IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2016] SGCA 52

Civil Appeal No 127 of 2015

Between

Zhu Xiu Chun (alias Myint Myint Kyi)

… *Appellant*

And

Rockwills Trustee Ltd suing as Administrators of the Estate of & on behalf of the Dependants of Franklin Heng Ang Tee

… *Respondent*

Civil Appeal No 131 of 2015 and Summons No 318 of 2015

Between

Rockwills Trustee Ltd suing as Administrators of the Estate of & on behalf of the Dependants of Franklin Heng Ang Tee

… *Appellant*

And

(1) Wong Meng Hang (Huang Minghan)
(2) Zhu Xiu Chun @ Myint Myint Kyi
(3) Reves Clinic Pte Ltd

… *Respondents*

Civil Appeal No 132 of 2015

Between

Wong Meng Hang (Huang Minghan)

… *Appellant*

And

Rockwills Trustee Ltd suing as Administrators of the Estate of & on behalf of the Dependants of Franklin Heng Ang Tee

… *Respondent*

JUDGMENT

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Court of Appeal — Civil Appeals Nos 127, 131 and 132 of 2015 and Summons No 318 of 2015
Sundaresh Menon CJ, Chao Hick Tin JA and Andrew Phang Boon Leong JA
8 March 2016

1 September 2016 Judgment reserved.

Chao Hick Tin JA (delivering the judgment of the court):

Introduction

1 The present appeals arise from an unfortunate incident. Due to a negligently conducted liposuction surgery, one Heng Ang Tee, Franklin ("the Deceased") met his demise. The Deceased died on the day the surgery was carried out, *ie*, 30 December 2009. He was then 44 years old. The administrator of his estate brought the present proceeding for damages against the doctors and the clinic responsible for the debacle. In *Rockwills Trustee Ltd (administrators of the estate of and on behalf of the dependants of Heng Ang Tee Franklin, deceased) v Wong Meng Hang and others* [2015] 4 SLR 239

("the Judgment"), the High Court judge ("the Judge") awarded a total sum of $5,260,653.58 to the Deceased's estate and dependants. Dissatisfied with the sum awarded, the administrator of the Deceased's estate, as well as the two doctors who performed the surgery, has appealed against the Judge's award, with the administrator contending that the sum awarded is inadequate and the doctors arguing that it is excessive. These are the first appeals in which this court has had to consider a claim for loss of inheritance pursuant to s 22(1A) of the Civil Law Act (Cap 43, 1999 Rev Ed).

Facts

Parties to the dispute

2 The doctors who performed the liposuction surgery are Dr Zhu Xiu Chun @ Myint Myint Kyi ("Dr Zhu") and Dr Wong Meng Hang ("Dr Wong"). They are the appellants in Civil Appeal No 127 of 2015 ("CA 127/2015") and Civil Appeal No 132 of 2015 ("CA 132/2015"), respectively. Along with Reves Clinic Pte Ltd, the two doctors are the respondents in Civil Appeal No 131 of 2015 ("CA 131/2015"). We will refer to these parties collectively as "the Defendants". The appellant in CA 131/2015 is Rockwills Trustee Ltd, the administrator of the Deceased's estate ("the Administrator"). Reves Clinic Pte Ltd does not play a substantial part in any of the present appeals.

3 The Administrator acts on behalf of both the estate of the Deceased as well as the Deceased's dependants. The Deceased's dependants comprise the following persons:

(a) Mdm Tan Siak Cheng – the Deceased's mother;

(b) Ms Peggy Quek ("Ms Quek") – the Deceased's former wife;

(c) Ms Jo-Ann Heng Hui Lyn ("Jo-Ann") – the Deceased's daughter; and

(d) Mr Ryan Heng Chun Kye ("Ryan") – the Deceased's son.

4 Jo-Ann was born on 9 June 1996; she was 13 years old at the time of the Deceased's demise and she turned 19 years old in the year in which the Judgment was rendered. Ryan was born on 19 May 1999; he was 10 years old at the time of the Deceased's demise and he turned 16 years old in the year the Judgment was delivered. Collectively, Jo-Ann and Ryan will be referred to as "the Children".

5 With respect to the relationship between the Deceased and Ms Quek, a decree *nisi* for divorce was obtained on 23 February 2006. Prior to his death, the Deceased was paying a maintenance sum of $9,000 a month to Ms Quek and the Children. Since the decree *nisi*, the Deceased has had a relationship with his live-in girlfriend, Ms Mabel Leong ("Ms Leong").

6 Prior to his demise, the Deceased was the Chief Executive Officer of YTL Starhill Global REIT Management Limited, a property management firm. The Deceased was then also the owner of three properties – a property at Marigold Drive, a property at Duchess Avenue and a property at Tanglin View.

Background to the dispute

7 Following the death of the Deceased on 30 December 2009, the Administrator commenced Suit No 165 of 2011 against the Defendants on 11 March 2011, alleging that the Deceased's death was caused by their

negligence. A coroner's inquiry was carried out over 15 days. The coroner issued his report on 4 January 2012 and in it he concluded that:

> The deceased sustained multiple iatrogenic punctures of the intestines due to the liposuction procedure and died of the effects of asphyxia due to airway obstruction, secondary to intravenous Propofol administered. [MEDICAL MISADVENTURE].

8 Interlocutory judgment was entered against Reves Clinic Pte Ltd in default of appearance on 30 March 2011. Liability was admitted by Dr Wong and Dr Zhu on 15 August 2012. Therefore, the only issue that the Judge had to determine was the quantum of damages to be awarded.

Summary of the Pleadings

9 The different heads of claim, as well as the quantum that each party alleged should be awarded by the court for each head of claim, were summarised as follows at the hearing below:

Head of Claim	**The Administrator**	**Dr Wong**	**Dr Zhu**
Damages for pain and suffering	$10,000.00	$5,000.00	$0
Medical expenses paid	$8,120.00	$0	$0
Car-related charges	$47.02	$0	$0
Coroner's inquiry fees	**$190,513.05**	**Agreed**	**$22,500.00**
Trustee and administrator fees	$228,762.66	$0	$0
Loss and expenses incurred on	$1,279,354.39	$0	$0

properties			
Dependency claim of mother	$67,200.00	$0	$20,000.00
Dependency claim of former wife and children	**$1,664,000.00**	**$844,800.00**	**$849,600.00**
Loss of inheritance and/or savings	**$9,484,000.00**	**$525,127.58**	**$600,000.00**

The items highlighted in bold are those which form the subject-matter of the present appeals.

10 There were also further heads of claim such as funeral expenses, legal fees and disbursements incurred for obtaining Letters of Administration, and damages for bereavement which were undisputed by the parties.

Decision Below

11 The Judge granted an award of damages in favour of the Deceased's estate and dependants as follows (the Judgment at [29]):

Head of claim	Amount of award
Damages for pain and suffering	$5,000
Coroner's inquiry fees	$190,513.05
Funeral expenses	$14,813.95
Letters of Administration fees	$15,421.58
Bereavement	$15,000
Dependency claim of Mdm Tan	$20,000

Dependency claim of Ms Quek and the children	$1,116,900
Loss of inheritance claim of dependants	$3,883,005
Total sum	**$5,260,653.58**

12 As indicated above, the four main heads of claim which are being contested by the parties in the appeals are first, the coroner's inquiry fees, secondly, the dependency claim of Ms Quek, thirdly, the dependency claim of the Children, and fourthly, the loss of inheritance claim of the Children.

13 With respect to the coroner's inquiry fees, the Judge found that the professional fees charged by the Administrator's counsel, Ms Kuah Boon Theng, were clearly set out in an invoice dated 12 September 2012 and were reasonably incurred. The Judge therefore awarded the Administrator's claim of $190,513.05 for the coroner's inquiry fees.

14 As for the dependency claim of Ms Quek, the Judge accepted that she would set aside approximately $2,000 of the $9,000 under the maintenance order for herself, leaving $3,500 for each child. This led the Judge to use $2,000 as the multiplicand for Ms Quek's dependency claim. The Judge further found that the Deceased would most probably have continued to work until the age of 65 years but for his death and hence arrived at a multiplier of 21. The Judge then applied a 40% discount to fix the discounted multiplier at 12.6. Applying this multiplier to the multiplicand of $2,000, the Judge awarded a total sum of $302,400 to Ms Quek for her dependency claim.

15 With respect to the dependency claim of the Children, the Judge rejected Ms Quek's and the Children's averments that on top of the

maintenance which was paid, the Deceased had also paid $20,000 a year to cover additional expenses such as gifts, computers and school trips. He therefore only used the $3,500 maintenance amount as the multiplicand for each child's dependency claim.

16 The Judge adopted a multiplier of ten years for Jo-Ann since she was 13 years old at the time of the Deceased's demise and would be 23 years old when she completed her tertiary education. As for Ryan, the Judge adopted a multiplier of 15 years as he would complete his tertiary education at the age of 25 years. The Judge then applied a 25% discount to reach a discounted multiplier of 7.5 years and 11.25 years for Jo-Ann and Ryan respectively.

17 Additionally, the Judge decided that a higher multiplicand of $4,000 (*ie*, an additional $500) would be appropriate for three years to reflect the higher amount of maintenance needed for the Children during their years of tertiary education. The Judge, however, found that there was insufficient evidence to show that the Deceased had intended to send the Children *overseas* for tertiary education.

18 As a result, he awarded a total sum of $328,500 for Jo-Ann's dependency claim (*ie*, $4,000 per month for three years, and $3,500 a month for seven years, with a discount of 25%) and awarded a total sum of $486,000 for Ryan's dependency claim (*ie*, $4,000 per month for three years, and $3,500 per month for 12 years, with a discount of 25%).

19 As regards the loss of inheritance claim, the Judge reviewed the respective methodologies for quantifying the lump sum award as advanced by the Administrator's expert, Mr Keoy Soo Earn, and the Defendants' expert,

Mr Yin Kum Choy. The Judge was also assisted by the views of the court assessor, Mr Harsha Basnayake.

20 The Judge took the view that a balanced approach would be to calculate the amount of wealth that the Deceased would have accumulated, but for his death. By utilising the information from both experts' reports and after making certain adjustments, the Judge came to a range of $524,000 to $650,000 of savings per annum and took the average of the two sums to reach a figure of $587,000 worth of savings per annum. He used this figure as the multiplicand.

21 The Judge applied a discount rate of 40%, as he did with the dependency claim of Ms Quek, to the multiplier of 21 years (*ie*, the remaining working life of the Deceased) and multiplied this sum by $587,000 per annum to come to a total figure of $7,396,200. The Judge then applied 52.5% to this figure as the Deceased had intended, under the will which he had executed prior to his death, to give the Children 52.5% of his estate. Accordingly, the Judge awarded the sum of $3,883,005 as the loss of inheritance of the Children.

