IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHCR 12

Suit No 1351 of 2014

HC/AD 43/2015

Between

(1) Ng Hua Bak
(NRIC No. S0514858H)

… Plaintiff

And

(1) Eu Kok Thai
(NRIC No. S0210801A)

… Defendant

JUDGMENT

[Damages][Assessment]

Ng Hua Bak
v
Eu Kok Thai

[2016] SGHCR 12

High Court — Suit No 1351 of 2014 (Assessment of Damages No 43 of 2015)
Jay Lee Yuxian AR
12, 13, 14 January 2016, 24 March 2016, 5 May 2016, 8 June 2016

2 November 2016 Judgment reserved.

Jay Lee Yuxian AR:

INTRODUCTION

1 The Plaintiff was 69 years old at the time of the accident on 1 April 2009. He was then a full time taxi driver with Comfort Transportation Pte Ltd ("Comfort Taxi"). At the time of the Assessment of Damages ("AD") hearing, the Plaintiff was turning 76 years of age.

2 The Defendant was a driver of a motor vehicle involved in the traffic accident with the Plaintiff which occurred on 1 April 2009.

3 In the event, liability was not disputed and interlocutory judgment was entered by Consent at 100% in the Plaintiff's favour on 23 May 2012. The present action concerns the assessment of damages.

4 Whilst the dispute rested on settled principles of law, there were preliminary skirmishes over the state of the evidence at the commencement of the hearing. The Plaintiff's Affidavit of Evidence-in-Chief ("AEIC") was deposed in November 2013 and there was no supplementary AEIC put in by the Plaintiff for the AD hearing taking place in 2016. A significant corpus of evidence was compiled into bundles and sought to be admitted on the basis of a purported or assumed agreement between parties. The Defendant's counsel however pointed out that there was in fact no agreement between parties to dispense with formal proof or admissibility of some of the documents. This unwieldy state of affairs predictably led to some protracted and contentious exchanges between counsel on the scope of the "agreed" bundles and on which documents were to be admitted into evidence throughout the days of the hearing. The issues pertaining to the utility of "agreed bundles" and the guiding observations to resolve the tension between the underlying rationale of the Evidence Act and efficiency and fairness of the trial process, was comprehensively canvassed by the Court of Appeal in *Jet Holdings Ltd & Ors v Cooper Cameron (Singapore) Pte Ltd & Anor* [2006] 3 S.L.R. (R) 769 and need not be repeated here: see [40] to [56]. For my part and in the context of this AD hearing, it suffices to observe that it would have been more efficient for parties to address their minds to resolve any evidential disputes and calibrate the scope of agreement under any proposed agreed bundles *prior* to the hearing rather than wait to ventilate these issues only at the start of the hearing. Issues such as whether a document is agreed to be admitted into evidence, agreed as to authenticity and/or content can be addressed prior to the hearing. This would then result in a smoother and more efficient hearing process as well as a better organised corpus of evidence after the hearing.

Items of Claim

5 At the outset, I note that the heads of claim for (i) future medical expenses in respect of bi-annual consultations and follow up at the Spine Specialist Clinic at **$212.00** and (ii) medical expenses (claimed as special damages) at **$18,814.91** was not in dispute.

6 The items claimed by the Plaintiff and which were in dispute are outlined below. Each item, together with the relevant authorities will be discussed in turn.

General Damages

(a) Pain and Suffering

(i) Neck and whiplash associated injury

(ii) Dysphagia and Odynophagia

(iii) Osteoarthritis in shoulder and knee joints

(b) Loss of Future Earnings or alternatively Loss of Earning Capacity

(c) Future Medical Expenses

(d) Future Transport Expenses

Special Damages

(e) Pre-trial loss of earning

(f) Transport Expenses

Disputed Items

Pain and Suffering

Neck and whiplash associated injury

7 Relying primarily on the evidence of Dr Hee Hwan Tak ("Dr Hee"), the Plaintiff claimed to have suffered severe neck injury that manifested with whiplash associated disorders. Following the accident, the Plaintiff underwent an anterior cervical discectomy and fusion at the C5/6 level of his cervical spine on 18 September 2009 (the "First surgery"). The Plaintiff's case is that following the first surgery, he had difficulty swallowing in early 2010 (a condition known as dysphagia) and was referred by the ENT specialist (Dr Jeevendra Kanagalingam) back to the hospital for further treatment. He underwent a second fusion surgery (the "Second surgery") at the C4/5 level of his spine on 30 April 2010 to address this. Post-operatively, he claimed to experience pain while swallowing (a condition known as odynophagia). Presently, the Plaintiff claims he continues to experience neck pain, neck stiffness and giddiness. He claimed that his neck injuries would fall within the category of "Severe (a)(ii)" under the Guidelines for the Assessment of Damages in Personal Injury Cases 2010 (the "Guidelines").

8 The Defendant contended that the Plaintiff's neck injury fell within the category of "moderate" rather than the category of "severe" under the Guidelines, and that the Plaintiff was exaggerating the extent of the residual pain and disabilities from the neck injury. The Defendant relied primarily on the expert evidence of Dr W C Chang ("Dr Chang") and Dr Chang's medical report dated 11 November 2015.

9 The medical evidence showed that the Plaintiff suffered from a prolapse injury to his cervical spine caused by the accident. The C5/6 disc prolapse was noted by both Dr Hee and Dr Chang in their medical reports. This was uncontroversial.

10 The medical evidence also showed that the Plaintiff initially suffered from neck pain radiating to his left arm following the accident. This was reflected in Dr Hee's medical report dated 22 February 2010 which records that the Plaintiff "was admitted to NUH…for neck pain after an accident…", was "initially treated conservatively" and "…did not improve and *still* complained of neck pain radiating to his left arm" and was thereafter referred for the First surgery. In the same report, Dr Hee noted that the Plaintiff "was better" at the review on 23 December 2009, although no details of the improvements were recorded. Dr Hee's next report dated 16 December 2010 shed more light on the Plaintiff's condition. It recorded again that the Plaintiff was admitted to NUH following the accident "for neck pain radiating to his left arm" and that following the First surgery, the Plaintiff's "left upper limb symptoms improved somewhat after the surgery". Dr Hee's evidence on the Plaintiff's improvements following the surgery was further explained by Dr Hee during cross-examination where he agreed that the First surgery was successful in reducing the Plaintiff's neurological or nerve symptoms to his left arm. Dr Naresh Kumar's report of 20 October 2014 ultimately accepts that the Plaintiff "may have some neck pain" which can be addressed by "posture advice and physiotherapy", although Dr Kumar notes, following a review of the radiological investigations, that he does not think the Plaintiff "should get neck pain on a bumpy road or feeling of neck dropping off when he gets off from the car" and that it is difficult to explain why the Plaintiff should be getting neck pain when rotating his neck.

11 I also considered the video surveillance evidence produced by the Defendant. In my observation, the quality of the video surveillance meant that it was not able to accurately reflect whether the Plaintiff experienced pain/discomfort or the degree of pain/discomfort experienced when executing movements of the neck and it did not provide much assistance on this point.

12 In my view, the overall evidence shows that moderate, but not severe neck pain is present.

13 The medical evidence also shows on balance that the Plaintiff suffered a moderate but not severe restriction of motion to his neck. It was common ground between the two key medical experts that given the 2 fusion procedures, limitation of neck movement was expected. The dispute was over how severe the restriction to neck motion was and on this issue I considered the following to be relevant:

(a) Dr Hee's report of 17 November 2014 recorded his observation that the Plaintiff has "neck stiffness in all directions", "there was global reduction in range of motion of his cervical spine", the "extension and lateral flexion (left and right) were severely limited (about 5 degrees)" and "[f]lexion and lateral rotation were about 10 to 15 degrees". However, when questioned on the restriction of motion of the Plaintiff's neck, Dr Hee accepted that the ordinary range of neck rotation (the motion of turning the head to face the left or to face the right) was in the region of 60 degrees to each side and that with 2 fusion procedures, the expected restriction to rotation was in the region of 8 degrees to each side. Dr Hee also accepted that with 2 fusion procedures, the expected restriction to flexion and extension was in the region of 14 degrees.[1] This suggested that Dr Hee's observed limitation

to the Plaintiff's neck movements was out of proportion to the generally expected restriction in motion.

