IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHCR 02

Suit No 483 of 2017 (Assessment of Damages No 25 of 2017)

Between

Hazwani Binte Amin

… *Plaintiff*

And

Chia Heok Meng

… *Defendant*

JUDGMENT

[Damages] — [Assessment]

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Hazwani bte Amin
v
Chia Heok Meng

[2018] SGHCR 02

High Court — Suit No 483 of 2017 (Assessment of Damages No 25 of 2017)
Scott Tan AR
10-12 October 2017; 29 December 2017

2 April 2018 Judgment reserved.

Scott Tan AR:

Introduction

1 On the night of 31 July 2011, the Plaintiff, then aged 22, was riding her motorcycle along Bedok South Avenue 1 in the direction of New Upper Changi Road when she met with an accident at the intersection of Bedok South Avenue 1 and Upper East Coast Road. The Defendant, who was travelling in the opposite direction, made a right turn at the intersection and collided with the side of the Plaintiff's motorcycle, causing her to fall. Immediately after the accident, the Plaintiff was conveyed to Changi General Hospital where she was hospitalised for 1.5 months.[1] On 1 July 2014, the Plaintiff commenced an action against the Defendant in the State Courts in the tort of negligence. The Defendant denied liability and the matter proceeded to trial. On 6 November

[1] See Affidavit of Evidence-in-Chief of Hazwani Binte Amin dated 1 November 2016 ("Plaintiff's AEIC") at paras 8–9 (see Plaintiff's Bundle of Affidavits ("PBoAff") at pp 4–5).

2015, the District Judge delivered his decision. He held that the Defendant was fully liable for the accident and granted interlocutory judgment wholly in the Plaintiff's favour (see *Hazwani Binte Amin v Chia Heok Meng* [2016] SGDC 8 ("State Courts GD")). On 24 April 2017, the matter was transferred to the High Court for the quantum of damages to be assessed.

2 After careful consideration of the evidence and the competing arguments, I award the Plaintiff a total of $220,806.20 in damages plus interest at the usual rate of 5.33% per annum from the date of the writ to today. A tabular summary of my findings may be found at paragraph [57] below.

The injuries and the aftermath of the accident

3 It is undisputed that as a result of the accident, the Plaintiff suffered the following injuries:[2]

(a) right 2nd toe distal phalanx amputation;

(b) right 5th metatarsal shaft fracture;

(c) right 5th metacarpal fracture;

(d) right knee laceration with extension to knee joint; and

(e) right thigh laceration.

4 The accident also left the Plaintiff with a number of scars. These were detailed in a report prepared by Dr Seah Chee Seng – a consultant plastic surgeon practising at Gleneagles Hospital whom the Plaintiff consulted after

[2] Plaintiff's submissions on quantum ("PWS") dated 24 November 2017 at paras 5 and 6; Defendant's written submissions ("DWS") dated 15 December 2017 at para 7; Notes of Evidence (10 October 2017) ("NE1"), p 24, lines 15–16.

interlocutory judgment had been entered – as follows:[3]

> Right leg
>
> 1. A 25cm x 15cm conspicuous scooped out skin grafted defect at the front to the right knee centred over the knee cap and the upper tibia. The skin was very thin and lacked padding over the bone. The texture and colour of the healed skin graft was also different from normal skin. There was no hair and also no sweat glands. Sensation over the area was very much decreased.
>
> 2. There was a 15cm x 10cm cross shaped scar at the lower 1/3 of the right thigh. At the centre of the cross was a 4cm dimpled pigmented scar.
>
> 3. Her right second toe was amputated.
>
> 4. Healed hypopigmented scar at the dorsum of the right foot.
>
> 5. A few scattered 1cm flat hypopigmented scars on the right shin.
>
> Left leg
>
> 6. 30cm x 20cm healed skin graft donor site at the front of the left thigh. The colour was very uneven with darker and lighter pattern[s]. Within this scar, there was a 5cm x 5cm patch near the knee cap which was of different texture from normal skin.
>
> 7. There were a few scattered hypopigmented scars at the left shin.

5 On 25 September 2012, the Plaintiff discovered that she had contracted Hepatitis C.[4] Her position is that she had contracted Hepatitis C as a result of the blood transfusions which she had received following the accident, and the Plaintiff should therefore be liable for the cost of her treatment.[5] The Defendant denies this, and submits that even if it were the case that the Plaintiff had

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3 Medical Report for Ms Hazwani Binte Amin prepared by Dr Seah Chee Seng dated 13 May 2016 ("Dr Seah's Report") at p 2 (see PBoAff at p 91).

4 Plaintiff's AEIC at para 16; PBoAff, pp 45 and 133.

5 Plaintiff's AEIC at para 16.

contracted Hepatitis C as a result of the blood transfusions she had received, her recourse (if any) lies in an action against the hospital, and not against him.[6]

The heads of claim

6 The Plaintiff brought a number of claims, which may conveniently be divided into the following four categories: (a) pain and suffering, (b) future medical expenses, (c) loss of earning capacity, and (d) special damages. All of her claims, save for the one, were disputed by the Defendant. I set out the parties' respective positions in the table below:[7]

S/N	CLAIM	PLAINTIFF	DEFENDANT
1.	**Pain and Suffering**	**$61,000**	**$24,637.00**
1.1	Right 2nd toe distal phalanx amputation	$18,000	$11,000
1.2	Right 5th metatarsal shaft fracture	$8,000	$3,167
1.3	Right 5th metacarpal fracture	$5,000	$2,861.70
1.4	Right knee laceration with extension to knee joint and right thigh laceration	$5,000	$2,950
1.5	Scarring and disfigurement	$25,000	$4,658.00
2.	**Future medical treatment**	**$203,000 – $363,000**	**NIL**
2.1	Corrective surgery for large scooped out scar	$203,000 –	NIL

6 DWS at para 93.

7 Annexure A of DWS and Plaintiff's reply submissions dated 28 December 2017 ("PRS") at paras 63, 65, and p 20.

2.2	Corrective surgery for dimpled scar on right lower thigh		
2.3	Treatment for hepatitis C	$80,000	NIL
3.	**Loss of earning capacity**	**$120,000**	**NIL**
4.	**Special damages**	**$76,939.99**	**$8027.59**
4.1	Medical expenses	$71,533.89	$5,481.39
4.2	Transport expenses	$193.10	$115.20
4.3	Pre-trial loss of earnings	$2,133.00	$2,133.00
4.4	Cost of repair of motorcycle	$2,900.00	$298.00
4.5	Loss of use of motorcycle	$180.00	NIL
TOTAL:		**$460,939.99 – $620,940**	**$32,664.59**

7 The Plaintiff called 3 witnesses to give evidence on her behalf:

(a) Dr Lim Wen Siang Kevin, a former medical officer at Changi General Hospital, and the author of the medical report on the care received by the plaintiff during her stay at Changi General Hospital;

(b) Dr Seah; and

(c) Dr Jessica Tan Yi-Lyn ("Dr Tan"), a senior consultant in the Gastroenterology and Hepatology department of Changi General Hospital, whom the Plaintiff consulted in 2016 in relation to her treatment options for Hepatitis C.[8]

[8] Notes of Evidence (12 October 2017) ("NE3"), p 14, lines 17–15.

