the average of 8.5 days. She determined that hospitalisation costs $523 per day.

51 Oddly though, she calculated the award for pneumonia treatment as follows (see [90] of the AR's Judgment):

> $530.50 x 8.5 days x 7 incidences = $31,564.75

52 I say the calculation is odd, because the AR used $530.50 rather than $523 as the hospitalisation costs per day. The Plaintiff noted this discrepancy in his submissions, but said nothing more about it. The Defendant is not appealing against this calculation. I therefore leave this oddity for a moment to consider the crux of the Plaintiff's appeal on this matter.

53 On appeal, the Plaintiff submits the following:

> (a) The cost of hospitalisation per day should be $1046 based on Dr David Low's estimate that each admission for pneumonia would cost about twice as much as URTI (see [90] of the AR's Judgment).
>
> (b) The AR should have allowed for 10 incidences, rather than seven incidences of pneumonia, because 10 times is a "reasonable estimate" over a remaining period of 27 years and is a more "cautionary stand".

54 In his oral submissions before me, the Plaintiff's counsel seemed to have conceded his appeal on this point. The Plaintiff's counsel voluntarily conceded that when Dr David Low said treatment for pneumonia would cost about twice as much as treatment for URTI, he did not know how much treatment for URTI costs. Of course, I have no evidence to this effect. I do not know the basis upon which the Plaintiff's counsel asserts that Dr Low did not know the cost of URTI treatment in making that statement.

55 Nevertheless, I note that in the AR's Judgment at [90], she stated

> … 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*. …
>
> [emphasis added]

56 It seems to me that a logical way to make sense of Dr David Low's statement is that treatment for pneumonia costs twice as much *because* it normally involves a hospitalisation stay of twice the length of that of URTI treatment. The Plaintiff's initial interpretation that the cost of hospitalisation per day for pneumonia treatment is double that of URTI treatment has no basis in the evidence.

57 In any case, as I have noted, the Plaintiff's counsel seems to have conceded his first point on

appeal. Therefore, I need not say any more on this.

58 On the number of incidences of pneumonia that the court should award future medical expenses for, the key question is whether the AR should have discounted the number of incidences indicated by the medical experts to take into account accelerated payment and vicissitudes of life. The Plaintiff made no submissions on the correctness of discounting the number of incidences to take into account accelerated payment and vicissitudes of life. He simply submits that 10 is a "reasonable estimate", and is more "cautionary".

59 No one doubts that 10 incidences of pneumonia is a reasonable estimate. This estimate is based on medical evidence which the AR herself accepted in her judgment. I also do not see how the submission on caution assists me in deciding whether a discount should be applied. Of course, the higher the number, the more "cautionary" the award would naturally be from the Plaintiff's perspective. But this cannot mean that I award the Plaintiff damages for as high a number of incidences of pneumonia that I reasonably can. This would be unfair to the Defendant.

60 On balance, apart from the fact that the AR wrongly used the figure of "$530.50" instead of "$523" as the daily hospitalisation rate, I do not see anything wrong with the AR applying a discount to the number of incidences of pneumonia on account of accelerated payment and vicissitudes of life. This seems to be in accordance with well-established principles on discounting damages awarded in view of the fact that a plaintiff often receives an award in one lump sum, upfront. I therefore revise the AR's award for pneumonia treatment to $31,118.50 ($523 x 8.5 days x 7 incidences = $31,118.50).

Physiotherapy sessions

61 The evidence shows that the Plaintiff will need physiotherapy on a regular basis for the rest of his life. However, the Plaintiff will also need more intensive physiotherapy after his tenotomy surgeries. The AR allowed for two physiotherapy sessions a month for the rest of the Plaintiff's life. I set out her reasoning on this (at [91]–[92] of the AR's Judgment):

> 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…
>
> [emphasis added]

62 It is clear that the AR took into account the need for more intense physiotherapy in awarding the Plaintiff damages for two physiotherapy sessions a month.

63 On appeal, the Plaintiff submits the following:

> (a) The AR wrongly failed to make an award for the more intensive physiotherapy sessions needed after the two tenotomy surgeries.

(b) In the alternative, if the AR did factor in the need for more intensive physiotherapy in her overall award of two physiotherapy sessions per month, this is insufficient.

64 It is clear that the first submission is wrong. As I stated above, the AR did consider the need for more intensive rehabilitation after the tenotomy procedures in her award. In support of his alternative submission, the Plaintiff highlighted to the court that after each tenotomy surgery, "Professor Ong recommended 3 to 5 times a week and Dr Low recommended 2 to 4 times a month for an intensified period of 3 to 6 months". The Plaintiff took the position that two physiotherapy sessions a month was the appropriate award for "usual rehabilitation". An additional award must be given above and beyond the two monthly sessions for the "intensified period". The Plaintiff submitted that in determining this additional award, the court should take the average of the highest medical estimate (*ie*, five times a week or 20 times a month) and the lowest medical estimate (*ie*, two times a month), which is 11 times a month.

65 On the whole, I find many problems with the Plaintiff's submissions. I uphold the AR's award of two sessions per month for the following reasons:

(a) The Plaintiff has no basis to submit that two physiotherapy sessions a month is the appropriate award for "usual rehabilitation". The AR cited medical evidence from Dr David Low that 1.5 sessions per month is the "historical baseline". The Plaintiff did not dispute this in his appeal.

(b) The award of two physiotherapy sessions per month for the rest of the Plaintiff's life is already very generous. This is an additional 162 sessions above the usual 1.5 sessions a month (0.5 additional session per month x 12 months x 27 years = 162). This is far more than the Plaintiff's estimate of the 99 additional physiotherapy sessions needed for post tetonomy recovery.

(c) The Plaintiff has cited no proof that Professor Ong recommends three to five sessions of additional rehabilitation *a week*. The AR cited Dr Low's estimate of two to four sessions a month during the intensification period, and Professor Ong's estimate of two physiotherapy sessions per month for the rest of the Plaintiff's life. I will not disturb the AR's finding without more concrete evidence that her award is erroneous.

66 Moreover, while this is not necessary to my decision, I point out that if the Plaintiff were correct, the estimates given by Professor Ong and Dr Low seem vastly at odds with each other. The former estimates 12 to 20 sessions a month, while the latter only two to four. If I had to decide this for myself, I would have had to decide which estimate is right. Taking the average of the highest estimate (20) and the lowest estimate (two) as proposed by the Plaintiff does not seem to me to be the correct approach to take.

67 In any case, given the Defendant did not appeal on this, and there is no doubt in my mind that the AR's award of two physiotherapy sessions per month is fair and reasonable, I shall not disturb the AR's finding that on the whole, two physiotherapy sessions per month should be awarded.

68 The Plaintiff also makes the point that the multiplier used to calculate the award for physiotherapy sessions should not be 12 years. On this, I agree that the AR's award must be altered in light of my holding that the appropriate multiplier for future expenses generally is 14 years.

69 Therefore, taking into account a modified 14-year multiplier, I award the Plaintiff $59,136 for physiotherapy sessions. I derive the figure in the following way:

$176 per session x 2 sessions x 12 months x 14-year multiplier = $59,136

Outpatient medication

70 The Plaintiff submits that the AR omitted to award damages for outpatient medication, necessary after hospitalisation for URTI and pneumonia. To assist the court in calculating the quantum of outpatient medication, the Plaintiff submits the following facts:

(a) The cost for outpatient medication is between $10 and $20 per day.

(b) One week of outpatient medication is necessary after each hospitalisation.

71 On that basis, the Plaintiff submits that $7,840 should be awarded for post-URTI medication, and $700 should be awarded for post-pneumonia medication. I reproduce the table the Plaintiff put in his submissions to explain how the figures were calculated:

	URTI	**Pneumonia**
Cost of medication per day	$10 (after 50% discount)	$10 (after 50% discount)
Number of days	7 days	7 days
Number of incidences	7 incidences per year	10 incidences per lifetime
Multiplier	16	-
Total	$7840	$700

72 I note that no evidence was offered to the court on any of the above figures. I find this rather unsatisfactory. However, during the hearing before me, the Defendant concedes outpatient medication appears to have been missed out by the AR, and did not object to either the award or the quantum of outpatient medication claimed by the Plaintiff. I therefore assume that the parties agree on the accuracy of the above figures.

73 On my part, in fairness to the Defendant, I would make the following amendments to the figures the Plaintiff proposed based on the facts I have before me:

(a) On the Plaintiff's own case, the cost of medication per day ranges from $10 to $20. The average cost of medication per day is therefore $15. While the Plaintiff does not explain why he applies a 50% discount in the table he submits, I assume this is because the figures he submits are based on private rates rather than restructured hospital rates. I would award $7.50 per day for medication rather than $10 on the basis that there is no justification in using the upper limit of the cost of medication.

(b) As decided previously, taking into account accelerated payment and vicissitudes of life, the number of incidences of pneumonia which the court will award damages for is seven, not 10.

(c) The appropriate multiplier to apply is 14, not 16.

74 I therefore award the Plaintiff a total of $5,512.50 for outpatient medication. I shall use the

table format used by the Plaintiff to explain how I derived the above figure:

	URTI	**Pneumonia**
Cost of medication per day	$7.50 (after 50% discount)	$7.50 (after 50% discount)
Number of days	7 days	7 days
Number of incidences	7 incidences per year	7 incidences in the Plaintiff's lifetime
Multiplier	14	-
Total	$5,145	$367.50
Grand total	$5,512.50	

Conclusion on future medical expenses

75 On the whole, I partially allow the Plaintiff's appeal on future medical expenses. I summarise my holdings on future medical expenses in the table below:

Item	**Award**
Tenotomy	$5,000
Botox and baclofen infusion	$12,000
Treatment for skin pressure ulcers	$17,000
Treatment for URTI	~~$175,728~~ **$205,016**
Treatment for pneumonia	~~$31,564.75~~ **$31,118.50**
Physiotherapy session	~~$50,688~~ **$59,136**
Limb splints	~~$2,400~~ **$2,800**
Wheelchair	~~$12,000~~ **$14,000**
Modifications required to prevent skin pressure sores – hospital bed and special mattress	$6,000
Medical consultations	~~$3,000~~ **$3,500**
Closure of tracheostomy hole	$2,000
Outpatient medication	**$5,512.50**
Total	~~$317,380.75~~ **$363,083**

76 I have reflected the amended sums in bold for clarity.

Cost of future nursing care

77 There are two aspects to the award for future nursing care. The first concerns a full-time stay

home domestic helper. The second concerns a private or auxiliary nurse that would be engaged for one month each year to give the main caregivers (*ie*, the mother and the domestic helper) some time off. This is to prevent caregiver burnout.

Domestic helper

78 The AR took into account the following costs involved in hiring a domestic helper:

(a) $480 for monthly salary;

(b) $83.85 for monthly maid levy;

(c) $80 monthly for food, medical bills and lodging;

(d) $200 contract renewal fee once every two years;

(e) $300 return air ticket once every two years; and

(f) $321 for insurance premiums payable once every two years.

79 The AR deemed it appropriate to apply a 50% discount to the total cost of the domestic helper because she spends half her time doing household chores. Using a 12-year multiplier, the AR arrived at a global sum of $48,820.20 as expenses of hiring a domestic helper.

80 The Plaintiff appeals against the 50% discount applied as well as the 12-year multiplier. I have already determined that the appropriate multiplier should be 14 years. The only issue left for me to determine is whether the 50% discount was correctly applied. On this, the Plaintiff submits the following:

(a) The consensus of the medical experts is that the Plaintiff needs two caregivers and auxiliary help for the rest of his life.

(b) The maid was engaged for the predominant purpose of assisting the Plaintiff's mother take care of the Plaintiff.

(c) While it is not denied that the maid helps out with household work, she does so only from time to time. Moreover, the maid's involvement in the Plaintiff's care would inevitably increase as the Plaintiff grows in size and weight.

81 I agree with the Plaintiff that no discount should be applied to the award for the cost of hiring a domestic helper. It is clear that the need for a domestic helper arose solely because of the accident. It may well be true that the domestic worker helps out with house work. However, it must be borne in mind that the mother is now a full-time care-giver for the Plaintiff and this obviously has an impact on her own ability to perform house work. The need to hire a domestic helper to help out in the areas she does is, in my view, entirely necessitated by the accident.

82 Moreover, I am fortified in my view by the medical evidence that the Plaintiff needs *two caregivers*. It thus seems to me entirely fair to award the Plaintiff the *full cost* of two caregivers (*ie*, the domestic helper and the mother). As such, I find that a 50% discount should not have been applied to the award for the cost of a domestic helper.

83 Therefore, taking into account a modified 14-year multiplier, I award the Plaintiff $113,913.80

for the cost of a domestic helper. I derive the figure in the following way:

($480 + $83.85 + $80) x 12 months x 14-year multiplier = $108,166.80

($200 + $300 + $321) x 14-year multiplier / 2 years = $5,747

Total = $108,166.80 + $5,747 = $**113,913.80**

Private nurse

84 The Plaintiff's appeal on the quantum awarded for the private nurse relates both to the multiplicand and the multiplier. I have already decided that the appropriate multiplier is 14 years not 12 years. Moreover, I see no reason to disturb the AR's decision to use $160 as the multiplicand. The AR saw it fit to take the average of the lowest end of the defendant's estimate of the cost of a private nurse (*ie* $100) and the plaintiff's estimate of the said cost (*ie* $220). The Plaintiff has provided no reasons for me to believe that this is erroneous. I therefore only revise the multiplier adopted by the AR, and award the Plaintiff $67,200 for the cost of a private nurse hired for a duration of one full month each year. I derive the figure in the following way:

$160 per day x 30 days a month x 14-year multiplier = **$67,200**

Conclusion on cost of future nursing care

85 In total, the amount awarded for cost of future nursing care is $181,113.80 (being $113,913.80 + $67,200).

Mother's loss of future earnings

86 The Plaintiff's mother has since stopped work and become a full-time caregiver to the Plaintiff. While this is undoubtedly a significant drain on her, the AR correctly noted that under this head of damage, we are concerned not with loss to the mother, but loss to *the Plaintiff*: *Lee Wei Kong (by his litigation representative Lee Swee Chit) v Ng Siok Tong* [2012] 2 SLR 85 ("*Lee Wei Kong (CA)*") at [53].

87 It bears repeating that the evidence establishes that the Plaintiff needs two caregivers, and that his mother is one of them. The Defendant thus should rightfully pay the cost of *two caregivers*. An award for one of the caregivers, *ie*, the domestic helper, has already been considered above. I now consider the award that should be given as costs of the second caregiver, the Plaintiff's mother. The difficulty here is that in reality, this care is provided gratuitously to the Plaintiff. As such, the Plaintiff does not actually incur any expense from having to depend on his mother for full-time caregiving. While there is some controversy over whether damages should be awarded to *the Plaintiff* for the gratuitous care he receives from friends or family (see for example the English position in *Hunt v Severs* [1994] 2 AC 350 ("*Hunt v Severs*")), there is sufficient authority for the proposition that a reasonable value of that care should be awarded to the Plaintiff as damages: *Donnelly v Joyce* [1974] 1 QB 454 ("*Donnelly v Joyce*"), *Lee Wei Kong (CA)* at [53]. Moreover, both parties accept this as a correct proposition in law.

