IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 26

Suit No 265 of 2014

Between

Yap Boon Fong Yvonne (Ye Wenfeng Yvonne)

… *Plaintiff*

And

(1) Wong Kok Mun Alvin
(2) Lim Chuah Heng

… *Defendants*

JUDGMENT

[Damages] — [Measure of damages] — [Personal injuries cases]

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Yap Boon Fong Yvonne
v
Wong Kok Mun Alvin and another

[2018] SGHC 26

High Court — Suit No 265 of 2014
Andrew Ang SJ
28–31 March, 5 April; 31 July 2017

1 February 2018 Judgment reserved.

Andrew Ang SJ:

Introduction

1 This suit arose out of a road traffic accident that took place on 12 July 2011 at the T-junction of Woodlands Avenue 12 and Woodlands Avenue 5. The accident involved (a) the first defendant Wong Kok Mun Alvin ("Wong"), who was then riding motorcycle no. FT2921C, (b) the plaintiff ("the Plaintiff"), who was then riding pillion on the motorcycle, and (c) the second defendant, who was then driving motor lorry no. YK9094R. The lorry was travelling in the opposite direction of the motorcycle and collided into it while making a right turn into Woodlands Avenue 5.

2 As a result of the accident, the Plaintiff suffered a fracture dislocation of her right elbow, a fractured right patella, fractured radius and ulna, and a comminuted segmental fracture of her right tibia. She was bedridden for the first

few months following the accident.[1] While her upper limb injuries healed without complications, the Plaintiff continued to have problems with her tibia, which required bone grafting.[2] On 24 April 2013, the Plaintiff underwent examination and it was found that she had 20 degrees of external rotation and 20mm of shortening of her right tibia. The Plaintiff opted for reconstructive surgery using an Ilizarov frame. One of the Plaintiff's medical experts, Dr Chang Haw Chong ("Dr Chang"), described the Ilizarov procedure as follows:[3]

> It involves putting wires, metal rings around the outside of the leg for a long period of time and stretching the---the two rings ... [by] four turns a day. Each turn is a quarter of a millimetre. So you are basically pulling your leg longer every day by 1 millimetre.

3 The reconstructive surgery was undertaken on 13 August 2013. This was but the first step in a long process. The Plaintiff subsequently went through several more surgical procedures related to the Ilizarov procedure and also to treat site infections, including one to remove three Ilizarov pins on 16 January 2014 and another to remove the Ilizarov frame and to apply a plaster cast on 15 July 2014.[4] While the procedure succeeded in achieving equalisation of her right lower leg length and correction of the external rotation, there was a setback when the Plaintiff's right tibia fractured two weeks after the frame was removed. Her right tibia was re-cast and she was required to use a wheelchair and crutches to get around.[5] Since then, fortunately, the Plaintiff's condition has improved. She no longer requires a wheelchair for travelling short distances even when she

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1 Yap Boon Fong Yvonne's AEIC dated 13 January 2015, para 30.

2 PBD 67.

3 NE, 28 March 2017, 19–20.

4 PBD 68.

5 PBD 68–69 and 76.

is outdoors, although she uses a walking stick occasionally.[6] She still experiences pain if she walks for a prolonged duration.

4 As can be seen, the Plaintiff endured a long and painful recuperation period. She was given a total of 1,310 days of medical leave from the date of the accident until 13 January 2015, the date of her first affidavit of evidence-in-chief.[7] Thereafter, she obtained further medical leave for the period spanning February 2015 to June 2016.[8]

5 The Plaintiff filed her writ of summons on 10 March 2014. Wong did not enter appearance and thus on 2 June 2014, interlocutory judgment in default of appearance under O 13 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules") was entered against him in favour of the Plaintiff with damages to be assessed.[9] On the same day, interlocutory judgment in default of defence under O 19 of the Rules was entered against the second defendant in favour of the Plaintiff with damages to be assessed.[10]

6 The trial on quantum was heard before me on 28–31 March and 5 April 2017.

7 The Plaintiff relied on the evidence of three medical experts:

(a) Dr Chang, a Consultant Orthopaedic Surgeon at HC Chang Orthopaedic Surgery Pte Ltd at Gleneagles Medical Centre;

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6 Yap Boon Fong Yvonne's AEIC dated 6 September 2016, para 7.

7 Yap Boon Fong Yvonne's AEIC dated 13 January 2015, para 25.

8 Yap Boon Fong Yvonne's AEIC dated 6 September 2016, paras 4–5.

9 Yap Boon Fong Yvonne's AEIC dated 13 January 2015, exhibit YBF-2, p 34.

10 Yap Boon Fong Yvonne's AEIC dated 13 January 2015, exhibit YBF-2, p 35.

(b) Dr Jeffrey Tan Gek Meng ("Dr Tan"), a Senior Consultant in the Department of Orthopaedic Surgery at Khoo Teck Puat Hospital; and

(c) Dr Chong Si Jack ("Dr Chong"), an Associate Consultant in the Department of Plastic, Reconstructive & Aesthetic Surgery at Singapore General Hospital.

8 The defendants called only one expert witness – Dr Sarbjit Singh ("Dr Singh"), a Consultant Orthopaedic Surgeon with the Centre for Advanced Orthopaedics: Limb Reconstruction & Lengthening at Mount Elizabeth Medical Centre.

Undisputed items of damages

9 The parties reached agreement on the following items:

(a) General damages for pain and suffering (inclusive of interest) at **$108,000**;

(b) Special damages for medical expenses at **$18,941.85**; and

(c) Special damages for transport for medical treatment at **$2,000**.

Disputed items of damages

10 The following are the items in dispute:

(a) General damages:

(i) Future medical expenses and future transport for medical treatment;

(ii) Loss of future earnings and/or loss of earning capacity;

(b) Special damages:

(i) Domestic helper expenses; and

(ii) Pre-trial loss of earnings.

11 I will deal with the heads of claim relating to future medical expenses and related transport expenses, and domestic helper expenses in that order.

Future medical expenses and future transport for medical treatment

12 The Plaintiff claimed a total of **$102,980** under this head of claim, as per the following breakdown:

	Description	**Amount**
(a)	Intra-articular visco-supplementation or steroid injection	$480
(b)	Right ankle supramalleolar/tibia realignment osteotomy (inclusive of hospital charges)	$10,000
(c)	Ankle fusion (inclusive of implants and hospital charges)	$12,000
(d)	Total ankle replacement (inclusive of implants and hospital charges)	$20,000
(e)	Scar excisions and fat grafting	$20,000
(f)	Tissue expansion surgery	$30,000
(g)	Follow-up reviews and treatments/medication (estimated)	$10,000
(h)	Future transport for medical treatment	$500

13 The defendants, on the other hand, submitted that the Plaintiff was at best entitled to **$13,400**. The defendants' case was essentially that the Plaintiff did not require the ankle-related procedures listed at (a) to (d) in [12]; instead, the Plaintiff's ankle stiffness could be resolved by one round of Botox and physiotherapy.[11] As for the future cosmetic procedures listed at (e) and (f) in [12], the defendants disputed the Plaintiff's suitability for those procedures.[12] The defendants thus submitted that the Plaintiff was entitled only to:

(a) $2,400 for Botox and ten sessions of physiotherapy for her ankle stiffness/pain;

(b) $10,000 for scar excisions and fat grafting only if this court were to find that the Plaintiff has discharged her burden of proof that she is suitable to undergo the procedures recommended by Dr Chong; and

(c) $1,000 for follow-up reviews and future transport for medical treatment (estimated).