8 The Defendant elected not to call any witnesses. At the close of the hearing, Mr Hassan Esa Almenoar ("Mr Almenoar"), counsel for the Defendant, sought leave to put in further evidence on the cost of corrective surgery (see items 2.1 and 2.2 of the table). I declined to give leave at that stage because it was not clear whether the additional evidence would be forthcoming, or what form the evidence would take. Instead, I granted the Defendant liberty to apply for further directions once it became clear what evidence his client intended to adduce. However, no such application was made.[9]

Pain and suffering

9 I now turn to each of the heads of claim, beginning first with the claim for pain and suffering. As the Court of Appeal said in *ACB v Thomson Medical Pte Ltd* [2017] 1 SLR 918, the quantification of damages for intangible injuries – such as pain and suffering – is an exercise that is fraught with difficulty, for it involves the ascription of a "monetary value to matters which do not lend themselves easily to pecuniary expression" (at [137]). I bear this well in mind. I bear in mind, also, that the "sensible way forward" in the assessment of damages for pain and suffering is to use the awards made in precedent cases as guides, but to remember that each case turns on its own particular facts (see *Tan Siew Bin Ronnie v Chin Wee Keong* [2008] 1 SLR(R) 178 ("*Ronnie Tan*") at [11]). This is particularly important here because many of the precedents cited were unreported cases in respect of which no detailed grounds were issued. As has been said in a different context, unreported cases – while useful in giving a sense of the broad range of possible awards – should be treated with caution. Even when the facts of these unreported cases are summarised in a digest, there is simply not enough particularity to allow intelligent comparisons to be made

[9] NE3, p 31, line 1 to p 34, line 31.

(see *Luong Thi Trang Kathleen v Public Prosecutor* [2010] 1 SLR 707 at [21]). For these reasons, I do not propose to discuss all of the cases cited by the parties (although I have considered all of them carefully), but will confine myself only to those which I consider to be the most germane.

Right 2nd toe distal phalanx amputation

10 In justifying his client's claim for $18,000 for this head of loss, Mr Thiruchelvan ("Mr Thiru"), counsel for the Plaintiff, relied chiefly on the recent decision of the Singapore High Court in *Tan Shi Lin v Poh Che Thiam* [2017] SGHC 219 ("*Tan Shi Lin*"), which also concerned the assessment of damages following a road accident. In that case, the plaintiff claimed damages for, among other things, the full amputation of her big toe and the partial amputation of her second toe. Relying on the guidelines set out in *Guidelines for the Assessment of General Damages in Personal Injury Cases* (Academy Publishing, 2010) ("*Guidelines for the Assessment of General Damages*"), the court awarded damages of $30,000 for the complete amputation of the big toe and $25,000 for the partial amputation of the second toe (at [31] and [34]). In the light of this, Mr Thiru submits that the sum of $18,000 claimed by the Plaintiff is "very reasonable".[10] Mr Almenoar, on the other hand, submits that *Tan Shi Lin* should be distinguished because the plaintiff in that case had suffered from a range of physical limitations that prevented her from leading the active lifestyle she used to enjoy, but that there was no evidence of similar disability here that would justify the making of a similar award in this case.[11]

11 Given the reliance placed on it by the parties, it is useful to examine the facts of *Tan Shi Lin* more closely. In that case, the plaintiff was a motorcyclist

10 PWS at pp 4–5.

11 DWS at para 21.

whose left foot was run over by a bus driven by the defendant, causing her to suffer from severe crush injuries. The plaintiff then brought both a general claim for pain and suffering arising from the crush injury to her left foot *as well as* distinct claims for the amputations of her toes. In that section of the judgment referred to by Mr Almenoar, the court was considering whether the plaintiff was *entitled* to a separate award of damages for the amputations *on top of* the award of $90,000 for pain and suffering which it had already awarded for the crush injury. It was in relation to that specific issue that Lai Siu Chiu SJ made reference to the particular disabilities occasioned by the amputations (and the extent to which the plaintiff's daily activities had been curtailed) and held that the general award made in respect of the crush injury would be inadequate and that separate awards were required.

12 Read fairly and in context, it is clear that the sum of $25,000 awarded for pain and suffering for the partial amputation in *Tan Shi Lin* was not in any way exceptional or contingent on proof of special disability. Instead, Lai SJ had relied on *general* guidelines (chiefly, the range provided in the *Guidelines for the Assessment of General Damages* which provides for a range of between $15,000 and $25,000 for "severe toe injuries" like partial amputations) in arriving at the figure of $25,000. Against this background, and having regard to the other cases cited, it seems to me that the sum of $18,000 claimed by the Plaintiff here is reasonable, and I so order.

Right 5th metatarsal shaft fracture

13 In submitting for an award of $8000 for this head of loss, Mr Thiru relies chiefly on the *Guidelines for the Assessment of General Damages*, which prescribes a range of $2000 – $8000 for metatarsal fractures (at p 55), as well as the 1998 decision of the Singapore High Court in *Aw Ang Moh v OCWS*

Logistics Pte Ltd [1998] SGHC 167 ("*Aw Ang Moh*"), where a sum of $8000 was awarded as compensation for the fracture of two metatarsals.[12] As against this, Mr Almenoar points out that many of the precedent cases cited by the parties (including *Aw Ang Moh*) involved the fracture of multiple metatarsals. He contends instead that a sum of $3167, which he submits is the median award for the fracture of a single metatarsal (citing *Aw Ang Moh* and a number of other unreported authorities), should be awarded instead.[13]

14 In my assessment, Mr Thiru's submission that $8000 should be awarded cannot be accepted. That figure lies at the very highest end of the range provided in the *Guidelines for the Assessment of General Damages*, which applies to cases involving multiple fractures, and there is nothing on the facts that suggests that the single fracture in this case is so grievous that it warrants an exceptional award. I accept Mr Almenoar's argument that a discount should be applied to the figures in the precedent cases on account of the fact that those awards were made in relation to cases where there were multiple fractures. However, I do not accept – as Mr Almenoar's submission assumes – that there is a linear relationship between the number of fractures and the quantum of the award, such that it would be appropriate simply to divide the figures in the past cases to derive an award for this case. Having regard to the precedents, and bearing in mind that those cases were decided more than 20 years ago and an upward adjustment should be made to account for inflation (see *Ronnie Tan* at [18]), I consider that an award of $4,500 would be appropriate in this case.