88 I note that whilst the House of Lords in *Hunt v Severs* did overrule *Donnelly v Joyce*, this was in respect of the holding in the latter case that it was irrelevant to consider the identity of the source from which the need for nursing or care services was met. In *Hunt v Severs*, the House of Lords held that where the provider of the nursing or care services is the *tortfeasor*, there was no ground in

public policy to require the tortfeasor to pay damages to the Plaintiff in respect of services which he himself has rendered. This was because the House of Lords took the view that the underlying rationale of awarding damages on this front is to enable the voluntary carer to receive proper recompense for the services. That being so, the House of Lords' conclusion was that a plaintiff who recovers damages under this head should hold them on trust for the voluntary carer.

89 Indeed, I note that regardless of the controversy in England about whether such damages for such services should be held on trust for the caregiver, the position in Singapore is that the plaintiff may directly recover the reasonable value of such gratuitous services rendered as damages. In any case, this issue was never raised by the parties in the appeal and I therefore need not explore it any further.

90 The authorities establish that to compute the reasonable costs of obtaining the care his mother provides, the court will look at the mother's loss of earnings as the *starting point*: *Lee Wei Kong (CA)* at [63]. In other words, the multiplicand adopted is based on the mother's monthly income. This is not in dispute on appeal. What is in dispute is the sum which should be imputed as the mother's monthly income.

91 The AR adopted the multiplicand of $1,508 per month in computing the mother's loss of future earnings. This was based on the mother's last drawn salary before the accident. At that time, she was working as a receptionist at a law firm drawing a monthly salary of $1,300 with employer's CPF contributions of $208 per month.

92 The gravamen of the Defendant's complaint is that the AR wrongly used the mother's last drawn salary as the multiplicand. The Defendant submits that the evidence strongly suggests that the mother would have stopped working. The evidence includes the following [note: 1] :

(a) The Plaintiff's mother admitted in cross-examination on 10 December 2013 that it was her inclination to stay at home and look after the children even if the accident did not happen. While she did change her testimony when examined on 13 December 2013 to say that she intended to work her whole life, the Defendant submits that this is untruthful, self-serving testimony.

(b) The Plaintiff's mother's history of employment suggests that she only works during periods when her husband is irresponsible and is not earning a wage to support the family (she has had three husbands so far). Her present husband earns a wage to support the family. This suggests the Plaintiff's mother is likely to have left her job even if the accident did not take place.

(c) Since 1992, the time she left school to enter the workforce, the Plaintiff's mother has only worked for approximately eight years.

93 Based on the above evidence, the Defendant submits that the appropriate multiplicand to adopt is that which is adopted for homemakers. According to the Defendant, on the authority of *Toon Chee Meng Eddie v Yeap Chin Hon* [1993] 1 SLR(R) 407 ("*Eddie Toon*"), this is a figure of about $300. I note that the AR did consider this submission in her judgment, but dismissed it on the ground of other authorities which suggest that the court should not presume the mother would eventually quit work and stay at home.

94 From the above, two issues arise for my consideration:

(a) In assessing the cost of care based on loss of future earnings, to what extent should the court speculate whether a caregiver who was working at the time of the accident would continue

to work had the accident not taken place?

(b) To what extent should the cost of a caregiver's care be assessed based on his or her loss of future earnings? Related to that, how should we compute the cost of a homemaker's caregiving?

Speculation about a caregiver's continued employment

95 The starting point of this inquiry is the objective of achieving a fair and reasonable assessment of the loss incurred by the Plaintiff in having been reduced to a state where he requires his mother's full-time care. Naturally, the court needs to be fully apprised of all relevant facts.

96 Where the full-time nursing care is provided by a homemaker, it is established that the court should endeavour to award a reasonable and fair value to the Plaintiff as damages. *Eddie Toon* is relied on by the Defendant for the proposition that the appropriate multiplicand in such a case is the figure generally adopted for homemakers (around $300 per month). On the other hand, where full-time nursing care is provided by an income-earning parent (who had to give up work), the Plaintiff asserts that the assessment is generally based on the income which that parent earned but can no longer earn. This may well be considerably more than the figure that is said to have been generally adopted for homemakers.

97 I pause here to note that many factual permutations can arise. In some cases, it may be that a homemaker parent who now provides the full-time nursing care is a well-qualified professional who intended to return to the work-force in a few years. Nevertheless, at the time of the accident and hearing, that parent had not yet returned to work. In other cases, it may be that the full-time nursing care is provided by a high-income earning parent who has since had to give up his or her job to stay home and look after the severely injured and disabled child. It goes without saying that the income of that parent may be higher than the cost of engaging a full-time professional home nurse. The point made is that it follows that evidence on the following facts *are relevant* (at the minimum) to determine the cost of a caregiver's care where such care is gratuitously provided to the Plaintiff:

(a) Was the caregiver gainfully employed prior to the provision of gratuitous care?

(b) What were the caregiver's employment prospects, and related to that, whether there was any likelihood that the homemaker turned caregiver would have entered the work-force in the future but for the injuries suffered by the plaintiff,

(c) If the caregiver had continued working, how much the care-giver would have earned as salary.

(d) The cost of engaging third-party full-time care, whether by means of a domestic helper (where this is appropriate given a plaintiff's needs), a professional nurse, or institutionalised care.

98 This list may not be exhaustive – other factors may well be relevant. Whilst it may be said that the above fact finding exercise involves a good deal of "speculation", it cannot be denied that the court is often compelled by the circumstances of the cases it hears, to make "considered" speculative findings of fact.

99 Indeed, the AR considered the factual question of whether the Plaintiff's mother would have continued working if the accident did not take place. From my reading of the AR's Judgment, the conclusion was that there is insufficient evidence that the mother would have chosen to become a

homemaker. In other words, the AR basically made a finding of fact that the mother *would have continued working* at her pre-accident salary of $1,508 per month (as per the *status quo* before the accident) if the accident did not take place. It is to this factual finding that I now turn.

100 The AR stated at [107] of her judgment that "it was complete speculation on the part of the defendant to suggest that the mother would have chosen to be a homemaker". She cited *Teo Ai Ling (by her next friend Chua Wee Bee) v Koh Chai Kwang* [2010] 2 SLR 1037 ("*Teo Ai Ling*") at [74], where Steven Chong JC (as he then was) held:

> 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. …

1 0 1 *Teo Ai Ling* rightly cautions the courts not to assume that women will stop work *simply* because of their gender and the homemaker role a woman is traditionally thought to play. This is clearly correct. There is no basis for a court to assume that a caregiver is likely to quit her job just because of her gender. That said, *Teo Ai Ling* does not go so far as to state that it is never proper to take into account the continued employment prospects of the person who had to leave work to provide full-time care. For example, if there is clear evidence that the caregiver whilst employed at the time when the need for care arose, had already tendered a 3-month resignation notice, such evidence should not be ignored.

102 I therefore turn to the actual evidence before me, and ask whether the Plaintiff's mother would have stopped work.

103 I outlined the evidence that the Defendant would like me to take into account at [92] of this judgment. In my view, the evidence is insufficient to justify a finding of fact that the Plaintiff's mother would have become a homemaker for the rest of her life even if the accident had not taken place. I accept that the Plaintiff's mother has not consistently been in the workforce and that her present husband may be responsibly supporting the family. I also accept that she may personally prefer to be a homemaker if circumstances permit. However, she was holding a full-time job before the accident, and there is nothing to suggest that she would have quit in the near or foreseeable future.

104 In short, it is not possible to determine on a balance of probabilities that she would have quit her job if the accident had not taken place. Moreover, given that it is the AR who heard the evidence from the mother first hand, I find it appropriate to defer to her judgment that on the evidence, it was "complete speculation" to suggest the Plaintiff's mother would have quit her job. There is no reason to disturb the AR's factual finding.

105 It might fairly be said that evidence to positively support the fact that the Plaintiff's mother would have continued working at a monthly salary of $1,508 if the accident did not take place is equally lacking. The Defendant points to the possibility that the Plaintiff's mother may not have been able to keep such a well-paying job, as well as the fact that she might choose to quit her job (as previously mentioned). I fully accept that these are possibilities. However, it appears that the *starting point* the courts have adopted in assessing the loss of future income as a result of an accident is the caregiver's or the victim's *pre-accident income*: see for example *Donnelly v Joyce*, cited in approval in *Ang Eng Lee and another v Lim Lye Soon* [1985-1986] SLR(R) 931 at [10] – [11].

106 The court rightly tries to avoid speculation as to whether the caregiver or victim in question is likely to find a better job, to be fired, or to eventually quit her job. The starting point is that the pre-accident *status quo* is presumed to continue unless there is clear evidence to the contrary. It must follow that when a court is asked by the parties to make a finding of fact as to whether a particular victim or caregiver would have, on a balance of probabilities, continued in employment at a particular income, the court may start by assuming that *status quo* would continue. It is for the other party to then displace this initial presumption with contrary evidence. In the present case, I affirm the AR's decision that there is insufficient contrary evidence to displace the presumption that the pre-accident *status quo* would have continued.

Assessing the cost of a caregiver's care

107 I turn to the question of how the cost of a caregiver's care should be quantified. Both parties proceeded on the assumption that this should be quantified with reference to the caregiver's loss of income. This may well be correct in some, if not most, cases. The caregiver's loss of income is the *starting point* in assessing the reasonable expense a plaintiff would have had to incur to obtain such care: *Lee Wei Kong (CA)* at [63]. The question, however, is whether there are other factors a court should take into account in determining the reasonable expense a plaintiff would have had to incur to obtain the gratuitous care he has received from his family.

108 If a successful private banker who draws a monthly salary of $50,000 leaves her employment to provide full-time care to her son who has been severely injured and disabled. Can the court properly award her son damages of $50,000 per month as compensation for her cost of care? This would seem unfair and unreasonable to the tortfeasor. Indeed, this sentiment was expressed by Kan Ting Chiu J in *Lee Wei Kong (by his litigation representative Lee Swee Chit) v Ng Siok Tong* [2010] SGHC 371 ("*Lee Wei Kong (HC)*"). Kan J (at [29]) held that while claims for a caregiver's loss of earnings have been allowed, they must be reasonable:

> … For these losses to be recovered, however, they have to be reasonable. If a mother gives up a $10,000 monthly salary to look after a child instead of employing a maid or a nurse, then the recoverable loss should be based on the cost of employment of a maid or nurse and not the mother's salary.

109 While *Lee Wei Kong (HC)* has been substantially overturned by the Court of Appeal in *Lee Wei Kong (CA)*, I note that the above *dicta* was not disapproved of, and remains instructive (see *Lee Wei Kong (CA)* at [63]–[64]).

110 Indeed, the above *dicta* was cited in *Tan Teck Boon v Lee Gim Siong and others* [2011] SGHC 76 at [25], where the learned assistant registrar adopted Kan J's approach of awarding the cost of alternatively employing a maid or a nurse where evidence on the victim's father's pre-accident income was wholly inadequate.

111 *Chong Hwa Yin (committee of person an estate of Chong Hwa Wee, mentally disordered) v Estate of Loh Hon Fock, deceased* [2006] 3 SLR(R) 208 ("*Chong Hwa Yin*") is also of some guidance. Choo Han Teck J held (at [11]) that a problem with the assistant registrar's method of assessing the mother's cost of care in that case was that

> the mother's income as a rubber tapper was accepted as the costs of nursing care. If there was no evidence of what nursing care would cost this item could not be allowed using a rubber tapper's, or any other, income as the gauge.

112 Choo J seems to suggest by this that one cannot *exclusively* refer to the caregiver's loss of income in determining his or her cost of care. Regard must be had to the cost of nursing care generally. It is not clear from his judgment however, how the cost of nursing care would have been taken into account in making the final compensatory award. It is also not clear whether "the mother's income as a rubber tapper" would still have been relevant if there was evidence of the general cost of nursing care.

113 The final local case I consider on this point is *Eddie Toon*. In *Eddie Toon*, the learned assistant registrar had awarded the plaintiff a sum of $480,600 for future nursing care. The award was based on there being two stages of care. The first is when the plaintiff is nursed at home with home nursing care in the day as well as full-time parental care. The second is when the plaintiff's parents are no longer able to take care of him. The breakdown of the assistant registrar's award for future nursing care was as follows (see *Eddie Toon* at [30]–[32]):

(a) $405,000 – costs of *home nursing care* during the first stage using a multiplier of 9 years, and a multiplicand of $125 a day, which is the daily cost of engaging a private nurse.

(b) $32,400 – the cost of the *mother's services* during the first stage in lieu of a private nurse who should be employed for the night shift. A multiplicand of $300 per month was used.

(c) $43,200 – the cost of *institutional nursing care* during the second stage when the plaintiff's parents can no longer take care of him. A multiplier of 6 years and a multiplicand of $1,500 per month were used (with a 60% deduction for the "domestic element", being the cost of food and accommodation the Plaintiff would have had to incur even without the accident).

114 The defendant in that case appealed against the award of $405,000 for home nursing care, arguing that it was not reasonable for the plaintiff to be cared for at home given the significantly greater costs. What is of especial importance is the approach Goh Phai Cheng JC took on appeal.

115 Goh JC first established that the burden of proving that it is reasonable for the plaintiff to be cared for at home lay on the plaintiff: *Eddie Toon* at [34]. He then found that engaging a private nurse for the purposes of providing home nursing care during the first stage of care was not a reasonable expense. He reasoned that institutional nursing care was a viable option because the plaintiff's mother could attend to him daily if she wished: *Eddie Toon* at [36]. Moreover, if the plaintiff's mother wished to continue to care for the plaintiff at home, she could engage a maid to assist her. Engaging a private nurse was not necessary because the plaintiff's mother had been providing excellent nursing care to the plaintiff from the time of the accident till the date of the assessment: *Eddie Toon* at [37].

116 Goh JC then calculated the appropriate award for future nursing care assuming the plaintiff was cared for at home with the assistance of a domestic maid, and found this to come up to a global figure of $141,000: *Eddie Toon* at [40]. He calculated the alternative award assuming the plaintiff received institutional nursing care for the rest of his life (*ie*, during both the first and the second stages of care). He provided for the travelling expenses the plaintiff's mother would incur in making daily visits to the nursing home, and found that this would produce an aggregate sum of $162,000: *Eddie Toon* at [41]–[44]. Having arrived at the two figures, Goh JC, referring to the award of $162,000, held at [44]:

> … Since this award is higher than the award which I have arrived at as the costs of future nursing care on the basis that the plaintiff would be looked after by his parents until such time as they are not able to do so, and for him to be looked after in a private nursing home when his

parents are unable to care for him, I am of the view that the plaintiff should be awarded the sum of $162,000 for future nursing care.

117 Based on the reasoning above, Goh JC set aside the assistant registrar's award of $480,600 and substituted it with an award of $162,000. Two points may be gleaned from Goh JC's analysis in *Eddie Toon*:

(a) First, the court will apply a test of reasonableness in determining the type of nursing care the plaintiff may be compensated for. Hence, where one mode of care (*eg*, home nursing care) is far costlier than other equivalent modes of care, the court will be reluctant to calculate compensation on that basis. This is in line with Kan J's *dicta* in *Lee Wei Kong (HC)*. Even so, I note in passing that in assessing the home-care option as opposed to institutional care, the court must have regard to any non-monetary advantages of home-care by a private nurse or a parent.