14 I will deal first with the ankle-related procedures.

Ankle-related procedures

15 The Plaintiff relied on Dr Chang and Dr Tan's evidence to support her submissions that the Plaintiff may be required to undergo supramalleolar osteotomy in the event of the onset of early osteoarthritis, and that the Plaintiff may require ankle fusion in light of the pain from osteoarthritis.[13] The Plaintiff also relied on Dr Tan's report dated 18 July 2016 to argue that the Plaintiff may

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11 DCS, paras 98–109.

12 DCS, paras 111–113.

13 PCS, paras 15–30.

require intra-articular visco-supplementation injections for temporary pain relief before ankle fusion.[14] Finally, the Plaintiff relied on Dr Tan's oral testimony that the Plaintiff may require total ankle replacement once she reaches 60 or 65 and her ankle osteoarthritis worsens.[15]

16 As can be seen, the Plaintiff's claims were premised on (a) the Plaintiff having developed or having a pre-disposition to early ankle osteoarthritis and (b) continuing to suffer from ankle pain as a result. The defendants disputed both premises. Both sides' experts also proposed different treatments to treat the Plaintiff's ankle pain.

17 I will first set out the parties' cases relating to the issue of ankle osteoarthritis. In Dr Chang's report dated 16 July 2015, he observed that the Plaintiff's right ankle oblique joint line together with the diffuse chondral thinning pre-disposed the Plaintiff to early osteoarthritis of that joint because it caused excessive asymmetrical loading to the lateral aspect of her right ankle joint. In court, Dr Chang clarified his view that the thinning of the cartilage was itself evidence that ankle osteoarthritis had *already* set in.[16]

18 Dr Tan also testified that there was evidence of early ankle osteoarthritis. He pointed to the fact that both X-ray examination and the magnetic resonance imaging ("MRI") results showed degenerative changes to the Plaintiff's right ankle.[17] Dr Tan also pointed out that even Dr Singh had in his clarification

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14 PCS, para 14.

15 PCS, para 31.

16 NE, 28 March 2017, 46:4–10.

17 NE, 29 March 2017, 50:15–31.

medical report dated 9 March 2017 agreed that the X-rays showed "mild degenerative changes in the ankle joint".[18]

19 On the other hand, according to Dr Singh, the Plaintiff did not have a predisposition to ankle arthritis.[19] Dr Singh testified that in his view, the Plaintiff presently displayed no features of ankle osteoarthritis, and that the probability of her developing ankle osteoarthritis in the future was "less than 50%".[20] In response to the MRI report which showed thinning of cartilage on the Plaintiff's right ankle, Dr Singh said that the thinning of cartilage was not a known factor indicating pre-disposition for ankle osteoarthritis and in any event, the thinning in the present case was observed *below* the ankle joint.[21] Dr Singh further emphasised that the radiologist who had performed the MRI, an independent and experienced expert in this specific field, did not diagnose the Plaintiff with ankle osteoarthritis.[22] Accordingly, in his view, there was no need for the Plaintiff to undergo supramalleolar osteotomy or ankle fusion as recommended by Dr Chang and Dr Tan.[23]

20 I next set out the parties' cases relating to the ankle pain suffered by the Plaintiff. According to Dr Singh, the Plaintiff's ankle stiffness and pain were secondary symptoms to the Ilizarov frame treatment and could be treated with Botox injections and physiotherapy. If those treatments did not work, the pain could be resolved by percutaneous tendon Achilles lengthening. Regardless,

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18 DBD 20.

19 DBD 21.

20 NE, 29 March 2017, 103:5–15.

21 NE, 29 March 2017, 124:13–26.

22 NE, 29 March 2017, 93:25–94:3; 105:1–7.

23 DCS, paras 100–105.

once the ankle stiffness was resolved, the ankle pain would also be resolved.[24] Again, on this basis, the Plaintiff would not be required to undergo the procedures recommended by Dr Chang and Dr Tan.[25]

21 Dr Chang did not dispute that the Plaintiff suffered from ankle stiffness and pain *during* the Ilizarov procedure. However, according to Dr Chang, the Plaintiff was still suffering from ankle pain even *after* the Ilizarov procedure because of her oblique joint line, *ie*, her right ankle joint was not level with the ground:[26]

> … The---why she is having ankle problem is because during this procedure when trying to achieve---to re---re-adjust the length back to normal length, it is very hard to control the ankle joint. So right now, after the procedure, the success is she has---the bone is joined; number two, she's---her leg is no longer big difference in length between the right and the left leg, right, but the ankle joint---the ankle joint is no longer level, the joint line is not level. When she stands, the weight of her body is not evenly distributed across the ankle joint because the joint line is not level. I hope you understand this point, yah, that's why the---the ankle has so much problem now.
>
> …
>
> But because of her comminuted fracture, and subsequent treatment, in---even with the best of hands of the---an intention of the treating doctor, which is Dr Khan, who, I think, did a great job but the joint line is not level with the ground. So that's why she is having so much pain and---and continue to have pain stiffness in that ankle.

A similar explanation was given in Dr Chang's report dated 16 July 2015.[27]

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24 DBD 20–21.

25 DCS, paras 100–106.

26 NE, 28 March 2017, 20:6–21:2.

27 PBD 77–78.

22 Dr Tan also testified that the MRI scan performed by Dr Chang on 8 July 2015 showed that the Plaintiff still had oedema around her right ankle (*ie*, swelling of the bone as a result of previous trauma to the bone), four years after the accident.[28] This correlated clinically with chronic regional pain syndrome. Thus he disagreed with Dr Singh's clarification medical report dated 9 March 2017 where Dr Singh stated that that MRI scan showed tendinosis of the right fibular anterior tendon which was secondary to the Ilizarov frame application.[29]

23 As regards the appropriate treatment for the Plaintiff's ankle pain, Dr Tan disagreed with Dr Singh's recommendation of using Botox injections and physiotherapy. Dr Tan testified that Botox injections and therapy would only relieve ankle stiffness, but not pain and suffering. Furthermore, the half-life of Botox is short, meaning that injections would have to be given often and end results would not be permanent.[30] It would also be very expensive because repeated injections would be required throughout the Plaintiff's lifetime.[31]

24 Dr Chang's opinion in his report dated 16 July 2015 was that supramalleolar osteotomy of the Plaintiff's right ankle (*ie*, cutting the bone and realigning the joint) would assist in achieving a more level ankle joint line, thereby alleviating joint pain for a period of five to ten years.[32] Thereafter, the Plaintiff might still have to consider ankle fusion.[33]

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28 NE, 29 March 2017, 37:24–26.