(b) The surveillance video of the Plaintiff was only helpful to the limited extent that in my observation it showed that his neck movements appeared somewhat restricted. Under examination, both Dr Hee and Dr Chang maintained that the surveillance video footage aligned with their own respective assessments. However, I must note that, it was simply not possible to tell with precision from the video what the degree of restriction to the motion was. I also accept Dr Hee's explanation under examination that the surveillance video footage did show that the Plaintiff's spontaneous neck movements were not done to the limits of a normal person and that the Plaintiff would rely on his back to execute movements as this accorded with my visual observations.[2] Footage from the surveillance video also showed the Plaintiff was able to execute Tai Chi exercises, jog and do sit ups, however I noted that it appeared from the video footage at least that in performing these motions, the Plaintiff's neck movements did appear somewhat restricted.

(c) The report of Dr Naresh Kumar dated 20 October 2014 recorded that the Plaintiff's "range of movement of the neck is likely to be restricted". Although Dr Kumar did note separately that based on the radiological investigations it was difficult to explain why the Plaintiff should be getting neck pain when he rotated his neck, this

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[1] NE Day 1 – pg 68 line 5 to 24.

[2] NE Day 1 – pg 32, line 26 to pg 33, line 2.

statement spoke to the degree of neck pain but did not significantly undermine the Plaintiff's complaints of neck stiffness.

(d) In his medical report of 11 November 2015, Dr Chang recorded his observations that the Plaintiff's neck "was extremely stiff. There was no extension, left or right lateral flexion. Flexion was only about 5 degrees." It should be noted that Dr Chang opined "[t]he stiffness was felt to be due to lack of volition and effort to move on his part". Under examination, Dr Chang gave more elaboration and eventually accepted that given the 2 fusion procedures, the Plaintiff could experience up to 30% restriction in neck movements.

14 There was also evidence that the Plaintiff cervical spine had recovered fairly well after the first and second fusion procedures in the sense that based on the reviewed x rays and MRIs there was good fusion at the C4/5 and C5/6 level and no significant residual cord compression. This was consistently noted in the reports of Dr Kumar dated 20 October 2014, Dr Hee dated 17 November 2014 as well as Dr Quek dated 17 April 2015.

15 The Plaintiff complained of other residual pain and disabilities associated with the neck injury. Here I note the evidence is consistent that the Plaintiff continues to suffer from some degree of reduction in power to his left hand grip. This was observed both in Dr Naresh Kumar's report dated 20 October 2014 and Dr Chang's report of 11 November 2015. I also accept the evidence of Dr Hee that it is common for cervical spine injuries to be accompanied by the twin complaints of giddiness and headache.[3] The

[3] NE Day 1 – Pg 49, line 17 to 20.

Plaintiff's complaint of giddiness was also noted relatively early on in Dr Hee's report of 16 December 2010.

16 The totality of the evidence reviewed above supports a finding that the Whiplash associated disorders suffered by the Plaintiff come within Grade 4 on the Quebec classification which corresponds to a clinical presentation where there are "neck complaints with fracture or dislocation or injury to the spinal cord". It is uncontroversial that the accident left the Plaintiff requiring an initial fusion procedure at the C5/6 level of the spine. In my view, the Plaintiff's whiplash associated neck injuries fall within the "moderate" (b)(i) category range under the Guidelines which is described as follows:

> "Severe whiplash injury classified as Grade 4 whiplash injury. There is serious limitation of neck movement, neurological deficits with recurrent pain radiating to the limbs and headaches. There is not only an increased vulnerability to future trauma but there is a high risk of developing cervical spondylosis with a possible need for cervical spine fusion surgery in the near future.

And the category of "severe" (a)(iv) which is described as follows:

> "Severe damage to soft tissues and/or ruptured tendons such that movement of the neck is affected. The person continues to suffer disabilities in the long run."

17 In considering the appropriate quantum of award, I agreed with Plaintiff's counsel's submission that the injuries in this case were more serious than those in *Clark Jonathan Michael v Lee Khee Chung* [2009] SGHC 204, *Tan Siew Bin Ronnie v Chin Wee Keong* [2008] 1 SLR 178 and *Kuan Whye Mun v Yeoh Woei Chi Nicholas* (DC Suit No. 964 of 2033). Unlike the aforementioned three cases, the Plaintiff here suffered injury to the spine and required an initial fusion surgery at the C5/6 level. It was clear to me however that contrary to the submissions of Plaintiff's counsel, the Plaintiff's injuries

were not as severe as in the case of *Teddy, Thomas v Teacly (S) Pte Ltd* [2014] SGHC 226. ("*Teddy Thomas*") where the claimant was awarded $60,000 in relation to his spine injury. In *Teddy Thomas*, the Court found that the claimant there suffered fractures at the C4 to C6 vertebral bodies which required an urgent surgery, and disc injuries at the C3/4 to C7/T1 level resulting in indentation of the spinal cord: see [34] and [36]. I did not find the case of *Nirumalan V Kanapathi Pillay v Teo Eng Chuan* [2003] 3 SLR(R) 601 ("Nirumalan") which was relied upon by the Defendant's counsel to be particularly useful as it was of considerable vintage. It was significant that even in *Nirumulan* at [18], the High Court expressly recognised that in applying precedents of awards for injuries, allowance had to be made for the age of the award.

18 Based on the authorities and the range of awards canvassed before me and in line with the appropriate range identified under the Guidelines, I award **$40,000** to the Plaintiff for pain and suffering in relation to the neck and whiplash associated injury.

Dysphagia and Odynophagia

19 The Plaintiff claimed to have suffered dysphagia in early 2010 just several months after the first fusion surgery. According to the Plaintiff, a review by an ENT specialist identified that the dysphagia was due to osteophytes at the C4/C5 level which had developed following the first fusion surgery. This necessitated a second surgery at the C4/C5 level. The Plaintiff further claimed that he continues to suffer from severe dysphagia and odynophagia. Dysphagia refers to difficulty in swallowing whilst odynophagia refers to painful swallowing. This was explained by Dr Hee in his evidence and as I understand it, not disputed by the Defendant.

20 The Plaintiff relied primarily on the evidence of Dr Jeevendra Kanagalingam in his doctor's report dated 13 April 2010, referral letter dated 13 April 2010 and the report of Dr Hee dated 16 December 2010. Dr Hee stated in his report that the Plaintiff developed dysphagia in early 2010 and the impression was that the dysphagia could be due to the C4/5 osteophyte.

21 Having assessed the medical evidence that emerged in the course of the hearing, the Defendant was prepared to concede that the Plaintiff suffered dysphagia following the first surgery but disputed the severity of the dysphagia. The Defendant's counsel submitted that they were prepared to concede to an award of $5,000 for the Plaintiff's dysphagia. The Defendant contended that there was no diagnosis of the Plaintiff suffering from *severe* dysphagia by any ENT specialist, there was no evidence of the Plaintiff suffering from odynophagia and that there was no evidence that the Plaintiff continued to suffer from dysphagia.