(b) Second, the court will not necessarily determine the award for the future cost of nursing care based on the *cheapest* possible mode of care. It is not clear why, of the two reasonable alternative modes of care, Goh JC decided to base his award on the more costly mode of care (*ie*, on the assumption of institutional nursing care). That said, the court must consider all the possible reasonable nursing care options the plaintiff has before deciding on the basis upon which it makes its award. Indeed, this seems to have been the point Choo J was making in *Chong Hwa Yin* at [11].

118 One important question that arises, and that both parties to the present appeal made submissions on, is how to value a parent's gratuitous caregiving. This is important when a court is assessing the range of reasonable options available, and is deciding on the cost to impute on a parent's full-time care-giving as a possible option of care. *Lee Wei Kong (CA)* suggests quite clearly that the parent's loss of income is an appropriate measure. However, this leaves open the question how an assessment may be made if the caregiver was previously unemployed and was performing the role as a homemaker. Strictly relying on the loss of income as the measure of a caregiver's gratuitous caregiving would result in the homemaker's care having at most a nominal value.

119 The Defendant submits that this is in fact the case, and relies on *Eddie Toon* as authority for this. The Defendant argues that Goh JC awarded the mother, who was a homemaker, a nominal figure of only $300 per month for her care of the plaintiff. I point out that this is not entirely accurate. The sum of $300 was only awarded for the mother's services in lieu of a private nurse *at night*. While it is arguable that the court may have ultimately omitted to make an award for the cost of the mother's care *in the day* (given it rejected awarding the plaintiff the cost of a private nurse for the day), the court's award in *Eddie Toon* is not in my view conclusive authority that a homemaker's full-time care should only be awarded a nominal value. Indeed, this point was never raised or discussed on appeal.

120 I have found the English case law on how to assess the cost of care gratuitously provided by family or friends instructive. English case law on this issue suggests that there are two broad approaches to assessing the cost of care gratuitously provided by family or friends. The first is the "loss of earnings basis", and the second is the "cost of care basis": *Fairhurst v St Helens and Knowsley Health Authority* [1995] PIQR Q1 ("*Fairhurst*").

121 Both approaches seek to provide proper recompense for the services provided gratuitously by a family carer. As May LJ held in *Evans v Pontypridd Roofing Limited* [2002] P.I.Q.R. Q5 ("*Evans v Pontypridd*") at [25]:

… Circumstances vary enormously and what is appropriate and just in one case may not be so in

another. If a caring relation has given up remunerative employment to care for the claimant gratuitously, it may well be appropriate to assess the services provided *by reference to the carer's lost earnings*. If the carer has not given up gainful employment, the task remains to assess proper recompense for the services provided. As O'Connor LJ said in *Housecroft v Burnett*, regard may be had to *what it would cost to provide the services on the open market*. But the services are not in fact being bought in the open market, so that adjustments will need to be made.

[emphasis added]

122 Indeed, the principle that an objective of the assessment is to provide proper recompense to the caregiver comes from *Housecroft v Burnett* [1986] 1 All ER 332 ("*Housecroft v Burnett*"). O'Connor LJ held at 343:

… Once it is understood that this is an element in the award to the plaintiff to provide for the reasonable and proper care of the plaintiff and that a capital sum is to be available for that purpose, the court should look at it as a whole and consider whether, on the facts of the case, it is sufficient to enable the plaintiff, among other things, to make reasonable recompense to the relative. So, in cases where the relative has given up gainful employment to look after the plaintiff, I would regard it as natural that the plaintiff would not wish the relative to be the loser and the court would award sufficient to enable the plaintiff to achieve that result. The ceiling would be the commercial rate. In cases like the present I would look at the award of £108,550, remembering that there is in that sum a sum of £39,000 over and above the sum required to provide the expected outgoings, and ask: is this sufficient to provide for the plaintiff's needs, including enabling her to make some monetary acknowledgment of her appreciation of all that her mother does for her? I would also ask: is it sufficient for this plaintiff should her mother fall by the wayside and be unable to give as she gives now? …

123 While the objective of providing reasonable recompense to the caregiver is clear and undisputed, it is noted that O'Connor LJ framed this objective within the overall goal of making sufficient provision for the plaintiff's needs. For this reason, the question was also asked: "is it sufficient for this plaintiff should her mother fall by the wayside and be unable to give as she gives now".

124 As mentioned above, English case law suggests two distinct approaches in assessing what is reasonable recompense. I shall call them the "income approach", and the "cost of care approach".

125 The founding authority for the income approach is arguably the case of *Donnelly v Joyce*. In that case, Megaw LJ awarded the plaintiff the cost of his mother's care based on the income she would have earned if she did not have to stay home to take care of the plaintiff. This was justified as the plaintiff's loss (at 462):

… The loss is the plaintiff's loss. The question from what source the plaintiff's needs have been met, the question who has paid the money or given the services, the question whether or not the plaintiff is or is not under a legal or moral liability to repay, are, so far as the defendant and his liability are concerned, all irrelevant. *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.

[emphasis added]

126 Earlier at [88], I noted that the House of Lords in *Hunt v Severs* disagreed with the holding that the source the plaintiff's needs were met was irrelevant. That said, the loss of income approach was not disagreed with and indeed was also adopted by the Court of Appeal in *Fitzgerald v Ford* [1996] PIQR Q72 ("*Fitzgerald v Ford*"), where the court awarded the plaintiff £62,600 for her brother-in-law's gratuitous caregiving. Her brother-in-law was her full-time caregiver and the sum of £62,600 represented his loss of earnings. Notably, there was evidence that after making the appropriate discounts, an award based on the cost of professional care (the alternative basis for assessment, as we will see in a while) would have come up to £82,000. However, the court chose to make an award for future care on the basis of the caregiver's loss of income.

127 The second approach adopted by the English courts is the cost of care approach. As suggested in the passage quoted above from *Evans v Pontypridd*, this method of assessment is based on what it would cost the plaintiff to obtain equivalent caregiving services on the open market. On this approach, the courts generally base their award on the hourly rate of professional nursing care, and multiply it by the number of hours of care required as a result of the accident. A quarter to one-third discount is then applied to the global figure to take into account the fact that the plaintiff is receiving the services gratuitously, and that income tax and National Insurance contributions (a feature unique to the English legal system) are not paid on the provision of the caregiving services: see *Evans v Pontypridd* at [14] and [36]–[38]; *Fairhurst*; *Willbye v Gibbons* [2004] PIQR P15.

128 In deciding that only a 25% rather than a one-third deduction should be made in *Fairhurst*, the court took into account the fact that the parents in *Fairhurst* had to acquire special skills to take care of the plaintiff. The parents' services were thus valued "somewhat closer to the full commercial rate than might otherwise have been appropriate". This reasoning was affirmed in *Evans v Pontypridd* at [37], and the court additionally stated that it would also take into account the possibility that "the services of the gratuitous carer may not be available for the entire period upon which the assessment is based" in determining the appropriate discount to apply.

129 Having laid out the two approaches adopted by English courts in different cases, the important, and perhaps trickier, question is how they interact.

130 First, O'Connor LJ in *Housecroft v Burnett* held at 343 that while a plaintiff's caregiver's loss of income may be the basis for computing the award for past and future care, "[t]he ceiling would be the commercial rate" of the caregiving services provided. By contrast, where the caregiver's loss of income is less than the discounted commercial rate of obtaining caregiving services, the courts have in some instances decided to award the plaintiff the lower figure: see *Fitzgerald v Ford*.

131 Second, based on *Evans v Pontypridd* at [25], it appears that the English courts have avoided "putting first instance judges into too restrictive a strait-jacket, such as might happen if it was said that the means of assessing a proper recompense for services provided gratuitously by a family carer had to be assessed in a particular way or ways". The court then went on to describe the income approach and the cost of care approach as two possible methods of assessment (see quoted passage from *Evans v Pontypridd* at [121] of this judgment). In other words, the English cases suggest that there *are* and *should be* no fixed rules governing which approach a court adopts. It all depends on what is appropriate and just on the particular facts.

132 Third, the authorities accept that where the caregiver did not in fact give up any gainful employment in entering into full-time care of the plaintiff, the cost of care approach should be used: see *Housecroft v Burnett* at 343 and *Fairhurst*.

133 On this basis, a plaintiff who receives gratuitous care from a caregiver who did not give up gainful employment would necessarily be awarded damages based on the cost of care approach. A plaintiff who receives gratuitous care from a caregiver who did give up gainful employment could, on the basis of *Housecroft v Burnett*, be awarded damages based on either the income or cost of care approach. A problem, however, with the law as set out by O'Connor LJ in *Housecroft v Burnett* is that the damages awarded on the cost of care approach is necessarily higher than the damages awarded on the income approach. This is because the ceiling for an award on the income approach is the commercial rate of caregiving. Given the cost of care approach is premised on the commercial rate of caregiving, the income approach would, at best, give a plaintiff an award as high as one assessed on a cost of care approach. Indeed, if we consider the facts of *Fitzgerald v Ford*, the plaintiff would arguably have received a higher award for future care if her brother-in-law (her primary caregiver) were unemployed before. She might have been awarded the discounted cost of commercial care (£82,000) rather than her brother-in-law's loss of income (£62,600).

134 The learned author of Harvey McGregor, QC, *McGregor on Damages* (Sweet & Maxwell, 19th Ed, 2014) ("*McGregor on Damages*") considered this problem and argues at para 38-231:

> … if the relative has given up employment which paid him or her less than what the court would award to a relative who had not given up paid employment and was therefore entitled to the cost of commercial care as discounted, the same award should be made to both. This seems only right, though it is contrary to Stuart-Smith L.J.'s approach in *Fitzgerald v Ford*. …

135 He further argues in *McGregor on Damages* at para 38-232 that the statement that the "ceiling would be the commercial rate" in *Housecroft v Burnett* was strictly *dicta* and is not binding. A plaintiff should be allowed to recover the cost of a devoted family carer even if it is more expensive (when assessed based on loss of income) than outside professionals.

136 A final point I would make is that there are precedents where English courts have awarded a plaintiff damages on the basis of the cost of care approach even if computing damages on the basis of the income approach would have resulted in a smaller award (*ie*, the opposite of *Fitzgerald v Ford*). This can be seen in the Court of Appeal decision in *Hogg v Doyle*, CA, Judgment of 6 March 1991 (Unreported), where the plaintiff was awarded damages based on the cost of care approach, which amounted in substance to 1.5 times the plaintiff's caregiver's loss of earnings. This was justified on the basis of the extensive care provided by the caregiver.

137 The discussion above has perhaps raised more difficulties than answers. Does the cost of care approach have any place in Singapore law? If so, how should the relationship between the income approach and the cost of care approach operate in practice?

138 The income approach and the cost of care approach are premised on divergent conceptual paradigms. The income approach views the cost of care which the plaintiff receives as that which had to be foregone by the caregiver. By contrast, the cost of care approach views the cost of care the plaintiff receives to be the fair value of the nursing and caregiving services *actually provided* by the caregiver, regardless of what the caregiver could have otherwise earned. That said, I repeat the observation of O'Connor LJ in *Housecroft v Burnett* that the question is whether the sum awarded is "sufficient to provide for the plaintiff's needs". In that case, the needs include enabling the plaintiff to make some monetary acknowledgment of his or her appreciation of all that her mother (the caregiver) does for her, as well as making sufficient provision for the plaintiff if her mother should "fall by the wayside". The needs are those of the *plaintiff*. The loss in question is also the *plaintiff's*.

139 Coming back to the case authorities in Singapore, the Court of Appeal established in *Lee Wei*

Kong (CA) that in assessing the value of the gratuitous caregiver's care, the caregiver's loss of income should be the starting point. I am bound by this authority.

140 Indeed, there is merit in adopting the income approach where the caregiver has given up employment. After all, from a practical point of view, the value of the loss caused by the accident (in terms of nursing or care needs) is indeed the loss of the income which the caregiver would otherwise have earned. This is the plaintiff's loss, because the accident created the need for him to be cared for by family. The argument made by the learner author of *McGregor on Damages* at para 38-232 also supports this view: the cost of care a devoted husband provides must be measured in terms of what he had to give up (a well-paying job) and not just in terms of the actual commercial value of the nursing care he provides (which may arguably be unquantifiable in the open market because from his wife's perspective, he is not substitutable by any other nurse or caregiver).

141 The question that remains to be answered is whether a similar approach should be applied to homemakers. Should only a nominal value be awarded for the cost of their care on the basis that they did not give up gainful employment? In my view, this must be wrong. Taking guidance from the cost of care approach, the correct approach in such cases is to consider the value of the care a caregiver *actually provides* to a plaintiff (as derived from commercial rates with a suitable discount applied where appropriate) . Even in the case of caregivers who were earning nothing before (or an income lower than the cost of care), the loss caused to a plaintiff must still be, at the minimum, the value of the care that he requires as a result of the accident. To say that the value of the care provided by a homemaker is merely nominal would not only unfairly devalue the non-financial contributions of homemakers in our society, but would also devalue the significant sacrifice the homemaker has to make as a result of the accident.

142 Thus, to summarise my conclusions at this juncture, I find that in assessing the cost of gratuitous care received by a plaintiff, the following approach is to be adopted:

(a) The caregiver's foregone income is to be the starting point.

(b) This starting point may be departed from where appropriate if the foregone income is *less than* the fair value of the nursing and caring services provided to the plaintiff. In such a case, the cost of the gratuitous care received by a plaintiff shall be taken to be the fair value of the nursing and caring services the plaintiff actually requires and receives.

143 It is appropriate at this point to address a concern raised earlier that it would be unfair to a defendant to require him to compensate a plaintiff for the cost of a family carer if that family carer happens to be earning a large salary. In my view, this concern should come in only at the second stage of the inquiry, after the cost of a gratuitous caregiver's care has been assessed.

144 Where it is clear on the facts that the plaintiff has been and will continue to be cared for gratuitously by a family carer, the first stage of the inquiry requires an *assessment of the value of the care provided gratuitously* by the said caregiver and received by the plaintiff. For this, the principles stated above apply. Should the caregiver's pre-accident income be $50,000, the value or cost of the care gratuitously provided by that caregiver would ordinarily be assessed at $50,000 per month.

145 This is where the second stage comes in. As seen from *Eddie Toon* and the *dicta* in [11] of *Lee Wei Kong (HC)*, the plaintiff must also show that it is *reasonable for him to receive the particular mode of care he seeks compensation for*. The reasonableness inquiry will involve a balancing of the plaintiff's need for the specific mode of care, the equivalence of the other available alternatives, and

the costs of the various modes of care. In *Eddie Toon*, where the court found that institutional nursing care (with the plaintiff's mother travelling daily to visit him) or the assistance of a domestic maid was sufficient to meet the needs of the plaintiff, hiring a private nurse to stay at his home throughout the day was found to be unreasonable. Similarly, if a family caregiver was earning $50,000 per month (and hence the costs of the family carer's care would be assessed at $50,000 per month as per the principles laid down above), and the costs of professional nursing care (which may offer the plaintiff superior care from a medical perspective) were substantially less, the court may not find it reasonable that the plaintiff chooses to have his high earning family carer stay at home to take care of him. On that basis, the court may only award damages for future nursing care on the basis of the lower rate of hired help. If the high-wage earning parent still chooses to stay at home and provide the care and forgo the $50,000 salary - that is a choice for the parent to make.