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12 PWS at pp 5–6.

13 Joint Opening Statement ("JOS") dated 5 October 2017 at pp 30–32.

Right 5th metacarpal fracture

15 To justify his submission that a sum of $5,000 be awarded for this head of loss, Mr Thiru relies on the case of *Shao Hai v Cao Yong Hui and others* [2003] SGDC 181 ("*Shao Hai*"), where the plaintiff was awarded a global sum of $8,500 for pain and suffering for a multitude of injuries to his hand (which included, among other things, a fracture of the 5th metacarpus, a shortening of his left little finger, and soft tissue injury) following an industrial accident.[14] Mr Almenoar submits that *Shao Hai* is distinguishable because the injuries there were far more serious and urged me to award a sum of $2,861.70 instead, which he contends is the median award for a single metacarpal fracture.[15]

16 The *Guidelines for the Assessment of General Damages* recommends that an award of $5,000 or less be made for hand injuries of minor severity, with the upper end of the range being "appropriate for hairline fractures that are likely to resolve in a few months" (at p 36). From my review of the digests of the cases in Carrie Chan *et al*, *Practitioner's Library – Assessment of Damages: Personal Injuries and Fatal Accidents* (LexisNexis, 3rd Ed, 2017) ("*Assessment of Damages*"), it appears that sums between $3000 (see *Wong Kwok Keong v Zee Lee Sieh (administratix of the estate of Khong Yung Yew Aloysius, deceased) and another* (Unreported, High Court Suit No 913 of 1999) and $7000 (see *Wu Xue Liang v Wyndham Construction (Pte) Ltd* (Unreported, District Court Suit No 4789 of 2002) ("*Wu Xue Liang*")) have been awarded for single metacarpal fractures. Having regard to these precedents, and bearing in mind that a higher award was made in *Wu Xue Liang* to account for the possibility of osteoarthritis, I consider that $4,500 would be a fair award, and I so order.

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14 PWS at p 6.

15 DWS at paras 27–30.

Right knee and right thigh laceration

17 In respect of this claim, Mr Thiru relies on *Yip Kok Meng Calvin (a minor) v Lek Yong Han (Yip Ai Puay, third party)* [1993] SGHC 21 and *Ting Heng Mee v Sin Sheng Fresh Fruits* [2004] SGHC 43, where sums of $8000 and $7000, respectively, were awarded, to support his submission that damages be assessed in the sum of $5000. However, I agree with Mr Almenoar that both cases are readily distinguishable. In the former, the plaintiff did not suffer any knee lacerations (he suffered, instead, from fractures and abrasions); in the latter, a *global award* of $7000 was made for a *multitude* of injuries. It is therefore my view that neither provided useful guidance.

18 In considering this claim, therefore, I first have regard to the *Guidelines for the Assessment of General Damages*, which prescribes a range of $1,500 – $5,000 for minor knee injuries such as lacerations. I do not think that an award at the lowest end of the scale is appropriate, given that the Plaintiff had suffered not one, but two lacerations to different parts of her leg. Taking into account the various precedents cited by Mr Almenoar (where awards of between $1,000 and $1,800 were granted per laceration), I consider that an award of $3,500 would be fair. This is broadly consistent with *Koh Chwee Seng (next friend of Koh Chee Kheng) v Chew Thong Huat* (Unreported, District Court Suit No 1 of 1988), where the plaintiff was awarded $3000 for two knee lacerations.[16]

Scarring and disfigurement

19 The details of the scars have already been set out at [4] above, and I need add no more to Dr Seah's succinct description, save to say that I also had regard to the photos annexed to his report, which reveal (in ways that words alone

[16] JOS at p 36.

cannot convey) the extent to which the appearance of the Plaintiff's legs have been altered by the scars.[17] The most significant scar is the one which covers the entirety of her right knee and extends about halfway down her leg. Dr Seah referred to this injury as the "large scooped out scar", and described it as "ugly and in a conspicuous part of her body which is normally exposed". The surface of the scar is discoloured and wrinkled, and it is clear – even from a cursory review of the photos which were annexed to Dr Seah's report – that her right leg is visibly different from her left because of the obvious lack of tissue beneath the surface of the scar. Dr Seah also noted that the Plaintiff's right knee was only covered by a skin layer of skin that was prone to breaking.[18]

20 The Plaintiff deposes that these scars have affected her ability to kneel, which not only affects her professionally (as it makes more difficult for her to kneel to perform cardiopulmonary resuscitation), but has also affected her religious and devotional life, as she finds it more difficult to kneel to pray. The Plaintiff also says that "[t]he anxiety and fear of hurting [herself] in the right knee again" has "kept her from participating in the activities that [she] used to love. She also explains that her "self-confidence and overall [sense of] self-worth [have] taken a huge hit from the scarring and disfigurement", as she is "pre-occupied" with ensuring that the scars are covered up and is consequently reluctant to leave her home.[19]

21 In contending that a figure of $25,000 should be awarded, Mr Thiru urged me to consider the cases of *Ng Hoon Chian v Vittorio Luigi and & Ors* (Unreported, High Court Suit No 988 of 1995) (summarised in in *Assessment of*

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17 PBoAff at pp 93–95.

18 Dr Seah's Report at p 2 (see PBoAff at p 91).

19 Plaintiff's AEIC at paragraphs 17–21.

Damages at pp 460–461), where an award of $18,000 was made, as well as *Tan Shi Lin*, where a sum of $15,000 was awarded. In particular, Mr Thiru drew my attention to [65] of *Tan Shi Lin*, where the Lai SJ wrote:[20]

> … It should be observed that the [*Guidelines for the Assessment of General Damages*] on scars recommend as follows:
>
> > The higher range of the award is appropriate in cases where the scars are huge and unlikely to be removed completely even with cosmetic surgery and the injured person is a young female.
>
> The [*Guidelines for the Assessment of General Damages*] then gave a range of $5,000 to $15,000 for multiple scars, $1,500 to $3,000 for single or minor scars and $3,000 to $6,000 for keloid scars.

22 Mr Almenoar accepts the proposition cited above, but contends that because the Plaintiff has "failed to provide any evidence on whether the scar could be removed with cosmetic surgery", *Tan Shi Lin* is not applicable, and no comparable award should be made. He submits that a sum of $4,658, which he says is the mean award for scarring, should be awarded instead.[21]

23 With respect, I reject both Mr Thiru's and Mr Almenoar's submissions. In my view, this is plainly a case which falls within the range of 5,000 – $15,000 recommended by the *Guidelines for the Assessment of General Damages*, and I see no reason for a departure (let alone the significant departures which the parties urged upon me) from this range. In my view, this case is almost on all fours with *Tan Shi Lin* because: (a) the Plaintiff is young, (b) the scars, being located on her knee and lower leg, are conspicuous and unsightly, (c) these scars have caused her to be more self-conscious and she has altered her daily routine as a result, and (d) she occasionally experiences pain because the skin over her

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[20] PWS at pp 8–9.