22 I note that there was evidence of the Plaintiff suffering from dysphagia following the first surgery in the form of Dr Jeevandra's doctor' report and referral letter both dated 13 April 2010. This cohered with the report of Dr Hee dated 16 December 2010 which noted that the Plaintiff developed dysphagia in early 2010, that the dysphagia necessitated a second fusion surgery to address it, and that the Plaintiff had some odynophagia as at December 2010. The difficulty in swallowing and breathing was also noted in the report of Dr Kumar dated 20 October 2014 and again in the report of Dr Amy Quek dated 17 April 2015. I found the reports of Dr Thomas Loh dated 26 May 2015 and a memo from the ENT department of the National University Hospital dated 8 July 2015 relevant as they indicated that the Plaintiff's dysphagia "improved after [the] second spinal surgery and has since been the same with no progression or worsening, and he is coping with it".

This same report made no mention of "odynophagia". The ENT doctor's reports also indicated that by mid-2015, the ENT doctors were only treating the Plaintiff "as for reflux" so it appears the dysphagia may have moderated somewhat. The Defendant did not provide any evidence from an ENT doctor to refute the Plaintiff's dysphagia or odynophagia claim.

23 The picture presented by the medical evidence was that the Plaintiff did suffer from dysphagia, that the dysphagia necessitated the second fusion surgery, that there was some improvement following the second surgery but the Plaintiff continues to suffer from some dysphagia. As for the odynophagia, this was noted in the report of Dr Hee dated 16 December 2010. In the absence of medical evidence from the Defendant to refute the existence of odynophagia, I was prepared to accept that there was some degree of odynophagia. Overall, the evidence indicated that the dysphagia and odynophagia suffered by the Plaintiff was not severe. The footage from the video surveillance did show the Plaintiff eating food but here again I found it was of limited assistance. The quality of the video surveillance meant that it was not able to accurately reflect whether the Plaintiff experience discomfort/pain or the degree of discomfort/pain experienced by the Plaintiff in swallowing or eating. Given its limitations, it was not possible to conclude on the basis of the video footage that the Plaintiff had no difficulty or pain in swallowing or eating and I could not accept Dr Chang's evidence to this effect.

24 As to the quantum of award, I did not find the precedent authorities relied on by the Plaintiff's counsel to be particularly helpful. *Shaw Linda Gillian v Chai Kang Wei Samuel* [2009] SGHC 187 did not state the nature and extent of the "tongue and throat muscle injuries" and the report of *Chua Seng Lee v Ang Teow & Anor* Suit No. 2103 of 1996 High Court (unreported)

similarly notes that the nature of the throat injury was not stated but that it was likely due to a crushing injury. The Defendant's counsel on the other hand did not present any authorities on this item of claim but nevertheless submitted that an award of $5,000 would be appropriate. In my view, the nature of the injury in the case of *Shaw Linda Gillian* bore more resemblance to the dysphagia and odynophagia injury in the present case insofar as it was muscular in nature as opposed to a crushing type of injury. I also gave due consideration to the fact that the trauma and injuries sustained by the claimant in *Shaw Linda Gillian* was more severe than the present case so the award in the present case should be calibrated lower. In the premises, I award **$7,000** for dysphagia and odynophagia.

Osteoarthritis in Shoulder and Knee Joints

25 I deal with this item of claim briefly. This item of claim is based primarily on a radiology report by Dr Krishna Mohan Gummalla dated 25 May 2012. In the course of the hearing, it was agreed upon by counsel that this radiology report was not to be admitted into evidence. That being so, and as rightly submitted by the Defendant's counsel, there was no documentary evidence to substantiate these claimed injuries. Even if the radiology report were to be in evidence, I note that it was a report done in 2012, almost 3 years after the accident, and it only notes that mild and moderate osteoarthritic changes were observed respectively in the shoulder and knee joints but does not in any way link these osteoarthritic changes to the accident. Significantly, there is no mention in Dr Hee's first report on 22 February 2010 (i.e. the report most contemporaneous with the accident) of any knee or shoulder injuries. Contrary to the Plaintiff counsel's submissions, none of the medical reports suggest that the accident predisposed the Plaintiff to a greater

incidence of such osteoarthritic changes. In the premises, I make no award for this item of claim.

Future Medical expenses and Future Transport expenses

26 I deal now with the Plaintiff's claim for future medical and transport expenses. In terms of the future medical and transport expenses, the Plaintiff claimed for the following items:

(a) Gabapentin/Neurobion treatment	$500 (based on $25 every 3 months for next 5 years)
(b) Aspen or Miami cervical collar	$200 ++ for the collar $50 ++ for each annual change of padding components over 5 years
(c) Spine Specialist Clinic Follow-up (NUH) , requiring radiographic imaging	$**212** (this item was agreed by the Defendant)
(d) Reasonable transport expenses for the above consultations and to obtain medication	$900 (based on $21 for the taxi ride to and from the Plaintiff's house, 20 trips for purchase of Gabapentin/Neurobion, and 2 trips for the biannual check-up)

27 As to the claim for Gabapentin / Neurobion treatment costs, the evidence of Dr Amy Quek, the neuorologist who prescribed the gabapentin and neurobion was clear. Dr Quek in her report dated 17 April 2015 had explained that the medications had been prescribed to treat the Plaintiff's "sensory symptoms" which included complaints of "numbness of the peripheries", "pins and needles" and "burning sensation". Dr Quek's report noted that further investigations on the Plaintiff were pending to ascertain if the Plaintiff had small fibre neuropathy. Dr Quek further explained during the

hearing that it was most unlikely that trauma would be the cause of small fibre neuropathy. In the course of the hearing, Dr Quek's medical notes were admitted into evidence as AQ 1 – 16, and it was noted at AQ 7 of the medical notes that the Plaintiff's sensory symptoms were due to small fibre neuropathy and crucially that this "may be idiopathic, and is not related to previous spine surgery". Dr Quek also helpfully explained during the hearing that "idiopathic" means that "no cause can be found". Given the clear medical evidence that the Plaintiff's sensory symptoms were not linked to any injuries caused by the accident, I see no basis to award this item of claim to the Plaintiff.

28 The claim for future medical expenses relating to the Aspen or Miami cervical collar rested primarily on the Plaintiff's own testimony that he found it necessary to wear the cervical collar in crowded places to minimise the risk of other persons bumping into him and causing him pain. Medically however, the Plaintiff's expert Dr Hee gave evidence that a cervical collar would usually be recommended to be worn by a patient for only a short period of time after undergoing surgery, certainly not for long periods of time.[4] The Plaintiff's counsel submitted that based on the Plaintiff's testimony, the reason why the Plaintiff continued to wear the cervical collar on occasion was "not because he wanted to exaggerate his condition, but due to his misconceived perception that it may help him to avoid further deterioration of his neck condition"[5]. I agree with that to the extent that the Plaintiff's occasional wearing of the cervical collar was due to his own misconceived perception and that there is insufficient evidence to show the Plaintiff wore the cervical collar in order to exaggerate his condition. The Plaintiff's misconceived perceptions aside, the

[4] NE Day 1 Pg 33 lines 25 to 30 and Pg 34, lines 2 to 14.

[5] NE Day 2 Pg 44 lines 2 – 8 and lines 16 – 18.

medical evidence was clear that generally the cervical collar would only be worn for a short period of time after the relevant surgery and not for a long period of time. I agree with the Defendant's submissions that there is no medical reason for the Plaintiff to be wearing a cervical collar anymore or in the reasonable future and I make no award for this item.

29 The Plaintiff's claim for future medical expenses in relation to follow up consultations with the spine specialist on a bi-annual basis quantified at **$212** was agreed by the Defendant. I now consider the claim for future transport expenses. Given my findings above that there is no basis for the Defendant to bear the future expenses for the gabapentin / neurobion treatment and the provision of the cervical collar, this meant that the Plaintiff's quantification of $900 for this item was excessive (insofar as this quantification had factored in the trips to purchase the Gabapentin / Neurobion and/or the cervical collar). The future transport expenses are limited to the trips for the follow up consultations with the spine specialist which is on a bi-annual basis and which the Defendant had not disputed. The Defendant's counsel took the position in submissions that the Defendant would concede to a quantum of $200 for future transport expenses, I agree that this is an appropriate amount. In the circumstances, I award **$200** for future transport expenses.