The Appeals

22 As noted above, the appeals have been brought to challenge the quantum of damages awarded by the Judge in respect of several heads of claim:

(a) In CA 127/2015, Dr Zhu is seeking a *reduction* of the amount awarded for:

(i) the coroner's inquiry fees;

(ii) the dependency claim of Ms Quek;

(iii) the dependency claim of the Children; and

(iv) the loss of inheritance claim of the Children.

(b) In CA 131/2015, the Administrator is seeking an *increase* of the amount awarded for:

(i) the dependency claim of the Children; and

(ii) the loss of inheritance claim of the Children.

(c) In CA 132/2015, Dr Wong is seeking a *reduction* of the amount awarded for:

(i) the dependency claim of Ms Quek;

(ii) the dependency claim of the Children; and

(iii) the loss of inheritance claim of the Children.

23 As part of CA 131/2015, the Administrator has also filed Summons No 318 of 2015 ("SUM 318/2015") seeking leave to adduce certain documents for the purposes of the appeal. These documents are published information relating to fee schedules for tuition and university accommodation fees of local tertiary institutions and the fee schedules of driving schools in Singapore which are meant to substantiate a greater sum to be awarded for the dependency claim of the Children.

Defendants' Cases / Administrator's Case

Dr Zhu's Case

Adducing of further evidence

24 Dr Zhu objects to the adducing of the further evidence and has indicated via a letter to the Registrar of the Supreme Court that they will be relying on the submissions of Dr Wong in this regard (see below at [32]).

Coroner inquiry fees

25 Dr Zhu first argues that based on s 10(1) of the Civil Law Act, there must be a subsisting cause of action for there to be a claim for such fees. Since there was no such subsisting cause of action at the time of the coroner's inquiry, the Administrator has to bear such expenses itself.

26 Dr Zhu further contends that, in any event, the fees charged by the Administrator's solicitors are excessive.

Dependency claim for Ms Quek

27 Dr Zhu avers that although the Civil Law Act regards a former wife as a dependant, Ms Quek should not be paid the same amount until the end of the normal working life of the Deceased. As Ms Quek was earning $21,000 a month at the time of the suit and was given a significant amount of assets from the divorce, it would be appropriate for Ms Quek to be paid another $24,000 as maintenance for only one year as a dependant.

Dependency claim for the Children

28 With respect to the dependency claim for Ryan, Dr Zhu argues that since Ms Quek is earning a substantial amount, the Judge should have applied a further discount of 20% to reflect Ms Quek's share in contributing to his expenses. Finally, the court should also consider that Ryan would be receiving a substantial sum for his loss of inheritance. Accordingly, the award for Ryan's dependency claim should be reduced to $384,000.

29 Dr Zhu is not appealing against the sum awarded for Jo-Ann's dependency claim.

Loss of inheritance

30 Dr Zhu submits that the Judge had erred in failing to take into account the fact that the Children would not remain as dependants for very much longer and that if the Deceased had passed away at the end of his natural life, the Children would not even be entitled to make a dependency claim. Dr Zhu therefore argues that a reduction should be made to the sum awarded by the Judge.

31 With respect to Mr Keoy's expert evidence, Dr Zhu contends that Mr Keoy had reached his proposed figure on the basis of several erroneous assumptions and conjectures:

(a) First, he had wrongly assumed that certain bonus figures would be paid to the Deceased until the latter attained the age of 65. Instead, the bonuses were one-time payments due to transfers of ownership in 2005 and 2009.

(b) Secondly, he had wrongly assumed that the Deceased would be receiving a salary of $57,200 per month till he turned 65.

(c) Thirdly, he did not take into account the personal expenses of Ms Leong.

(d) Fourthly, post-retirement expenses had not been taken into account.

Therefore, the Judge should not have relied on Mr Keoy's projections.

Dr Wong's Case

Adducing of further evidence

32 Dr Wong argues that leave should not be granted to adduce the further evidence as first, the evidence could have been obtained with reasonable diligence at trial, and secondly, the evidence would not likely have had an important influence on the outcome of the action.

Dependency claim for Ms Quek

33 Dr Wong argues that, based on a correct application of case precedents, the appropriate multiplier for Ms Quek's dependency claim should be ten instead of 12.6 (*ie*, a discount rate of 52% instead of the 40% applied by the Judge).

Dependency claim for the Children

34 On the same basis that the case precedents had been applied incorrectly, Dr Wong contends that the appropriate multiplier for Ryan's dependency claim should be ten instead of 11.25.

35 Dr Wong also argues that there should not have been any adjustment to the multiplicand during the years of the Children's tertiary education as no evidence was adduced to show that there would be such increased costs.

Loss of inheritance

36 Dr Wong submits that the sum awarded for loss of inheritance was erroneously inflated for the following reasons:

(a) First, the Judge had failed to factor in the post-retirement expenses of the Deceased which would include maintaining both himself and Ms Leong. The Deceased's expenditure during retirement should be assumed as being the same as before retirement.

(b) Secondly, although the Judge stated that a discount rate of 4% should be applied to determine the Deceased's wealth, this discount rate did not feature any further in the Judgment.

(c) Thirdly, the Judge should not have used the bonuses received by the Deceased in the four years preceding his demise as a benchmark for the bonuses he would receive in the subsequent years. This is because the bonuses which the Deceased received during that period were illegitimate as they were not authorised by any board resolution. The appropriate multiplicand should therefore have only been $299,116.

(d) Fourthly, the Judge had erred in applying a multiplier of 12.6 years; an appropriate multiplier would be eight years as there should be an adjustment downwards to take into account the fact that the Deceased would have had to maintain Ms Leong as well.

37 After making the necessary adjustments, Dr Wong contends that the Children should only inherit a total of $525,127.58.

The Administrator's Case

Adducing of further evidence

38 The Administrator argues that there has been a material change in the factual circumstances since the time of the trial as Jo-Ann has decided to commence her university education locally. The conditions in *Ladd v Marshall* [1954] 1 WLR 1489 therefore should not be applied strictly.

39 The Administrator also submits that, in any event, the *Ladd v Marshall* conditions are met. Further, it is necessary in the interests of justice for this evidence to be admitted as it is relevant and accurate information.

Coroner's inquiry fees

40 With respect to Dr Zhu's objections to the coroner's inquiry fees, the Administrator argues that the authority of *Chong Khin Ngen and another v Lim Djoe Phing* [1993] SGHC 154 ("*Chong Khin Ngen*"), which was also relied upon by Dr Zhu, stands for the proposition that such fees are recoverable.

41 As for the quantum which was awarded by the Judge, the Administrator submits that it was a reasonable amount as its counsel had played a significant role in the coroner's inquiry.

Dependency claim for the Children

42 The Administrator argues that the Judge had applied a correct multiplier – the discount rates derived by Dr Wong from the precedents are erroneous.

43 As for the multiplicand, the Administrator submits that the sum of $3,500 per month for each child is inadequate. The Judge failed to adequately consider the evidence relating to other additional expenses incurred by the Children that were not part of this monthly maintenance sum. Given the generosity of the Deceased, the Children should be entitled to the following increases in the sum awarded:

(a) an additional sum of $7,000 per child per annum for costs of vacation and similar expenses;

(b) an additional one-off sum of $3,000 per child for the cost of driving lessons;

(c) an additional sum of $15,000 per annum for each child for their university tuition fees; and

(d) an additional sum of $6,000 per annum for each child for their accommodation during university.

44 The Administrator also argues that the Judge had erred in providing for only three years for the Children to obtain a university degree as a good number of undergraduate degree courses in Singapore take at least four years to complete.

Dependency claim for Ms Quek

45 The Administrator argues the sum of $302,400 awarded to Ms Quek as dependency claim was appropriate. The evidence showed that the Deceased had a strong commitment to provide for Ms Quek even after their divorce.

46 Further, the Administrator contends that the discount rates proffered by Dr Wong based on precedents are erroneous. The Administrator also emphasises that it is not desirable for courts to blindly adhere to the multipliers adopted in previous cases. Rather, the court should focus on the individual facts of each case.

Loss of inheritance

47 With respect to both Dr Zhu's and Dr Wong's submissions that the sum awarded for loss of inheritance should be *reduced*, the Administrator responds as follows:

(a) It is irrelevant that the Children would no longer be dependants prior to the end of the natural death of the Deceased when computing the loss of inheritance.

(b) The Judge did take into account what the Deceased was capable of earning after his official retirement and was satisfied that he would be able to meet his expenses and even earn income.

(c) Ms Leong's expenditure was taken into account as it was subsumed under the Deceased's own expenditure.

(d) The bonuses received by the Deceased in the four years preceding his demise were not illegitimate.

48 The Administrator argues that the sum awarded should instead be *increased* for the following reasons:

(a) In relation to the loss of inheritance, the Judge should have adopted Mr Keoy's multiplicand value of $592,957.24 per annum as he was the more credible expert witness.

(b) The Judge should have applied a compounded interest rate of 4% per annum over the multiplier of 21 years to reflect the future value of an annuity.

49 Taking all these adjustments into account, the Children should be awarded a total of $5,971,256.53.

Issues before this Court

50 The main issue in contention from the three appeals is whether the sums awarded under the following heads are appropriate:

(a) the coroner's inquiry fees;

(b) the dependency claim of Ms Quek;

(c) the dependency claim of the Children; and

(d) the loss of inheritance claim of the Children.

51 An ancillary issue which also arises from CA 131/2015 is whether the Administrator should be allowed to adduce further evidence for the purposes of the appeals (*ie*, SUM 318/2015).

Our Decision

52 As our determination of SUM 318/2015 may have a bearing on the analysis of the appropriateness of the various awards, we first address this application.

Whether leave should be granted for further evidence to be adduced

53 The further evidence which the Administrator is seeking to adduce comprises the following:

(a) the published fee schedules of three driving schools for driving lessons in Singapore;

(b) the published fee schedules for various undergraduate degree programmes at three local universities; and

(c) the published fee schedules for the residential colleges and/or hostels/halls of residences of the National University of Singapore and the Nanyang Technological University.

54 For further evidence to be adduced at the appellate stage pursuant to s 37(4) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) and O 57 r 13(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), there must be "special grounds" which justify the introduction of such evidence. To establish that special grounds exist, the applicant must satisfy the three conditions laid down in *Ladd v Marshall* and the conditions are to be applied strictly (see *Singapore Civil Procedure 2015: Volume I* (G P Selvam gen ed) (Sweet & Maxwell, 2015) ("*Singapore Civil Procedure*") at para 57/13/11). The Administrator has sought to rely on the decision of the Court of Appeal in *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157

("*Yeo Chong Lin*") to argue that where the further evidence relates to matters which have occurred after the date of the decision from which the appeal is brought, the satisfaction of special grounds is not required for such evidence to be admitted. According to the Administrator, the further evidence sought to be adduced relates to Jo-Ann's decision to pursue her university education locally, a decision which was only made after the date of the Judgment.