[21] DWS at para 40; JOS at p 39.

knee is fragile and prone to breaking. I therefore consider that a sum of $15,000 should likewise be awarded to her for this head of claim.

Future medical treatment

24 The claims for the costs of future medical treatment form the bulk of the Plaintiff's claims in the present suit. There are two components to this: the first is a claim for $200,000–$283,000 for corrective surgery for the scars on the Plaintiff's legs; and the second is a claim for $80,000 for Hepatitis C treatment.

Corrective surgery for scars

25 In his report, Dr Seah opined that as the scar over the Plaintiff's right knee was "very significant, prone to breakdown and has affected her daily activities, corrective surgery requiring multiple procedures is advised, with extensive downtime."[22] During the hearing, he elaborated at length on what this entailed. He explained that a minimum of two surgeries, and possibly three, would be required. During the first surgery, which he described as a "technically challenging operation" that would last for about 10–12 hours and can only be performed with the assistance of another plastic surgeon, a "DIEP [deep inferior epigastric perforator] flap" would be created to transfer skin and fat from the lower abdomen to the knee to improve soft tissue padding, as well as the function and appearance of her leg.[23] During the second (and third) surgeries, work would be done to "debulk" the transferred tissue. In total, he explained that the surgeries would cost anywhere between $130,000 (if two surgeries are carried out) and $180,000 (if three surgeries are required), plus an additional 15% set aside in the contingency that further work is required.[24]

22 Dr Seah's report at para 5(11) (see PBoAff, p 86).

23 Notes of Evidence (11 October 2017) ("NE2"), p 18, line 23 to p 19, line 28.

24 NE2, p 19, line 29 to p 20, line 28.

26 During the hearing, Mr Almenoar cross-examined Dr Seah extensively on the necessity of the surgery. At one point, he suggested that the surgery was "by and large", a "cosmetic" procedure.[25] This suggestion was vigorously refuted by Dr Seah, who explained that the principal difference between cosmetic surgery and reconstructive surgery – which was what he said this was – is that the object of cosmetic surgery is the enhancement of a person's *appearance*, while the goal of reconstructive surgery is the *restoration of normal function*, which has been lost as a result of defects or deformities. Dr Seah's evidence was that the "scar" in question was properly classed as a "deformity" that was of such severity that "any plastic surgeon" would classify it as posing a reconstructive problem that ought to be addressed.[26] In short, the purport of Dr Seah's evidence is that the proposed surgery was not elective and cosmetic, but necessary and therapeutic. The Defendant did not call any witnesses of his own to offer a contrary view, and there is therefore nothing to controvert Dr Seah's evidence, which I accept without reservation.

27 In any event, Mr Almenoar no longer pursues this line of argument in his submissions. Instead, he advances two other arguments in contending that the Plaintiff's claim should be dismissed in its entirety. First, he submits that the Plaintiff's claim is a "mere afterthought and should be disallowed", as she "never mentioned nor claimed … during the trial on liability that she had … an intention" to seek corrective surgery for her scars. He argues that the Plaintiff should at least have obtained an initial estimate before the trial on liability instead of "ambushing" the defendant with this claim at the assessment stage.[27] Second, he submits that the Plaintiff's claim should be disallowed as she did not

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25 NE2, p 13, lines 19–20.

26 NE2, p 13, line 25 to p 14, line 20; p 15, lines 2–23.

27 DWS at paras 65–66.

obtain a second opinion even though Dr Seah had advised she do so (Mr Alemenoar also submits that this second opinion should have come from a doctor in a public hospital, even though Dr Seah made no specific recommendation to this effect).[28] This failure, he says, means that Dr Seah's report "comes to naught" and "cannot, and should not be relied upon.[29]

28 I cannot agree with either of these arguments. As a starting point, it is important to recall that the trial in the State Courts was on the issue of *liability* alone (see the State Courts GD at [2]). I cannot see – and Mr Almenoar did not explain the basis for this submission – why the Plaintiff would have an obligation to inform the Defendant in advance of the heads of loss she would seek to recover at the *assessment of damages* stage (let alone why she was required to obtain an "initial estimate" of the cost of the surgery), even before judgment had been granted in her favour. This case is to be distinguished from one in which interlocutory judgment is entered *by consent* between the parties on terms that an assessment would be carried out in respect of certain agreed heads of damages. In such a case, there might be scope for arguing that the non-disclosure of a head of claim constitutes an actionable misrepresentation of a sort that would justify the setting aside of the consent judgment. However, there is none of that here, for this matter was contested from the outset.

29 Insofar as the law is concerned, the position appears to me to be clear. The general rule is that a claimant is entitled to damages for all medical expenses reasonably incurred as a result of the injury (see *Ng Chee Wan v Tan Chin Seng* [2013] SGHC 54 ("*Ng Chee Wan*") at [13]). It does not matter, for this purpose, whether the expenses have already been incurred at the time of assessment or

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28 DWS at paras 75–78.

29 DWS at para 81.

whether they are prospective (save only that the former must be pleaded as special damages; the latter as general damages): see Harvey McGregor, *McGregor on Damages* (Sweet & Maxwell, 19th Ed, 2014) ("*McGregor*") at para 38-181. Thus, it seems to me that it was perfectly open for the Plaintiff to have decided, as she did in this case, to have waited before consulting a plastic surgeon to discuss possible treatment options. In fact, the evidence is that this was a medically reasonable course of action. During the hearing, Dr Seah explained that scars need some time to "mature", so he would not have been able to do anything if the Plaintiff had come to see him one year after the accident. He said that by the time he saw her in 2016 (which was about five years after the incident), the scar had stabilised, he was then able to properly assess the treatment options available to her.[30]

30 This leaves only Mr Almenoar's second argument, which concerns the absence of a second opinion. At the outset, I would reject Mr Almenoar's submission that the Plaintiff's failure to seek a second opinion must – without more – entail the wholesale rejection of her claim. While it is true that Dr Seah had advised that the Plaintiff seek a second opinion, he never said that the validity of his opinion was contingent on her doing so. Dr Seah explained during the hearing that he had advised the Plaintiff to seek a second opinion to explore the full range of treatment options available to her (because different surgeons might have "slightly different opinion[s]"); but he never suggested that his opinion "cannot … be relied upon" if a second opinion were not sought.[31]

31 More to the point, there is no rule against seeking recovery for private medical care nor is there a rule that private medical care is only available if

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30 NE2, p 23, lines 17–32.