Pre-Trial Loss of Earnings ("PTLOE"), Loss of Future Earnings ("LFE") alternatively Loss of Earning Capacity ("LEC")

30 These items formed the substantial portion of the amounts claimed by the Plaintiff and were the most contentious between parties.

Pre-Trial Loss of Earnings ("PTLOE")

31 I begin with the claim for Pre-trial Loss of Earnings ("PTLOE"). It is apposite to note at this juncture that the Plaintiff was 75 years of age at the time of this hearing and was going to turn 76 in June 2016. This is significant because prior to the accident, the Plaintiff's worked as a full-time taxi driver and it was common ground between both parties that the mandatory retirement age for a taxi driver was 75 years old. The period of time after the accident and up to the time the Plaintiff turned 75 years old in June 2015 was claimed as pre-trial loss of earnings by the Plaintiff[6]. I note that the item of claim for pre-trial loss of earnings should in principle also take in the period after June 2015 up to the point of the Assessment of Damages hearing in 2016.

32 The Plaintiff separated his PTLOE claim into two components for a period of 75 months from the accident in April 2009 until the mandatory retirement age of 75 years old in June 2015. First he claimed for pre-trial loss of earnings at $2,400 per month for a period of 75 months, with an appropriate deduction for the Plaintiff's earnings during the 2 short periods he returned to driving his taxi after the accident (i.e. 19 May to 15 September 2009; and 6 February to 23 March 2010). Secondly, he claimed for loss of progressive earnings at $600 per month for 75 months. The Defendant disputed both the multiplicand of $2,400 and the multiplier (75 months) sought to be employed by the Plaintiff. The Defendant also argued that the claim for loss of progressive earnings was speculative and unsupported by the evidence.

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[6] Plaintiff's Submissions at [70].

Multiplicand for PTLOE

33 The Plaintiff appeared to rely on evidence of his earnings over a narrow period of 3 months just before the accident (January to March 2009) to derive the multiplicand of $2,400. The Defendant's counsel countered that the multiplicand of $2,400 was an unrealistic representation of the Plaintiff's average monthly income as it only took into account this 3 month period of earnings and argued that a more accurate method would be to derive the average per month income of the Plaintiff over the period of 3 years prior to the accident which computed to the figure of approximately $2,100. I found both methods unsatisfactory for the reasons set out below.

34 Referring to his Notices of Assessment for 2007 to 2010, the Plaintiff sought to demonstrate the he enjoyed year on year increments to his annual income from 2007 to 2010[7] up to the time of the accident where his income had reached $2,400 per month. The Plaintiff then appeared to rely on the average of the last 3 months of earnings prior to the accident to derive the multiplicand. This was too simplistic an analytical approach to adopt in my view. Clearly, a taxi driver's earnings depended on many factors including perhaps most significantly his average number of driving hours or mileage covered. There was however no submissions on this. Other factors which may have seen changes from 2007 to 2010 and up to the time of assessment include the type and amount of surcharges, the calculation of the basic fare (e.g increases in the amount charged per kilometre travelled), the driving patterns of the driver (i.e. whether the driver drove mainly in the day time, night time, weekdays and/or weekends). There was scanty evidence on these matters save for a single sentence by the Plaintiff at [21] of his AEIC that prior to his

[7] See Plaintiff's AEIC at [16] to [18]

second surgery, he drove on weekends for a short period of time. In my view, in a case like the present, a more accurate assessment of the multiplicand would generally require consideration of and computations premised on at least the following factors:

(a) The average number of hours driven by the driver;

(b) The mileage travelled by the driver;

(c) The changes in the calculation of the basic fare for the duration of the period claimed;

(d) The changes in the type and amount of surcharges for the duration of the period claimed;

(e) The driving patterns of the driver.

Unfortunately, little evidence on these factors was highlighted to the Court.

35 Instead, the best evidence that was available appeared to be the Notices of Assessment from 2007 to 2010 and the computations on average monthly earnings that may be derived therefrom. The Defendant's counsel's contention that it would be more accurate to derive the Plaintiff's average income based on his earnings for the 3 years prior to the accident i.e. based on the Notices of Assessment from 2007 to 2009 failed to take into account factors that would have evolved from 2007 to 2009 such as the changes in the calculation of the basic fare, and type and amount of surcharges. I consider that the Plaintiff's earnings in 2008 and 2009 based on the Notices of Assessment of 2009 and 2010 would at least have factored in the changes to the calculation of basic fare and/or type and amount of surcharges, and changes to his established driving patterns, closer to the time of the accident. From this perspective, I consider that the Plaintiff's level of earnings closer to the accident, based on

the Notices of Assessment of 2009 and 2010 provided a better starting point for the calculation of the multiplicand.

36 The Plaintiff's annual income based on the Notice of Assessment of 2009 was $28,859.00. For the Notice of Assessment of 2010, the overall income was $23,503.00 – Of this, the Plaintiff explained in his evidence that $7,200 represented his earnings from January to March 2009 prior to the accident. $4,800 was in relation to "property" which the Plaintiff has explained was derived from the renting out of one room in his property,[8] $2,000 was derived from an insurance pay-out under his group insurance scheme for taxi drivers, and $8,800 reflected the Plaintiff's earnings for the period of time after the accident when he resumed driving the taxi from 19 May 2009 to 15 September 2009.[9] The Defendant's counsel, in his submissions, sought to undermine the reliability of the Plaintiff's stated figure of $16,000 which was given as the Plaintiff's overall earnings from taxi driving in 2009[10] contending that it could not have been an exact round figure and it was only an estimate. The Defendant's contention did not go very far. The Plaintiff's figure of $16,000, taken together with the $2000 insurance pay-out under the group insurance scheme for taxi drivers broadly aligns with the amount of $18,702 which is reflected as the Plaintiff's "trade" income in the Notice of Assessment for 2010. Moreover, I note that Plaintiff's evidence on this was not seriously challenged by the Defendant's counsel under cross examination and in the absence of any concrete evidence to the contrary, I am prepared to accept the figure as correct. I also found it significant that the evidence suggests the Plaintiff's earnings for January to March 2009 prior to

[8] See Plaintiff's AEIC at [19].

[9] See Plaintiff's AEIC at [18]

[10] See Plaintiff's AEIC at pg 39.

the accident averaged to around $2,400 per month which would be largely consistent with the average monthly income earned for 2008 (based on the Notice of Assessment of 2009). In relation to the Plaintiff's earnings in 2009, I found it unsuitable to take into account the Plaintiff's earnings of $8,800 over a 110-day period when the Plaintiff attempted to return to driving from 19 May 2009 to 15 September 2009 as it was in the period following soon after the accident and would not be a good reflection of the Plaintiff's contemporaneous pre-accident level of earnings.

37 Based on the Plaintiff's earnings from taxi driving in 2008 ($28,859) and for January to March 2009 ($7,200) prior to the accident, the Plaintiff's average monthly income amounted to $2,403.93. In the premises, I assess the multiplicand to be **$2,403.93.**

Multiplier for PTLOE

38 The Plaintiff argued that following the accident, the Plaintiff's injuries and condition, in particular his neck pain and giddiness and loss of mobility of the neck, rendered him unable to continue to work as a taxi-driver. The Plaintiff relied primarily on the medical reports by Dr Hee. Dr Hee had noted in his report dated 16 December 2010 that the Plaintiff was not able to continue driving as a taxi driver given his conditions.