146 Indeed, I make the observation that the loss of income approach set out by the Court of Appeal in *Lee Wei Kong (CA)* at [63] is couched in terms of it being "the starting point". In appropriate cases, it must follow that adjustments can be made: whether up or down from that starting point depending on the overall facts and circumstances. Whilst it may be questioned whether O'Connor LJ's ceiling of the "commercial rate" is rightly cast as a mandatory rule, there is no reason why it should not be a factor, as a matter of fairness and reasonableness, which can be taken into account in appropriate cases in assessing the plaintiff's needs for nursing and home care during his remaining life expectancy.

147 In my view, adopting the above approach to determining the award that should be made for the past and future care of the plaintiff (whether such care be provided gratuitously by a family carer, by a domestic maid, by an institutional nursing home, or by a private stay-in nurse) allows the court to fairly balance the interest of both parties.

148 Applying the above to the present case, it is clear that the Plaintiff's mother will continue caring for him gratuitously. The first stage of the inquiry is therefore triggered – what is the value which should be ascribed to her caregiving? Her loss of income is the starting point. As seen above, I have affirmed the AR's decision that the Plaintiff's mother has foregone $1,508 per month in salary. The only question that remains is whether this falls below the fair value of the nursing and caring services the Plaintiff's mother *actually provides*.

149 In the present case, little evidence was provided on that. Based on the parties' submissions, I do not have enough to determine if the Plaintiff's mother provides care akin to a private nurse, or whether a second domestic helper could fulfil her role. As such, the sum of $1,508 per month should be taken as the value of the Plaintiff's mother's caregiving.

150 I move on to the second stage of the inquiry. Again, the parties did not make submissions on whether it was reasonable to award $1,508 per month as the Plaintiff's cost of care given the range of alternatives available. The Defendant's only submission on appeal is that the Plaintiff's mother would have likely quit her job. I have already rejected this submission. Based on the material before me, therefore, I find that $1,508 per month is a reasonable sum to award the Plaintiff for the costs of one of his caregivers (*ie*, his mother).

Conclusion

151 I therefore substantially uphold the AR's reasoning on the mother's loss of future earnings. I only adjust the actual award she made on the basis that a 14-year multiplier rather than a 12-year multiplier should be adopted. I therefore award the Plaintiff $274,456 for the cost of his mother's future caregiving. I derive this figure as follows:

$1,508 x 13 month (inclusive of a month's bonus) x 14 = **$274,456**

Future transport expenses

152 Future transport expenses relate to the cost of private ambulance trips needed to transport the Plaintiff to the hospital for follow-ups. In awarding the Plaintiff $23,520 for future transport expenses, the AR took into account the following factors:

(a) Award should only relate to non-emergency cases because the cost of the ambulance is included in the hospitalisation bill in emergency cases.

(b) The Plaintiff is likely to take an average of 28 non-emergency trips to the hospital annually: physiotherapy sessions twice a month (12 x 2 = 24), and medical consultations four times a year.

(c) The average cost of private ambulance services is $70 given the invoices for the ambulance fees show that the costs ranged from $50 to $90.

153 The Plaintiff makes two points on appeal:

(a) First, the Plaintiff submits that the AR was wrong to leave out an award for the cost of ambulance services in emergency cases. According to the Plaintiff's counsel, historical data shows that the cost of private ambulance services for emergency cases is not included in the Plaintiff's hospitalisation bills.

(b) Second, the Plaintiff submits that the AR was wrong about the average costs of ambulance services. Apparently, the cost of a one-way transfer is $50 to $90. The average cost of a two-way transfer is $110. Naturally, the Plaintiff submits that he should be awarded the cost of a two-way transfer.

Frequency of trips

154 On the first point, the Plaintiff submits that the appropriate number of two-way ambulance trips he should be compensated for is 673. I cite the following table from the Plaintiff's closing submissions to explain his claim:

	Types of treatment	**Number of trips**
1	Medical consultation	4 per year x 16-year multiplier = 64
2	URTI	7 per year x 16-year multiplier = 112
3	Non-intensive rehabilitation and physiotherapy	2 per month x 12 months x 16-year multiplier = 384
4	Intensive rehabilitation and physiotherapy	11 x 4.5 months x 2 tenotomy treatments = 99
5	Pneumonia	10 trips in his lifetime
6	Tenotomy / Botox and Baclofen infusion treatment	4 treatments
	Total	673

155 The AR has already included the trips for the first and third items in the table (*ie*, medical consultation and non-intensive rehabilitation and physiotherapy) in her calculations of the total number of trips needed in a year. There is no appeal relating to that decision. On the fourth item, *ie*, rehabilitation and physiotherapy during the intensified period after the two tenotomy procedures, I have decided above that the AR's global award for two rehabilitation and physiotherapy sessions a month for the rest of the Plaintiff's life is appropriate. I have explained that the award of two physiotherapy sessions a month seems to more than adequately cater for even the intensified period after the tenotomy procedures. It thus follows that the Plaintiff's claim for transport costs to his post-tenotomy rehabilitation sessions is adequately covered by the third item in the above table and the claim for the fourth item in the table above must fail.

156 According to the Plaintiff, the remaining three items claimed in the table above relate to emergency cases. The question therefore is whether the hospitalisation bills for URTI treatment, pneumonia treatment, tenotomy procedures, and botox and baclofen infusion treatment, include the cost of a two-way ambulance transfer. If it does, allowing the Plaintiff to claim for private ambulance costs here would effectively allow double recovery because these costs would have already been taken into account in calculating the appropriate award for the above treatments and procedures. However, if the hospitalisation bill does not cover transport costs, then the Plaintiff should rightfully be entitled to claim the cost of a two-way ambulance transfer each time his injuries necessitate a trip to the hospital.

157 Before me, the Defendant's counsel conceded that the hospitalisation bill for the Plaintiff's visit to the hospital on 14 July 2012 did not include ambulance costs. He did not seek to challenge the sufficiency of the evidence the Plaintiff adduced, and I hence proceed on the basis that an award should be made for emergency ambulance trips.

158 Looking at the above table, the appropriate award for item 5 should be seven trips rather than 10 trips (see my conclusion above at [61]–[69]). In relation to item 2, the Plaintiff's submission of seven trips per year for URTI treatment does not appear to be disputed (see [44] above). The claim for four treatments for tenotomy and botox and baclofen infusion treatments seems reasonable as well given the AR's conclusion that the Plaintiff would require two tenotomy procedures (see the AR's Judgment at [64]) and two botox and baclofen infusion treatments (see the AR's Judgment at [66]) for the rest of his life.

159 Thus, to sum up, the following table represents the number of ambulance trips I am awarding, on the basis of a 14-year multiplier:

	Types of treatment	**Number of trips**
1	Medical consultation	4 per year x 14-year multiplier = 56
2	URTI	7 per year x 14-year multiplier = 98
3	Non-intensive rehabilitation and physiotherapy	2 per month x 12 months x 14-year multiplier = 336
4	Intensive rehabilitation and physiotherapy	nil
5	Pneumonia	7 trips in his lifetime

6	Tenotomy / Botox and Baclofen infusion treatment	4 treatments
	Total	501

Average cost of a two-way ambulance transfer

160 The next question is simple: what is the average cost of a two-way ambulance transfer? I am satisfied that based on the invoices, the AR mistakenly assumed that $50 to $90 was the cost of a *two-way* ambulance transfer. At the oral hearing before me on 7 September 2015, the Defendant's counsel conceded that $100 was a good estimate of the average two-way ambulance costs. He recognised that costs may be higher depending on whether the ambulance trip is taken during or outside office hours. As such, I find that $100 is a good estimate of the average costs of a two-way ambulance transfer.

Conclusion

161 Thus, I allow in part the Plaintiff's appeal against the AR's award of $23,520 for future transport expenses, and award the Plaintiff $50,100 instead. I derive this figure as follows:

501 trips x $100 = **$50,100**

162 I note that this roughly accords with the Defendant's oral submission that an additional ballpark figure of $20,000 should be awarded for emergency transport. The final award appears about $7,000 more than what the Defendant submits because of my conclusion that the appropriate multiplier to be applied is 14 rather than 12.

Future expenses for daily consumables and essentials

163 At [98]–[99] of the AR's Judgment, the AR awarded $325 per month for daily consumables and essentials (such as nasogastric tubes, suction tubes, diapers, liquid diet, daily dressings and wipes). It is undisputed that this sum was derived after deducting the subsidies the Plaintiff received from the KK Women's and Children's Hospital ("KKH") Health Endowment Fund and the Medifund Junior Scheme (see [98]–[99] of the AR's Judgment).

164 On appeal, the Plaintiff submits that the AR should not have taken into account the subsidies the Plaintiff received. At the court's request, the Plaintiff tendered a letter dated 29 April 2015 from the Medical Social Work Department of KKH which stated that the Plaintiff will not qualify for financial assistance once he receives the damages awarded for his injuries. As such, the Plaintiff submits that $1,000 per month for daily consumables and essentials is a more appropriate multiplicand. [note: 2] In light of the new evidence, the Defendant has since accepted that the Plaintiff's figure of $1,000 per month is reasonable. [note: 3]

165 As such, I allow the Plaintiff's appeal on this issue, and award the Plaintiff $168,000 for future daily consumables and essentials. I derive this figure as follows:

$1,000 per month x 12 months x 14-year multiplier = **$168,000**

Plaintiff's loss of future earnings

166 As a result of the Defendant's negligence, the Plaintiff has no hope of ever earning a wage or supporting himself. Moreover, medical experts estimate that the number of years he has left to live has been shortened considerably (he is expected to live only up to an age of 38). It is thus not at all inaccurate to say that the Defendant's actions have caused the Plaintiff to lose all the working years he would have had as a normal, healthy adult if the accident did not take place.

167 The question before the court, however, is whether compensation should be given for the Plaintiff's *loss of earnings* across all the years of life he no longer has, but would have had, if he did not meet with the accident (the multiplier question). Moreover, a second question that arises is how much the Plaintiff would have earned (in terms of a monthly wage) across his years of working life (the multiplicand question). The difficulty in estimating the second is obvious in the present case – this nine year-old boy could very well have become a wealthy businessman or professional, as much as he could have ended up in a low-waged blue collar job. The only thing that is clear is that after the accident, neither of these are possibilities.

168 At the hearing below, the AR adopted a multiplier of nine years in relation to the Plaintiff's loss of future earnings. She assumed that the Plaintiff would only start work after finishing National Service at 22 years old. Neither party objected to that assumption. She then reasoned that given the Plaintiff is expected to live up to 38 years old, he is likely to have 16 years of working life. She rejected the Plaintiff's submission that a multiplier of 16 years should be adopted, stating that the multiplier must be discounted for the vicissitudes of life and the accelerated receipt of a lump sum award which can be invested to yield a return (see [33] of the AR's Judgment). On the basis of *Eddie Toon*, where the court adopted a nine-year multiplier for a plaintiff who was 7.5 years old at the time of the accident and was likely to have 19 years of working life in view of his reduced life expectancy, the AR adopted a multiplier of nine years.

169 On appeal, the Plaintiff submits that a multiplier of 20 years (or 16 years in the alternative) should be awarded. The Plaintiff makes this submission on the basis of a new argument that was never raised before the AR. The argument is that the Plaintiff should be awarded loss of future earnings up until the normal retirement age of 62 years old, *ie* for 40 years of working life, since this is the period he would likely have worked and earned a salary if the accident had not taken place. In other words, the Plaintiff submits that he should also be awarded damages for his loss of future earnings during the years he has lost due to the accident. I shall refer to this as the "lost years claim".

170 At the first hearing before me, the matter was adjourned and I asked parties to make further written submissions on the differences between a lost years claim by a living plaintiff, a deceased plaintiff's estate, and a dependency claim. The parties duly tendered the written submissions, and I must express my gratitude for the detailed and well-researched arguments presented. Indeed, having read the submissions, it is apparent that the legislative and historical context in which a lost years claim is made is of some significance. It is to that which I first turn.

Legislative and historical context of a lost years claim

171 Where a plaintiff's life is truncated because of a defendant's negligence, the lost years can never be fully made good by a monetary award. Indeed, even in the case of the loss of opportunity to earn a wage and to generate an income in the years that have been taken away, considerable problems have arisen in determining the extent to which such "losses" can be compensated.

172 I pause here to note two different factual scenarios whereby a claim for loss of earnings in respect of the years lost might arise. First, there is the case where the tortfeasor has killed the

victim. The second is where the tortfeasor has injured the victim such that his or her normal life expectancy has been reduced. In both cases, difficult questions of law and policy arise where a claim is brought in respect of loss of expectation of life and loss of earnings or earning capacity in respect of the years lost.

173 The problem is perhaps at its most acute in the first scenario. The common law rule was that no action could be brought for loss suffered through the killing of another. This position was eventually changed by Parliament. In Singapore, it is now dealt with by various provisions in the Civil Law Act (Cap 43, 1999 Rev Ed) ("Civil Law Act"). That said, even in the second scenario, the question as to whether it is proper for the victim to maintain a claim for loss of earnings in respect of the years lost (as opposed to any loss of earnings or earning capacity in the years of life that remain) has caused problems.

174 A number of philosophical questions arise. First, it may be asked, as did Lord Scarman in *Pickett (Administratix of the Estate of Ralph Henry Pickett Deceased) v British Rail Engineering Ltd* [1978] 3 WLR 955 ("*Pickett v British Rail*") at 980H: what does compensation mean when it is assessed in respect of a period after death?

175 As Lord Scarman candidly responds (at 981E), there is no completely satisfying answer. While it can be said that a plaintiff who loses the ability to earn a living because of an accident suffers a loss of earnings in the period that he *lives incapacitated*, it is not as easy to say the same for a plaintiff who has lost the chance at living itself. The loss of earnings during those lost years arguably belongs to his "future self" who will no longer be around to earn and enjoy them because of the accident. That said, Lord Scarman's comment at 981F also bears repeating:

> … The logical and philosophical difficulties of compensating a man for a loss arising after his death emerge only if one treats the loss as a non-pecuniary loss – which to some extent it is. *But it is also a pecuniary loss* – the money would have been his to deal with as he chose, had he lived…
>
> [emphasis added]

176 Second, another question is asked: who is or are the parties that have suffered loss and who ought to be compensated? We might assume that the answer is clear and straightforward – it is the plaintiff who has suffered loss. However, as will be seen, the law as it has developed is very much concerned about compensating the loss caused to *dependants* as well. The line between the two is blurred at times.

177 Third, assuming the loss of earnings during the lost years is properly seen as the plaintiff's own loss, yet another question arises: how does the law conceptualise what the plaintiff has lost? This is related to the first question. Is the object of the monetary award to compensate the plaintiff for his loss of a chance at enjoying his earnings? But, that is something no monetary award can ever remedy. It is an irremediable fact that the years of potential enjoyment are lost. Further, to earn that income and to enjoy the income, expenses will have to be incurred. Indeed, the "right" to spend money on oneself is a self-evident common way of enjoying the fruits of labour.

178 Perhaps, as suggested by Lord Wilberforce in *Pickett v British Rail* (at 962A), the loss suffered by the plaintiff is the loss of the financial ability to use such part of the income that he does not need for his dependants, or for other persons or causes which he wishes to support. Or perhaps, as suggested by Lord Scarman in the passage I quoted above, there is no need to further conceptualise the loss. The loss is a straightforward pecuniary loss – money which would have been his, but is no longer his, because of the accident.