31 NE2, p 22, line 2 to p 23, line 12.

public care is unavailable; at the end of the day, the test is always whether the expenses are *reasonable* (see *Ng Chee Wan* at [15]). On this, the evidence would appear to be as follows. First, it is not disputed that the scars were the direct result of the accident. Second, it is also not disputed that the scars have affected the Plaintiff's quality of life (see [20] above). Third, the Defendant does not now challenge – and in any event I have found in favour of the Plaintiff on this point – that the contemplated surgery is a therapeutic treatment that is aimed at restoring the Plaintiff to the state she was in before the accident. In conclusion, therefore, it seems to me that it is entirely reasonable for the Plaintiff to elect for corrective surgery and the only point that the Defendant can take issue with is the *quantum* of the award.

32 But therein lies the rub. The Defendant submits that the "cost for corrective surgery is highly inflated and unreasonable" (and on this point it should be noted that the Defendant's position is not for the Plaintiff to be awarded some lesser sum, but for her to be awarded *nothing at all*), but it is not clear what the basis for this submission is,[32] because the Defendant *never* led any evidence on the cost of private treatment as compared to public treatment. The *only* evidence which was led at trial on this point came from Dr Seah, whose evidence was wholly equivocal. I note the following exchange:[33]

> Q: If she had gone to see a government like public hospital, like general hospital, do you think that the costing would be same as your expertise?
>
> A: Obviously there can---there will be cost difference. How different will it be, I cannot comment.
>
> Q: Right
>
> A: If you talk to another plastic surgeon, maybe the costing will also be different because it depends on what you

[32] DWS at para 85.

[33] NE2, p 21, line 29 to p 23, line 12.

> propose, what you do. That's why I said that the second opinion--- …
>
> …
>
> Q: Just that it's somewhat well-know, right, at least without the same kind of argument that you have, that a patient out of pocket will be much lower in the public hospital, so to speak. That's about right?
>
> A: I---I---I cannot comment on that because I have got no figures and sometimes it's all hearsay and then sometimes it's anecdotal. Anecdotally, I also can tell you I've also hear story that actually, for certain things, private sector actually is turn out to be cheaper---
>
> Q: Okay, right.
>
> A: ---because we are actually more efficient in many ways.
>
> Q: Right, I see. So, is your answer then that the public hospitals for the same kind of treatment that you are going to do would be the same as yours?
>
> A: I cannot comment on that. I only can speak for myself as I see the problem and my estimated fees as such. But as I said, I recognise there may be a contention and that's why I said that a---a second opinion as regards to the treatment and cost is advised.
>
> Q: Right.

33 The Defendant has known of the Plaintiff's intention to bring a claim for the cost of corrective surgery since 1 November 2016 at the very latest, for that was when the Plaintiff filed her affidavit of evidence-in chief for the assessment hearing. The hearing only took place from 10–12 October 2017, which meant that he had nearly one full year to put in evidence of the cost of such surgery at a public hospital (more, if one considers the liberty to apply I granted at the end of the hearing: see [8] above), but he did not. In the circumstances, it has not been established that the cost of private treatment would exceed the cost of treatment at a public hospital (indeed, it is not even clear if the treatment which the Plaintiff seeks is available in a public hospital as all that was said during the trial on this point is that it is not available at Changi General Hospital[34]) let alone

that the differential is so great that it would be "unreasonable" for the Plaintiff to elect for treatment at a private hospital.

34 In his submissions, the Defendant explained that the defendant had attempted to arrange for the Plaintiff to seek a second opinion at a Polyclinic, but encountered various difficulties in trying to arrange for an appointment on her behalf.[35] This may well be so, but even if it was not possible for the Defendant to have procured a second opinion, there were other things he could have done. For instance, he could have adduced some evidence on the cost of corrective surgery at a public hospital (perhaps from publicly available sources), whether in the form of general fee guidelines or otherwise. Or even if such information was not readily available, it would have been open for the Defendant to submit the report prepared by Dr Seah to another doctor for an evaluation and assessment. Neither of these alternatives would have been ideal, but they would at least have provided the court with some basis for assessing the reasonableness of the figures put forward by Dr Seah. As matters stand, Dr Seah's evidence is all that the court has to go on.

35 Turning to the subject of the sum to be awarded, Dr Seah's evidence is that a minimum of $130,000 would be required because at least two surgeries will have to be performed; and that this figure would rise to $180,000 if three surgeries are needed (see [25] above). However, he did not explain when a third surgery would be required, nor did he explain why a third surgery might be required if provision was already going to be made for additional work to be done in the form of the 15% contingency fee he proposed. I therefore assess the damages on the basis that two surgeries will be performed, but I am willing to

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[34] NE2, p 8, line 26 to p 9, line 5.

[35] DWS at para 76.

go with the suggestion that a 15% contingency fee be added to this in the event that further work is necessary. In the premises, I award the Plaintiff $150,000 (which is approximately 115% of 130,000) for this head of claim.

Treatment for hepatitis C

36 Dr Tan, who was the only expert who took the stand to give evidence on this claim during the trial, explained that Hepatitis C is a blood borne viral infectious disease which affects the liver and may be transmitted through the sharing of needles, sexual contact, or through exposure to contaminated blood products or bodily fluids.[36] The Plaintiff's case is that she contracted Hepatitis C as a result of the blood transfusions she had received while in hospital. She has no direct evidence of this, but pointed me to the following facts:

(a) On 24 September 2010, she went for the annual medical screening provided by her employer and was assessed to be free of Hepatitis C. She missed the next screening in 2011, because she was convalescing after the accident. She next went for a screening on 25 September 2012, and that was when she discovered that she had contracted Hepatitis C.[37]

(b) During the period between the 2010 and 2012 screenings, she received 12 units of blood through four separate blood transfusions (a known means for the transmission of Hepatitis C) she received while being treated for her injuries.[38]

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36 NE3, p 10, line 14 to p 11, line 14.

37 NE1, p 38, line 24 to p 39, line 12.

38 PWS at p 27; PBoAff at p 43.

(c) Dr Tan did not testify – nor did the Defendant prove through other means – that the transmission of Hepatitis C through sanctioned blood transfusions is an "impossibility in Singapore".[39]

(d) Changi General Hospital has an "incident reporting system" for all "needlestick injuries" – another known means for the transmission of Hepatitis C[40] – sustained by hospital staff (I note that the Plaintiff has not said explicitly that she had not suffered any needlestick injuries in her years of working as a nurse, but it is implicit in her evidence that this is so.)[41] And further, "universal precautions" (such as the use of gloves and gowns) are taken to prevent the spread of infections in the hospital.[42]

37 As can be seen from the above, the Plaintiff's case that she had contracted Hepatitis C from the transfusions is built entirely upon circumstantial evidence.[43] There are three significant difficulties with accepting the Plaintiff's argument. The first is the lapse of time. The evidence is that the Plaintiff could have contracted Hepatitis C anytime during the two year period between 24 September 2010 and 25 September 2012.[44] This is a considerable period of time, and the Plaintiff has not adduced any direct evidence linking the transfusions (which took place over 4 days in 2011) with the Plaintiff's contraction of Hepatitis C. The second difficulty is the multiplicity of possible causes. It is undisputed that Hepatitis C can be transmitted through various means and – critically – the Plaintiff works as a nurse and might have contracted it due to a

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39 PWS at p 25.