29 NE, 29 March 2017, 36:16–39:2; DBD 20.

30 NE, 29 March 2017, 40:15–26.

31 NE, 29 March 2017, 42:1–6.

32 PBD 78; NE, 28 March 2017, 29:16–27.

33 PDB 78.

25 Dr Tan's report dated 18 July 2016 similarly stated that if the Plaintiff's chronic ankle pain persisted, she may require ankle fusion.[34] In court, Dr Tan clarified that ankle fusion would only be undertaken as a last resort because that treatment would cause the Plaintiff to lose her ankle movement totally, thereby affecting her gait.[35] Supramalleolar osteotomy on the other hand was a temporising measure that would buy the Plaintiff several years of a less painful and more active life.[36] Dr Tan added that if the Plaintiff's arthritis worsened when she was older (*eg*, around age 60 or 65), total ankle replacement was also an option she could consider.[37]

26 As can be seen, the expert medical evidence on behalf of the parties differ significantly. When faced with conflicting expert evidence, the court must decide which side's evidence it prefers. In the present case, I prefer the evidence given by the expert witnesses for the Plaintiff. This is partly because, in the course of cross-examination, Dr Singh made certain comments which suggested to me that he was not entirely impartial. In particular, he suggested that the Plaintiff was exaggerating the pain in her ankle in order to obtain greater financial compensation.[38]

27 It will be recalled that Dr Chang's position was that the Plaintiff was experiencing right ankle pain because her joint line was not level with the ground (see [21] above). Dr Singh was referred to an X-ray of the Plaintiff's right ankle appended to Dr Chang's report dated 16 July 2015, wherein Dr

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34 PBD 97.

35 NE, 29 March 2017, 51:13–52:12.

36 NE, 29 March 2017, 52:14–17.

37 NE, 29 March 2017, 52:23–53:5.

38 NE, 29 March 2017, 106:5–13; 108:17–20.

Chang had noted that "the tilt of the joint line was oblique".[39] Dr Singh's response to this X-ray was two-fold. First, the X-ray was "not adequate" or "not good enough" for a diagnosis of obliquity.[40] Second, Dr Singh maintained that even if there were some degree of obliquity, it was within normal limits.[41]

28 It was in this context that the court queried of Dr Singh: if the Plaintiff's right ankle joint line was indeed level (or within normal limits of obliquity) as he claimed, then what was the cause of the Plaintiff's complaint of right ankle pain? This question led to the following exchange:[42]

Court	So where would the pain be coming from?
Witness	Er, okay, the---for this kind of patients, er, firstly, I will look at, er, first, it's the objective factor. One, okay, she has some amount of scarring likely from the tendons, the capsules. Er, second possibility is, er, whether she has, er, internal scar tissue which I don't see much on the MRI. The third factor, *Your Honour, I---I talk very frankly is, look at the element of, er, psychological overlay. Many of these patients who come to Court and want to be very open about it, there---there's also financial remuneration overlay involved, er, and that also tends to influence it.* I'm not the expert in that. I think that, I let the Court to decide, but that also has a factor to play in it, mm. We cannot deny that, mm.
Court	That would depend case by case.
Witness	Of course, yah, of course. That's why I say you all are the experts. I---I---I know it's a very difficult thing to do but it does play a part. Remember, you asked me.

39 PBD 88.

40 NE, 29 March 2017, 95:1–24.

41 NE, 29 March 2017, 99:15–32.

42 NE, 29 March 2017, 105:18–106:32.

> Court So does your opinion factor in what you think is the over[l]ay?
>
> Witness I---I personally feel that this patient has some pain, lah, but it---I mean if you don't mind say open---*I think she is somewhat of a---there's a bit of over---over-reaction about it, you see, you know, what I mean.* All right. Whenever I---I---I be frank. I'm a senior orthopaedic surgeon. I have written many reports. Er, and I know how these are done. So the---the---the---I---I will say very unlikely this patient end up with ankle fusion. If you say she has ankle fusion, she knows what she can claim. She's not---she's not, er, sorry, not stupid lah, I mean.
>
> [emphasis added]

29 Dr Singh seemed to consider that his views on the alleged "psychological overlay" and "financial remuneration overlay" were in answer to the court. But in truth, the court had only invited Dr Singh to account for *why the Plaintiff was experiencing right ankle pain*. His answer that the Plaintiff was exaggerating her pain for greater financial compensation was unsolicited and went beyond his remit. This exchange led me to wonder whether Dr Singh had come to court to give evidence in an impartial or disinterested manner. One could be forgiven for thinking that he appeared to be holding a brief for the defendant, actively resisting the Plaintiff's claim and casting aspersions on her credibility.

30 On the other hand, I found that the expert witnesses for the Plaintiff, Dr Chang and Dr Tan, presented their opinions in a fair and professional manner. In particular, Dr Tan is a doctor in a government hospital and there is no reason for him to recommend the Plaintiff to undergo any unnecessary surgical procedures. Dr Tan had testified that he found the Plaintiff to be honest and reliable and that she did not try to exaggerate her condition.[43]

[43] NE, 28 March 2017, 32:21–31.

31 In the circumstances, I am of the view that it is unsafe to rely on Dr Singh's evidence as to the Plaintiff's medical condition and the necessity of the various medical procedures. I should not have to remind all experts that come before this court of O 40A r 2 of the Rules: it is the duty of an expert to assist the court on matters within his expertise. This duty overrides any obligation to the person from whom he has received instructions or by whom he is paid.

32 There are further reasons for preferring the evidence of Dr Tan over Dr Singh's. Although Dr Singh is a specialist on Ilizarov procedures, Dr Tan is the Plaintiff's treating doctor and a foot and ankle specialist. Dr Tan therefore has greater familiarity with the Plaintiff's medical condition, especially her residual disabilities in relation to her ankle and her foot. Dr Tan had also seen the Plaintiff most recently on 14 June 2016. In contrast, Dr Singh had last seen the Plaintiff some time ago on 13 August 2015 and did not review her for the preparation of his clarification medical report dated 9 March 2017.

33 I therefore accept Dr Chang and Dr Tan's evidence as to the necessity and cost of the following treatments:

(a) intra-articular visco-supplementation or steroid injections: $480 per injection;[44]

(b) right ankle supramalleolar osteotomy/tibia realignment osteotomy (inclusive of hospital charges): $8,000 to $10,000 at B1 rate;[45] and

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44 PBD 98.

45 NE, 29 March 2017, 58:19–27.

(c) ankle fusion (inclusive of implants and hospital charges): $8,500 to $12,000 at B1 rate.[46]

34 The Plaintiff claimed the upper limit in respect of each of these procedures (see [12] above). In my view the amounts claimed by the Plaintiff, despite being at the top end of the range, are not unreasonable.

35 However, with regard to the total ankle replacement procedure, I am of the view that the Plaintiff has not proved, on a balance of probabilities, that she would be required to undergo this surgery in the future. While Dr Chang and Dr Tan had both recommended in their respective medical reports that the Plaintiff undergo supramalleolar osteotomy and ankle fusion, it was only Dr Tan who mentioned the possibility of the total ankle replacement procedure in his oral testimony. Even then, Dr Tan clearly considered total ankle replacement to be an *alternative* to the combined osteotomy and fusion procedures.[47] This option would be appropriate if the Plaintiff were older (*ie*, around 60–65 years of age) and her arthritis had worsened. In my view, given the fact that the Plaintiff was clearly troubled by the pain in her right ankle at present, there is a much greater likelihood that she will undergo the osteotomy and fusion procedures in the near future to relieve her ankle pain, rather than wait nearly 20 years while her arthritis gradually worsens before undergoing a total ankle replacement. I therefore decline to award the Plaintiff any amount in respect of the ankle replacement procedure.