39 The Defendant's counsel countered that applying a multiplier of 75 months was excessive because (1) the Plaintiff had recovered sufficiently to return to taxi driving at the latest by 9 months after the second surgery, (2) the Plaintiff had failed to mitigate his losses by resuming work when he recovered, (3) even if the accident had not occurred, the Plaintiff would have been unable to drive a taxi if he failed the compulsory driving evaluation test

at 70 years of age and/or the further test at the age of 73, (4) even if the accident had not occurred, the Plaintiff would also have been unable to drive a taxi once he started taking medication for his unrelated neurological condition (i.e. small fibre neuropathy) in 2014. These contentions are addressed in turn.

Could the Plaintiff have returned to taxi driving after 9 months following the second surgery?

40 In my view, the medical evidence supports the view that following the accident, the Plaintiff suffered restriction of motion to his neck which eventually rendered him unfit to continue work as a taxi-driver as at December 2010. I could not agree with the Defendant's counsel's contention that the Plaintiff could have returned to taxi driving after 9 months following the second surgery. The following points are salient:

(a) Dr Hee had noted in his medical report dated 16 December 2010 that the Plaintiff was unable to continue working as taxi driver due to his disabilities which included neck stiffness and giddiness. Dr Hee was the Plaintiff's attending surgeon at that time and had performed the two fusion surgeries on the Plaintiff. This 16 December 2010 report was based on an assessment close in time to the accident and by a doctor who was no doubt familiar with his own patient's condition at the material time. The Defendant's counsel sought to undermine the reliability of Dr Hee's December 2010 report and contended that Dr Hee had not examined the Plaintiff's physical range of motion prior to concluding the Plaintiff would be unable to drive. Whilst Dr Hee conceded that he had not recorded the range of motion of the Plaintiff's neck on the face of his December 2010 report, Dr Hee had explained that he was then the Plaintiff's attending doctor[11], had

performed the fusion surgeries and had been seeing the Plaintiff regularly over a period of time[12]. Dr Hee further explained that there were likely to have been contemporaneous investigations and tests done prior to the December 2010 report.[13] Additionally, he explained that generally for cases involving 2 fusion surgeries, one could expect at least a 16 degree reduction in extension/flexion and a 8 degree reduction in rotation[14]. Dr Hee also explained that taxi driving would entail extended periods of driving requiring the Plaintiff to move his neck across the different planes (i.e. flexion/extension/rotation) in response to the surrounding traffic so the Plaintiff's restricted neck motion, neck pain and giddiness rendered him unable to go back to being a full-time taxi driver.[15] On the whole, I found Dr Hee's explanations reasonable and credible. The evidence was clear that the Plaintiff had visited the hospital regularly in 2009 and 2010. It must be appreciated that Dr Hee had also been the Plaintiff's attending doctor and operating surgeon with a contemporaneous insight into the Plaintiff's medical history and condition. Dr Hee's December 2010 report should be seen in this context. Clearly it was quite different from a one-off medical report by a doctor seeing a patient for the first time with less direct knowledge of the patient's medical history.

(b) The Defendant relied primarily on Dr Chang's opinion in his report dated 11 November 2015 where Dr Chang stated that "he was

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[11] See NE Day 1 pg 16 lines 10 to 16.

[12] See NE Day 1 pg 62 lines 20 to 23; pg 77 lines 14 to 17.

[13] See NE Day 1 pg 64 line 28.

[14] See NE Day 1 pg 77 lines 3 to 10.

[15] See NE Day 1 pg 22 lines 12 to 15, lines 21 to 28,

likely able to drive a taxi 6 to 9 months after his second surgery on 30.4.10". However, I note that Dr Chang had accepted under examination that generally, following two fusion procedures, the Plaintiff could be expected to lose up to 30% of neck motion. It may be noted from Dr Chang's report that there was no clear explanation on why he felt it possible or advisable for the Plaintiff to continue driving his taxi vocationally if someone with 2 fusion surgeries like him could suffer up to 30% restriction of neck motion. Dr Chang was also not the Plaintiff's operating surgeon or attending doctor during the material time following the accident and the Plaintiff's surgery. This is significant as it may be generally appreciated that the views of the examining and treating doctor may be preferred over the views of other physicians whose opinions are based more on medical probability and not actual contemporaneous observations: see *Teddy Thomas* at [28]. Although this was not emphasized by respective counsel in their submissions, I reviewed the available evidence and noted that in and up to 2011[16], the Plaintiff still visited NUH for matters pertaining to his neck/spine injury. I infer from this that the Plaintiff continued to require attention to his neck/spine condition at some level and this undermines the Dr Chang's view that "[the Plaintiff] would be able to recover and drive his taxi 6 to 9 months after the second surgery". All considered, I found the opinion of Dr Hee that the Plaintiff continued to suffer restriction to his neck mobility and this rendered him unable to return to full-time taxi driving after December 2010 more persuasive.

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[16] See Plaintiff's AEIC at pg 145.

(c) Although this was not highlighted by respective counsel in their submissions, I also found guidance from the copy of the Singapore Medical Association Guidelines on Fitness to Drive, 2nd Ed. 2011 ("SMA Guidelines") which was admitted into evidence in the course of the hearing. These SMA guidelines astutely observe that "*higher standards of fitness are recommended for vocational drivers – those who drive professionally. This is because they drive for longer hours and under more difficult conditions than drivers of private vehicles. In the case of taxi and bus drivers, they are also responsible for the safety of their passengers besides that of other road users.*" Dr Chang was questioned on his opinion on the Plaintiff's fitness to drive by reference to these SMA Guidelines and he accepted that the SMA Guidelines were a useful reference point.[17] It suffices for me to note that at page 28 of the SMA Guidelines, it observes that in relation to vocational drivers, "persons with chronic low backache and prolapsed lumbar disc should not drive" and "persons with spinal injuries should obtain a doctor's clearance before driving". In this case, I note that the Plaintiff did in fact suffer a C5/C6 disc prolapse from the accident (noted in Dr Hee's 22 February 2010 report) and following 2 fusion surgeries was eventually certified by his then attending doctor to be unfit to return to taxi driving in December 2010.

(d) The medical reports available to the Court consistently record the restriction to the Plaintiff's neck mobility. Beginning with Dr Hee's report in December 2010 to Dr Kumar's report in October 2014 and Dr Hee's further report in November 2014. Even Dr Chang's own report records the restricted motion of the Plaintiff's neck although I

[17] See NE Day 3 pg 66 at lines 17 to 19.

note Dr Chang proffered a view that this was due to the Plaintiff's attempt to exaggerate his condition.

(e) The surveillance video footage, as I had noted above, was useful to only a limited extent. In my observation, it did show that the Plaintiff's neck mobility was restricted although the degree of such restriction could not be precisely gauged. There was no stark surveillance evidence, and none was pointed out by the Plaintiff's counsel, that would completely debunk the Plaintiff's complaints of restricted neck motion. To illustrate, there was for example no footage of the Plaintiff driving, or of the Plaintiff turning/twisting his neck sharply/forcefully, or of the Plaintiff cradling his mobile phone between his neck and shoulder.

Did the Plaintiff mitigate his losses?

41 Here I agree with the Defendant's counsel that the Plaintiff had not done enough to mitigate his loss. The case of *Wee Sia Tian v Long Thik Boon* [1996] 2 SLR(R) 420 is apposite ("*Wee Sia Tian*").