40 PWS at pp 25–26; NE1, p 39, line 13 to p 40, line 3; p 56, line 29 tp p 57, lines 1–22.

41 NE1, p 39, line 10 to p 40, line 10.

42 NE3, p 11, line 30 to p 12, line 14.

43 PRS at para 32.

44 DWS at para 91; and PRS at para 32, read with DWS at para 52.

workplace accident.[45] While the Plaintiff has sought to address this through her evidence on the incident reporting system and the general precautions taken to prevent the spread of infection in the hospital, she has not led any evidence of the relative risks of contracting Hepatitis C from a contaminated blood transfusion as against other possible sources of infection. The third difficulty is state of the evidence. During the hearing, Dr Tan was asked about the likelihood that the Plaintiff had contracted Hepatitis C on account of the blood transfusions she had received, but expressly declined to express any view:[46]

> Q: Is there any way that the hospital or anyone can say that the plaintiff contracted Hepatitis C on account of these blood transfusions?
>
> A: We are not able to be a 100 percent certain.
>
> Q: You know, your answer makes me want to ask you the next question. If not 100% certain, is there a percentage that it might be?
>
> A: You either---we would not want to speculate on something like that. It's either she contracted it or she did not.
>
> Q: So, can we take it that you or the hospital is unable to say for sure whether she contracted it on account of these blood transfusions?
>
> A: That is correct.

38 Of course, the law does not deal in certainties, but in probabilities, but I consider that the evidence which has been adduced so far is insufficient. In my judgment, as matters stand, the Plaintiff only shown that there is a *possibility* that she had contracted Hepatitis C as a result of the transfusions; but she has fallen short of showing on a balance of *probabilities* that this was so.

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45 DWS at paras 92–93.

46 NE3, p 17, lines 5–15.

39 The case of *Surender Singh s/o Jagdish Singh and another v Li Man Kay and others* [2010] 1 SLR 428, which Mr Thiru cited in argument, is readily distinguishable. In that case, a patient underwent a surgical procedure during which her left renal artery was secured through the use of a surgical clip. After the surgery, the surgical clips used to secure her left renal artery slipped, and she lost 1600ml of blood before passing away. One of the issues which had to be decided by the court was whether the patient had passed away due to post-operative blood loss, as the plaintiff contended, or whether she had passed away due to an unrelated underlying medical condition (small vessel artery disease), as the defendant contended. In that case, the court was aided by a great deal of evidence, in the form of the testimony of three medical experts as well as citations from relevant medical literature, that compared the risk of exsanguination from the loss of 1,600ml of blood against the risk of death from small vessel artery disease. In particular, the court placed considerable reliance on a report prepared by a forensic pathologist, who was aware of the two possible causes of death and gave detailed and cogent reasons for concluding that the patient had passed away due to blood loss.

40 By contrast, the present case does not involve a binary choice between two possible causes nor is there that temporal proximity between cause and effect that there was in *Surender Singh*. As I have noted above, there is no direct evidence linking the transfusions with the Plaintiff's contraction of Hepatitis C nor do I think that the Plaintiff has gone far enough to establish this link by a process of elimination. The Plaintiff's evidence on the precautionary measures taken in the hospital comes the closest, but, alone, it is not enough. In order for her to make something of this, she would have to lead evidence on the comparative risks of contracting Hepatitis C from the various sources (*eg*, the ambient risk of contracting Hepatitis C for the general population; the

occupational risk of contracting Hepatitis C faced by the Plaintiff as a nurse; and the specific risk of contracting Hepatitis C from contaminated blood transfusions as a patient) to show that it was more likely than not that the transfusions were to blame. In saying this, I do not meant to suggest that the Plaintiff has to rule out all the other possibilities. However, it is the Plaintiff burden to show – on a balance of probabilities – that she had contracted Hepatitis C on account of the blood transfusions and in my assessment, she has not crossed the requisite evidential threshold.

41 For the foregoing reasons, I dismiss the Plaintiff's claim for the cost of Hepatitis C treatment. Given this, I do not need to go further to consider the Defendant's alternative submissions that: (a) that the contraction of Hepatitis C from a tainted blood transfusion is damage of a sort that is too remote to be recoverable and (b) if the Plaintiff had indeed contracted Hepatitis C as a result of the transfusions, the medical treatment administered by the hospital must have been so grossly negligent as to constitute a *novus actus interveniens*.[47]

Loss of earning capacity

42 An award for loss of earning capacity is made to compensate a victim for "the loss arising from the weakening of the plaintiff's competition position in the open labour market" (see *Koh Chai Kwang v Teo Ai Ling (by her next friend, Chua Wee Bee)* [2011] 3 SLR 610 at [9]). It follows from this that a plaintiff who remains employed after the accident (and is therefore not in the open labour market) is only entitled to such an award if there is a substantial or real risk that he/she *might* lose his/her job sometime after the accident and would, *as a consequence of the accident*, be unable to find alternative employment or have to take on a less well-paying job. A plaintiff who is less

[47] DWS at paras 94–105.

employable after an accident but faces no risk of losing his/her job is not entitled to an award for loss of earning capacity. In *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587, the Court of Appeal put the point as follows (at [36]):

> … It is trite that an award for loss of earning capacity (in the context where the plaintiff is currently employed) can only be awarded *if* ***[a]*** *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 his or her working life *and* ***[b]*** *that the plaintiff will, because of the injuries, be at a disadvantage in the open employment market. It is a cumulative test. …*
>
> Following from this, ***no award for loss of earning capacity should be granted if there is no risk of the Respondent's post-accident employment being terminated.***
>
> [emphasis added in italics and bold italics]

43 I turn first to the issue of whether there is a substantial or real risk that the Plaintiff will lose her job sometime in the future. In her submissions, the Plaintiff gives four reasons for submitting that she is at risk of losing her present job: (a) her anxiety and self-consciousness have kept her from socialising, which has "inevitably affected her professional relationships and professional development"; (b) the "pain and numbness" she experiences in her legs "would adversely affect her job performance in the long run, especially as she ages"; and (c) the lack of cushioning in her right knee "could, and most likely would, in the future, affect the number of hours [of work] she could undertake."[48] In my view, however, these points are simply too speculative. The Plaintiff has not led evidence from any of her superiors or colleagues on the tangible impact that her injuries has had (or might have) on her performance at the workplace. In *Tan Yu Min Winston (by his next friend Tan Cheng Tong) v Uni-Fruitveg Pte Ltd* [2008] 4 SLR(R) 825 at [44], the High Court held that in order for one to succeed in a claim for loss of earning capacity, the risk of loss of employment

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48 PWS at pp 30–32.