36 For completeness, I note the following. Given that the ankle fusion surgery is likely to take place only five to ten years after the osteotomy

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46 NE, 29 March 2017, 58:28–59:17.

47 NE, 29 March 2017, 52:32–53:5; 60:11–15.

procedure (see [24] above), it may be argued that an upward adjustment ought to be applied to take into account inflation and rising medical costs. While that is correct, one must also take into account the fact that the Plaintiff will essentially be receiving the benefit of a payment in advance (see *Khoo Ih Chu v Chong Hoe Siong Jeremy* [1989] 2 SLR(R) 243 at [27]). In the circumstances, and especially given that the Plaintiff did not argue this specific point, I do not think it necessary to make an upward adjustment to the amount awarded in relation to the ankle fusion procedure. I therefore award the Plaintiff a total of **$22,480** in respect of the three ankle-related procedures stated at [33].

Cosmetic procedures

37 In Dr Tan's report dated 23 February 2016, he observed that the Plaintiff had, amongst other scars:[48]

(a) 6cm and 7cm scars on the right anterior knee;

(b) a 27.5cm serpentine scar on the anterior tibia; and

(c) a 5.5cm scar on the lower third of her tibia extending to the ankle.

38 The Plaintiff testified that this scarring had prevented her from dressing herself in the way she otherwise would have – she had to wear clothes that were long enough to cover her scarring.[49] The Plaintiff also showed the court the extent of the scarring on her legs. That explained why she said she was keen to undergo procedures that would reduce the scarring.[50]

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48 PBD 95–96.

49 NE, 30 March 2017, 33:5–34:32; 5 April 2017, 93:27–29.

50 NE, 30 March 2017, 9:16–30.

39 The Plaintiff relied on Dr Chong's report dated 5 March 2015, which stated that he had explored scar revision surgeries with the Plaintiff to reduce the size of the scars and improve contour deformities. These included scar excisions and fat grafting.[51] Scar excision involves cutting away parts of scars and stitching them together properly.[52] Fat grafting involves taking fat tissues from other parts of the body like the stomach or the thighs and grafting it onto the affected areas to improve the appearance of any contour deformities.[53]

40 Dr Chong had also indicated in the same report that the Plaintiff might benefit from tissue expansion surgeries.[54] This procedure involves the surgical insertion of a balloon-like device under the skin. The device will then be slowly inflated over a period of months in order to stimulate tissue growth. Once the skin has grown sufficiently, it can be used to replace the scars.[55] As tissue expansion surgery is more complicated, it will normally not be offered as a first-line solution but only if simpler procedures like scar excision and fat grafting fail to achieve desired results.[56]

41 The defendants did not dispute that the Plaintiff suffered scarring as a result of her injuries caused by the accident. However, they submitted that the Plaintiff had failed to prove on a balance of probabilities that she was *suited* to undergo the scar excision, fat grafting and tissue expansion surgeries in respect of which she was claiming. The fact that she *wanted* to undergo these

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51 PBD 65.

52 NE, 30 March 2017, 8:1–6.

53 NE, 30 March 2017, 8:7–15.

54 PBD 65.

55 NE, 30 March 2017, 17:25–18:7.

56 NE, 30 March 2017, 18:22–19:13.

procedures was a different matter.[57] In support, the defendants relied on the oral testimony of Dr Chong:[58]

Court	The question that doc---that Mr Nara is asking you is, is there a situation where you say, "No, I'm not going to operate because she will be harmed by the operation."
Witness	Erm, er---so if to answer that question, that would be an important consideration. There are situations where scar excision surgeries, not fat grafting, but scar excision surgeries may not be carried out if I'm not confident that they will improve the patient, so that will have to be ascertained before I embark on any surgeries. So the cer---answer is, I may potentially not operate if I assess that the---the scar tissues, er, may worsen or re---recur because of my surgeries.
Court	Yes. Okay. Have you got what you want?
Ramasamy	More or less, Sir, yes. I think---I mean that is---would be an important consideration, I believe, for a surgeon at that point in time.
Q	But the good doctor, I think, what you're saying is that *at this point in time you don't have the answer to that because you have not embarked on that assessment yet.*
A	*Yes.*
Q	*So your report is essentially giving the general options a patient such as Ms Yap has that she can consider and the costing.*
A	*Yes.*

[emphasis added]

42 When queried by the court, Dr Chong confirmed that his report of 5 March 2015 was given not with a view to his immediately operating on the Plaintiff within a matter of months. Rather, it was purely a consultation with

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57 DCS, paras 113 and 116.

58 NE, 30 March 2017, 14:18–15:6.

regard to prospective work to be done, possibly after the Plaintiff had undergone further surgeries in respect of her other injuries.[59] I thus agree with the defendants' submission that the Plaintiff cannot rely solely on Dr Chong's report of 5 March 2015 as a basis to assert that she is necessarily *suited* to undergo scar excision, fat grafting and/or tissue expansion surgeries.

43 Nonetheless, I accept Dr Chong's evidence that those options were the "likely options" that any plastic surgeon would offer to the Plaintiff. The advice that he had given in his report of 5 March 2015 was merely not "customised" in the sense of telling her "which scar, where and when to do it".[60] In court, Dr Chong was referred to certain photographs of the Plaintiff's scars and was asked to offer his opinion on which treatments were suitable, and the likely prospect of success. Dr Chong opined that:[61]

(a) scars in the form of "[d]eep indents"[62] would "definitely" be improved by fat grafting;

(b) scars on the Plaintiff's ankle[63] would require further assessment, but scar excision would potentially bring about an improvement;

(c) "[d]isfigured scarrings [*sic*]"[64] would "definitely" be improved by scar excision and fat grafting;

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59 NE, 30 March 2017, 21:1–12.

60 NE, 30 March 2017, 21:25–22:2.

61 NE, 30 March 2017, 22:8–24:11.

62 PBD 99.

63 PBD 99.

64 PBD 100.

(d) scars around the Plaintiff's knee joint[65] would require further assessment;

(e) contour deformities due to the Ilizarov frame[66] would be improved by fat grafting; and

(f) scars on the Plaintiff's knee joint and across her wrist[67] would require further assessment, but potentially revision surgeries would bring about an improvement.

44 Based on Dr Chong's testimony in court, I am satisfied that the Plaintiff is suited to undergo scar excision and fat grafting in respect of a significant amount of the scarring. She is therefore entitled to recover damages in respect of these two procedures. However, I am not convinced that the Plaintiff should recover any damages in respect of tissue expansion surgery. Dr Chong did not assess any of the scars as being suited for such a procedure. He had also given clear evidence that in his view, tissue expansion surgery would not generally be recommended until and unless the less complicated procedures had failed to achieve the desired results. In any event, it seemed to me that the Plaintiff herself was not so keen to undergo what she considered a "scary" procedure with potentially "a lot of complications".[68]

45 Given that the Plaintiff is entitled to claim damages in respect of the scar excision and fat grafting procedures, the next question concerns the quantum of damages that the Plaintiff is entitled to recover. The Plaintiff sought **$20,000**,

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65 PBD 101.