179 Compelled by the myriad of different factual circumstances, three distinct types of claims have developed in English and Singapore law.

180 First, a *living plaintiff's claim* for loss of income during the lost years. This is the claim in the present case. The plaintiff's life expectancy and hence his working years are reduced, but the plaintiff is alive at the time of trial. I shall call this a "Living Plaintiff's Claim".

181 Second, an *estate claim* for a deceased plaintiff's loss of income during the lost years. This relates to a situation where the plaintiff has died as a result of the accident at the time of the trial, but the estate "inherits" his claim for lost years and pursues the action for the damages the plaintiff would have been entitled to had he been alive to personally pursue the action. I shall call this an "Estate Claim". In Singapore, the enabling statutory provision can be found at s 10 of the Civil Law Act.

182 Third, a *claim by the dependants* for the loss they suffered as a result of the deceased's loss of income during the lost years. This relates to a situation where the plaintiff has died as a result of the accident at the time of the trial, and his or her dependants make a claim for the loss they suffered as a result of the deceased's loss of earnings due to his death. I shall call this a "Dependant's Claim". In Singapore, the enabling statutory provision can be found at s 20 of the Civil Law Act.

183 These claims all arise from the tortfeasor having caused a plaintiff's death or reduced life expectancy, which results in a loss of earnings during the lost years. A brief review of the historical development of these claims may be helpful.

184 In *Lassiter Ann Masters (suing as the widow and dependant of Lassiter Henry Adolphus, deceased) v To Keng Lam (alias Toh Jeanette)* [2005] 2 SLR(R) 8 ("*Lassiter*") at [12]–[29], Woo Bih Li J explained the legislative history behind the development of these claims in great detail. Reference may therefore be made to *Lassiter* for a more detailed exposition of the historical development of these claims. I mention only the salient points here.

185 Singapore's law on fatal accidents and claims for loss of income has followed English law quite closely: *Lassiter* at [12]. English law, as noted above, started out by disallowing all claims when a plaintiff passes on. This was based on the common law principle that a personal action dies with the person. However, because of the injustice that dependants were thought to suffer from losing their sole breadwinner in an accident caused by a defendant's negligence, the United Kingdom ("UK") passed the Fatal Accidents Act 1846 (UK). This Act enabled prescribed classes of dependants to bring an action for loss of dependency against a tortfeasor who caused the death of their relatives. This legislative provision is presently in force in the UK under s 1 of the English Fatal Accidents Act 1976 (UK). It is also in force in Singapore under s 20 of the Civil Law Act. It should be noted that such a claim cannot be brought if the plaintiff had obtained judgment against the defendant for the "wrongful act, neglect or default" before he died.

186 There was a second development in English, and subsequently, Singapore law, which culminated in what I referred to above as the Estate Claim. The English Parliament passed the Law Reform (Miscellaneous Provisions) Act 1934 (UK), which provided at s 1 that "on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate".

187 In line with this amendment, Singapore adopted s 8 of the Civil Law Act (Cap 30, 1970 Ed) ("the 1970 Civil Law Act"). The English and Singapore provisions were *in pari materia*. The provisions

allowed a deceased plaintiff's estate to inherit and pursue, *inter alia*, his lost years claim even after his death.

188 In England, the above legislative provisions were applied in *Gammell v Wilson* [1981] 2 WLR 248 ("*Gammell v Wilson*"). In that case, the House of Lords upheld an Estate Claim for two young plaintiffs who died as a result of the defendant's negligence. Similarly, in Singapore, the Singapore Court of Appeal in *Low Kok Tong v Teo Chan Pan* [1981–1982] SLR(R) 643 ("*Low Kok Tong*") followed the House of Lords in *Gammell v Wilson*, and allowed an Estate Claim.

189 While an Estate Claim was thus recognised by the highest courts of both jurisdictions, I note that both courts came to the decision with significant reluctance and regret. In particular, the courts were concerned with the potential unfairness to a defendant arising from the possibility of double recovery by the estate and by the dependants under statute (*ie*, the possibility that an Estate Claim and a Dependant's Claim can both succeed simultaneously, resulting in the defendant having to pay damages twice for the same loss caused).

190 The English Parliament intervened after *Gammell v Wilson* by passing the Administration of Justice Act 1982 (UK). The 1982 Act amended the Law Reform (Miscellaneous Provisions) Act 1934 (UK) by adding that an estate *does not* inherit actions for "damages for loss of income in respect of any period after that person's death". This essentially precluded an estate from bringing a lost years claim after the plaintiff's death. Singapore followed suit in 1987, and the same amendment (*in pari materia*) can be found at s 10(3)(*a*)(ii) of the Civil Law Act.

191 Notably, from the Singapore Parliamentary Debates, Official Report (4 March 1987) vol 49 at cols 66–69, it can be seen that Parliament was concerned with solving the following problems in passing the 1987 amendment:

(a) the problem of double compensation as described above; and

(b) the problem of unjustly enriching distant relatives who are beneficiaries of the estate but are not dependants.

192 In my view, this legislative history strongly suggests that *where a plaintiff has already passed on*, Parliament has been primarily concerned with compensating the *loss to the dependants*. The choice to remove an Estate Claim and retain a Dependant's Claim demonstrates that. The law is not concerned with compensating a deceased plaintiff's *personal* loss of earnings in the lost years (which should ordinarily belong to the estate like any other claim); it is instead concerned with compensating the dependants for their loss of support. It must be borne in mind that the deceased's dependants are not necessarily the same persons entitled to his estate. The question that remains is whether this policy inclination applies, or ought to apply, in respect of a *living plaintiff* who has lost years based on medical estimates of reduced life expectancy.

193 It might have been observed that the above discussion of legislative history primarily concerns claims where the plaintiff has *already passed on*. Little has been said about a Living Plaintiff's Claim, which is what the present case is concerned with. Nevertheless, the above discussion provides a helpful backdrop for the discussion that is to follow. I therefore now turn to discussing whether a living plaintiff can make a lost years claim.

Lost years claim for a living plaintiff

194 Philosophically controversial as it may be, it has become relatively uncontroversial in law that a

living plaintiff does have a lost years claim. This general proposition may well be subject to certain exceptions, but it is certainly true as a starting point. Indeed, if this were not the case, the problem in *Gammell v Wilson* as well as *Low Kok Tong* would never have arisen. The estate would not have *inherited* a claim for lost years if the deceased plaintiff never had such a claim when he was alive. I shall now consider the local and English authorities which support a Living Plaintiff's Claim.

Singapore position

195 As a preliminary, I note the Defendant's submission that to the best of his knowledge, there are no local decisions on a Living Plaintiff's Claim. [note: 4] This is not entirely accurate, as will be seen from the discussion that follows.

196 In *Low Kok Tong*, the deceased plaintiff was a 20 year-old national serviceman who died from the injuries he sustained in a traffic accident. The administrators of his estate made a claim for loss of future earnings under s 8 of the 1970 Civil Law Act (which was then in force). The Singapore Court of Appeal allowed the Estate Claim (see [13] of the judgment). It cited *Pickett v British Rail* and *Gammell v Wilson* as authority for the following propositions:

(a) A person is entitled to be compensated not only for the immediate reduction in his earnings but also for the loss of the whole period for which he has been deprived of his ability to earn them: *Low Kok Tong* at [7].

(b) A deceased's estate is entitled to bring a claim for lost years under s 8 of the 1970 Civil Law Act because the lost years claim vested in the deceased before he died: *Low Kok Tong* at [9]–[10].

197 While this decision has effectively been overturned by the 1987 legislative amendment previously discussed, *only* the second proposition at [196(b)] above was rejected by Parliament – a deceased's estate no longer can pursue a lost years claim. Importantly, the legislative amendments have no impact on whether a *living plaintiff* still has such a claim. *Low Kok Tong* therefore is still good authority for the proposition at [196(a))] above, that a living plaintiff can make a lost years claim.

198 This position has been taken in two subsequent High Court cases as well. The first case is *Au Yeong Wing Loong v Chew Hai Ban and another* [1993] 2 SLR(R) 290 ("*Au Yeong Wing Loong*"). That case concerned a plaintiff who sustained injuries in a road accident. He was severely disabled because of the accident and his life expectancy was reduced by 10 to 15 years, but he lived to bring a claim for personal injury. The High Court awarded the plaintiff future loss of earnings for the period in which his working life was shortened. The award was made by basing the multiplier for loss of future earnings "on the working life of the plaintiff prior to his injuries": *Au Yeong Wing Loong* at [59]. A Living Plaintiff Claim was thus allowed.

199 The second case is *Ramesh s/o Ayakanno (suing by the committee of the person and the estate, Ramiah Naragatha Vally) v Chua Gim Hock* [2008] SGHC 33 ("*Ramesh v Chua*"). The High Court (at [36]) affirmed the assistant registrar's observation that an award for loss of future earnings was to compensate the plaintiff for losses he would not have incurred but for the accident. The plaintiff's lifespan would not have been reduced if not for the accident. An appropriate multiplier must therefore be assessed with reference to the plaintiff's *natural or pre-accident working life*.

200 I must point out that a potentially contrary authority exists and was brought to my attention by the parties. That is the case of *Eddie Toon*. In *Eddie Toon*, the High Court adopted a multiplier of 9 years for the plaintiff's loss of future earnings, taking into account the fact that the then seven and a

half years old plaintiff's post-accident working life would be 19 years: see *Eddie Toon* at [53]–[56]. The plaintiff was only expected to live up to an age of 40 after the accident, and he was assumed to start work at 21 years old. The High Court did not make an award for loss of earnings during the plaintiff's lost years. This question was never discussed. It appears that neither side brought the issue of lost years up, nor did the court consider the matter. I therefore do not think that *Eddie Toon* stands as an authority *against* the granting of a lost years claim. The claim was not granted simply because the plaintiff never put it into issue.

201 In conclusion, the Singapore authorities quite unanimously support the existence of a Living Plaintiff's Claim. Whether there are exceptions to this general position is a matter that shall be subsequently discussed. I now consider the English authorities on the matter.

English position

202 The most important English decision on a lost years claim is arguably the House of Lords decision in *Pickett v British Rail*. In that case, the court held that a living plaintiff does have a lost years claim. The plaintiff was 51 years old when he contracted mesothelioma. This was caused by breathing in asbestos dust at work. The plaintiff successfully sued his employer for negligence and claimed damages for personal injuries. At the time of the trial, the plaintiff was expected to have only a year left to live. He had passed on by the time the case reached the House of Lords on appeal. The court found that if not for the asbestos dust that he had breathed in at work, the plaintiff would have been expected to live up to 65 years old. The court therefore held that the plaintiff was entitled to recover damages for loss of earnings during the lost years, but that the damages should be computed after deduction of his probable living expenses (see 963E, 966E, 974H and 981H–982A). I will not discuss the issue of assessing the multiplicand at this juncture. Instead, what is of importance at this stage is the majority's reasons for allowing a lost years claim.

203 The first key plank of the majority's reasoning is that the loss of earnings during the lost years was a real pecuniary loss to the plaintiff personally. As Lord Edmund-Davies puts it (at 973H–974A):

> … With respect, it appears to me simply not right to say that, when a man's working life and his natural life are each shortened by the wrongful act of another, he must be regarded as having lost nothing by the deprivation of the prospect of future earnings for some period extending beyond the anticipated date of his premature death. …

204 Lord Scarman (at 981F) describes a plaintiff whose life expectancy was reduced as suffering both a non-pecuniary and a pecuniary loss. The pecuniary loss he refers to is the "money [that] would have been his to deal with as he chose, had he lived". Lord Wilberforce was similarly of the view that to the plaintiff, "something objective" has been lost (see 961G). He rhetorically states (at 961H–962A):

> … Is he not entitled to say, at one moment I am a man with existing capability to earn well for 14 years: the next moment can only earn less well for one year? And why should he be compensated only for the immediate reduction in his earnings and not for the loss of the whole period for which he has been deprived of his ability to earn them? To the argument that "they are of no value because you will not be there to enjoy them" can he not reply, "yes they are: what is of value to me is not only my opportunity to spend them enjoyably, but to use such part of them as I do not need for my dependants, or for other persons or causes which I wish to support. If I cannot do this, I have been deprived of something on which a value - a present value - can be placed"?

205 Indeed, Lord Wilberforce continued with the trenchant observation that "[f]uture earnings are

of value to him in order that he may satisfy legitimate desires, but these may not correspond with the allocation which the law makes of money recovered by dependants on account of his loss. He may wish to benefit some dependents more than, or to the exclusion of, others … He may not have dependents...” According to *Pickett v British Rail*, it followed from basic compensatory principles that the plaintiff should be awarded damages for his loss of earnings during the lost years.

206 The second important feature of the majority’s reasoning is their holding that recovery does not depend on whether the plaintiff has dependants. This, in my view, follows from the first point made above. If the law is compensating the plaintiff for a pecuniary loss he *personally* suffers, the existence of dependants and the extent of loss they suffer must be irrelevant. Lord Edmund-Davies held (at 973H):

> … For our present consideration relates solely to the *personal entitlement* of an injured party to recover damages for the "lost years," *regardless both of whether he has dependants and of whether or not he would (if he has any) make provision for them* out of any compensation awarded to him or his estate…
>
> [emphasis added]

207 Lord Wilberforce (at 962D–F) and Lord Scarman (at 980F–H) both took a similar position. While Lord Salmon was concerned about the injustice that the plaintiff’s dependants may suffer from the denial of a Living Plaintiff’s Claim (see 965B), he held (at 966D):

> … Certainly, the law can make no distinction between the plaintiff who looks after dependants and the plaintiff who does not, in assessing the damages recoverable to compensate the plaintiff for the money he would have earned during the "lost years" but for the defendant's negligence. …

208 As can be seen from the above discussion, the majority in *Pickett v British Rail* were in agreement that a living plaintiff may successfully make a lost years claim, regardless of whether he or she has dependants. Indeed, even if the plaintiff has dependants, it does not mean that the plaintiff cannot, during his life, spend all his monies and savings elsewhere.

209 The final observation I would make about the reasoning in *Pickett v British Rail* for now is that while the majority recognised that there were inevitably difficulties in assessing the quantum of damages for a lost years claim, they were of the view that the difficulties were not insuperable. Problems of evidence did not affect the existence of the principle.

210 Lord Wilberforce held (at 962H) that a lost years claim does not create “insoluble problems of assessment” (though he did qualify his statement by distinguishing the case of a young child). In the case of a young adolescent, Lord Wilberforce thought that the value of lost earnings whilst real would probably be assessed as small. Lord Salmon stated (at 966E) that “[t]he assessment of these living expenses may, no doubt, sometimes present difficulties, but certainly no difficulties which would be insuperable for the courts to resolve”. Lord Edmund-Davies similarly observed (at 974G) that the lost earnings are not “far too speculative to be capable of assessment by any court of law”. The majority in *Pickett v British Rail* therefore allowed the plaintiff’s lost years claim.

2 1 1 *Pickett v British Rail* was subsequently applied by the House of Lords in *Gammell v Wilson*. While the House of Lords in *Gammell v Wilson* expressed some reservations about granting an Estate Claim, it nevertheless held that following *Pickett v British Rail*, the deceased had a lost years claim which survived for the benefit of his estate under s 1 of the Law Reform (Miscellaneous Provisions) Act 1934 (UK).