"must be real and substantial, not speculative or fanciful". In my assessment, the Plaintiff's evidence falls far short of this standard.

44 On the facts of the present case, it does not appear that the Plaintiff faces any risk of losing her job. In fact, it seems to me that the evidence is quite the opposite. Before the accident, the Plaintiff was a staff nurse who drew a base monthly salary of $1,763. On 1 July 2017, shortly before the hearing, she was promoted to a senior staff nurse, a position with a base monthly salary of $3,792.[49] In the same period, she earned two additional qualifications. On 14 June 2013, she was awarded an advanced diploma in nursing by Nanyang Polytechnic; on 12 June 2016, she earned a Bachelor of Science with Distinction in Nursing from Edinburgh Napier University.[50] This is not all, for she testified during that hearing that she planned to further her studies and obtain a Master's degree.[51] She has – by her own admission – "done very well" professionally, and her career does not appear to have been affected as a result of the accident.[52] This is a point which the Plaintiff herself acknowledges:[53]

> Q: But as it turned out, everything seems to be quite okay, your performance. Otherwise, you will not be a senior staff nurse.
>
> A: Mm.
>
> Q: You understand me?
>
> A: Mm, yah.
>
> Q: Otherwise, your employers will say, "*Cik* Hazwani, you are---you know, I don't think you can perform. You---we want you to leave." You know, something like that. But as it turned out, I am trying to find out from you, this

49 Plaintiff's Bundle of Documents ("PBOD") at pp 144 and 177.

50 PBOD at pp 175–176.

51 NE1, p 21, lines 4–13.

52 NE1, p 19, lines 12–26.

53 NE1, p 23, lines 5–22.

> accident has almost negligible effect on your performance in an advancement of your profession. That's correct, right?
>
> A: Yah, correct.

45 The Plaintiff's obvious passion for nursing and her desire and ability to triumph despite the setback which she has faced (for which she is entirely to be credited) are qualities which have plainly been recognised by her employer. In the short run, it seems to me to be clear that she is at no risk of losing her job, for she was just promoted, and there is no evidence to suggest that her employment will be terminated soon. In the medium to long run, the evidence appears to be that the Plaintiff – who has continued to improve herself – will have little trouble retaining her job. This is quite unlike the case of *Winston Tan*, where the injuries were severe enough that the disabilities caused by the accident caused the plaintiff to face a real risk of losing his job, his avowed desire to succeed notwithstanding. Thankfully, it seems that the injuries in this case are minor enough and the Plaintiff's will to succeed great enough that the accident has not had any appreciable impact on her career. It is also unlike *Samuel Chai*, where the plaintiff – who was engaged in part-time employment as a physiotherapist and was paid hourly rates – was in a far more precarious employment situation (at [37]). By contrast, the Plaintiff is presently in stable employment, and her evidence is that her employer has mapped out career paths for nurses such as herself, and she appears for all intents and purposes to have hit the milestones that she is expected to have hit at this stage.[54]

46 For the foregoing reasons, I dismiss the Plaintiff's claim for an award for loss of earning capacity. In the light of this, it is not necessary for me to go on to consider whether she would face any disadvantage in the employment market if she had to seek alternative employment.

[54] NE1, p 19, lines 6–24.

Special damages

47 In the context of a personal injury claim, "special damages" refers not only to losses which "the law will not presume to be the consequence of the defendant's act", but also to "out-of-pocket expenses and loss of earnings which the plaintiff has incurred down to the date of trial, and is generally capable of substantially exact calculation" (see *Lee Mui Yeng v Ng Tong Yoo* [2016] SGHC 46 ("*Lee Mui Yeng*"), at [63], citing *British Transport Commission v Gourley* [1956] 1 AC 185 at 206). Thus, in order to put the other side on notice of the case it has to meet, a plaintiff in an action for personal injuries is statutorily required to serve, with his statement of claim, a statement of the special damages claimed (see O 18 rr 12(1A) and 12(1C) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). In the ordinary case, a plaintiff will not be entitled to recover special damages which he has failed to plead, unless no prejudice has thereby been occasioned to the other side (see *Lee Mui Yeng* at [66], citing *Ng Bee Lian v Fernandez and another* [1994] 2 SLR(R) 179 at [30]).

48 In the statement of special damages which she annexed to her statement of claim, the Plaintiff identified eight distinct heads of loss. Some have already been dealt with, others are no longer being pursued, and one has been agreed. The only four heads of claim that remain for decision are:

(a) medical expenses;

(b) transportation expenses;

(c) repair costs; and

(d) loss of use of motor vehicle.

Medical expenses

49 I begin with the claim for medical expenses. In both the joint opening statement and her first set of written submissions, the Plaintiff had quantified her claim for medical expenses in the sum of $6,509.98.[55] However, in her reply submissions, she substantially revised this figure to $71,533.89. She explained that upon further review of the documents, she realised that her initial claim was too low, and did not reflect what was stated in all the invoices.[56] Understandably, the Defendant took strong objection to the last minute revision of the claim. He also pointed out that many of the invoices referred to related to the same bill, and submitted that there were a large number of duplicate claims.[57]

50 After careful consideration of the documents, I agree with the Defendant that the Plaintiff has made a number of duplicate claims. The most obvious example concerns the charges incurred during her post-accident stay in Changi General Hospital. On 20 September 2011, the Plaintiff was issued an interim bill which recorded that she had to pay a sum of $22,329.51 out of pocket.[58] This figure was substantially revised when the final bill was issued on 5 October 2011, after the charges were lowered and credit was given to the Plaintiff for the amounts which would be paid by Medishield and Medisave.[59] However, the Plaintiff claims *both* the amount expressed to be due in the 20 September 2011 interim invoice *as well as* all amounts stated to be due in the 5 October 2011 final invoice (even though there is no evidence that she had paid the sums due under both invoices).[60] And what is worse, the Plaintiff has reproduced the 5

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55 JOS at p 26; PWS at p 33.