55 In our view, the Administrator's reliance on *Yeo Chong Lin* is misplaced. In that case, the judge who heard the matter at first instance had to decide the question of who had beneficial ownership over certain shares (*ie*, the father or the daughters) to determine whether these shares should be included in the pool of matrimonial assets. Although it was known to the judge that the daughters were alleging that they were the owners of the shares and that they intended to challenge their father's act in taking away their ownership of the shares, no suit had been commenced by the daughters at that time. Subsequently, after the judgment of the High Court was delivered, the daughters commenced a suit in the High Court to claim for these shares. The fresh evidence sought to be admitted on appeal related to the new action that was instituted by the daughters.

56 In allowing the evidence to be admitted, the Court of Appeal made the following observations (*Yeo Chong Lin* at [11]–[13]):

> 11 However, the fact of the matter is that the filing of S 373/2010 was certainly an event which occurred after the judgment was delivered. ***The documents filed in the writ would not have been documents which the Husband could have produced to the Judge***. It cannot be gainsaid that the institution of this writ is directly relevant to the question as to whether the Judge is correct to have treated the Daughters' Shares as belonging to the Husband and thus formed part of the matrimonial assets. …

> 12 … The fresh evidence which the Husband seeks to adduce ***clearly relates to events which occurred after the decision of the Judge and thus do not need to satisfy the requirement of special grounds***. The fact that the daughters' claim to be entitled to those shares was a matter which was brought to the attention of the Judge does not mean that S 373/2010, which was instituted after the decision of the Judge, is not an event which occurred after the decision.
>
> 13 Obviously while this court has the general discretion to allow a party to adduce fresh evidence, the principle of *finis litium* should not be lightly disregarded. In the English House of Lord cases of *Mulholland v Mitchell* [1971] AC 666 and *Murphy v Stone-Wallwork (Charlton) Ltd* [1969] 1 WLR 1023, it was held that no precise formulation should be laid down regarding the admission of further evidence on matters that occurred after the decision. Clearly further evidence which will materially alter the basis of the decision should be allowed. It stands to reason that the conditions governing the admission of further evidence on matters that occurred after the trial should not be more restrictive than the special grounds laid down in *Ladd v Marshall*. The second special ground enunciated in *Ladd v Marshall* only requires the further evidence to have an important influence on the outcome of the appeal, but it need not be determinative. Therefore, perhaps, the test should be: would the further evidence have a *perceptible impact* on the decision such that it is in the interests of justice that it should be admitted?
>
> [emphasis in original in italics; emphasis added in bold italics]

57 From the above, it is evident that in *Yeo Chong Lin*, the event which arose after the judgment was delivered was the commencement of the new suit by the daughters. Significantly, this meant that the further documents sought to be adduced on appeal were documents which *could not have been produced* to the judge below. This is a factor which is absent from the facts of the present case since the documents which the Administrator is seeking to adduce could have been produced at the trial below.

58 It should also be emphasised that the justification behind admitting further evidence as to matters occurring after the date of the judgment is that

the further evidence "materially affects the basis of the earlier decision" and "the change must substantially affect a basic assumption made at the trial" (see *Singapore Civil Procedure* at para 57/13/16).

59 The Administrator argues that the fact that Jo-Ann has now chosen to pursue her education locally instead of overseas is a material change in the factual circumstances. We do not see how this can be so. In the present case, in arriving at his decision, the Judge did not make any assumptions as to whether the Children would be pursuing their university education locally or overseas when awarding the quantum for their dependency claims – rather, the Judge's focus was on whether the Deceased *intended* to send the Children abroad for their tertiary education and to fund the same and he found that no such intention had been proven. Whether Jo-Ann eventually chose to study locally or overseas was irrelevant to the inquiry.

60 It should also be emphasised that with respect to the fee schedules for the driving schools, there is no explanation as to how any event which arose after the Judge's decision would be relevant to justify the relaxation of the *Ladd v Marshall* conditions.

61 Applying the *Ladd v Marshall* conditions, in our judgment, the first condition is not satisfied. The evidence could have been adduced at trial with reasonable diligence. By Ms Quek's own averments in her supporting affidavit dated 6 November 2015 for this application, "[t]he documents … were also all easily obtained from the internet and are publicly available" (at para 10).

62 The Administrator argues that because it was Dr Zhu and Dr Wong who were contending that the Children could complete their education locally instead of overseas, the onus should have been on them to adduce the evidence

pertaining to the fees charged by local tertiary education institutions. We disagree with this assertion. It was the Administrator, as plaintiff, who was claiming for the tertiary school fees of the Children. Accordingly, it was open to the Administrator, and indeed incumbent upon it, to produce fees relating to *both* overseas and local tertiary education institutions to support its claim. By choosing to hang its hat on a successful claim for the former, and therefore omitting to adduce the fee schedules of local universities, the Administrator has to bear the consequences of its litigation strategy or oversight.

63 The Administrator has also sought to rely on the cases of *Cheng-Wong Mei Ling Theresa v Oei Hong Leong* [2006] 2 SLR(R) 637 ("*Oei Hong Leong*") and *Su Sh-Hsyu v Wee Yue Chew* [2007] 3 SLR(R) 673 ("*Su Sh-Hysu*") to argue that the *Ladd v Marshall* conditions should not always be applied rigidly in all circumstances and that the court should allow the introduction of the evidence as it is in the interests of justice to do so. In our judgment, the authorities do not support the Administrator's contention.

64 Although the Court of Appeal held in *Oei Hong Leong* (at [39]) that the rule in *Ladd v Marshall* is "not a statutory provision to be applied rigidly in all circumstances", there are no exceptional circumstances in the present case to justify adopting a relaxed approach to the *Ladd v Marshall* conditions. In *Oei Hong Leong*, the plaintiff was seeking to adduce evidence which showed that the Singapore Improvement Trust (the predecessor of the Housing and Development Board) had approved the development of certain houses in 1956. At the trial below, both the plaintiff and defendant assumed that the houses which had been erected were authorised which explained why the defendant did not raise any objection in this respect. The judge below, however, took a stricter stance and found that although the subdivision plan showed the existing houses, it did not show that permission was granted for

their actual development. This point was only brought up for the first time in the grounds of decision of the judge. Therefore, the Court of Appeal found that because the judge had taken up a new point which the parties had not raised, and did not give notice of this new point to the parties, evidence should be allowed in the appeal to show that approval had been obtained. It was found (at [43]) that "[h]ad the point been brought up during the hearing, the plaintiff could easily have brought in the new evidence to seal the point".

65 As for *Su Sh-Hysu*, the Court of Appeal allowed the further evidence to be adduced, notwithstanding that the first condition of the *Ladd v Marshall* test was not satisfied, on the basis that the fresh evidence uncovered the fraud and deception of the other party and such fraud struck at the very root of the litigation. In that case, the appellant was seeking leave to adduce an expert report to corroborate her account of events. The Court of Appeal held that although, at the time of trial, the appellant did have testimonies which supported her case, she should still have gone ahead to obtain the expert report as she had a duty to obtain the *best evidence* in support of her case. She should not have assumed that the judge would wholly accept her version of the facts and the Court of Appeal therefore found that she had failed the first *Ladd v Marshall* condition. However, due to the fraud that was present in *Su Sh-Hysu*, the Court of Appeal allowed the admission of the expert report notwithstanding the appellant's failure to fulfil the first *Ladd v Marshall* condition.

66 In our view, an analogy may indeed be drawn between the present case and that of *Su Sh-Hysu*, but to the Administrator's detriment. The Administrator had assumed that the Judge would simply allow the claim for the overseas university expenses and had therefore omitted to produce the fee schedules of the local universities at the trial below. This is precisely why the

Administrator cannot legitimately say that the first *Ladd v Marshall* condition has been satisfied. In the present case, however, we cannot overlook the failure to meet this condition as there are no exceptional circumstances or improprieties in the nature of fraud to justify a similar result as in *Su Sh-Hysu*.

67 Accordingly, we dismiss SUM 318/2015 and refuse leave for the Administrator to adduce the further evidence.

Whether the sum awarded for the coroner's inquiry fees is appropriate

68 We turn now to consider the main issues in the appeals, beginning first with a consideration of the sum awarded for the coroner's inquiry fees.

69 It appears to us that while there is support for the view that such fees should be claimable, our courts have not spoken consistently with one voice on this issue. In *Chong Khin Ngen*, the High Court allowed a claim for counsel's fees in connection with a coroner's inquiry. There, Amarjeet Singh JC noted that:

> In Halsbury's Laws of England 4th Edn. Vol. 12 pg 423 para 1120, it is clearly stated that "where as a result of the Defendant's wrong, the Plaintiff has incurred costs in other proceedings, the Plaintiff may, subject to the rules of remoteness, recover these costs from the Defendant as damages". The proceedings before the Coroner were an adjunct and necessary step leading to the present proceedings. The Coroner's Inquiry proceedings flowed from the wrongful act of the Defendant and the Plaintiffs were entitled to retain Counsel for the effective presentation of the evidence there …

70 *Chong Khin Ngen*, however, is not the final word on this matter. In *Tan Harry and another v Teo Chee Yeow Aloysius and another* [2004] 1 SLR(R) 513, some doubt was cast over whether such fees should be claimable. In that case, the defendants objected to the plaintiff's claim for his counsel's

attendance costs at the coroner's inquiry, arguing that such costs were not claimable. Woo Bih Li J disallowed the claim for the costs of the coroner's inquiry fees on the basis that it had not been pleaded as special damages but declined to adjudge on the question as to whether costs for attending a coroner's inquiry are claimable as special damages (at [75]):

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

In reaching his conclusion, Woo J also observed (at [72]) that the defendant in *Chong Khin Ngen* had not been present before the court and therefore no argument to object to the claiming of such fees had been presented to the court.

71 In a later decision of *Kim Anseok and another (personal representatives of the estate of Kim Miseon, deceased) v Shi Sool Hee* [2010] SGHC 124, Kan Ting Chiu J allowed the plaintiff's claim for its solicitors' bill of costs and disbursements for attending the coroner's inquiry although there, the defendant similarly did not dispute that such costs were recoverable.

72 Therefore, while previous decisions of the High Court have allowed plaintiffs to recover such fees, their determinations had been made without the benefit of any objections being raised by the defendants in those cases. Having considered the matter, we see no reason, and Dr Zhu has raised no valid objection, for us to conclude that such fees cannot be claimed.