66 PBD 101.

67 PBD 102.

68 NE, 31 March 2017, 9:22–26.

relying on Dr Chong's evidence that each of the three sessions would cost $6,000 to $7,000 at B1 rates (*ie*, unsubsidised).[69] The defendants proposed **$10,000**, relying on Dr Chong's evidence that at B2 rates (*ie*, after factoring in government subsidies for public hospitals), the cost of the procedures would be reduced by up to half.[70]

46 It was not disputed that the Plaintiff had undergone most of her prior treatments at Khoo Teck Puat Hospital at B2 rates.[71] This was despite the fact that she had insurance coverage for up to A class.[72] The Plaintiff explained that her sister had chosen the B2 class on her behalf upon her initial admission because she was unconscious at the time.[73] Upon her subsequent readmissions, the Plaintiff did not ask to be moved to a better class because in her view, she had already been assigned to certain doctors and "there [was] no need to abuse the system to get the A class, to get back the same doctors to … treat [her]".[74]

47 The Plaintiff also explained that Dr Chong had been required to quote B1 rates for these cosmetic procedures because she had been referred to him by Dr Suheal Khan Ali (the Plaintiff's treating doctor) on a doctor-to-doctor basis, and not by, for instance, a polyclinic.[75]

48 Finally, the Plaintiff said that she was not sure whether her insurance policy coverage extended to scar excision and fat grafting procedures – such

69 NE, 30 March 2017, 16:11–20; 17:1–8.

70 NE, 30 March 2017, 16:21–17:17.

71 NE, 30 March 2017, 65:9–16.

72 NE, 30 March 2017, 65:20–66:13.

73 NE, 30 March 2017, 65:22–28.

74 NE, 30 March 2017, 66:5–13.

75 NE, 30 March 2017, 66:15–19.

procedures would not be covered if the insurance company were to consider them purely "cosmetic".[76] Notwithstanding this, the Plaintiff had candidly admitted that she was likely to pursue "better treatment" because she was very keen to see her appearance improve:[77]

> So, in future, er, I---because it's a cosmetic plastic issue, to be very frank, I would definitely want to go for, er, better treatment, er, and not, er, substandard into risk my cosmetic, er, er, you know, outlook, et cetera.

49 The defendants did not challenge any of the above points in cross-examination. It was simply asserted in their submissions that the Plaintiff was only entitled to an award based on B2 rates. It seemed to me that the suggestion from the defendants was that because the Plaintiff had previously been content to undergo treatment at B2 rates, any future cosmetic procedures would similarly be undertaken at B2 rates.

50 I disagree with the defendants. The Plaintiff explained that she was not entitled to B2 rates because any referral to a plastic surgeon would be by way of a doctor-to-doctor private recommendation.[78] The defendants did not challenge this point. Further, even if the Plaintiff had previously been content to undergo treatment at B2 class, cosmetic procedures were clearly a different matter for the Plaintiff. In my view she was entitled to (and it was likely that she would) seek treatment at a class higher than B2. I therefore award the Plaintiff **$20,000** in respect of the cosmetic procedures.

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76 NE, 30 March 2017, 66:22–67:6; 67:20.

77 NE, 30 March 2017, 66:19–21.

78 PCS, para 39.

Miscellaneous expenses

51 The remaining amounts claimed relate to (i) follow-up reviews and treatments/medication and (ii) future transport for medical treatment. The Plaintiff claimed $10,000 and $500 respectively, totalling **$10,500**, while the defendants asserted that only **$1,000** should be awarded.

52 The Plaintiff submitted that she was required to attend follow-up sessions with Dr Tan every three months, averaging $40 per consultation.[79] She also testified that she spends an average of about $800 per year on medical consumables and medication.[80] Finally, given the aforementioned ankle-related procedures and cosmetic procedures that the Plaintiff would undergo, the Plaintiff submitted that a sum of $10,000 was appropriate. To that end, $500 for transport expenses was also appropriate.[81]

53 The defendants did not make any specific submissions in support of their figure of $1,000. They also did not specifically dispute the figures used by the Plaintiff in her calculation.

54 In the circumstances, given my finding that the Plaintiff is entitled to claim damages in respect of the majority of the ankle-related and cosmetic procedures (see [33] and [44] above), I accept the Plaintiff's submissions and award the Plaintiff **$10,500** for follow-up reviews and treatments/medications and future transport for medical treatment.

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79 PBD 96.

80 NE, 31 March 2017, 103:11–27.

81 PCS, paras 42–45.

Domestic helper expenses

55 It was not disputed that the Plaintiff depended on her domestic helper, Ms Kusrini, to help her with daily living activities (*eg*, wheeling the Plaintiff around in her wheelchair when needed, and cooking) and with the daily care of her various wounds.[82]

56 The Plaintiff sought damages of **$32,815.95** in relation to domestic helper expenses incurred from August 2011 to January 2016 (both months inclusive).[83] These expenses included foreign worker levies, salary payments, medical expenses and return airfares for Ms Kusrini's home leave. It should be noted that the Plaintiff's initial claim (as reflected in the joint opening statement) was higher as it included expenses incurred up to July 2016. However, the Plaintiff in cross-examination subsequently limited her claim to expenses incurred up to three months after her last surgery in November 2015, *ie*, January 2016.[84]

57 On the other hand, the defendants submitted that the Plaintiff was not entitled to claim damages for domestic helper expenses *at all* because those were expenses that the Plaintiff was already incurring and liable to pay prior to the accident. In other words, they were not "fresh expenses" arising from the accident.[85] Alternatively, the defendants submitted that the Plaintiff was only entitled to 50% of her claim as Ms Kusrini's services would likely have conferred benefits on (a) the Plaintiff's uncle, who was living with the Plaintiff

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82 PBD 31, 47 and 49.

83 PCS, para 62 and Annexure A.

84 NE, 30 March 2017, 62:26–28; PCS, para 63.

85 DCS, para 121.

at the time and (b) the Plaintiff's employees, since the Plaintiff's home was being used as a home office at the time.[86]

58 It was not disputed that Ms Kusrini had already been employed prior to the accident. The Plaintiff testified that Ms Kusrini had originally been hired to take care of her father, who suffered from a cardiac condition. In fact, the Plaintiff had been on the way to visit her father in the hospital when the accident occurred. The Plaintiff's father passed away in August 2011,[87] about one month after the accident on 12 July 2011, while the Plaintiff was still hospitalised. Ms Kusrini therefore stayed on to look after the Plaintiff. The Plaintiff testified that she would have preferred not to have to rely on Ms Kusrini but accepted that she required assistance for her daily living activities:[88]

> Q I'm just going to put a put question to you in respect of earlier, I think, domestic expense which I may have, domestic maid expense which I might overlooked. Put it to you that you would have incurred this domestic maid expenses that you are claiming even if you are not involved---
>
> A Sorry.
>
> Q In the accident.
>
> …
>
> A No, I disagree because, er, my---the---purpose of having the domestic helper was to take care of my dad, er, before he passed away. So I---I would like to live alone without, you know, like some stranger with me in a way at that point of time because she was only there for 6 months. So I think those could be probably taken care by a weekly helper kind of thing, but because of this accident, from day one, I require assistance. Even I was going through, erm, the nurses were telling me how to

86 DCS, para 122.

87 NE, 30 March 2017, 53:1–23; 54:11–15.

88 NE, 31 March 2017, 80:30–81:24.

> even wear a shirt. So obviously this will even tell that I would need a helper---
>
> Q: Correct.
>
> A: ---or even a nurse.