42 The Plaintiff has given evidence in the course of the hearing that apart from taxi driving, he had other job experiences and skills in baking, proof reading and had run a business manufacturing plastic bags as well as a coffee shop venture.[18] The Plaintiff did state that his businesses were sustained for a period of time before they failed. That however did not mean that he had no relevant skills at all. In my view, the evidence showed that the Plaintiff did have a range of job experiences and skills apart from taxi driving. The Plaintiff's counsel submitted that the Plaintiff had attempted to find alternative

[18] See NE Day 2 pgs 68 to 73.

employment but was unable to find a job[19], however I note there is no evidence that the Plaintiff took any reasonable steps to find alternative employment relevant to his range of skills. Plaintiff's counsel was unable to point to any such evidence in his submissions. No documentary evidence of the Plaintiff's job search attempts was provided in the Plaintiff's AEIC. Tellingly, the Plaintiff also did *not* refer to any attempts to seek alternative employment in his AEIC. This gap in the evidence stood in contrast with the more detailed evidence provided by the Plaintiff on how his wife was able to secure a part time job as a Service Assistant with Taster Food Pte Ltd.[20] Although this as not emphasized in the parties' submissions, for completeness, I note that the closest the Plaintiff came to giving evidence on his attempts to seek alternative employment was in the course of re-examination where he commented *"...I did think of finding a job, but I couldn't find one that was suitable for me*".[21] But I find even this statement to be equivocal as it was devoid of particulars and the Plaintiff did not clarify whether he actually made any concrete attempts to seek employment or simply *thought* of finding a job but laboured under his subjective view that he did not see any suitable job opportunities on the horizon. No further evidence on this point was elicited from the Plaintiff by his counsel during examination; no supplementary AEIC with such evidence was put in by the Plaintiff.

43 The Plaintiff's medical leave ended by 31 December 2010[22]. On 16 December 2010, the Plaintiff then obtained Dr Hee's medical report stating that he was no longer able to return to taxi driving. However, it is salient to

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[19] See Plaintiff's Submissions at [81].

[20] See Plaintiff's AEIC at [26].

[21] See NE Day 2 pg 66 lines 26 to 27.

[22] See Plaintiff's AEIC at [12].

note that Dr Hee never expressed the view that the Plaintiff was not able to perform other forms of work or work at any level. Even in his report dated 17 November 2014, Dr Hee similarly noted that the Plaintiff remained unable to work as a taxi driver but did not express the view that the Plaintiff was unable to work at any level. In short, the medical evidence does not support the view that the Plaintiff was wholly unable to work. Rather, the evidence indicates that the Plaintiff appeared to make no effort to seek alternative employment or find out what work he could or could not do. This was similar to the situation facing the Court in *Wee Sia Tian* at [20]. The fact that the Plaintiff was not given further medical leave after December 2010 supports the inference that he was capable of working at some level at least. It would be reasonable to allow the Plaintiff adequate time to recover following his second surgery and even after the expiry of his medical leave in December 2010, but he ought to have attempted to find alternative employment thereafter. I make two further observations based on the evidence from the Plaintiff's transport and medical expenses from 2009 to 2013. First, there is evidential support showing that up to November 2011, the Plaintiff had gone for consultation and investigations on his spine[23] so it may be inferred that the Plaintiff continued to require attention for his neck/spinal conditions. Secondly, the evidence shows that the Plaintiff's visits to the hospital had tapered off significantly in 2012 (1 visit) and 2013 (2 visits)[24] and this also supports the view that the Plaintiff's condition by then allowed him to seek alternative employment in some form and albeit in a reduced capacity. In my view, it would be reasonable to expect the Plaintiff to seek alternative employment by July 2012.

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[23] See 2 AB at pg 120 and also the Plaintiff's AEIC at pg 145.
[24] See 2 AB at pgs 5 – 155.

44 It is also necessary to consider what the Plaintiff's reasonable earning level would be had he returned to some form of alternative employment. In the course of the hearing, the Plaintiff had given evidence that he had managed to earn $1000 a month in his previous job in baking. This was his last job before going into full-time taxi driving.[25] I take this as a useful starting point to calibrate the earnings the Plaintiff could have enjoyed had he sought and obtained alternative employment of the same nature. I am mindful that it is necessary to factor in the Plaintiff's advanced age at which he would have to re-enter the job market to seek alternative employment and his reduced capacity to work due to his residual conditions. A more reasonable view is that the Plaintiff could have earned up to **$500** a month in alternative employment. The impact of the Plaintiff's failure to mitigate his losses is analysed below at [53].

Would the Plaintiff have failed the taxi driving evaluation assessments conducted at 70 years of age and at 73 years of age?

45 The Defendant's counsel submitted that even if the accident had not occurred, there was a chance that the Plaintiff would still not have been able to continue as a taxi driver if he did not pass the mandatory driving evaluation tests which would be conducted at the 70th year, 73rd year mark and thereafter at annual or shorter intervals as recommended by a doctor or occupational therapist. On this basis, the Defendant's counsel contended that the multiplier should be discounted to take into account the possible vicissitudes of the Plaintiff not passing these driving assessments. The short answer to that is that there was no evidence to indicate that the Plaintiff would not have been able to pass the evaluation tests at the 70th and 73rd year mark had the accident not

[25] See NE Day 2 pg 76 lines 3 to 8.

occurred. In terms of the medical evidence, the Plaintiff's other condition of small fibre neuropathy emerged in November 2014 when the Defendant was already beyond 73 years of age. As analysed at [47] to [49] below, the evidence also does not indicate that the Defendant would not be able to drive his taxi following the onset of small fibre neuropathy. I would also note that the Defendant counsel's suggestion to calculate the multiplier up to mid-point mark between 70 and 75 years to reflect this particular vicissitude is arbitrary and unsuitable as it appears to bear little nexus to the specific concern it purports to address.

46 The Defendant's counsel argued that there was no evidence the Plaintiff would be able to pass these driving assessments at the 70 and 73 years mark. He sought to make much of a series of questions put to the Plaintiff during the hearing to which the Plaintiff answered that he did not take any taxi driving evaluation tests after the first surgery in 2009 and the second surgery in 2010.[26] However, it must be noted that the Plaintiff underwent his second surgery on 30 April 2010, was on medical leave in 2010 save for the period of 1 February 2010 to 23 March 2010, and had then been certified unfit to return to taxi driving by Dr Hee in December 2010. There was no good reason for the Plaintiff then to go on and take the driving evaluation test at the 70 year mark and it is unrealistic to count this against the Plaintiff.

Would the Plaintiff have been able to continue with taxi driving after the onset of small fibre neuropathy in November 2014 which required him to take medications?

47 The Defendant's contention is that the Plaintiff's medications for small fibre neuropathy would have rendered him unable to drive a taxi as at

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[26] See NE Day 2 pg 59 lines 9 to 24.

November 2014. Here the medical evidence from Dr Amy Quek is clear. The Plaintiff saw Dr Quek in November 2014 for symptoms of numbness in the peripheries, "pins and needles" and burning sensations on the soles and sometimes fingers. He was eventually diagnosed with small fibre neuropathy and given gabapentin as well as neurobion and subsequently pregabalin to address his condition.[27] Dr Quek also helpfully explained that small fibre neuropathy was idiopathic – meaning no cause can be found, and that it was "most unlikely" to be caused by trauma.[28] This opinion was also recorded in Dr Quek's medical notes dated 23 June 2015.[29] The evidence demonstrates that the Plaintiff's symptoms attributable to the small fibre neuropathy were unrelated to the accident.

48 The next question to address was whether the Plaintiff, suffering from his symptoms caused by small fibre neuropathy which necessitated the consumption of gabapentin, neurobion and pregabalin, would have been able to continue with his taxi driving. Based on the evidence of Dr Quek, the common side effects of gabapentin and pregabalin would include drowsiness and confusion. This corroborated with the views of Dr Chang.[30] When asked whether the side effects of taking gabapentin would render the Plaintiff unable to drive a taxi, both Dr Quek and Dr Chang gave a somewhat qualified response that it would depend on the symptoms experienced by the Plaintiff. If the Plaintiff were to suffer from side effects that would impair his driving ability, such as drowsiness and/or confusion, the Plaintiff would not be fit to drive.[31] I accepted the medical evidence on the potential side effects of

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[27] See NE Day 4 pg 24 lines 12 to 32, pg 34 lines 10 to 12.