73 We find support for the above conclusion in the English jurisprudence. In *Roach and another v Home Office* [2010] 2 WLR 746 ("*Roach*"), Davis J sitting in the English High Court held that such costs were recoverable. In that case, the claimants, who were the parents of a man who had committed suicide in prison, instructed solicitors and counsel to attend the inquest into his death and subsequently brought a claim against the Home Office for damages in negligence. Davis J allowed the claim for costs relating to the inquest on the basis that costs of attendance at an inquest were capable of being recovered as costs incidental to subsequent civil proceedings.

74 In the more recent decision of *Amelda Helen Lynch (Representation of the Estate of Colette Lynch) and others v Chief Constable of Warwickshire Police and others* 2014 WL 5833974 ("*Lynch*"), Master Rowley, sitting in the Senior Courts Costs Office of the English High Court of Justice, affirmed and elaborated on the decision of *Roach* by emphasising (at [61]) that in assessing the recoverable inquest costs, the court should look towards whether the costs were disproportionate and only those necessarily incurred and reasonable in amount would be allowed.

75 It should be noted that the source of the power to award such incidental costs in the United Kingdom may be found in s 51(1) of the Senior Courts Act 1981 (c 54) (UK) which provides that:

> (1) Subject to the provisions of this or any other enactment and to rules of court, the costs of and incidental to all proceedings in –
>
> (a) the civil division of the Court of Appeal;
>
> (b) the High Court; and
>
> (c) any county court,
>
> shall be in the discretion of the court.

Similarly, O 59 r 2(2) of the Rules of Court provides that:

> Subject to the express provisions of any written law and of these Rules, the costs of and incidental to proceedings in the Supreme Court or the State Courts, including the administration of estates and trusts, shall be in the discretion of the Court, and the Court shall have full power to determine by whom and to what extent the costs are to be paid.

76 We therefore find that the coroner's inquiry fees are claimable by the Administrator. The key question which arises then is whether the amount awarded is reasonable and proportionate. On the facts of the present case, and based on the submissions before us, we find that there is insufficient evidence to make a determination one way or the other. Dr Zhu has sought to argue that the amount of $190,513.05 awarded for a 15-day coroner's inquiry was excessive by reference to *Chong Khin Ngen*, wherein a sum of $50,914.20 was awarded for a 36-day coroner's inquiry. However, we do not think that a simple comparison may be made between the cases based purely on the number of days that the inquiries had spanned. The scope of work undertaken in that case and the present one may have been significantly different. As was emphasised by the Administrator, at the coroner's inquiry, the Senior State Counsel requested and/or allowed the Administrator's counsel to lead evidence from various important witnesses called by the State and the time allowed for the Administrator's counsel to question each of the witnesses was often equal to, if not more than, the time taken by the State Counsel.

77 In the present case, all that has been presented before this court is a tax invoice prepared by the Administrator's counsel. The tax invoice shows that a fee of $112,500 was charged for counsel's attendance at the coroner's inquiry for 15 days and that $45,000 was charged for the preparation of written submissions for the inquiry. These two specific heads of fees are disputed by Dr Zhu. However, the tax invoice does not suffice to demonstrate the full

extent of the Administrator's counsel's participation in the inquiry so as to enable the court to make a determination as to the reasonableness of the costs incurred.

78 Therefore, in the circumstances here, we find that the Administrator is entitled to claim for the coroner's inquiry fees so long as they are proven to be reasonably incurred. The parties will be allowed to tax the amount being claimed for that purpose.

Whether the sum awarded for the dependency claim of Ms Quek is appropriate

79 As noted above (at [14]), the Judge had awarded a sum of $302,400 to Ms Quek for her dependency claim. This amount was calculated by using $2,000 a month as the multiplicand, with a multiplier of 12.6 years on the basis of a remaining working life of 21 years (*ie*, with a 40% discount).

80 The parties do not dispute the multiplicand applied by the Judge. Dr Wong, however, argues that the Judge should have applied a discount of 52% which would amount to a multiplier of ten years. Dr Wong relies on the following case authorities to support his point:

Case	**Dependency Period**	**Discount**	**Multiplier**
Hanson Ingrid Christina and others v Tan Puey Tze and another appeal [2008] 1 SLR(R) 409	12	25%	9

("*Hanson*")			
Cheong Gim Fah and another v Murugian s/o Rangasamy [2004] SGHC 93 ("*Cheong*")	16	50%	8
The present case	**21**	**40%**	**12.6**
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*")	22	54%	10
Zhang Xiao Ling (personal representative of the Estate of Chan Tak Man, deceased) v Er Swee Poo and Another [2004] SGHC 21 ("*Zhang*")	33	57%	14

81 A closer perusal of the above cases, however, shows that some of the discount rates reflected in the table are inaccurate.

82 In *Cheong*, contrary to Dr Wong's submissions, the discount rate applied was not 50%. This is because the retirement age at that time was set at 62 years, and not 65 years. This meant that the deceased in that case, having passed away at the age of 49 years, had a remaining working life of 13 years. The assistant registrar had also demarcated the pre-trial and post-trial dependency claims of the wife and thereafter applied a multiplier of eight years for the *post-trial dependency claim alone*. It should be noted that the remaining work life of the deceased in relation to the post-trial dependency claim was approximately only 11 years, and the multiplier of eight years therefore meant that the assistant registrar had applied a discount rate of approximately 27.3%.

83 With respect to *Zhang*, this was also a case decided when the retirement age was 62 years. The deceased in that case passed away at the age of 32 years. The deceased's remaining working life amounted to 30 years, and by eventually applying a multiplier of 14 years, the assistant registrar therefore applied a discount of approximately 53%.

84 A more accurate representation of the discounts awarded in the various case authorities cited would therefore be as follows:

Case	**Dependency period**	**Discount**	**Multiplier**
Hanson	12	25%	9
C*heong*	**11**	**27.3%**	**8**
The present	**21**	**40%**	**12.6**

case			
Lassiter	22	54%	10
Zhang	**30**	**53%**	**14**

85 From the above, the precedents show that a longer dependency period will not *always* result in a higher discount rate. For example, although the dependency period in *Zhang* was eight years longer than in *Lassiter,* a greater discount was awarded in *Lassiter*. Such occurrences reflect the principle that each case must be determined on its unique circumstances and this dovetails with the observations of the Court of Appeal in *Poh Huat Heng Corp Pte Ltd and others v Hafizul Islam Kofil Uddin* [2012] 3 SLR 1003 ("*Hafizul*") (at [54]) that:

> … 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.

86 In the more recent decision of *Lai Wai Keong Eugene v Loo Wei Yen* [2014] 3 SLR 702 ("*Lai Wai Keong*"), the Court of Appeal had further opined (at [38]) that whilst it would have been inappropriate to effect a radical and sweeping revision of the discount rate embedded in the multipliers used under the conventional approach, this would not preclude courts from adopting a lower or higher discount rate, and thereby departing from the trend of multipliers in previous cases, if the court found it appropriate to do so on the facts of the particular case before it. In this regard, we emphasise that parties should not merely rely on the multipliers set out in previous cases but should also seek to assist the court further by providing relevant actuarial data to justify the discounts which they are advocating for.

87 Having said that, and as a general proposition, we would agree that it would be in line with reason and logic that the longer the dependency period the higher should be the rate of discount. This is because, where the dependency period is longer, there would be greater uncertainties as far as vicissitudes of life are concerned. In our judgment, the discount rate of 40% applied by the Judge is not one which deviates significantly, if at all, from the general trend of discounts which courts have applied in previous cases. Accordingly, we do not think that the multiplier of 12.6 years is so excessive as to warrant appellate intervention.

88 Dr Zhu has raised a further argument that because Ms Quek is a high-earning individual, a lump sum of $24,000 would suffice for the purpose of her dependency claim. Dr Zhu relies heavily on the fact that during the parliamentary debates for the amendments to the Civil Law Act which expanded the scope of "dependants" to include a former wife, the Senior Minister of State moving the bill stated as follows (*Singapore Parliamentary Debates*, *Official Report* (19 January 2009) vol 85 at col 1139 (Assoc Prof Ho Peng Kee, Senior Minister of State for Law)):

> … [T]he definition of "dependant" will be extended to cover a "former wife". This will enable ex-wives who have been supported by the deceased prior to his death pursuant to maintenance orders to file dependency claims when their ex-husbands die. Indeed these ex-wives may still be dependent on the deceased *at least for some time* after the marriage has ended.
>
> [emphasis added]

According to Dr Zhu, the use of the phrase "at least for some time" shows that the legislature never intended for a surviving ex-wife to be paid the same amount until the end of the normal working life of the deceased ex-husband.

89 In our judgment, Dr Zhu's reliance on the above excerpt from the parliamentary debates is misconceived and should not be read out of context. The genesis of the amendment to include a former wife as a "dependant" stemmed from the suggestions in the report of the Law Reform Committee ("the Committee") where reference was made to the decision of *Hanson*, which was decided at a time when ex-wives did not fall within the ambit of a "dependant" under the Civil Law Act (see Law Reform Committee, Singapore Academy of Law, *Loss of Inheritance or Savings: A Proposal for Law Reform* (April 2008) (Authors: Michael Hwang SC and Fong Lee Cheng) ("the Committee Report")). In *Hanson*, at the time of the husband's demise, a decree *nisi* had been issued but not the decree absolute. This led the court to conclude that since the legal form of the marriage was still intact, the deceased's "former" wife was still considered his wife and could therefore maintain her claim as a dependant. In its report, the Committee considered the case of *Hanson* and stated (at para 29) that:

> It is foreseeable that future cases may similarly involve a recent divorce but the divorce may be rendered absolute such that a former wife, who would have received maintenance had the deceased been living, would be barred from bringing a dependency claim due to his death. This is an unfair result which also needs to be corrected.