59 The Plaintiff testified that Ms Kusrini's services were required because post-accident, the Plaintiff needed assistance with her household chores and care of her wounds. If she had instead looked for a new domestic helper, she would likely not have been able to get one promptly. The Plaintiff added that the remaining alternative was to hire a professional nurse.[89]

60 Although Ms Kusrini had not been hired at the very outset to care for the Plaintiff, it is clear to me that the Plaintiff continued to incur domestic helper expenses (after her father's death) *because* she needed assistance in daily living activities and care of her injuries *as a result of* the accident. I accept the Plaintiff's evidence that she would not otherwise have continued to retain the services of Ms Kusrini. I note that the defendants did not challenge the Plaintiff's and/or Dr Chang's evidence that the Plaintiff was dependent on Ms Kusrini for her daily living activities and care of her wounds. I also note that the Plaintiff acted reasonably in choosing to retain the services of her existing domestic helper instead of looking for a new helper, or hiring a nurse. I therefore reject the defendants' submission that the Plaintiff was not entitled to claim damages for domestic helper expenses at all.

61 I turn now to consider the defendants' alternative argument that the Plaintiff should only be entitled to 50% of her claim because the household chores performed by Ms Kusrini benefited not only the injured Plaintiff, but also (a) her uncle who stayed with her and (b) her employees working out of her

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89 NE, 30 March 2017, 55:17–56:7.

home office. In support, the defendants cited the High Court decision of *Toon Chee Meng Eddie v Yeap Chin Hon* [1993] 1 SLR(R) 407 ("*Toon*"). The context there was slightly different as the court was deciding the quantum to be awarded in respect of future nursing care; nonetheless, part of this assessment involved the computation of domestic helper expenses. In *Toon*, although parties agreed that the monthly cost of a domestic helper in Singapore was $750, the court applied a 20% discount to reach a multiplicand of $600 on the basis that this discount took into account the value of the domestic helper for other services provided to the household (at [38]). The defendants thus submitted that the percentage reduction in the present case should be higher than the 20% in *Toon* because Ms Kusrini's services conferred benefits not just on other members of the household, but also those *outside* of the household (*ie*, the Plaintiff's employees).[90]

62 In response, the Plaintiff submitted that Ms Kusrini's services did not confer any substantial benefit or assistance on her uncle, other than some basic household chores like cooking and laundry, which Ms Kusrini performed in common for the Plaintiff as well.[91] The Plaintiff also highlighted that despite her uncle's senior age, he was in fact very independent and did not require much assistance:[92]

> Court: Your father's brother was also living there.
>
> Witness: Yes, Sir.
>
> Court: So although your father passed away---
>
> Witness: Yes, Sir.
>
> Court: ---wouldn't a maid be needed to look after him?

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90 DCS, paras 123–124.

91 NE, 30 March 2017, 64:9–32; PRS, para 41.

92 NE, 31 March 2017, 81:30–82:12.

> Witness: Yes. I totally understand. Er, my---in fact, my father's brother is actually an elder brother, but his state of health is actually better even until now. He doesn't---he is very---because he's a bachelor, he doesn't have any family members. So even a maid staying like, if taking care of him, he is very scared that, you know, sometimes fever---er, there was once he touched, then he will say, "Oh, no, you---no, you don't need to take care of me." Even until today, at his age, he's 1932. So he's 80 over years old. Every day, he is still walking out, going out by himself, taking bus, having meals outside.

63 As for the defendants' submission that Ms Kusrini's services benefited the Plaintiffs' employees, the Plaintiff averred that her employees were full-time staff and did not require Ms Kusrini to help or assist them in any way. The Plaintiff testified that Ms Kusrini did not help these employees by cooking or providing lunch, or even serving them water.[93] The Plaintiff also pointed out that there was no evidence supporting the assertion that Ms Kusrini had assisted the Plaintiff's employees.[94]

64 Accordingly, the Plaintiff submitted that no discount should be applied to the award for domestic helper expenses at all.[95] In support, the Plaintiff relied on several cases, the most relevant of which is the High Court's decision in *AOD (a minor suing by his litigation representative) v AOE* [2016] 1 SLR 217 ("*AOD*"). The assistant registrar applied a 50% discount to the total cost of the domestic helper on the basis that the helper had spent half her time doing household chores. However, the High Court disagreed and found that no discount should be applied. It was clear that the need for the domestic helper had arisen solely because of the accident. Even if the domestic helper did assist

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93 NE, 31 March 2017, 82:15–83:4.

94 PRS, para 43.

95 PCS, para 73.

in housework, this was because the plaintiff's mother had become a full-time caregiver for the plaintiff and this limited her ability to perform house work as she otherwise would. The plaintiff's mother therefore needed a domestic helper to help out in these areas (at [81]).

65 The Plaintiff further submitted that *if* this court were minded to order a discount, in view of the small proportion of the household chores carried out by Ms Kusrini that benefited the Plaintiff's uncle, such discount should not exceed a small percentage of 5% to 10%.

66 I deal first with the sole authority of *Toon* raised by the defendants to support their submission that a discount greater than 20% should be applied to the domestic helper expenses claimed by the Plaintiff. One of the key reasons why the court in *Toon* applied a 20% discount was because the domestic helper was not required to care for the plaintiff *at all times*: the plaintiff was *also* being looked after by both his parents (see *Toon* at [30], [38] and [39]). In contrast, the Plaintiff's sole caregiver is Ms Kusrini. It is reasonable to conclude that as compared to the domestic helper in *Toon*, Ms Kusrini would have spent a significantly greater percentage of her time caring for the Plaintiff, and correspondingly would have provided fewer benefits to the household in general. This key factual distinction means that *Toon* does not take the defendants' case very far. I therefore do not think that the value of Ms Kusrini's services for benefits allegedly conferred on the Plaintiff's uncle and/or the Plaintiff's employees should necessarily be accounted for, much less to an extent greater than 20%.

67 I come now to *AOD* which the Plaintiff relied on for her submission that no discount should be applied because the need to hire a domestic helper arose

solely because of the accident. At the outset, it should be noted that *AOD* (like *Toon*) is distinguishable on the basis that the plaintiff had other caregivers in addition to the domestic helper. Notwithstanding this factual distinction, the proposition laid down in [81] of *AOD* (see [64] above) seems eminently sensible: there is no reason to apply a discount to account for benefits accruing to the household if the domestic helper was simply doing housework that, but for the accident, would have been done by the plaintiff's current caregiver. This principle equally applies in respect of housework that, but for the accident, would have been done by the plaintiff *personally*.

68 In my view, it would be inappropriate to apply a discount in the present case. Though there was evidence that work done by Ms Kusrini for the household (such as cooking and laundry) had benefited the Plaintiff's uncle to some extent, in my view, such benefits would have been minimal. As for the Plaintiff's employees, there was no evidence to show that they had benefited from Ms Kusrini's services at all. In any event, as mentioned at [60] above, it was clear to me that the need for Ms Kusrini's services had arisen solely as a result of the accident. The Plaintiff would have taken care of the household herself, but because of the accident, she had to rely on Ms Kusrini instead. Applying the principle in *AOD*, the Plaintiff should be compensated for such expenses that she would otherwise not have incurred. Further, as mentioned earlier at [56], the Plaintiff had of her own accord limited her claim for domestic helper expenses to those incurred between the time of the accident and end of January 2016 (being three months after her last surgery in November 2015). This was despite the fact that she was *in fact* still relying on Ms Kusrini's services up till the time of the hearing.[96] The Plaintiff could have claimed domestic helper expenses up till then, but decided not to. This strongly signals

[96] NE, 30 March 2017, 62:8–14.

to me that the Plaintiff did not seek to claim more in domestic helper expenses than she thought she was fairly entitled to. For all the reasons mentioned above, I do not think that it would be appropriate to further apply a discount and limit the quantum claimed by the Plaintiff.