[28] See NE Day 4 pg 25 lines 5 to 26.

[29] See AQ7, Medical Notes dated 23 June 2015.

[30] See NE day 3 pg 74, lines 29 to 31.

gabapentin and pregabalin. That being so, I next consider whether the gabapentin or pregabalin did in fact cause the Plaintiff drowsiness and/or confusion such that Plaintiff would not be fit to drive. The medical notes of Dr Amy Quek charted the Plaintiff's consultations, investigations and eventual diagnosis of the small fibre neuropathy. The medical notes also recorded that the Plaintiff experienced feeling "heaty" after taking gabapentin[32] and that he experienced backache after starting on pregabalin.[33] There was no indication that the Plaintiff suffered at any point from side effects of drowsiness and/or confusion from gabapentin or pregabalin.

49 On the evidence before me, I find there is insufficient basis to conclude that the Plaintiff's medications for small fibre neuropathy would have rendered the Plaintiff unfit to drive a taxi as at November 2014. I therefore do not consider this a basis to reduce the multiplier. For completeness, I note that there was also no contention that the very onset of small fibre neuropathy itself would have rendered the Plaintiff unfit to drive a taxi and no evidence was elicited on this.

Computation of Multiplier

50 Based on the above analysis, I consider that the appropriate multiplier to adopt for the pre-trial loss of earnings in relation to the Plaintiff's taxi driving is for the period from the date of the accident in April 2009 until the Plaintiff reached the compulsory retirement age of 75 years old in June 2015. This is a total of **75 months.**

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[31] See NE Day 3 pg 81 lines 31 to pg 82 lines 1 to 17. See also NE Day 4 pg 35 lines 25 to 32

[32] See AQ7 – Medical notes dated 23 June 2015.

[33] See AQ4 – Medical notes dated 18 August 2015.

Final Quantification of PTLOE

Date of accident to compulsory retirement age of 75 in June 2015

51 I earlier found at [37] that the appropriate multiplicand would be $2,403.93. The quantification of the award for PTLOE from the date of the accident up to the compulsory retirement age of 75 is thus $2,403.93 x 75 months = **$180,294.75.**

July 2015 to time of the hearing

52 In addition, there is a period from July 2015 to the time of the hearing in 2016 that needs to be factored in. The Plaintiff's evidence was that he expected to carry on taxi driving up to the retirement age of 75, and that he would expect to work another 3 to 5 years until the age of 78 to 80 as he still had another young son to support.[34] I found no reason to doubt the Plaintiff's testimony in this respect. The fact is that he did have a young son who was about 9 years old at the time of the accident. He was also driving his taxi up to the time of accident with average earnings in the region of $2,400 per month. The Plaintiff's counsel argued in submissions that equipped with a Class 3 driving licence, the Plaintiff could well have taken on other driving related jobs even after his compulsory retirement from taxi driving in June 2015. These driving related vocations included doing deliveries, personal chauffer or school bus driving and even private taxi driving under Uber and Grab.[35] I do not doubt that these were *possibilities*. However, the real question is whether the Plaintiff evinced any such intentions. On this issue, the evidence of the Plaintiff is that after he turned 75 years of age, he could continue to work as a

[34] See Plaintiff's AEIC at [28] to [29].

[35] See Plaintiff's Reply Submissions at pgs 4 to 7.

baker or do a small baking related business.[36] The Plaintiff also did not give evidence in the course of the hearing that he would have turned to these other driving related vocations post-retirement from taxi driving at the age of 75. There is also medical evidence that the Plaintiff suffered from small fibre neuropathy as from November 2014 and this may well have weighed on the Plaintiff's mind in considering whether to carry on working in driving related vocations after the age of 75 although this point may be somewhat speculative. On the whole, I find that there is insufficient evidence to base the computation of the Plaintiff's pre-trial loss of earnings for the period from July 2015 up to the time of the hearing in 2016 on the Plaintiff's taxi driving or driving related income. A more appropriate figure to take would be the amount of earnings per month for alternative employment relevant to the Plaintiff's baking skills or previous business experiences. I consider that an appropriate figure is $750 per month. I derive this using the Plaintiff's previous earnings of $1,000 a month as a salaried worker in a baking related job as a starting point and then factoring in some deductions to take into account the Plaintiff's advancing age and the impact this would have had on his earning ability. I quantify the award for PTLOE from July 2015 to October 2016 at $750 x 16 = **$12,000.**

Deductions

53 I also noted at [43] and [44] above that the Plaintiff had not done enough to mitigate his loss and he would have been able to earn up to $500 a month in alternative employment from July 2012 onwards up to October 2016 (52 months). This amounted to $500 x 52 = $26,000 which has to be taken into account.

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[36] See Plaintiff's AEIC at [30].

54 The Plaintiff has also acknowledged that he has to deduct the amount of $11,356 which he had earned during the brief periods he attempted to return to taxi driving in 2009 and 2010.[37] The final quantum awarded to the Plaintiff for PTLOE from the date of the accident to the time of the hearing is therefore $180,294.75 + $12,000 - $26,000 - $11,356 = **$154,938.75.**

Pre Trial Loss of Earnings – Progressive Earnings

55 The Plaintiff also separately claimed for an amount representative of progressive earnings or anticipated increments in the Plaintiff's taxi driving earnings from 2009 up to the retirement age of 75 years. The Plaintiff's counsel submitted that there was a trend of increments in the Plaintiff's earnings as a taxi driver from 2007 to 2009 prior to the accident and that the Court should factor in an annual increment of 5%. Here I agreed with the Defendant's counsel that there was insufficient evidence to support such a claim. There was no concrete evidence on the increments to the calculation of the basic fare or the types/amounts of surcharges. The Plaintiff himself conceded in the course of the hearing that for taxi drivers, their earnings depended on luck as well as diligence, there was no real trend in terms of their earnings and that sometimes it goes up and sometimes it comes down.[38] The Plaintiff's reliance on the case of *Koh Chai Kwang v Teo Ai Ling (by her next friend, Chua Wee Bee)* [2011] SGCA 23 was misplaced as the facts there were different and the computations pertaining to the claimant's loss of future earnings in that case were premised on a civil service career model which included reasonable assumptions as to projected salary increments. In the present case, there was no evidence on any reliable career model from which

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[37] See Plaintitf's Submissions at [72] and Plaintiff's AEIC at [35(b)]

[38] See NE Day 2 pg 43 lines 22 to 32.

to derive the Plaintiff's projected increments in earnings. The Plaintiff's counsel referenced the emergence of private operators like Uber and Grab to argue that this reflected a shortage in taxi services which would have led to a progressive increase in earnings for taxi drivers[39]. This submission was speculative in my view. Equally, one may speculate that it is just as plausible that the expansion of private operators like Uber and Grab could have quite the opposite effect of increasing competition for taxi drivers and reducing their earnings. In any event, there is no need to speculate further. The evidence to support this item of claim is inadequate. In the premises, I make no award for this item.

LFE or in the alternative LEC

56 I come now to the Plaintiff's claim for an award of LFE or in the alternative LEC.

57 The principles pertaining to claims for LFE and LEC are well settled. The Court of Appeal in *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587 ("*Shaw*") explained that LFE and LEC are two distinct heads of claim meant to compensate for different losses: see [19] to [22]. LFE compensates for the difference between the post – accident and pre- accident income or rate of income, while LEC compensates for the risk or disadvantage, which the Plaintiff would suffer in securing an equivalent job (as the one currently held) in the open employment market: see [20]. The Court is entitled to make an award for both LFE *and* LEC where the evidence supports this and there is no inverse relationship between an award for LFE and an award for LEC: see [23] to [25]. The overarching objective of awarding

[39] See Plaintiff's Submissions at [76].

damages, it must be remembered, is to restore the injured victim to the position that he or she would have been (in a monetary sense) had the accident not happened: see [29], citing Lord Blackburn in *Livingstone v The Rawyards Coal Co* (1880) 5 App Cas 25 at [39].