212 Notably, in light of the young ages of the two plaintiffs in *Gammell v Wilson* (15 and 22 years old), the House of Lords expressed some concern about the difficulty of assessing damages for their estates' lost years claim.

213 Lord Diplock (at 250G) described the task of assessing damages in that case as indulging "in what can be no better than the merest speculation about what might have happened to the deceased during a normal working life-span if he had not been prematurely killed". Lord Edmund-Davies (at 259E–F) found that "[t]he process of assessing damages in such cases is so extremely uncertain that it can hardly be dignified with the name of calculation; it is little more than speculation".

214 Yet, notwithstanding these concerns, the court ultimately allowed the Estate Claim.

215 Indeed, while the Administration of Justice Act 1982 (UK) effectively reversed *Gammell v Wilson*, it did not disturb the conclusion that a *living plaintiff* has a claim for lost years: *McGregor on Damages* at para 38-108. It merely prevented a deceased plaintiff's lost years claim from being vested in his estate.

216 It is clear that in both Singapore and in the UK, a *living plaintiff* may successfully bring a lost years claim.

Lost years claim for a young, living plaintiff

217 Given the weight of English authority, the Defendant accepts that a living plaintiff may have a claim for lost years. [note: 5] Nevertheless, the crux of the Defendant's objection to the lost years claim *in the present case* is that a *young* living plaintiff should not be allowed an award for loss of earnings during his lost years. The argument appears to be either (a) young living plaintiffs are an exception to the rule, or (b) the claim will fail because of the absence of sufficient objective evidence proving what the young plaintiff's earnings are likely to be, or indeed, what the future expenses of the young plaintiff are likely to be but for the accident and injuries.

218 The main authority the Defendant cites is the English Court of Appeal case of *Croke v Wiseman* [1982] 1 WLR 71 ("*Croke v Wiseman*").

219 In *Croke v Wiseman*, the infant plaintiff was 21 months old when he was injured by the defendant's medical negligence. As a result, the plaintiff's life expectancy was reduced to 40 years. The court unanimously held that the infant plaintiff's lost years claim failed. However, the majority held (Lord Denning M.R. dissenting) that the infant plaintiff did have a loss of earnings claim for the time period during which he was expected to live (*ie*, up to the age of 40).

220 The Defendant does not dispute that the Plaintiff in the present case does have a loss of earnings claim for the time period during which he is expected to live. However, the Defendant relies on the reasoning in *Croke v Wiseman* to support its position that a *young* living plaintiff should not be awarded damages for loss of earnings during his *lost years*.

221 Griffiths LJ, whom Shaw LJ substantially agreed with (see 85A), had two main reasons for rejecting the plaintiff's lost years claim in *Croke v Wiseman*. The first reason is the difficulty of assessing the sum that should be awarded as damages for loss of earnings during the lost years. Griffiths LJ acknowledged (at 81H) that while it is "a task of the greatest difficulty to assess an appropriate sum to award a young child for future loss of earnings", the court frequently undertakes such tasks. However, Griffiths LJ was of the view that in a lost years claim, the court faces an *even*

greater difficulty (see 82D):

> … In attempting to assess the value of a claim for the lost years, the court is faced with a peculiar difficulty. Not only does it have to assess what sum the plaintiff might have been earning, but *it also has to make an assessment of the sum that would not have been spent upon the plaintiff's own living expenses and would have, therefore, been available to spend upon his dependants*. …
>
> [emphasis added]

222 Thus, the difficulty of assessment is, in a sense, doubled. Not only must a court predict what a young plaintiff's *future earnings* would be, it must also predict his *future expenses*. Indeed, the difficulty of assessing damages for a young plaintiff's lost years claim was also acknowledged by the House of Lords in *Pickett v British Rail* and *Gammell v Wilson*.

223 In *Pickett v British Rail*, Lord Wilberforce expressed the view (at 962H) that in the case of a young child, "neither present nor future earnings could enter into the matter" because of the problems of assessment. Lord Salmon stated (at 966A) that in the case of a young child, "lost earnings are so unpredictable and speculative that only a minimal sum could properly be awarded".

224 In *Gammell v Wilson*, Lord Fraser of Tullybelton expressed the strong view (at 259D–E) that it would be hard to assess a young plaintiff's lost years claim because he had "no established earning capacity or settled pattern of life". He observed:

> … It is particularly difficult to justify the law in cases such as the present, in each of which the deceased was a *young man with no established earning capacity or settled pattern of life*. In such cases it is hardly possible to make a reasonable estimate of his probable earnings during the "lost years" and it is, I think, quite impossible to take the further step of making a reasonable estimate of the free balance that would have been available above the cost of maintaining himself throughout the "lost years," and the amount of that free balance is the relevant figure for calculating damages. The process of assessing damages in such cases is so extremely uncertain that *it can hardly be dignified with the name of calculation; it is little more than speculation*. Yet that is the process which the courts are obliged to carry out at present. …
>
> [emphasis added]

225 This concern was shared by Lord Diplock (at 250G and 253D–E), Lord Russell (at 262A) and Lord Scarman (at 265F).

226 Griffith LJ's second reason for rejecting the infant plaintiff's lost years claim in *Croke v Wiseman* was that the plaintiff does not, can never, and will never have dependants. I find it useful to cite Griffith LJ's reasoning (at 82E–F) in full:

> … In the case of a living plaintiff of mature years whose life expectation has been shortened and who has dependants, there are compelling social reasons for awarding a sum of money that he knows will be available for the support of his dependants after his death. It was this consideration that led to the result in *Pickett's* case. … In the case of a child, however, there are no dependants, and if a child is dead there can never be any dependants and, if the injuries are catastrophic, equally there will never be any dependants. It is that child that will be dependent. …

227 Griffiths LJ thus found that the "compelling social reason" to grant a lost years claim, that is the dependants' loss of support, was not present in the case of a young child who will never have any dependants. A lost years claim was therefore denied.

228 The Defendant submits that in Singapore, *Eddie Toon* is good authority for the rejection of a Living Plaintiff's Claim where the plaintiff is young. However, as explained at [200] above, the High Court in *Eddie Toon* cannot be taken to have rejected a lost years claim. An award for lost years was not made because the parties never raised it as an issue before the court. Indeed, there seems to be a dearth of local authority on whether a *young*, living plaintiff's lost years claim may succeed.

229 In considering this novel issue in the Singapore context, I propose to first consider Griffith LJ's concern regarding the difficulty of assessing damages for a young plaintiff's lost years claim. In particular, the court must consider whether any assessment of damages is so inherently speculative such as to make the claim too remote to be measurable (as per Lord Scarman in *Pickett v British Rail* at 981H). Thereafter, I shall consider the significance of a young plaintiff's absence of dependants.

Difficulty of assessing damages

230 The difficulties of assessing damages for a young plaintiff's lost years claims can be summarised as follows:

(a) It is often impossible to make a factual finding, on a balance of probabilities, about what the young plaintiff is likely to earn in future given working life is such a distant future. Naturally, the younger he is, the more distant working life is, the more difficult the fact finding exercise becomes.

(b) It is also often impossible to make a factual finding, on a balance of probabilities, about the plaintiff's likely spending patterns and expenses in the future when he no longer depends on his parents for a living.

231 Those who oppose awarding a young plaintiff damages for loss of earnings during lost years would argue that any factual finding in relation to the above two matters must inevitably be speculative and arbitrary. They will argue that it therefore cannot be the basis for awarding damages, and liability for a lost years claim must be denied.

232 I pause to note again that local authorities have not fully explored the issue of the difficulty of assessing damages for a *young plaintiff's* lost years claim, as well as its potential implications on *liability*. The Singapore Court of Appeal did comment in *Lee Wei Kong (CA)* (at [33]) that in the case of "injured plaintiffs who were young at the time of the accident and had yet to commence work at the time of the trial … the main difficulty with quantifying [loss of future earnings] … 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". Nevertheless, the court did not have to consider if such assessment difficulties had an impact on *liability* (specifically, if it negated liability), especially if the plaintiff in question were even younger (the plaintiff in *Lee Wei Kong (CA)* was aged 18 at the time of the accident).

233 I return now to the English authorities to discuss one final, but rather important, English Court of Appeal case – *Iqbal v Whipps Cross University Hospital NHS Trust* [2008] P.I.Q.R. P9 ("*Iqbal v Whipps*").

234 The Court of Appeal in *Iqbal v Whipps* makes important comments on Griffith LJ's two concerns

in *Croke v Wiseman*, namely, the difficulty of assessing damages, and the absence of dependants. However, I shall limit my discussion to the first concern at this juncture.

235 The plaintiff in *Iqbal v Whipps* was an infant injured at birth by the defendant's medical negligence. As a result, he sustained dystonic tetraplegic cerebral palsy and his life expectancy was reduced to 41 years. The Court of Appeal dismissed the infant plaintiff's lost years claim. While it expressed great dissatisfaction in doing so, it held that it was bound by its previous decision in *Croke v Wiseman* to deny a young plaintiff's lost years claim (see [64], [89] and [92]).

236 On the difficulty of assessing damages, the Court of Appeal's main point in *Iqbal v Whipps* seems to be that the task, while difficult, is not insurmountably so. Courts are in fact required to undertake similar tasks in similar contexts.

237 One such context is most obviously the assessment of a young plaintiff's loss of future earnings *during the time he is expected to live*.

238 Gage LJ found it "difficult to accept that if it is possible to assess prospective future loss of earnings for the lifetime of a young child, even allowing for the difficulty of assessing the surplus, it is not possible to assess damages for the lost years" (see [46]).

239 Rimer LJ held (at [81]–[82]):

> 81 … True it is that the indications given in both *Pickett* and *Gammell* were that the assessment exercise in the case of a child as young as the present claimant was likely to be too speculative to justify more than a modest award, if any. But the judge [below] did not feel inhibited by that …
>
> 82 In short, the techniques of assessment had moved on since *Pickett* and *Gammell*, and there was no reason to shy away from the assessment of the claim in respect of the lost years merely because of the extreme youth of the claimant. In principle, I would not fault that approach. …

240 Notably, however, Gage LJ acknowledged at [72] of his judgment that the more advanced techniques of assessment the court referred to, *ie*, the "Ogden Tables" used in the UK, "cannot offer any help on the element of speculation identified in *Pickett* and *Gammell*", which relates to "the surplus from which the damages for the lost years are derived". In other words, it seems that the actuarial tables currently available in the UK do not assist the court in determining the appropriate discount to apply to take into account expenses. Moreover, in the present case, I note that I do not have the assistance of any actuarial calculations.

241 Having considered the submissions and authorities above, I find that the difficulty of assessing damages for the Plaintiff's lost years claim in this case *does not* prevent the claim from succeeding. I do not think it is impossible for the court to make a finding on how the Plaintiff's life would have turned out if the natural and ordinary course of events were allowed to unfold, without the tragic intervention of the present accident. Of course, it is impossible to predict with precision the *exact* life the Plaintiff would have led, the exact income he would have earned in the future, and the exact living expenses he would have incurred. However, this is not necessary for an assessment of damages claim. Such certainty is never possible in any assessment of damages involving the estimation of loss of earnings. Indeed, it bears repeating that in *Croke v Wiseman*, damages were awarded to the young living plaintiff (21 months old) for the loss of earnings during the remainder of his life. Factors taken into account included actuarial tables, the national average wage for a young man, and family background.

242 The court is entitled to use evidence of general income and expenditure patterns of the average Singaporean to inform its decision on the damages that it should award for the present Plaintiff's lost years claim. Indeed, the authorities, as well as both parties, acknowledge that this is so with respect to future income *during the time the Plaintiff is likely to live* (*ie*, up to the age of 38). If the difficulties of assessment do not preclude an award for loss of future income during the time the Plaintiff is likely to live, there is no reason why such difficulties, which are almost identical in nature, should preclude a claim for loss of income during the lost years.

243 I acknowledge, as Griffiths LJ points out in *Croke v Wiseman*, that the court *may* face an additional difficulty of having to "make an assessment of the sum that would not have been spent upon the plaintiff's own living expenses" (*Croke v Wiseman* at 82D) in assessing damages for a lost years claim. In other words, besides assessing the Plaintiff's future income, the court may also have to assess the Plaintiff's *future expenditure*.

244 However, this first assumes that the English approach of deducting future expenditure (living expenses) from the estimated future earnings during the lost years is an approach that also applies in Singapore.

245 Second, even if this court decides to follow the English approach, I am of the view that the task of assessing a young plaintiff's *future expenditure patterns (living expenses)* whilst clearly difficult, is not any more difficult than assessing a young plaintiff's *future income*. It is as hard to tell whether a young plaintiff will end up extravagant or thrifty, as it is to tell whether he will end up a high or low income earner. In both cases, I do not deny that the use of national averages can only provide a blunt and broad-brushed approximation. However, if such approximations are sufficiently precise for the assessment of damages for a young plaintiff's loss of future earnings during his expected lifetime, it must follow that it also is sufficiently precise for the assessment of damages for a young plaintiff's lost years claim (even if it comprises two components – an estimation of future income *and* future expenses). I further mention in passing, notwithstanding the House of Lords' reservations about the speculative nature of the assessment of damages for a young plaintiff's lost years claim in *Gammell v Wilson*, it nevertheless affirmed the lower court's decision to make such an award.

246 This leads me to my third point. As Gage LJ opined in *Iqbal v Whipps* (at [79]), concerns about the difficulty of assessment do not go towards showing that "as a matter of principle, a young child will have no claim in respect of lost years". It merely might negate liability because the loss is too *remote* (as per Lord Scarman in *Pickett v British Rail* at 981B).

247 There can be no dispute that the accident directly caused the Plaintiff's reduced life expectancy. Denying a young plaintiff's lost years claim on the ground of excessive speculation or arbitrariness in assessment would have the *practical effect* of pegging his loss at *zero*, even whilst the court acknowledges *in principle* that the plaintiff has suffered loss that ordinarily ought to be compensated from having his life expectancy so reduced.

248 Therefore, for the above reasons, I do not think that the difficulty of assessing damages for the Plaintiff's lost years claim in this case precludes the claim from succeeding.

249 I now consider whether the fact that the Plaintiff does not have dependants might defeat his lost years claim.

Absence of dependants

250 While the relevance of dependants has been alluded to above, it is helpful to examine why the presence of dependants mattered to the previous courts that have heard such claims. When a plaintiff has his life expectancy reduced (whether he dies immediately or has fewer years left to live), the dependants whom he supports with his monthly wage clearly suffer a loss. They lose financial support in the years that the plaintiff would have lived but for the accident. The law has been concerned with ensuring that these dependants are taken care off in an award of damages.

251 This social concern explains the availability of a dependants' claim in Singapore under s 20 of the Civil Law Act, and in the UK under s 1 of the Fatal Accidents Act 1976 (UK). It also explains why the courts have been concerned with ensuring alternative compensation mechanisms for dependants where the abovementioned statutory provisions do not apply. In *Pickett v British Rail*, the majority was acutely aware of the fact that the dependants would no longer have a statutory action under the Fatal Accidents Act 1976 because the plaintiff had obtained judgment against the tortfeasor when he was alive. This was arguably one reason why the House of Lords found it just to award damages for loss of earnings during the lost years (see for example *Pickett v British Rail* at 964H–965C).