69 I therefore award the Plaintiff the full sum of **$32,815.95** which she claimed for domestic helper expenses.

Pre-trial loss of earnings

70 I come now to the most problematic portion of the Plaintiff's case, concerning pre-trial loss of earnings. I first set out some undisputed background facts.

Background facts

71 At the time of the accident, the Plaintiff was one of two equity partners of a firm known as Resources XP ("RXP") and a director and 50% shareholder of a company known as Resources XP Pte Ltd ("RXPPL").

72 The Plaintiff joined RXP sometime in November 2008.[97] Prior to that, RXP was a sole proprietorship under Wong's sole name and had no staff. The Plaintiff became a partner on 23 February 2009.[98]

73 RXPPL was subsequently incorporated on 15 June 2011. RXP and RXPPL are principally two units carrying out the same business activities (*ie*, providing accountancy and information technology ("IT") services). The only difference is that RXP is used to bill clients on a non-GST basis since it is not

97 NE, 31 March 2017, 16:26–31.

98 PBD 440–441.

GST-registered (unlike RXPPL).[99] Overall, the Plaintiff handled accounting, and the sales and business development of IT services and products. In other words, she was in charge of going out to meet clients and getting in customers. Her partner, Wong, handled the operations aspects of the business.[100]

74 Up till October 2008, prior to joining RXP, the Plaintiff had been employed as a Finance Manager with J Walter Thompson (Singapore) Pte Ltd ("JWT") and drew a fixed monthly salary of $6,300.[101]

Overview of the parties' cases

75 The Plaintiff submitted that but for the accident and the resultant injuries, she would have developed RXP's and RXPPL's businesses to an even greater extent than reflected in her Inland Revenue Authority of Singapore ("IRAS") Notices of Assessment up to the trial of this action. The Plaintiff offered two alternative methods of quantifying her pre-trial loss of earnings. The Plaintiff's primary computation method relied heavily on a spreadsheet document produced by the Plaintiff explaining her computation of what RXP and RXPPL's profits would have been if not for the accident and her injuries, spanning 2011 to 2014 ("the Forecasts").[102] The Plaintiff's alternative computation method used the Plaintiff's salary from her past employment at JWT as a proxy for estimating her pre-trial loss of earnings. I elaborate more on both methods later.

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99 NE, 31 March 2017, 49:7–50:10.

100 NE, 31 March 2017, 16:3–16.

101 Yap Boon Fong Yvonne's AEIC dated 13 January 2015, exh YBF-10, pp 235–259.

102 PBD 528–533.

76 The defendants submitted that the Plaintiff's pre-trial loss of earnings, if any at all, was limited to the year 2011. The defendants argued that neither of the Plaintiff's computation methods ought to be accepted. They proffered a third computation method for this court's consideration.

Whether the Plaintiff suffered any pre-trial loss of earnings

77 I first consider whether the Plaintiff had *in fact* suffered any pre-trial loss of earnings. It is important to bear in mind that at the time of the accident, the Plaintiff was self-employed and her income was essentially derived from RXP's and RXPPL's earnings.

78 The defendants argued that the Plaintiff's income had in fact increased after the accident. Her IRAS Notice of Assessment showed that she only earned $14,786 in 2010 before the accident. Post-accident, the Plaintiff went on to earn $17,230 in 2012 and her income peaked at $60,270 in 2013. Therefore, according to the defendants, the Plaintiff did not suffer any pre-trial loss of earnings.[103]

79 The defendants also argued that save for 2011, the evidence did not show that RXP and RXPPL had declined in profitability. The defendants relied on the following undisputed figures:[104]

Year	**RXP's (and RXPPL's, where applicable) profit before director remuneration**
2008	No information available
2009	Net loss of $17,356.05

103 DCS, para 63.

104 DCS, para 75.

2010	Net profit of $91,603.95
2011	Net loss of $47,946.84
2012	Net profit of $61,520.53
2013	Net profit of $122,367.83
2014	Net profit of $76,587.98
2015	No information available
2016	No information available

The right column labelled "profit before director remuneration" refers to RXP's actual net profit (or loss) for each year, combined with RXPPL's where applicable (*ie*, from 2011 onwards). For ease of reference in this judgment, I refer to the "profit before director remuneration" as RXP's net profit or loss.

80 The defendants submitted that based on the pre-accident years of 2009 and 2010, RXP's average net profit was $37,123.95. This was the base figure to determine whether RXP and RXPPL had suffered a decline in profitability after the Plaintiff's accident in 2011. The defendants submitted that except for 2011 when RXP suffered a net loss, RXP's net profit did not decline: from 2012 till 2014, RXP's yearly net profit exceeded the pre-accident average net profit of $37,123.95. There was no evidence in respect of the other years. Thus, the defendants said that the Plaintiff had no basis to claim a loss of earnings except in respect of 2011.[105]

81 I disagree with the defendants' submissions. First, in my view, it was inappropriate to use RXP's average earnings for 2009 and 2010 as the base

105 DCS, paras 78 and 81–82.

figure for comparison. RXP only started providing accounting and IT solutions in 2011. Prior to that, RXP was involved in the business of providing digital imaging services for Community Development Councils and SPRING Singapore and engaged elderly people as part-time staff.[106] That was a completely different business involving a completely different business model. Thus, RXP's earnings in 2009 and 2010 would not be an accurate gauge of the business's performance and profitability for 2011 and beyond, when RXP began providing accounting and IT solutions.

82 Second, and more fundamentally, it seems to me that the defendants' submissions missed the point. It was not the Plaintiff's case that her income had declined *as compared to the years before*, or that RXP's and RXPPL's profitability had declined *as compared to the years before*. The Plaintiff's case was that she suffered a loss of earnings because RXP and RXPPL were less profitable than they *could have been*, had the Plaintiff been able to develop the businesses without the disruption caused by the accident and the injuries she sustained as a result. In my view, the award for loss of pre-trial earnings should compensate the Plaintiff for her share of the net profit that RXP and RXPPL would otherwise have made, notwithstanding the fact that the numbers show no apparent decline in profitability.

83 This approach finds support in the case of *Koh Soon Pheng v Tan Kah Eng* [2003] 2 SLR(R) 538 ("*Koh Soon Pheng*"), which the defendants themselves relied on. The plaintiff was the owner of a motorcycle workshop, and most of the time he was the only worker in the business. In 2000, the plaintiff unfortunately met with an accident and sustained injuries which made it difficult for him to carry, repair and service motorcycles as he used to do.

106 NE, 31 March 2017, 16:30–17:27.

Based on documentation from the IRAS, his business suffered a net loss of $23,436 and $4,935 in 2001 and 2002 respectively. The High Court agreed with the plaintiff that his true loss of earnings was not just the amount that he had in fact lost (determined by comparing pre and post-accident figures), but also included the amount that he would otherwise have made as profit (at [13]).