56 PRS at paras 63 and 64.

57 Defendant's Reply Submissions dated 29 December 2017 at paras 5–13.

58 PBOD at pp 66–68.

59 PBOD at pp 72–74.

October final 2011 invoice *twice* in her bundle of documents and has made two claims for the amounts stated to be due.[61]

51 In my assessment, only the following items are properly recoverable:

S/N	Description	Medisave	Medishield	Plaintiff (out of pocket)
1	Final invoice for post-accident care and stay (5 October 2011)[62]	$11,718.63	4,909.98	$5,197.49
2	Outpatient purchase of Dermatix gel (1 December 2011)[63]	-	-	$62.90
3	Outpatient purchase of Dermatix gel (31 December 2011)[64]	-	-	$62.90
4	Outpatient purchase of Centellase ointment (24 March 2012)[65]	-	-	$78.30
5	Outpatient purchase of Dermatix gel (27 October 2012)[66]	-	-	$62.90
6	Treatment at KK Women's and Children's Hospital (9	-	$650.00	-

60 PRS at p 16, 1st and 4th rows of the table.

61 PBOD at pp 82–84; PRS at p 17, 6th row of table.

62 PBOD, p 73.

63 PBOD, p 90.

64 PBOD, p 94.

65 PBOD, p 100.

66 PBOD, p 108.

	September 2013)[67]			
7	Procedure performed at Tampines Polyclinic (24 September 2011)[68]	-	-	$8.00
8	Consumables for treatment at Tampines Polyclinic (27 October 2011)[69]	-	-	8.90
SUB-TOTAL		$11,718.63	$5559.98	$5481.39
GRAND-TOTAL				**$22,760**

52 Before I proceed, I will make several comments about this table. First, I have omitted all amounts which were fully paid by the Plaintiff's employer, because it is settled law that expenses which are paid for by a third party which the plaintiff is under no obligation to repay are not recoverable (see *Mukhtiar Singh v Balwyndarjeet Singh* [1993] 2 SLR(R) 694 at [52] and *McGregor* at para 38-187). There is no evidence that the Plaintiff has to repay her employer for any of the sums which it paid on her behalf (which, I should add, are considerable), so she cannot mount a claim for them. Second, I have included all amounts paid out of the Plaintiff's Medisave account because the money in there – being part of her Central Provident Fund account – is hers, and she is fully entitled to recover all sums paid out of it (see, *eg*, *Mark Amaraganthan Selvaganthan v Cheung Man Wai* [2015] SGHC 253 at [60]–[62]). Third, I have also included the amounts paid by Medishield because the Plaintiff is bound to pay over the sum of $5559.98 she recovers from the Defendant to the

67 PBOD, p 134.

68 PBOD, p 136.

69 PBOD, p 141.

Medishield Fund. In this regard, reg 15(1) of the Medishield Life Scheme Regulations 2015 (S 622/2015) provides as follows:

> **Reimbursement by another person**
>
> 15.—(1) Where —
>
> (a) an insured person's claim under the Scheme in respect of any approved medical treatment or services received by the insured person has been paid from the Fund; and
>
> (b) another person, who is under an obligation (contractual or otherwise) to pay or reimburse the insured person for charges incurred in respect of the approved medical treatment or services, has made the payment or reimbursement,
>
> an amount computed in accordance with the following formula becomes due and payable to the Fund by the insured person on the date such payment or reimbursement is made by that other person:
>
> $$X + Y – Z,$$
>
> where X is the total amount of the payment or reimbursement made by that other person;
>
> Y is the total amount of the claim paid from the Fund under the Scheme; and
>
> Z is the total amount of the charges incurred by the insured person.

53 In summary, a beneficiary under the Medishield Life Scheme who obtains compensation from a third party in respect of any medical expenses which were paid for by Medishield is statutorily obligated to reimburse the Medishield Life Fund. While the Medishield Life Scheme Act 2015 (Act 4 of 2015) had yet to be passed at the time of the accident, this makes no difference, because the same obligation of reimbursement applied under the old Medishield Scheme (see reg 57 of the Central Provident Fund (Medishield Scheme) Regulations (Cap 36, Rg 20) and *Ong Bin Wah v Quek Teng Pong and Another*

[2003] SGHC 279 at [20]–[22]). I therefore award the Plaintiff the sum of $22,760 for this head of claim.

Transport expenses

54 The Plaintiff claims $193.10 for transport expenses incurred in the immediate aftermath of the accident, when she had to make her way to and from the hospital. Her evidence consisted of two printed pages of taxi receipts which were reproduced at pages 172 and 173 of her bundle of documents.[70] In principle, she should be entitled to recover all travelling expenses that arise out of the accident. However, the amounts in these receipts (and I note that there is one duplicate receipt for $8.10, which may be found at page 172) do not add up to $193.10, but only to $115.20, which is the sum I award for this head of claim.

Repair of motorcycle

55 In support of her claim for this head of claim, the Plaintiff referred to a surveyor's report dated 15 October 2011 in which the costs of repairing her motorcycle were assessed to be $2,900.[71] However, there is no evidence that any repairs were carried out as no invoice or written documentation of any kind was tendered to prove this fact. When she was questioned on this, the Plaintiff testified that she had sold her motorcycle for approximately $3400 after the accident, and she was not sure if any repairs had been carried out before the sale.[72] Given the state of the evidence, I cannot conclude that the repairs had been carried out, so I am bound to dismiss this claim. However, the Defendant accepts that the Plaintiff should be entitled to recover the sum of $298 which she paid for the surveyor's report. I agree and so order.

70 PBOD at pp 172–173.

71 PBOD, pp 21–24.

72 NE1, p 42, lines 14–32.

Loss of use of motorcycle

56 This head of loss was not pleaded and so I shall – on the authority of *Lee Mui Yeng* – make no award on this claim (see [47] above).

Conclusion

57 In summary, I award the following amounts:

S/N	Claim	Decision ($)
1.	**Pain and Suffering**	
1.1	Right 2nd toe distal phalanx amputation	18,000
1.2	Right 5th metatarsal shaft fracture	4,500
1.3	Right 5th metacarpal fracture	4,500
1.4	Right knee laceration with extension to knee joint and right thigh laceration	3,500
1.5	Scarring and disfigurement	15,000
2.	**Future medical treatment**	
2.1	Corrective surgery for large scooped out scar	150,000
2.2	Corrective surgery for dimpled scar on right lower thigh	
2.3	Treatment for hepatitis C	0
3.	**Loss of earning capacity**	0
4.	**Special damages**	
4.1	Medical expenses	22,760
4.2	Transport expenses	115.20

4.3	Pre-trial loss of earnings	2133
4.4	Cost of repair of motor vehicle	298
4.5	Loss of use of motor vehicle	0
TOTAL:		**220,806.20**

58 I order that interest shall apply on all sums awarded at the rate of 5.33% from the date of the service of the writ to the date of judgment.

59 I will hear the parties on the issue of costs.

60 In closing, it remains only for me to thank Mr Thiru and Mr Almenoar for their submissions and for the fair and measured way in which they conducted the assessment hearing.

Scott Tan
Assistant Registrar

Thiruchelvan Sivagnasundram (S.T. Chelvan & Co) for the plaintiff;
Hassan Esa Almenoar (R Ramason & Almenoar) for the defendant.