90 From the above, it is clear that the intention behind the proposal was to ensure that former wives would be able to claim for dependency under the Civil Law Act, *even* where the divorce has been rendered absolute, just as the "former" wife in *Hanson* was able to do. It is therefore instructive to look at what was awarded to the "former" wife in *Hanson*. There, prior to his demise, the deceased had been ordered to pay a monthly maintenance of $4,200 to his "former" wife. In ordering that the defendant had to pay a total of $453,600 to the "former" wife (*ie*, $4,200 per month over nine years), Judith Prakash J (as she then was) noted (at [54]–[56]) that:

> 54 Ingrid Hanson stopped working after she married Sandy Eu in 1985. Sandy Eu was the sole breadwinner of the family. Having left the workforce for so long (22 years), it is the plaintiffs' case that Ingrid Hanson could no longer find gainful employment and should be maintained for the rest of her life (calculated at 25 years).
>
> 55 The [assistant registrar] declined to fix the multiplier suggested by the plaintiffs. While the [assistant registrar] found that Ingrid Hanson was entitled, as Sandy Eu's wife, to sustain a dependency claim under the Act, she fixed the multiplier at a mere four years. This was because the [assistant registrar] was of the view that Ingrid Hanson should be compensated only for the loss as a wife until the point when her marriage would have been finally dissolved, and this was estimated at about four years.
>
> 56 I take a different view. *Even after the decree absolute had been granted, Ingrid Hanson would have continued receiving maintenance payments from Sandy Eu. These would be over and above the matrimonial assets she received in the division. The critical point to note is that the court, in assessing dependency, inquires into the likely pecuniary support that the deceased would have provided for the dependent if he or she had remained alive. If Sandy Eu had remained alive, Ingrid Hanson would reasonably have expected to be maintained for the rest of Sandy Eu's life (subject to any material change of circumstances that might have occurred).* It was thus erroneous for the [assistant registrar] to calculate dependency only until the estimated date of grant of decree absolute.
>
> [emphasis added]

91 From the above, it is clear, and indeed trite, that when dealing with any dependency claim, including the claim of a "former wife", the principle of a "reasonable expectation of pecuniary benefit" is fundamental to the inquiry (as it is in any other dependency claim) (see *Gul Chandiram Mahtani and another (administrators of the estate of Harbajan Kaur, deceased) v Chain Singh and another* [1998] 2 SLR(R) 801 at [17]–[18] ("*Gul Chandiram Mahtani*")). The focus is not placed on the need, but on the reasonable expectation of the dependant. In the present case, at the time the maintenance order was agreed upon, Ms Quek was already generating an income of approximately US$10,000 a month. This goes to show that the Deceased, being an individual

of significant earning power, was content to pay a maintenance sum of $9,000 a month *despite* Ms Quek's ability to earn a substantial income of her own and despite the fact that Ms Quek was given a share of the properties under the divorce proceedings which amounted to about $500,000. In our judgment, Ms Quek has a reasonable expectation of receiving this maintenance sum for the rest of the Deceased's working life.

92 Accordingly, we decline to vary the Judge's award of $302,400 for Ms Quek's dependency claim.

Whether the sum awarded for the dependency claim for the Children is appropriate

93 The appropriateness of the sum awarded for the Children's dependency claim is a point of contention in all three appeals. Dr Zhu and Dr Wong submit that the total sum of $814,500 awarded for the Children's dependency claim is excessive and *should be reduced*. On the other hand, the Administrator argues that this sum is inadequate and *should be increased*. We will consider each of these contentions in turn.

Whether the sums awarded should be reduced

94 Dr Zhu and Dr Wong do not seek to disturb the Judge's award of $328,500 for Jo-Ann's dependency claim; their main submission is that the sum of $486,000 which was awarded for Ryan's claim is excessive.

95 Dr Zhu argues that the Judge should have applied a further 20% discount to reflect Ms Quek's share in contributing to Ryan's expenses and places heavy reliance on the decision of *Cheong* where a discount of 23% was applied in the light of the mother's ability to contribute to the children's expenses.

96 Dr Zhu has failed, however, to appreciate that the factual matrix in *Cheong* was materially distinct from the present case. In *Cheong*, the assistant registrar applied the discount on the basis that the expenses of the children would not have been solely borne by the deceased father and therefore legitimately took into account the earning capacity of the mother to ascertain what would have been her contribution to such expenses. In the present case, however, prior to his demise, the Deceased was *already* providing for a sum of $3,500 a month as maintenance to meet each child's expenses. This sum was agreed upon, notwithstanding that Ms Quek had an earning capacity of her own. The starting points of *Cheong* and the present case are therefore markedly different.

97 As already noted above, the focus must be placed on a "reasonable expectation of pecuniary benefit, as of right or otherwise, from the continuance of life" (see *Gul Chandiram Mahtani* at [17]). This principle was central, and indeed correctly so, to the Judge's mind when he rejected Dr Zhu's submission in the suit below. He concluded (at [23] of the Judgment) that:

> I do not think it appropriate to make provision for Ms Quek's contribution to the family as I am not calculating the total expenses of each child … I am, instead *focussing on what pecuniary benefit the children would have received from the deceased, but for his death.* [emphasis added]

In our judgment, there is nothing erroneous about the approach taken by the Judge.

98 In the present case, Ryan reasonably expected to continue to receiving this sum of $3,500 to meet his expenses up till the end of his tertiary education. The earning capacity of Ms Quek should not affect this conclusion.

99 As for Dr Wong, he relies on the same precedent table referred to above (at [80]) to argue that a greater discount should have been applied to the multiplier for Ryan's dependency claim. However, as already noted, Dr Wong's analysis of the precedents was inaccurate. By applying the revised table as set out at [84] above, with a dependency period of 14 years, the discount of 25% cannot be regarded as being excessive so as to warrant appellate intervention. We therefore conclude that the sums awarded for the Children's dependency claims should not be reduced.

Whether the sums awarded should be increased

100 We turn now to consider the Administrator's contentions that the sums awarded to the Children should be *increased*. As noted above (at [43]), the Administrator is asking for additional sums to be awarded, first, for the Children's costs of vacation and similar expenses, secondly, for the cost of the Children's driving lessons, thirdly, for the Children's university tuition fees and fourthly, for the Children's accommodation during university.

(1) Costs of vacation and similar expenses

101 With respect to the Children's claim for the costs of vacation and similar expenses (which would include the cost of gifts, computers and school trips), the Judge found that there was no evidence that the Deceased intended to pay for such expenses for the foreseeable future (see the Judgment at [22]). We do not share that view as we think the Judge had taken too narrow a perspective of the evidence.

102 As was held in *Ng Siew Choo v Tan Kian Choon* [1990] 1 SLR(R) 235 (at [15]), there does not have to be "distinct evidence of pecuniary advantage in existence prior to or at the time of death". Rather, it would suffice to show

that there is "some basis of fact from which the inference could be drawn that there was a reasonable expectation of pecuniary benefit". In our judgment, an inference could be drawn from the evidence before us that the Deceased would have catered for such expenses.

103 Quite apart from the fact that Ms Quek and the Children have consistently attested to the fact that the Deceased was a generous father who would pay for the Children's holiday trips and shower gifts on them, even his own lawyer, Ms Foo Siew Fong, who represented him during the divorce proceedings, attested to his generosity. We reproduce relevant excepts of Ms Foo's affidavit:

> 5 … The Deceased was anxious to ensure that Peggy and the children would be adequately provided for. His attitude was that while he had not been able to make his marriage work, he could at least look after them as best he could.
>
> 6 When I first received Peggy's proposal for maintenance from her lawyer, I had been of the opinion that the amount requested could be reduced and I advised the Deceased accordingly. However the Deceased told me that he was willing to pay whatever Peggy asked for, and that there was no need to negotiate for a lower quantum in maintenance. This was not typical as far as divorce clients are concerned. …
>
> 7 … *I had highlighted to the Deceased that Peggy may in future ask for an increase in maintenance and seek a variation in the maintenance order, especially as his children grow up and have additional needs, for example, additional expenses related to their further education, trips abroad etc. The Deceased assured me that he was aware of this and he had every intention to ensure that his children were well provided for and would be able to take advantage of opportunities that may come their way.*
>
> [emphasis added]

104 It must be emphasised that Ms Foo is an independent party in the proceedings and would have no interest in vouching for the generosity of the Deceased. The Deceased's girlfriend, Ms Leong, who is also an independent

party to the proceedings, similarly attested to the generosity of the Deceased. She noted that "[the Deceased] remained committed to looking after … his children … financially, as he felt it was his responsibility" and that "[h]e took pride in looking after the people around him … [and] [h]is children were, of course his first priority".

105 Accordingly, in our judgment, an additional $7,000 per annum should be awarded for each child to meet their costs of vacation and other expenses.

(2) Driving lessons

106 As for the driving lesson fees, we similarly take the view that this should have been allowed by the Judge. As was held by Prakash J in *Hanson* (at [52]), "in the modern context, learning to drive can be regarded as a normal part of the education of middle-class children [and] [t]hese expenses should be allowed". Prakash J then proceeded to award a sum of $2,386.65 for each child's driving lessons. Using that figure as a benchmark and taking into account that the fees would have increased since that time, in our judgment, a one-off sum of $2,500 for each child for their driving lessons would be appropriate.

(3) University fees

107 Turning now to the university fees for the Children, in our judgment, the increase in $500 per month which the Judge awarded to reflect the higher fees in a university education appears to be insufficient. We agree with the Administrator that the costs incurred during a student's university life would be significantly higher than during the previous years of education. Given the Deceased's commitment to taking care of the Children, we have no reason to

doubt that he would have made provision for the Children's increased expenses and that they could reasonably expect to receive such a benefit.

108 Accordingly, we adjust the award given by the Judge such that there would be an *additional* increase of $500 per month for the Children during their university years. This would result in them receiving $4,500 per month during that period of time.

109 At this juncture, it is necessary to address an inconsistency in the Judgement *vis-à-vis* the age at which the Children would complete their tertiary education. The Judge indicated that Jo-Ann and Ryan would be 23 years old and 25 years old respectively when they complete their tertiary education and this was evidently on the basis of a three-year university degree course. However, on the premise of a three-year university education, Jo-Ann would in fact be 22 years old when she completes her degree and Ryan would be 24 years old. In our judgment, quite apart from the above miscalculation, the Judge should have taken into account the fact that many undergraduate degree courses take four years to complete (*eg*, degrees with honours). At the time of the trial, both Jo-Ann and Ryan were doing well in school and it would be reasonable, in our view, for them to receive financial support for a four-year university education. The result of this is that the Judge's conclusion that Jo-Ann and Ryan would be 23 years old and 25 years old respectively when they complete their tertiary education remains unchanged.

110 Therefore after making the necessary adjustments, the Children should be awarded the following amounts for their respective dependency claims:

(a) Jo-Ann – [(($7,000 x ten years) + ($3,500 x 12 x six years) + ($4,500 x 12 x four years)) x 75%] + $2,500 = **$406,000**

(b) Ryan – [(($7,000 x 15 years) + ($3,500 x 12 x 11 years) + ($4,500 x 12 x four years)) x 75%] + $2,500 = **$589,750**

It should be noted that we do not apply a 25% discount to the $2,500 which we award for the Children's driving lessons since that sum is a one off expense not subject to any multiplier.