252 Traces of this concern for dependants can also be found in Singapore authorities dealing with lost years claims. In *Low Kok Tong*, the Court of Appeal commented (at [14]) that "[i]t could be questioned with some justification why persons other than the actual dependants of a deceased should be unjustly enriched by an award to the estate for the "lost years"". In the same vein, in *Au Yeong Wing Loong*, the High Court held (at [59]):

> The basis for awarding damages for the years by which the plaintiff's life has been reduced when computing future loss of earnings is that the plaintiff must provide for his dependants. The multiplier for loss of future earnings for the plaintiff's working life is accordingly based, *inter alia*, on the working life of the plaintiff prior to his injuries.

253 One might thus argue that if the basis for awarding a lost years claim is the loss to the dependants, a plaintiff with no dependants should not be awarded any compensation for loss of earnings during the lost years.

254 In my view, such an argument is wrong. In the present case, I find that the Plaintiff's absence of dependants or the prospect of dependants does not defeat his claim for loss of income during the lost years. In holding this view, I find myself supported by both legal authorities and principles.

255 As discussed above (see [206]–[208] of this judgment), the majority in *Pickett v British Rail* took a clear position on this issue. The House of Lords held that in allowing a lost years claim, the law cannot distinguish between plaintiffs who support dependants, and those who do not: *Pickett v British Rail* at 966D.

256 This interpretation of *Pickett v British Rail* is supported by Rimer LJ at [78] of *Iqbal v Whipps*.

> There was discussion in *Pickett* as to whether the real losers in respect of a lost years earnings claim were the claimant's dependents. Whatever the force of that, the four members of the House who were in agreement in allowing a lost years' earnings claim recognised that it was nevertheless a loss suffered by the claimant himself in respect of which he was entitled to recover in his own right … There is nothing in their speeches to support the view that success on such a claim is conditional on proof that the claimant has, or would have, dependents who could or might benefit from any recovery …

257 The comments made by Gage LJ in *Iqbal v Whipps* (at [35]) are also illuminating:

> In my judgment, *Gammell* makes quite clear, what might be said to be less clear from *Pickett*, that the age of a victim is not as a matter of principle relevant to the issue of whether or not a claim can be made for the lost years. Further, *the lack of dependants cannot be a factor which defeats a claim for damages for loss of earnings in the lost years*. When it comes to the assessment of damages for the lost years the issues are evidential and not matters of principle. …
>
> [emphasis added]

258 It is clear that the Court of Appeal in *Iqbal v Whipps* at [45], [46] and [83] expressed the view that the earlier decision in *Croke v Wiseman* that the absence of dependants in the case of a young child was fatal to the claim for loss of earnings in the lost years was inconsistent with previous House of Lords authority (*Pickett v British Rail* and *Gammell v Wilson*). That said, the Court of Appeal regarded itself bound by the decision in *Croke v Wiseman*.

259 A living plaintiff brings an action in his own capacity. In my view, it must follow that the *only* loss he can claim for is *his own*. Indeed, even in the case of claims for future nursing and home-care where these are provided gratuitously by a family member, as emphasised above, the court awards a plaintiff damages, assessed in relation to the caregiver's loss of future earnings as a *loss to the plaintiff himself*, and not to his caregiver. Similarly, to succeed, a living plaintiff's lost years claim must be *conceptually* founded on a plaintiff's personal loss, rather than his dependant's loss.

260 I am therefore of the view that the absence of dependants or the prospect of dependents, does not defeat a young living plaintiff's lost years claim. While the High Court in *Au Yeong Wing Loong* did suggest (as noted above) that the basis for awarding a lost years claim is the loss to the dependants, the comment was strictly *obiter* and was intended more to explain the normative reasons for awarding a lost years claim rather than establish a legal test.

Conclusion on lost years and the appropriate multiplier

261 In conclusion, the authorities clearly establish that a living plaintiff has a lost years claim. Moreover, an exception should not be made just because the living plaintiff is young. In my view, the existing authorities and principles support this position. Therefore, I find that the Plaintiff's claim for loss of earnings during the lost years succeeds.

262 In this regard, I affirm the AR's decision to adopt a multiplier of 9 years for the period in which the Plaintiff is likely to live (16 years of working life). Regarding the lost years, I accept the Plaintiff's assumption that he would have worked until the age of 62 if not for the accident. The number of "lost years" is thus 24. In view of the above, I find that a multiplier of 8 years for the lost years claim is appropriate. A more substantial discount from 24 years takes into account the fact that the more distant in time, the greater the exposure to the vicissitudes of life and the more advantage is gained from accelerated receipt. What remains is the need to determine the appropriate multiplicand.

Multiplicand

263 The first question that arises is whether the multiplicand adopted for the lost years should be different from that adopted for the period in which the Plaintiff is expected to live.

264 In my view, it should be. In awarding damages for a lost years claim, Singapore authorities do

support the English approach of deducting a plaintiff's anticipated expenses from his loss of earnings:

(a) In awarding an Estate Claim, the Court of Appeal in *Low Kok Tong* held (at [7]) that with respect to the deceased's loss of earnings during the lost years, "damages should be computed after deduction of his probable living expenses during that period".

(b) The High Court in *Au Yeong Wing Loong* similarly deducted the living plaintiff's estimated living expenses during the lost years in awarding damages for loss of earnings during that period (see [50] and [69]).

265 I note that no such deduction of expenses was made in *Ramesh v Chua*. The High Court seemed to have used the same multiplicand for the period during the time the plaintiff was expected to live, and during the lost years period (see [38]–[39]). Nevertheless, it appears that this issue was never raised to the court. The discussion on the lost years claim was notably brief. Neither *Low Kok Tong* nor *Au Yeong Wing Loong* was considered by the High Court in *Ramesh v Chua*. I therefore find that on balance, the local authorities we have suggest that different multiplicands should be used for the period in which the plaintiff is expected to live, and the lost years period. In the former, the court simply awards the plaintiff his estimated loss of earnings. In the latter, the court awards the plaintiff his estimated loss of earnings after deducing his estimated personal living expenses.

Multiplicand for the period during which the plaintiff is expected to live

266 To assess the appropriate multiplicand for the period during which the plaintiff is expected to live, the court is concerned with assessing the fair value of income that the Plaintiff may be treated as being likely to earn should the accident not have happened. In this case, given that the Plaintiff was only 9 years old at the time of the accident, it is very difficult for the court to assess the likely income he would have been earning had the accident not happened. There is neither a track record of past earnings, nor is there any clear indication as to the educational levels the Plaintiff was likely to attain. As mentioned earlier, recourse to national averages is thus inevitable. Both parties accept that following *Eddie Toon*, the mean commencing salaries of young workers should be used as the basis for calculating the multiplicand (see the AR's Judgment at [39]–[40]). What they disagree on is which occupational groups ought (or ought not) to be taken into account in the calculation.

267 The AR adopted a multiplicand of $1,723.24. She first took the average of the figures set out in the table at [42] of the AR's Judgment, which contains the median monthly wage of persons across eight occupational groups in the age-group of 25 to 29 years old. The figure derived was $2,059.25. She then applied a discount based on the average annual basic wage change over a 10-year period (see the AR's Judgment at [48]) to reflect the fact that the court was concerned with the median commencing salary of persons *aged 22 years old* (rather than 25 to 29 years old). She derived the final figure of $1,723.24, which she accordingly adopted as the multiplicand to assess the Plaintiff's loss of future earnings.

268 Both the Plaintiff and the Defendant have appealed the AR's decision on the multiplicand. The Plaintiff's main submission is that the multiplicand should not have been adjusted downwards from the average of $2,059.25 (for workers in the age-group of 25–29 years old) to reflect the fact that the Plaintiff is assumed to commence work at age 22. This wrongly assumes the Plaintiff's salary would remain stagnant throughout his working life. The Plaintiff referred the court to the Court of Appeal's decision in *Koh Chai Kwang v Teo Ai Ling (by her next friend, Chua Wee Bee)* [2011] 3 SLR 610 ("*Teo Ai Ling (CA)*") at [58], where the Court of Appeal took into consideration the fact that the plaintiff would have had an average annual salary increment of 7.3% in calculating the multiplicand. [note: 6] The Plaintiff therefore submits that the average wage for workers in the age-group of 25–29 years old

should be used as the multiplicand without a discount. I note that the Plaintiff has not taken issue with the *method* the AR used to discount the average wage for persons in the age-group of 25–29 years old; he only takes issue with the fact that the discount was applied.

269 The Defendant's main submission on appeal is that the AR should not have taken into account the top two income earning occupational groups, "Managers" (median wage of $3,663) and "Professionals" (median wage of $3,300), in calculating the multiplicand. This is because the Plaintiff was less than likely to attain tertiary education. [note: 7] The Defendant makes the following points in support of that submission:

(a) The AR wrongly held that the Plaintiff has an equal chance of becoming a professional or a labourer. [note: 8]

(b) The Plaintiff's academic results reveal that he was an inconsistent and average to below average student. The Plaintiff's results only picked up slightly in the first half of Primary Three despite tuition. [note: 9]

(c) The Plaintiff's family background is less than ideal. The Plaintiff's mother has gone through two failed marriages, and his biological father was irresponsible and left the home. The Plaintiff's mother and her present husband were both earning only a modest income at the time of the accident. [note: 10]

270 I first address the Plaintiff's submission that the AR should not have based the multiplicand on the average commencing wage of a person aged 22. On the one hand, the Plaintiff is correct that *Teo Ai Ling (CA)* suggests the court should take into account salary increments over a plaintiff's working life in determining the multiplicand. However, in *Teo Ai Ling (CA)*, there is considerable *dicta* that suggests a different approach might apply for young children who have not started work. In this regard, I refer to the Court of Appeal's comment at [45]:

> We recognise that for this purpose there is a distinct difference between, say, 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, *ie*, 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. Here, the Respondent, if not for the accident, would have probably completed the Diploma and started work, whether in the food business or the civil service or any other job. All she has now is her "O" level certificate. …

271 The Court of Appeal did not explain the approach it thinks a court should adopt for a young child. However, there is at some suggestion that a different approach might be appropriate.

272 The approach taken by the High Court in *Eddie Toon* to the assessment of the multiplicand for a young plaintiff's loss of future earnings is instructive. The High Court in *Eddie Toon* held (at [51]):

> 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.

[emphasis added]

273 Indeed, it is clear from [47] of *Eddie Toon* that this holding was an affirmation of the High Court's decision in *Peh Diana and another v Tan Miang Lee* [1991] 1 SLR(R) 22 ("*Peh Diana*"). I find it useful to cite the reasoning in [28] of *Peh Diana*:

> … Therefore, I find great difficulty in accepting that in the case of a person who has never worked, the national average wage should be used for purposes of working out his loss of future earnings. I understand the English courts have used something like this in calculating the loss of future earnings in respect of fairly young children, *eg Croke v Wiseman* [1982] 1 WLR 71; [1981] 3 All ER 852 where the child was seven years old at the date of trial. Even so, the wage adopted by the court in *Croke* was not the national average wage but the national average wage *for a young man*. That I think is quite different. … The amount to be taken in computing loss of future earnings following *Croke*, must be that of a young stenographic secretary and not someone who had worked for some years. …
>
> [emphasis in original]

274 In my view, *Peh Diana* and *Eddie Toon* establish the approach that ought to be taken by Singapore courts in assessing the multiplicand for a young plaintiff's loss of future earnings. *Eddie Toon* establishes that the "mean commencing salary" of young workers should be adopted; *Peh Diana* holds that the "national average wage *for a young man*" should be adopted. It is therefore clear that in the present case, the multiplicand should be calculated based on the average wages of younger workers. The only question is whether the court should insist on using the Plaintiff's estimated "commencing salary" at the age of 22 (as per *Eddie Toon*), or whether the average wage of young workers more generally should be used, in which case, the salary range for workers aged 25–29 may arguably be a fairer range to consider.

275 On balance, I prefer *Eddie Toon's* approach of using the *commencing salary* of young workers. In coming to this decision, I have taken note of the following:

> (a) The House of Lords' caution in *Gammell v Wilson* (*as per* Lord Edmund-Davies at 259A) "counselling moderation" where an assessment of damages is inevitably speculative "to reflect the high degree of speculation" that is involved.
>
> (b) The arbitrariness of taking the age-group 25–29 (bringing us to an average of 27 years old) as a representative of the average wage of "young persons" just because that is the age group which statisticians have decided to use.

276 I therefore affirm the AR's approach of basing the multiplicand on the average commencing wage of a 22-year old (being the year the Plaintiff is assumed to start work) and applying an appropriate discount to the figures in evidence to reflect that.

277 I now consider the Defendant's submission that the AR should not have taken into account the top two highest earning occupational groups on the ground that, on a balance of probabilities, the Plaintiff would not have completed tertiary education even without the accident.

278 In this regard, the AR, citing [49] of *Eddie Toon*, rejected the Defendant's submissions. The High Court in *Eddie Toon* at [49] held:

> … The plaintiff's academic abilities based on Primary 1 results is not a reliable guide as to what

the plaintiff's achievements at "O" or "A" Levels would have been if he had not met with the accident. *It is possible for the plaintiff to obtain a university education or to drop out from school in his teens. That is really a matter for speculation*.

[emphasis added]

279 The AR therefore reasoned (at [38] of the AR's Judgment) that little weight should be given to the plaintiff's primary school results. The court simply cannot make a finding that, on a balance of probabilities, the Plaintiff would not have attended tertiary education: [46] of the AR's Judgment.

280 On the other hand, it is relatively clear to me that *Lee Wei Kong (CA)* (at [31]–[32]) does support the proposition that a plaintiff's family background, along with school results, is at least a relevant factor that a court ought to take into account in assessing the multiplicand. With respect, I agree.

281 In my view, the question before me is *not* whether the Plaintiff's pre-accident school results or family background are relevant to the determination of the multiplicand. There is no doubt that the authorities suggest they are. In this regard, I accept the Defendant's submissions that I *must* take those facts into account. The court is asked to gaze into a crystal ball and, based on *all* the relevant facts it has before it, predict *as accurately as is reasonably possible* what the Plaintiff is likely to earn in a counter-factual future. The only question, however, is whether the undoubtedly relevant evidence on the Plaintiff's results and family background is *sufficient* in the present case to allow an *affirmative factual finding* (on a balance of probabilities) that the Plaintiff *will not* complete tertiary education and end up as a "Manager" or "Professional". The burden is on the Defendant to show this. If the evidence does not allow an affirmative factual finding either way, the court has no choice but to assume every possibility is equally likely. It would then take the average wage across *all occupational groups* as the basis for the multiplicand as the AR had done below.

282 Framed in this light, and having considered the evidence before me, I do not think I have enough evidence to make an affirmative factual finding that the Plaintiff will not complete tertiary education and/or end up as a "Manager" or "Professional". It is still too early to tell. The Defendant tried to distinguish *Eddie Toon* on the ground that the plaintiff in *Eddie Toon* was seven and a half years old, while the Plaintiff in the present case is nine. I am not persuaded that the year and a half makes a difference on the present facts. I am of the view that, *at this stage*, it is impossible to find that the Plaintiff *will not* end up completing tertiary education. Perhaps, one might argue that the very uncertainty caused by the Plaintiff's youth has worked to his advantage. That might be so. However, in cases like the present, where "many imponderables come into play" (*Lee Wei Kong (CA)* at [33]), the court can only come to the *best approximation* of what is just. I therefore uphold the AR's finding on this front.