58 Claims for LFE must be based on real assessable loss proved by evidence: see *Shaw* at [19], *Teo Sing Keng and another v Sim Ban Kiat* [1994] SGCA 20 ("*Teo Sing Keng*") at [36]. Claims for LEC on the other hand would generally be made where at the time of trial the Plaintiff was in employment and had suffered no loss of earnings but there was a risk that he might lose that employment and be disadvantaged in the job market by his injuries or where there was no available evidence of the Plaintiff's earnings to enable the court to properly calculate future earnings: *Teo Sing Keng* at [36] and [40]. The CA in *Shaw* clarified that an award for LEC can be made if there is a substantial or real risk that the plaintiff could lose his or her present job at some time before the estimated end of the plaintiff's working life *and* the plaintiff will be disadvantaged in the job market by the plaintiff's injuries. This was a cumulative test: see *Shaw* at [36].

59 The Plaintiff's claim for LFE was quantified on the following basis. The Plaintiff asserts that he would have continued working beyond the mandatory retirement age for taxi drivers (i.e. 75 years) as he had to support his youngest child (presently 15 years old). He claims for 5 years of pay based on half of his average monthly taxi driving earnings. I had earlier stated at [52] that I found no reason to doubt the Plaintiff's ability to work beyond the retirement age of taxi driving. The Plaintiff himself asserts that he intended to work up to 78 or 80 years of age to support his young son.[40] This aspect of his

[40] See Plaintiff's AEIC at [29].

evidence was not seriously challenged during the hearing. I did however note that there was insufficient evidence to show that the Plaintiff would have continued in a driving related job after he retired as a taxi driver. Instead, the Plaintiff's evidence was that he would have fallen back on his baking and business skills and experiences.[41] That being so, any claim for loss of future earnings must be based on potential earnings from jobs of this nature. The Defendant's counsel argued that the Plaintiff was only able to work as a taxi driver and his other attempts at business had been unsuccessful.[42] Insofar as the Defendant's counsel suggested that this demonstrated the Plaintiff was no longer economically viable or able to earn any income at all after the age of 75, I cannot agree. That the Plaintiff had been unsuccessful in earlier business endeavours does not necessarily mean that he is wholly unable to take on any form of alternative employment after he reached 75 years of age.

60 The Plaintiff is presently unemployed but this does not mean there is no evidence to support a claim for LFE. The Plaintiff had given evidence that before turning to full time taxi driving, he had managed to earn around $1,000 a month in a salaried role relevant to his baking skills.[43] The Plaintiff has also given evidence that he intended to go back to alternative employment relevant to his baking skills after retiring from taxi driving at the age of 75.[44] I take the view that post-retirement from taxi driving, given the Plaintiff would be at an advanced age, his earning ability in a baking related job would be diminished and a realistic figure for his monthly earnings would be $750. However, I earlier noted at [43] and [44] that the Plaintiff should be able to continue

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[41] See Plaintiff's AEIC at [30].

[42] See Defendant's Submissions at [8].

[43] See NE Day 2 pg 76 lines 3 to 8.

[44] See Plaintiff's AEIC at [30].

working albeit in a reduced capacity and in non-driving related jobs relevant to his prior work experiences. I found that an appropriate figure reflective of the Plaintiff's earnings in alternative employment in a *reduced capacity* and taking into account his more advanced age and residual conditions would be $500 per month and this also has to be factored in. I consider the amount of $750 – $500 = $250 to be a suitable multiplicand to base the claim for LFE upon. In terms of the multiplier, given that the Plaintiff was already reaching 76 years old at the time of this hearing, the reality is that his economic lifespan was reaching its end. The Plaintiff's own evidence was that he would work up to the age of 78 to 80 years.[45] I saw no reason to doubt his testimony but it is necessary to factor in the Plaintiff's advancing age, the onset of the Plaintiff's small fibre neuropathy and the attendant impact these factors would inevitably have on his earning ability. I consider that a multiplier of 2 years is reasonable and aligns with the lower end of the Plaintiff's own evidence of his expected post-retirement working lifespan. All considered, I award **LFE at $250 x 24 = $6,000.**

61 The Plaintiff mounted his claim for LEC as an alternative to his claim for LFE.[46] Having made an award for LFE and this being the premise of the Plaintiff's claim, I need not make an award for LEC. Had I required to do so, I would have found that in view of the Plaintiff's very advanced age, his skills and qualifications, the nature of his disabilities and the fact that the Plaintiff did not actually seek to return to any alternative form of work post-retirement, there was an inadequate basis to award LEC and any award for LEC would be negligible.

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[45] See Plaintiff's AEIC at [29].

[46] See Plaintiff's Submission at [87].

Transport Expenses

62 The next item to consider is the Plaintiff's claim for transport expenses quantified at $3,617.20. The Defendant's counsel took the position that special damages being a matter of strict proof, there were no receipts to support the claim and it should not be allowed. It is axiomatic that claims for special damages have to be strictly proven, otherwise they are not recoverable. The Plaintiff has not proved that these claimed transport expenses were actually incurred. No serious attempt was made to explain the lack of taxi receipts to support this claim. The lack of documentary proof of the taxi receipts was compounded by the inconsistencies in the Plaintiff's testimony on the estimated transport/taxi fares he incurred per occasion of travel to the various medical institutions. For example, in the Plaintiff's AEIC, he gives an estimation of $50 per round trip.[47] However, in the Bundle of Documents Vol 2, the Plaintiff prepared a table where he estimates his transport expenses at $42 per round trip.[48] The lack of documentary proof of the taxi receipts also stands in stark contrast to the voluminous medical invoices and receipts provided by the Plaintiff in evidence. In the circumstances, I am unable to make any award for special damages in relation to the claimed transport expenses.

Conclusion

63 In summary, I make the following award of damages in favour of the Plaintiff:

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[47] See Plaintiff's AEIC at [33].

[48] See Agreed Bundle of Documents Vol 2 at pg 19.

General Damages

Pain and Suffering

Neck and whiplash associated injury	$40,000.00
Dysphagia and Odynophagia	$7,000.00
Osteoarthritis in shoulder and knee joints	nil
	$47,000.00
Loss of Future Earnings	**$6,000.00**
Future Medical Expenses	**$212.00**
Future Transport Expenses	**$200.00**

Special Damages

Pre-trial loss of earning	**$154,938.75**
Medical Expenses	**$18,814.91**
Transport Expenses	nil
Total	**$227,165.66**

64 The Plaintiff's claim for interest to be awarded at 5.33% for both general *and* special damages from the date of service of the writ to the date of the judgment was misconceived and the Plaintiff did not elaborate on the basis for this claim in submissions. The ordinary measure is to award interest on general damages for pain and suffering at 5.33% from the date of service of the writ to the date of judgment, and interest for special damages at half of 5.33% from the date of the accident to the date of the judgment: see *Teo Sing Keng* at [50]. No interest is awarded for loss of future earnings because it cannot be said that the Plaintiff was kept out of this money. The Defendant in

his submissions did not contend for a different measure of interest to be awarded.

65 As to interest, I award 5.33% on general damages for pain and suffering from the date of service of the writ to the date of judgment, and half of 5.33% on special damages from the date of the accident to the date of judgment.

66 The usual consequential orders are to apply. Costs is to be taxed if not agreed.

Jay Lee Yuxian
Assistant Registrar

Mr Simon Yuen, Ms Felicia Chain, Mr Gerald Soo (Legal Clinic LLC) for the plaintiff;
Mr Anthony Wee (United Legal Alliance) for the defendant.