Whether the sum awarded for loss of inheritance is appropriate

111 As the parties have highlighted, this is the first time in which this court has had to consider a claim for loss of inheritance pursuant to s 22(1A) of the Civil Law Act. Section 22(1A) was enacted in 2009 and provides as follows:

> (1A) In assessing the damages under subsection (1), the court shall take into account any moneys or other benefits which the deceased would be likely to have given to the dependants by way of maintenance, gift, bequest or devise or which the dependants would likely to have received by way of succession from the deceased had the deceased lived beyond the date of the wrongful death.

The impetus for such a legislative change also stemmed from the recommendations of the Committee Report as evidenced by the parliamentary debates surrounding the enactment of this new provision (see *Singapore Parliamentary Debates, Official Report* (19 January 2009) vol 85 at col 1138–1139 (Assoc Prof Ho Peng Kee, Senior Minister of State for Law)):

> *(a) Law Reform Committee's proposals on loss of inheritance and savings and the definition of "dependant"*
>
> Clauses 3 and 5 of the Bill arise out of the recommendations of the Singapore Academy of Law's Law Reform Committee chaired by Justice Judith Prakash.
>
> The Committee has recommended, and [the Ministry of Law] agrees, that in computing claims filed by dependants, account should be taken of any savings or inheritance that they could have received from the deceased. This is because such sums are traditionally put aside by deceased persons, when alive, to

> eventually benefit their family. Hence, to leave them out of the computation would under-compensate the dependants. The current method of assessment, which is based largely on the annual or monthly sum given to the dependants, is inadequate where there is divergence between what the deceased actually gave and what he could afford to give, or where the deceased preferred to reinvest the moneys instead of disbursing them to his dependants. This amendment will bring us in line with the approach taken in the UK, Australia, Hong Kong, USA and Canada.

112 Given that there has hitherto not been any case which has invoked s 22(1A), we take this opportunity to express our views on the appropriate methodology that should be applied in the computation of a loss of inheritance claim.

The appropriate methodology

113 The Judge took the view that a balanced approach would be to calculate the amount of wealth which the Deceased would have accumulated, but for his death. He sought to do so by applying the conventional multiplier-multiplicand approach which essentially consists of three steps:

(a) First, select an appropriate multiplicand which represents the savings of the Deceased per annum.

(b) Second, multiply that by an appropriate multiplier which would be discounted for accelerated receipt and vicissitudes of life.

(c) Third, take into account the appropriate percentage of this inheritance which should be attributed to the dependant. In this case, the Judge applied a percentage of 52.5% as the Deceased had indicated in his will that he intended to leave that percentage of his estate to the Children.

114 The Administrator and Dr Wong have not objected to this general approach which was taken by the Judge. Dr Zhu has, however, raised concerns over this approach on the basis that it ignores the possibility that the Children may cease to be dependants well before the end of the Deceased's natural life. Dr Zhu's objections will be considered at a later part of this judgment (see below at [142]–[150]).

115 As a matter of general methodology, we agree with the Judge that the conventional multiplier-multiplicand approach would be relevant in quantifying a loss of inheritance claim. It is apposite to note that in the Committee Report, three possible methods for computing such claims were recommended, of which two were based on the application of the conventional multiplier-multiplicand approach. These two methods were described in the following terms (at p 49–50):

> **II. Method B ([Central Provident Fund] assessment applied *mutatis mutandis* to other types of savings)**
>
> The current method of taking future [Central Provident Fund (CPF)] contributions into account can be extended to non-CPF future savings. This can be done by setting a percentage rate of savings relative to earned income for the various stages in life. It can function as a rough and ready alternative to Method A.
>
> *Assessment of Damages* (2005)
>
> > Contributions to the CPF may be included in the figure of annual dependency to be multiplied by the multiplier or excluded from the figure of annual dependency and a separate and additional sum awarded in respect of them. In *Teoh Mee Sun & Anor v Asia-Pacific Shipyard Pte Ltd* [1991] SGHC 171, the pre-trial CPF loss was arrived at by applying the percentage rates of contribution over the period to the average of estimated earnings over the period. The post-trial loss was arrived at in a similar fashion using the rate at the date of the trial and the post-trial multiplier. A discount was then given on the total to allow for uncertainties and the fact that it would be an accelerated payment. The total was then divided

> among the dependants according to the rules of intestate succession. A discount may be given for the fact that not all the CPF monies would necessarily go to the dependants if the deceased were alive: *Ng Lim Lian v PSA* [[1997] SGHC 62], *Guo Xiuhua v Lee Chin Ngee* [2001] SGHC 190.
>
> **III. Method C (adapted from method used by Hong Kong courts)**
>
> The Hong Kong courts calculate the available surplus after monthly family contributions and then deduct a sum for personal expenses to determine the monthly saving. To adapt this to a dependency claim, the monthly saving can be multiplied by the multiplier, then a percentage for acceleration, personal post-retirement expenses and other uncertainties deducted to arrive at a fund representing savings which would be available to be spent on dependants either in the later years of the deceased's life or as inheritance. The court can then determine what proportion would benefit which dependant and apportion accordingly.

116 In our view, there is merit in adopting the multiplier-multiplicand approach which is in line with the way loss of Central Provident Funds ("CPF") contributions are computed since, as was noted in the Committee Report (at para 84), "normal savings should be treated similarly to CPF, as there is no logical distinction between the two".

117 Adopting this approach would also dovetail with the Court of Appeal's recent endorsement of the continued application of the conventional multiplier-multiplicand approach when quantifying loss of future earnings. In *Lai Wai Keong*, the Court of Appeal was asked to address the question as to whether it should depart from the conventional approach when assessing the loss of future earnings for a tort victim who was *injured* in an accident in the light of changes to the statutory minimum retirement age and the prevailing real interest rates. The Court of Appeal saw no reason to depart from the conventional approach and it observed (at [18] and [20]) that:

> 18 Although the Board did not say that local courts should use the conventional approach (and indeed opined that the present value approach was more accurate), our Court of Appeal in *Tay Cheng Yan* held (… at [16]) that **the conventional approach should be used by local courts as both the courts and local practitioners were more familiar with it. Thereafter, the conventional approach has held sway in local courts to this day.**
>
> …
>
> 20 Against this backdrop, we turn to consider the issue at hand. **Mr Wee submits that our decision in *Hafizul* (which was issued only four days before the [assistant registrar] made his award) has paved the way for local courts to jettison the conventional approach in favour of the present value approach, which is presented as a more accurate method of calculating future losses. We disagree.** … [B]oth the approach described at [48(a)] of [*Hafizul*] ("the first approach") and the approach described at [48(b)] thereof ("the second approach") deal with *the selection of the multiplier* to be used under *the conventional approach*. Under the first approach, the multiplier is selected by reference to the multipliers used in comparable cases; under the second approach, the multiplier is derived by taking the plaintiff's expected working life (expressed as a number of years) and then discounting that figure for accelerated receipt and the vicissitudes of life. It would therefore be incorrect to read *Hafizul* as endorsing an approach that dispenses with the use of multipliers altogether and relies entirely on present value calculations. We accept that in practice, the second approach would require the court to make present value calculations to determine the appropriate discount to be applied for accelerated receipt, and there is indeed nothing wrong with using present value tables for this purpose. **But the ultimate purpose of the exercise remains *the derivation of a multiplier* that can be cross-checked with the multipliers used in past cases so as to achieve consistency with cases involving similarly-situated plaintiffs.**
>
> [emphasis in original in italics; emphasis added in bold]

118 While *Lai Wai Leong* dealt with the loss of future earnings for a personal injury case and not a loss of inheritance claim as part of a dependency claim, the observations with respect to the familiarity of the courts in applying the conventional multiplier-multiplicand approach applies with equal force in the present context.

119 According to the Administrator, however, there is an important distinction between a loss of inheritance claim as compared to a loss of future earnings claim which would impact the methodology of quantifying such claims. When calculating loss of inheritance, the court is determining the future value of an annuity; in other words, the future value of a recurring amount of savings that can be invested or can generate interest. Such a consideration does not arise in the usual loss of support or loss of future earnings claims as those claims are concerned with the present value of an annuity. According to the Administrator, this distinction means that there should be an extra step to the conventional multiplier-multiplicand methodology – factoring in compounded interest from the savings during the multiplier period. We have reservations that such an additional step should feature in the analysis.

120 The Administrator has sought to justify the incorporation of this additional step on the basis that factoring in compounded interest is "a paired assumption" with the discount which courts award for accelerated receipt of a lump sum payment. As is well-established, an appropriate discount must be made to account for possible investment gains that a dependant would be expected to make as a result of the accelerated receipt of a lifetime payment (see, *eg*, *Hafizul* at [57]). According to the Administrator, "if the Courts are to assume that claimants are to invest money at a rate of 4% per annum, a paired and corresponding assumption must follow: The Deceased too could have invested the money to obtain returns at the rate of 4% per annum".[1] In our judgment, this submission is misconceived. It should be noted that the reason the courts apply a discount for accelerated receipt is due to the *fact* that a dependant is receiving a lifetime payment earlier. The discount is therefore

[1] Appellant's case, para 34.

meant to account for the dependant having *immediate access* to these monies which he could use to generate returns on. The court is not making any assumption as to whether the dependant would, as a matter of fact or even as a matter of likelihood, be applying the monies in a manner that would generate returns; rather, the discount is awarded to reflect that this *could be done*.

121 This is wholly different from adding compounded interest to the annual savings of a deceased which assumes, as a matter of fact, that the deceased *would*, *or would more likely than not*, invest his savings in a manner that would generate a steady rate of returns. In our view, while an assessment of damages is necessarily an exercise which involves an element of prediction and often requires the courts to grapple with various imponderables, to factor in the potential returns that a deceased could generate *if he decided to invest* his notional annual savings would be delving a step too far into the realm of speculation. It should be noted that even if the assumption could be made that a deceased would invest his notional annual savings, factoring in compound interest assumes further that he would generate a steady rate of returns on this investment. It should go without saying that this is highly speculative – it is first uncertain how a deceased would choose to invest his savings and it is equally likely that if a deceased had made investments, it could have resulted in a *reduction*, instead of an increase, in his overall wealth. In our judgment, factoring in compound interest would add a further layer of uncertainty to what is already an imprecise methodology and we are not prepared do so. This is not to say, however, that should the evidence establish that a deceased was an investor who generated a consistent rate of returns on his investments, this will not be taken into account. This would be factored in when the court considers what the appropriate multiplicand should be as his investment returns would form part of his annual earnings (and his savings as well).

However, we cannot accept the Administrator's suggestion that when computing a loss of inheritance claim, compounded interest should be taken into account, as a matter of course, such that there should be an extra step added to the multiplier-multiplicand approach.