283 Given the analysis above, I reject both the Plaintiff's and the Defendant's appeal against the AR's decision on the multiplier for loss of future earnings during the period the Plaintiff is expected to live. I affirm the AR's decision to adopt $1,723.24 as the multiplicand.

Multiplicand for the lost years period

284 Given my determination that the multiplicand for the Plaintiff's loss of earnings should be $1,723.24, the only question here is how much should be deducted for the Plaintiff's expenses to determine the multiplicand for the lost years.

285 In *Low Kok Tong*, the Court of Appeal held (at [13]) that the deceased's "earning after

expenses" was $150. Unfortunately, it is not clear from the report of the case as to how this figure was derived. The Court of Appeal simply noted that the estate had "urged us to apply a multiplier of 16 years with earnings ranging from $170 to $200 per month". The court also noted that the deceased was earning $122.47 per month during national service, and $150 per month as a shop assistant before that.

286 In *Au Yeong Wing Loong*, the court made the deduction for living expenses based on the plaintiff's "living expense before the accident": at [69]. In that case, both parties agreed to that approach. It should be noted that the plaintiff in *Au Yeong Wing Loong* was already a working adult with a relatively stable pattern of expenses, making it easier for the court to come to a conclusion as to the plaintiff's monthly expenses. Nevertheless, I note that the court's decision on the appropriate deduction for expenses appears to have been ultimately based on a rough estimation driven by submissions rather than specific evidence. As the High Court notes at [68]–[69]:

> 68 Counsel were asked to assist the court by indicating the amount that should be deducted for living expenses for the lost years having regard to the fact that no evidence was led. Mr Yap suggested the figure of $500 per day. Ms Ng was of the view that $150 would be proper.
>
> 69 This is a case of a man who was living with the family and working for a family concern. His expenses incurred in the course of his travel for business would in all probabilities be met by his employer. The chances are he would have been left with most of the money that he earned. $500 pm works out to roughly $17 per day. Both counsel were agreed that the deduction for living expenses should be on the basis of living expenses before the accident. …

There therefore does not seem to have been a detailed factual inquiry into the plaintiff's pre-accident expenditure.

287 Indeed, as a matter of law, one potential question that arises is how "expenses" ought to be defined, and related to that, what the legal justification for deducting expenses even is. During the "lost years", a plaintiff certainly would not incur any expenses – on that basis, it may be thought fair that the plaintiff should be awarded a sum based on the income he would have left after deducting the expenses he would have had to incur if he were alive. However, should the deduction be based on the minimum sum necessary to meet a person's basic needs, or should it take into account a plaintiff's spending habits (if there is available evidence on that)? In the case of a young plaintiff, where no available evidence exists on spending habits, should national averages on saving and expenditure rates be used instead?

288 In *Pickett v British Rail* at 962A, Lord Wilberforce observed

> … To the argument that "they are of no value because you will not be there to enjoy them" can he not reply, "yes they are: what is of value to me is not only my opportunity to spend them enjoyably, but to use such part of them as I do not need for my dependants, or for other persons or causes which I wish to support …"

I fully agree. Nevertheless, given that the parties did not make detailed submissions on this point, this is not an appropriate case for me to explore the issues any further than I already have.

289 In the present case, it would have been preferable if there were evidence and submissions on the correct approach the court should take in determining what expenses to deduct, as well as statistics on, for example, the average expenditure of Singaporeans in the relevant age or income group (whether in absolute value, or as a percentage of income). In the absence of such evidence, I

must make a decision based on the material and submissions before me. In coming to my decision, I am reminded of the well-known aphorism that it is better to be roughly right than to be precisely wrong. Given my earlier holding, it would be wrong to award the Plaintiff damages for loss of earnings in respect of the lost years *without* taking into account living expenses. The Plaintiff in his submissions refers to a number of Canadian decisions on assessment of living expenses. These cases are not binding on me and in any case, it is evident that much depended on the evidence, facts and circumstances of each case. The range of deductions in the Canadian cases appeared to have varied from 33% to 70%. [note: 11]

290 In the present case, I am well aware of the need for caution, especially given the nature of the exercise, which is speculative at best. I note that in Singapore, the minimum saving for a working person derives from the CPF scheme. This provides the court with a base-line figure of approximately 20% (based on present rates) for savings, as well as 17% from employer's contributions. The wage earner is free to spend or save the rest of the salary as he or she thinks fit. In the decision of *Au Yeong Wing Loong*, the Court adopted the figure suggested by the Defendant of $500 per month for expenses for a plaintiff based on a salary multiplicand of $3000 per month. It is stressed that no evidence had been led in that case on expenses, and the court had determined that the deduction for expenses should be based on the plaintiff's established spending habits. Such evidence is unavailable in this case. The precedent is therefore not of much help in this case. In these circumstances, I am of the view that a plaintiff's CPF savings is a good estimate of the savings he would have had after expenditure. This is approximately 40% of his salary.

291 Thus, in my view, the applicable multiplicand for the loss of income during the lost years is therefore $1,723.24 x 40% = $689.30.

Conclusion on the award for the Plaintiff's loss of future earnings

292 In summary, I affirm the AR's award of $233,878.14 for the Plaintiff's loss of future earnings during the period he is expected to live, and award the Plaintiff $71,687.20 for his loss of future earnings during the lost years. The total award for the Plaintiff's loss of future earnings is thus $305,565.34.

293 The award for the lost years is derived as follows:

$689.30 x 13 months x 8-year multiplier = **$71,687.20**

The Provisional Damages Order

294 The AR ordered that the Plaintiff may apply for future damages to be assessed if within three years of her order, he requires a permanent tracheostomy as a result of contracting pneumonia (see the AR's Judgment at [89]). The Defendant appeals against this order on the following grounds: first, that the claim for provisional damages was not sufficiently pleaded, and second, that the AR arbitrarily selected the duration of three years without proper medical evidence to support the time frame stipulated. [note: 12]

295 There is little dispute on the applicable legal principles governing the award of provisional damages. In this regard, I reproduce the legal principles derived from *Tan Juay Mui* helpfully delineated at [82] of the AR's Judgment:

(a) The risk of development of the contingency must be a clear risk and not one that is fanciful (at [90] of *Tan Juay Mui*).

(b) The contingency must be objectively identifiable and it must be objectively determinable whether the contingency has occurred. If so, 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] of *Tan Juay Mui*).

(c) The contingency 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] of *Tan Juay Mui*).

(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] of *Tan Juay Mui*).

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

296 When the parties came before me on 13 April 2015, the Defendant confirmed that it does not dispute that requirements (a) to (d) are satisfied. Further, it was common ground that medical evidence was indeed lacking on the appropriate time frame for an award of provisional damages. In the circumstances, I directed that further evidence on the issue of the appropriate time frame for provisional damages should be sought from the Plaintiff's doctors, Dr Henry Tan ("Dr Tan") and Dr Annette Ang ("Dr Ang"). I remitted the matter to the AR, who heard evidence from Dr Tan and Dr Ang on 3 July 2015. Parties came back before me on 7 September 2015 to make submissions on, *inter alia*, the appropriate award for provisional damages.

297 I shall first deal with the preliminary objection based on pleadings, and if necessary, deal with the appropriate award of provisional damages in light of the new evidence.

Pleadings

298 At para (h) of the "Particulars of General Damages" in the Plaintiff's statement of claim, the Plaintiff prayed for provisional damages without giving further particulars. This was the only part of the statement of claim that mentioned provisional damages.

299 The Defendant cites the decision of *ACD (by her next friend B) v See Mun Li* [2009] SGHC 217 at [23] in support of the proposition that in making a claim for provisional damages, a plaintiff must plead with specificity the exact medical condition which, if it develops in the future, is to form the triggering event to apply for further damages. [note: 13] I accept this as a general proposition of law. I also accept the Defendant's submission based on *PT Prima International Development v Kempinski Hotels SA and other appeals* [2012] 4 SLR 98 ("*PT Prima*") that the object of pleadings is to, *inter alia*, require each party to give fair and proper notice to his opponent of the case he has to meet. [note: 14] On this basis, it is clear that *prima facie*, the Plaintiff's pleadings are insufficiently particularised to support the present claim for provisional damages.

300 However, it is important to note that the failure to plead a particular point does not automatically bar the party who failed to plead the point from raising it at the hearing. As seen from the approach of the Court of Appeal in *PT Prima* at [51], consideration will also be given to whether the other party has suffered any *prejudice* from the lack of notice.

301 The Defendant's counsel appears to accept this, and submitted initially that his client was prejudiced because he was caught by surprise at the hearing before the AR and was not given the

opportunity to ask the doctors the necessary questions in relation to the issue of provisional damages. [note: 15] It is abundantly clear now that after the 3 July 2015 hearing, when further evidence was heard by the AR, the Defendant had ample opportunity to prepare and ask all the questions it wished to ask Dr Tan and Dr Ang.

302 While the Defendant maintains an objection to an award of provisional damages in its submissions dated 7 September 2015 on the basis of the Plaintiff's failure to plead the issue, he did not explain why he continues to be prejudiced notwithstanding the opportunity he has been given to question the doctors. [note: 16] Thus, I am of the view that the Plaintiff's pleadings, while disappointingly bare, is not an impediment to its present claim for provisional damages.

Appropriate award of provisional damages

303 From the evidence given on 3 July 2015, the consensus of the doctors appears to be that an award of provisional damages should be made. Indeed, apart from the Plaintiff's deficient pleadings, the Defendant raises no other ground post the 3 July 2015 hearing to dispute this.

304 Dr Ang's evidence is that the Plaintiff should be observed for another ten years until he enters young adulthood. [note: 17] Dr Tan's evidence is less clear. He agreed that if the Plaintiff goes on for another three to four years without developing pneumonia severe enough to require a permanent tracheostomy, the risk of him requiring a permanent tracheostomy diminishes. [note: 18] However, he also gave evidence that in his view, the risk of requiring a permanent tracheostomy remains constant throughout the estimated 27 years of the Plaintiff's life, and that he advises monitoring the Plaintiff throughout. [note: 19] In a bid to be helpful, he suggested that at the minimum, a time frame of 13.5 years, *ie*, half the Plaintiff's lifespan, should be set. [note: 20]

305 From my brief summary of the evidence, it is clear that there is little medical consensus on the appropriate time frame. Based on Dr Tan's evidence that the risk that a permanent tracheostomy would be required diminishes after three to four years, the Defendant submits that three to four years is an appropriate time frame. Based on Dr Ang's evidence, the Plaintiff submits that eight years is an appropriate time frame because this would take care of the Plaintiff until he reaches 21 years old.

306 The task of setting an appropriate time frame for an award of provisional damages is not a matter that permits precision. While the appropriate time frame should be based on medical evidence, it is not uncommon that as in the present case, the doctors themselves disagree or find it difficult to provide a specific time frame. In my view, the court's task is to decide on a fair time frame as between the parties, taking into account the views of the doctors, as well as the interest of finality (see *Teo Ai Ling (CA)*) at [55]).

307 Having regard to the evidence of Dr Tan and Dr Ang, as well as the interest of finality, I find that a period of five years is an appropriate time frame. While I acknowledge that the Plaintiff may be at risk of requiring a permanent tracheostomy even after the five-year period, I am of the view that five years best strikes a balance between the Plaintiff's need to have some protection against the eventuality that he will need a permanent tracheostomy and the Defendant's interest in finally settling the litigation. Thus, I order that the Plaintiff may apply for future damages to be assessed if within five years of the date of my judgment, he requires a permanent tracheostomy as a result of contracting pneumonia.

Future cost of Mental Capacity Act application

308 I see no reason to disturb the AR's award of $2,000. I agree with her assessment that the application is unlikely to be contentious. Moreover, while the Plaintiff's counsel tried to offer evidence from the bar about the cost of hiring a lawyer and submitting an application (even a non-contentious one), no proper evidence was adduced.

309 The Plaintiff's counsel also submits that the cost of the Mental Capacity Act application will be far higher in 10 years (when the Plaintiff turns 21), rendering $2,000 grossly insufficient. However, I note that an assessment of damages takes place in terms of *today's prices*. The Plaintiff gets the $2,000 today, and can choose to invest it as he will to preserve its value so that it will be sufficient to pay for the application in 10 years.

Costs

310 The AR awarded costs of $85,000 excluding disbursements. The Defendant submits that this is excessive, but offered no other grounds for its submission besides the fact that "[t]he matter went on for five days only". [note: 21] In the circumstances, I see no reason to disturb the AR's order of costs for the hearing below.

Conclusion

311 In conclusion, I award the following sums to the Plaintiff:

(a) For 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 $50,970.40; and

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

Total: $104,666.37

(b) For general damages:

(i) pain and suffering assessed at $190,000;

(ii) the Plaintiff's loss of future earnings assessed at $305,565.34;

(iii) future medical expenses assessed at $363,083;

(iv) future expenses for daily consumables and essentials assessed at $168,000;

(v) mother's loss of future earnings and employer's CPF contributions assessed at $274,456;

(vi) cost of future nursing care assessed at $181,113.80;

(vii) future transport expenses assessed at $50,100; and

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

Total: $1,534,318.14

Grand total: $104,666.37 + $1,534,318.14 = $1,638,984.51

312 I further order that the Plaintiff may apply for future damages to be assessed if, within five years of the date of this judgment, he requires a permanent tracheostomy as a result of contracting pneumonia. For the avoidance of doubt, the Defendant's appeal against the costs ordered by the AR is dismissed. Cost of the present appeal is to be awarded to the Plaintiff to be agreed or taxed.

313 The hearing on damages in this case has taken considerable time. The court is grateful to learned counsel for their submissions, in particular on the issue of the claim for lost years. The court also records its gratitude to the medical experts who have testified and, in particular to Dr Henry Tan and Dr Annette Ang, for the assistance they have provided.

[note: 1] Df Subs p24-p31

[note: 2] Plaintiff's submissions dated 12 May 2015 at paras 13–14.

[note: 3] Defendant's submissions dated 4 September 2015 at para 25.

[note: 4] Defendant's further submissions at [74]

[note: 5] Defendant's further submissions at [55]

[note: 6] Plaintiff's submissions at [15].

[note: 7] Defendant's submissions at [24].

[note: 8] Defendant's submissions at [20]

[note: 9] Defendant's submissions at [27]-[29]

[note: 10] Defendant's submissions at [35]–[38]

[note: 11] Plaintiff's submissions dated 27 March 2015 at para 1.3

[note: 12] Defendant's written submissions dated 26 February 2015 at paras 78 and 81

[note: 13] Defendant's written submissions dated 26 February 2015 at para 85.

[note: 14] Defendant's written submissions dated 26 February 2015 at para 88.

[note: 15] Defendant's written submissions dated 26 February 2015 at paras 88 – 89

[note: 16] Defendant's written submissions dated 4 September 2015 at para 4.

[note: 17] NE 3 July 2015, p 20 lines 13 – 20.

[note: 18] NE 3 July 2015, p 13 lines 1 – 7

[note: 19] NE 3 July 2015, p 8 lines 12 – 26 and p 16 lines 10 – 11

[note: 20] NE 3 July 2015, p 9 lines 1 – 8, p 16 lines 5 –11

[note: 21] Defendant's written submissions dated 26 February 2015 at para 108.