122 Indeed, the Administrator has been unable to point us to any authorities where such a step had been applied. As is evident from the Committee Report (which was the impetus for the legislative change), the learned authors had never considered that it would be appropriate for such a methodology to be utilised. As noted above, the Committee had proposed two different methods for calculating the loss of inheritance which are essentially based on the multiplier-multiplicand approach. Neither of these proposed methods accommodate, nor do they contemplate, the taking of an *additional step* based on the income which could potentially be generated from a deceased's future savings. In our judgment, this must be correct.

123 Therefore, the conventional multiplier-multiplicand approach is the appropriate methodology to be applied when computing a loss of inheritance claim. It must be noted, however, that while the general methodology is similar to the computation of a loss of dependency claim, there is an additional factor which must be taken into account and which is unique to a loss of inheritance claim – the post-retirement expenditure of the deceased. In this regard, we found the observations of the Hong Kong Court of Final Appeal in *Lam Pak Chiu and another v Tsang Mei Ying and another* [2001] HKCFA 28 to be particular instructive (at [34]–[35]):

> Thus if the court were to find in any given case that an accumulation of wealth would have been achieved by the notional time of retirement, the realistic possibilities, factoring in probable inflation, would then be as follows:

> (i) expenditure during retirement may exceed the income from the accumulation plus any pension and the like received during retirement so as to exhaust the accumulation some time before the notional time of death, thus leaving the deceased dependent upon state, family or other help during his notional final years; or
>
> (ii) post-retirement expenditure may exceed post-retirement receipts but only so as to diminish the accumulation without exhausting it; or
>
> (iii) such receipts may more or less match such expenditure so as to leave the deceased's financial position at the notional time of death much the same as it had been at the notional time of retirement; or
>
> (iv) it may even be that such receipts would exceed such expenditure so as to leave his financial position better at the notional time of death than it had been at the notional time of retirement.
>
> *It would be for the court to select from these possibilities the one which it considers the most realistic in the particular circumstances of the case, remembering that the burden lies on the party who asserts.*
>
> [emphasis added]

124 While we note that the above observations were made in the context of an *estate* claim for loss of accumulation of wealth (as compared to a *dependency* claim for loss of inheritance), it was suggested in the Committee Report (at p 57) that the above framework would be "a useful reference for our courts if an award is made for loss of inheritance/savings in a dependency claim". We find it to be so. What this means is that when adjustments are made at the second stage of the multiplier-multiplicand approach, the court must be alive to the fact that post-retirement expenses may result in a decrease, an increase or no change in the notional wealth of the deceased as reckoned from the time of his notional retirement up to the time of his notional death.

125 To summarise, when computing a loss of inheritance claim, the following three steps should be applied:

(a) First, an appropriate multiplicand should be derived which would reflect the savings of the deceased per annum.

(b) Second, this multiplicand should be multiplied by an appropriate multiplier which would be discounted for accelerated receipt and vicissitudes of life, along with an adjustment to reflect the post-retirement expenses of the deceased.

(c) Third, an appropriate percentage of this inheritance should be attributed to the dependant.

We turn now to apply these three steps to the present case.

Stage 1: Ascertaining the multiplicand

126 The Judge had derived the average savings per annum of the Deceased on the basis of the court assessor's report, which was produced after studying both the reports of Mr Keoy and Mr Yin, and after conducting three rounds of discussions with the two experts. This led the Judge to adopt the figure of $587,000 per annum as the multiplicand for the loss of inheritance claim.

127 Although the figures used by the Judge were taken from the court assessor's report, the court assessor had used Mr Keoy's report as a base for his calculations. This is evident from p 13 of the court assessor's report, which states:

> 54. It is important to highlight that during the meeting held on 9 September 2014, the Defendants' Expert [*ie*, Mr Yin] agreed that the methodology adopted by the Plaintiff's Expert [*ie*, Mr Keoy] is acceptable. However, without traceable

> documents to prove that the assumptions that the Plaintiff's Expert made is factual, the Defendant's Expert was not willing to accept the assumptions in **Annex 6**.
>
> …
>
> 57. However, for the purposes of this Memorandum, I am inclined to accept the Plaintiff's Expert's workings and assumptions set out in **Annex 6**. I found these assumptions to be logical in the absence of any further evidence.

128 Therefore, it would be apposite to address some of the objections raised by Dr Zhu and Dr Wong against the findings of Mr Keoy as they did have a bearing on the eventual figures relied upon by the Judge. The salient issues raised are as follows:

(a) whether it was correct to assume that the Deceased would be paid a monthly salary of $57,200 per month and whether he would receive the same bonus figures from the four years preceding his death annually until he turned 65; and

(b) whether Ms Leong's expenditure had been taken into account.

Each of these objections will be addressed in turn.

Monthly salary and bonus payments

129 We reject Dr Zhu's argument that there is no basis to show that the Deceased would have continued earning the same monthly income and receive the same annual bonus payments if he had not met his premature demise. As it stands, the monthly salary which the Deceased was drawing prior to his demise represents the most viable and reliable basis upon which to calculate the Deceased's monthly salary. Dr Zhu has suggested no other alternative method of computation. Additionally, the risk that the Deceased could lose his

job would be accounted for by the discount which is applied at the end of the computation and should not affect the multiplicand to be applied.

130 As for the bonus payments, it should be emphasised that even the Defendants' own expert (*ie*, Mr Yin) had accepted the legitimacy of these bonuses and used them as a basis for his own financial projections. It was for that reason that the values derived by both experts *vis-à-vis* the deceased's average net operating cash flow per annum were relatively similar. Although Dr Wong is now asserting that these bonuses should not have been included into the computation, there has not been sufficient evidence brought to our attention to find that these bonuses were illegitimate in nature.

Ms Leong's personal expenditure

131 In our view, Ms Leong's personal expenses had been sufficiently taken into account *as part of the Deceased's own expenses* in the computation. Ms Leong had been the Deceased's partner since his divorce in 2006 which coincided with the start of the four-year review period which was utilised by both Mr Keoy and the court assessor to calculate the Deceased's financial arrangements and obligations. In his report, Mr Keoy considered all credit card charges, cash withdrawals, personal purchases, utility bill payments and others as part of the Deceased's "personal expenses". These "personal expenses" would have logically included the amounts he was spending on Ms Leong, especially considering that she was his live-in partner. This conclusion is further buttressed by para 7.2 of his report where he states that:

> I noted from the Affidavit of Mabel Leong Mun Yee ("Ms Leong") dated 7th May 2014, that the Audi TT was purchased for the purpose of supporting Ms Leong, his then fiancée, who was selling Audi cars. I assumed the Deceased will maintain this car until the expiration of the COE and then deregister the car.

It is evident that Mr Keoy did not leave Ms Leong out of consideration when computing the Deceased's expenses. Therefore, the projection of the Deceased's expenses would have included Ms Leong's expenses as well.

132 Accordingly, we find that the Judge was justified in using the figure of $587,000 per annum as the multiplicand for the loss of inheritance claim.

Stage 2: Factoring in the multiplier

133 However, in our judgment, the 40% discount applied by the Judge (to reach a multiplier of 12.6 years) was insufficient. Before detailing our reasons for so finding, we address a few contentions made by Dr Wong which are, in our judgment, unmeritorious.

134 First, we reject Dr Wong's submission that there should have been a smaller multiplier applied due to the expenses of Ms Leong. As we have noted above, Ms Leong's expenses had already been included as part of the computation of the multiplicand. Such expenses should not affect the multiplier.

135 Further, contrary to what was submitted by Dr Wong, the Judge's observation that a discount rate of 4% per annum better reflects the risk attached to the cash flows as compared to Mr Keoy's suggested rate of 1.1% did not mean that he intended to apply a *further* discount on top of the overall 40% discount to the global sum. We disagree with Dr Wong's submission that the Judge may have muddled the 4% discount rate which is meant to reflect future cash flows with the 40% discount which is meant to account for vicissitudes of life and a lump sum payment. Rather, the 4% discount rate was the *basis* on which the 40% discount was derived as it is precisely the fact that there is such a discount rate at play which justifies an overall discount being

applied to reflect the accelerated receipt of such monies and other vicissitudes of life. This point was also made in the Court of Appeal decision of *Lai Wai Keong* where it was observed (at [28]) that "the cases indicate that the multipliers used under the conventional approach have been based on the assumption that the lump sum award can be invested to achieve real rates of return of 4–5%".

136 In the present case, the Judge was applying the conventional multiplier-multiplicand approach and therefore his reference to the 4% discount rate per annum was simply an explanation as to why he had applied an overall 40% discount, which is in line with the discounts applied in the precedents (see above at [84]). Dr Wong is therefore incorrect in asserting that, based on a 4% discount rate, a further discount has to be applied.

137 However, as noted above, we are of the view that the Judge had erred in applying the same discount (*ie*, 40%) as he did for Ms Quek's dependency claim to the Children's loss of inheritance claim. This is so for several reasons.

138 First, it should be noted that the discount that is applied to a dependency claim is based both on uncertainties in the future (due to vicissitudes of life) *and* for accelerated receipt of a lump sum payment (see *Lai Wee Lian v Singapore Bus Service (1978) Ltd* [1983-1984] SLR(R) 388 at [20]). While the uncertainty with respect to the Deceased's ability to earn the same income during his working years (*ie*, up to the age of 65 years old) is similar for both Ms Quek's dependency claim and the Children's loss of inheritance claim, the accelerated receipt component is not the same. This is because the Children are only expected to receive their inheritance at the time of the Deceased's notional death, which as accepted by the Judge, would be when he reached the age of 80 years. By being awarded a lump sum now, the

Children are effectively receiving their inheritance 36 years earlier than they would have if the Deceased had not met a premature demise. This must be contrasted with the multiplier which was applied to Ms Quek's dependency claim which was based *only* on the remainder of the Deceased's income earning years (*ie*, 21 years). By applying the same 40% discount, the Judge failed to take into account the additional 15 years acceleration (*ie*, from the date of the Deceased's notional retirement at 65 years old to the date of his notional death at 80 years old) which the Children would benefit from by receiving a lump sum award.

139 Second, in our judgment, further adjustments had to be made to account for the post-retirement expenses of the Deceased. We note that the Judge did not expressly direct his mind to this issue. The Administrator contends, however, that it was implicit in the Judge's conclusion that he had found that the Deceased was capable of generating funds even after his official retirement and was satisfied that the Deceased would be able to meet his expenses and even earn surplus income. In this regard, the Administrator points out that the Deceased would have continued to receive rental income, post-retirement, from the Tanglin View and Duchess Avenue properties to meet his future expenses. While it may be the case that the Deceased would have received such rental income, we do not think that it would have been sufficient to match the post-retirement expenditure of the Deceased. It should be emphasised that the Deceased was also responsible for meeting the expenses of Ms Leong and this was likely to be the case even post-retirement. Therefore, in our view, a further discount has to be made to reflect the diminishment of the Deceased's notional wealth during his post-retirement years.

140 In the light of the need to take the above two factors into consideration, and following the observations made above at [86], we would have been better assisted by parties if actuarial data had been furnished to enable us to determine the additional discount which should be adopted on account of accelerated receipt and also if expert evidence had been provided to project the *post-retirement expenses* of the Deceased.

141 Be that as it may, notwithstanding the limited evidence available to us, we are of the view that a total discount of 70% would be appropriate. By applying this discount to the sum of $587,000 per annum multiplied by 21 years (*ie*, $12,327,000), the figure which we derive at the end of Stage 2 is $3,698,100. We countercheck the reasonableness of applying this 70% discount on the basis that by applying a more conservative rate of return of 3% per annum (as compared to the 4% suggested by the court assessor), the future value of $3,698,100 after 36 years would amount to approximately $10,720,000. While this is a smaller figure than $12,327,000 which is the notional wealth of the Deceased at the end of his working life, as noted above, a discount has to be applied to account for the vicissitudes of life and the fact that his notional wealth would likely, to an extent, be diminished by his post-retirement expenses. It is our hope that in future cases parties would heed this call for better evidence and place the same before the court to enable it to arrive at a more objective and reasoned determination of the discount that should be adopted.

Stage 3: Apportioning the savings to the dependant

142 Both Dr Wong and the Administrator do not contest the Judge's decision to attribute 52.5% of the calculated savings to the Children based on what was reflected in the Deceased's last known will. Dr Zhu, however, raises

a conceptual objection on the basis that the court should take into account the fact that although the Children may be dependants now, they may no longer be dependants at the end of the Deceased's notional natural life.

143 Dr Zhu argues that as the law reforms were proposed with the decision of *Lassiter* in mind, no consideration was given to a case where a child may be a dependant now, but would no longer be a dependant at the end of the deceased's natural life. In this respect, Dr Zhu relies heavily on the observations of Woo J in *Lassiter* (at [74]–[75]):

> 74 I would mention that to allow dependants to claim for loss of inheritance would be to introduce a host of complexities. Supposing a child dependant would remain a dependant for only one more year after the death of the deceased but nevertheless has a reasonable expectation of being a beneficiary of the estate as she is named as a beneficiary in the deceased's will. Will that child be entitled to claim her entire share of the loss of inheritance proportionate to what was given to her in the will or only a small percentage thereof, and if the latter, how would that percentage be calculated? Take another example. Supposing a wife has her own successful career and is dependent on her husband to a small extent, but enough to qualify her as a dependant. There are child dependants who enjoy more financial support from the deceased when he was living than the wife but the children will not remain as dependants for very much longer. The wife is named as the main beneficiary in the deceased's will. Would that mean that she is entitled to claim more for herself than the children in the loss of inheritance claim?
>
> 75 Perhaps it is preferable to allow an estate claim for loss of inheritance with a cap on the quantum and with a qualification that such a claim is permissible only to the extent that the beneficiaries of the estate are also dependants so as to avoid benefiting distant relatives of the deceased. That will not address all the complexities I have mentioned and others not mentioned … *In any event, that is a matter for the Legislature, as I have said.*
>
> [emphasis added]

144 While *Lassiter* does call into focus some difficulties with a loss of inheritance claim, it is imperative to note that Woo J expressed the view that

ultimately these complexities would be for Parliament to resolve. In response to this decision, s 22(1A) of the Civil Law Act was enacted. This provides the clearest indication that Parliament did not think that the complexities which Woo J foresaw should bar a dependant from claiming for a loss of inheritance. More importantly, it is also telling that Parliament did not see the need to place a cap on the quantum which may be recovered as was tentatively suggested by Woo J.

145 The fact that Woo J expressly detailed these concerns also militates against Dr Zhu's objections that when the new sub-section was proposed by the Committee, it was done without consideration being given to the situation of a child-dependant who may no longer be a dependant at the end of the Deceased's natural life. To the contrary, such a consideration was, in our view, very much alive in the Committee's mind when proposing the amendments to the Civil Law Act. Quite apart from the fact that the proposals were made to *specifically* respond to the decision of *Lassiter*, which meant that Woo J's observations must have been taken into account, several of the case authorities relied upon in the Committee Report involved factual matrixes where there was a child-dependant who might not be dependant for much longer.

146 For example, in the House of Lords' decision of *Taylor v O'Connor* [1971] AC 115, a claim for loss of inheritance was allowed for a wife and a daughter who was 18 years old at the time when her father passed away at the age of 53 years. In this respect, Lord Reid noted (at 128) that:

> She or her daughter would also have an interest in any capital which the deceased might have accumulated before his death. She might not have survived him but her daughter probably would have and it is not suggested that there was any substantial likelihood that the deceased would have done other than bequeath his estate to his wife or daughter. …

147 Such an approach would also be consistent with the way that our courts have quantified claims relating to loss of CPF contributions, which as noted above, should be viewed similarly to a loss of inheritance claim. In *Assessment of Damages: Personal Injuries and Fatal Accidents* (LexisNexis, 2nd Ed, 2015), the learned authors noted that (at para 9-46):

> The loss attributable to the cessation of contributions to the CPF forms part of a dependency claim: *Singapore Bus Service (1978) Ltd v Lim Soon Yong* [1985] 2 MLJ 267; *Lee Wee Hiong & Anor (administrators of the estate of Lee Liak Meng (decd) & Ors v Victor Koh Ah Sai & Ors* [1989] SLR 1029; *Ang Song Huay v Chu Yong Thiam* [1995] SGHC 116. ***In the latter two cases, the children were granted a share of the estimated loss attributable to the cessation of CPF contributions even though they would have attained majority before the deceased, if he had lived, could withdraw his CPF monies.*** However, in *Gul Chandiram Mahtani v Chain Singh* … , the court found it highly unlikely that the daughter would be financially dependant on the contributor at the time the monies were withdrawn or that any part of the CPF monies would remain to constitute part of the deceased's estate. As such, the likelihood of the daughter getting a pecuniary benefit from the monies in the deceased's CPF account either when the monies were withdrawn or by inheritance was a matter too speculative and too remote for any award of damages to be made.
>
> [emphasis added in bold italics]

148 Therefore, with respect to claiming for loss of CPF contributions, the fact that the dependants would cease to be dependants at the time when the monies could actually be withdrawn is not fatal to the claim. This should similarly be the case for a claim for loss of inheritance. This factor would only be relevant insofar as it affects the *reasonable expectation* of the dependant to receive the monies at the end of the deceased's natural life. This was precisely the case in *Gul Chandiram Mahtani* where the court refused the daughter's claim for loss of CPF contributions. In *Gul Chandiram Mahtani*, after considering all the circumstances, S Rajendran J concluded (at [32]–[33]) that:

> 32 It is accepted law that the "lost" CPF moneys of the deceased may, in appropriate cases, form part of the dependency claim (*Lee Wee Hiong v Koh Ah Sai Victor* [1989] 2 SLR(R) 486; *Singapore Bus Services (1978) Ltd v Lim Soon Yong* [1983–1984] SLR(R) 159). ***The question that has to be asked is whether it can be said that the daughter, at the time the deceased would have withdrawn the CPF moneys, would have a reasonable expectation of benefitting from these funds.***
>
> 33 In *Singapore Bus Services (1978) Ltd v Lim Soon Yong*, there was a real possibility of pecuniary loss since the dependants making the claim were the wife and the deceased's parents who are all dependent on the deceased for their daily requirements. They could therefore expect that the CPF funds would have been used for their benefit. A child may not be in that position. By the time the parent withdraws the CPF moneys the child may have grown up and be self-supporting. In fact, the stage may have come when it is the child that is supporting the parents. In this case, it is highly unlikely that the daughter would be financially dependent on the contributor at the time the moneys are withdrawn. It is therefore difficult to say that the daughter had a reasonable expectation of benefitting from the CPF funds. ***Considering the income bracket that the deceased was in and considering that she had hardly any savings to show for the years she had worked, it also seems unlikely that any part of the CPF moneys would remain to constitute part of her estate or indeed that the deceased would have had very much other assets in her estate. In the circumstances of the present appeal, I find that the likelihood of the daughter getting a pecuniary benefit from the moneys in the deceased's CPF account either when the moneys were withdrawn or by inheritance to be a matter that is too speculative and too remote for any award of damages to be made.***
>
> [emphasis added in bold italics]

149 From the above, it can be seen that the focus is still entirely on the "reasonable expectation" of the dependant and the fact that the child would no longer have been dependent on the deceased mother by the time she could have withdrawn her CPF monies was only one factor which the court took into account. It was also relevant in that case that the deceased hardly had any

savings to begin with, which evidenced that it was unlikely that her CPF monies would constitute part of her estate.

150 The same cannot be said about the present case where the Deceased was an individual of substantial means and would have left a sum for the Children to inherit at the time of his death despite the fact that they may be financially independent by that time. We therefore agree with the Judge's decision to award 52.5% of the Deceased's accumulated savings for the Children's loss of inheritance claim.

151 By applying 52.5% to the sum of $3,698,100 (see above at [141]), the Children are to receive $1,941,502.50 for their loss of inheritance claim.

Conclusion

152 In the light of the above reasons, we allow CA 127/2015 and CA 132/2015 in part by reducing the sum awarded for the Children's loss of inheritance claim and by directing that the coroner's inquiry fees be taxed. We also allow CA 131/2015 in part by increasing the sum awarded for the Children's dependency claims. To summarise, the sums to be awarded to the respective dependants are as follows:

(a) Dependency claim of Ms Quek: $302,400.

(b) Dependency claim of the Children: $406,000 for Jo-Ann and $589,750 for Ryan.

(c) Loss of inheritance claim of the Children: $1,941,502.50.

153 On the issue of costs, parties are requested to make their submission in writing (not to exceed 15 pages) within two weeks of the date of this judgment.

Sundaresh Menon	Chao Hick Tin	Andrew Phang Boon Leong
Chief Justice	Judge of Appeal	Judge of Appeal

Dr Myint Soe, Srinivasan Selvaraj and Edward Leong (MyintSoe & Selvaraj) for the appellant in Civil Appeal No 127 of 2015 and the respondent in Civil Appeal No 131 of 2015;
Kuah Boon Theng, Felicia Chain, Gerald Soo, Karen Yong (Legal Clinic LLC) for the appellant in Civil Appeal No 131 of 2015 and the respondent in Civil Appeal Nos 127 and 132 of 2015;
Christopher Chong Fook Choy and Melvin See (Dentons Rodyk & Davidson LLP) for the appellant in Civil Appeal No 132 of 2015 and the respondent in Civil Appeal No 131 of 2015;
Third respondent in CA 131/2015 not present.