84 Although the issue in *Koh Soon Pheng* was quantification rather than the fact of the loss, it stands to reason that if the court found that the plaintiff was entitled to claim the profit that he would otherwise have made, the court must have considered that the plaintiff did in fact suffer a loss, albeit one not expressly reflected in the figures. Thus, although RXP's post-accident net profits were generally higher than its pre-accident average net profits, this does not mean that the Plaintiff did not suffer any compensable loss of earnings as a result of the accident.

85 I agree with the Plaintiff that the accident prevented her from developing RXP and RXPPL to the extent she otherwise would have. As a matter of logic, that must have been the case. RXP and RXPPL were essentially driven by two persons, the Plaintiff and Wong. Of the two partners in business, the Plaintiff was the one in charge of sales and business development. Her job required her to, *inter alia*, travel frequently within Singapore to meet existing and potential clients, arrange and conduct web hosting and/or software demonstrations and presentations in conjunction with pre-sales.[107] The fact that she had been hospitalised for an extended period of time, required to stay at home for recuperation, and made to endure various medical procedures and treatments, necessarily prevented her from performing her role fully. Accordingly the

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107 Yap Boon Fong Yvonne's AEIC dated 13 January 2015, para 29.

Plaintiff was unable to develop the business to the extent she would otherwise have had if the accident had not occurred.

86 In my view, the fact that RXP and RXPPL remained profitable in the post-accident years was in no small part due to the Plaintiff's commendable resilience. The Plaintiff gave evidence that she continued to work from her laptop even when she was hospitalised.[108] It must not be forgotten that the Ilizarov treatment, in particular, must have left the Plaintiff in great pain and discomfort. Yet she continued to visit clients and vendors in her wheelchair and crutches.[109] The Plaintiff had also shifted the firm's operations to her home, and continued to work from home even when she was on medical leave and supposed to be resting.[110] She persevered despite all the obstacles her injuries presented, and RXP and RXPPL managed to turn a profit every year from 2012 onwards. Had she been unencumbered by her injuries and able to put in her fullest to develop RXP and RXPPL, no doubt the business earnings would have been higher and she would have enjoyed a higher income. On that basis, I accept that the Plaintiff suffered a loss of earnings. To hold otherwise would only penalise the Plaintiff for the hard work and effort that she had put in despite her injuries.

Quantifying the Plaintiff's pre-trial loss of earnings

87 Given that I am satisfied that the Plaintiff suffered a loss (*ie*, her share of the net profit that RXP and RXPPL would have made but for the accident), I turn now to consider the question of quantification. As mentioned at [75]–[76]

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108 NE, 31 March 2017, 77:12–18; 5 April 2017, 86:26–87:8.

109 NE, 5 April 2017, 87:23–24.

110 PBD 30.

above, the Plaintiff offered two different computation methods and the defendants offered a third.

(1) The Plaintiff's pleaded case

88 Before discussing the three computation methods, I first mention the Plaintiff's pleaded case on pre-trial loss of earnings. In her statement of claim, the Plaintiff claimed $384,000, calculated as follows:[111]

> e. Loss of earnings being salary and net profits from RXP and salary and dividends from [RXPPL] for 32 months and still continuing at *$12,000.00 a month*
>
> [emphasis added]

89 The defendants' main objection was that the Plaintiff had not proved this loss of $384,000 because according to her IRAS Notices of Assessment, her income had in fact increased after the accident.[112] This objection misses the point because, as I have said, the Plaintiff's case was that she *would have earned more* than she actually had if she had been able to develop RXP and RXPPL without the disruption caused by the accident and the resulting injuries. As mentioned, I am satisfied that the Plaintiff did suffer a loss of earnings, albeit not one expressly reflected in the figures (see [86] above).

90 The defendants next pointed out that the Plaintiff had not explained the $12,000 figure mentioned in her statement of claim anywhere in her first and second AEICs.[113] When the Plaintiff was asked in cross-examination to justify the $12,000 figure, she explained that in her view, based on her 20 years of

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111 Statement of Claim (Amendment No 1) dated 12 February 2016, Annexure B, para (e).

112 DCS, para 63.

113 DCS, paras 20 and 63.

accounting experience, she would have been promoted to a Chief Financial Officer or a Finance Director by 2014. In such a role, she would have earned about $12,000 per month based on 13 months.[114] However, this was but a bare assertion unsupported by any objective evidence. In any event, such an explanation would only support the Plaintiff's claim for the years 2014 and beyond, but not the years before. Finally, as the defendants correctly pointed out, if the Plaintiff's claim was simply based on her alleged salary of $12,000 per month, that quantification method is clearly wrong as it fails to give credit for the Plaintiff's actual earnings for that period.[115]

91 More significantly, however, it became clear through cross-examination and the Plaintiff's closing submissions that the Plaintiff had not actually quantified her claim based on a flat figure of $12,000 per month *per se*. $12,000 was simply a convenient figure that was inserted in the statement of claim at the time when it was drafted.[116] As I will explain below, the Plaintiff's closing submissions made clear that her claim for pre-trial loss of earnings was to be quantified either on the basis of the Forecasts or the Plaintiff's former salary drawn while employed by JWT.

92 It was not entirely satisfactory that the Plaintiff had somewhat deviated from the manner in which the quantum of her pre-trial loss of earnings had originally been pleaded in the statement of claim. Nonetheless, given that I am satisfied that the Plaintiff did suffer a pre-trial loss of earnings (see [86] above), I am of the view that the court is entitled to consider the various quantification methods suggested by parties in order to arrive at a result that is just and

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114 NE, 5 April 2017, 110:23–28; PCS, para 97.

115 DCS, para 66.

116 NE, 5 April 2017, 101:1–4.

appropriate in all the circumstances. I therefore now turn to consider the Plaintiff's two proposed computation methods.

(2) The Plaintiff's primary computation method

93 Under the primary computation method, the Plaintiff submitted that her pre-trial loss of earnings from July 2011 to March 2017 ought to be quantified at **$578,244.32**.[117]

94 This method drew largely from the Forecasts prepared by the Plaintiff, which I mentioned at [75] above. In the Forecasts, the Plaintiff set out RXP and RXPPL's actual and forecast "profit before director remuneration" (*ie*, net profit or net loss) for the years 2011 to 2014. The Plaintiff then took 50% of that amount (being her share of the profits) and gave credit for the amount that she had actually earned in the corresponding period.

95 The Plaintiff's computations for her claim of $578,244.32 are reproduced in the table below:[118]

Year	**Amount actually earned by the Plaintiff** **(a)**	**Amount that the Plaintiff should have earned** **(b)**	**The Plaintiff's claim** **(b) – (a)**
2011 (Jul – Dec)	$2,203.50	$59,582.34	$57,378.84
2012 (Jan –	$17,229.26	$89,373.51	$72,143.55[119]

117 PCS, para 74.

118 PCS, Annexure B.

119 It should be noted that the Plaintiff's submissions contained a very minor calculation error. The correct figure should be $72,144.25.

Dec)			
2013 (Jan - Dec)	$60,270	$125,122.90	$64,852.90
2014 (Jan – Dec)	$38,799	$156,403.63	$117,604.63
2015 (Jan – Dec)	$34,636	$156,403.63	$121,767.63
2016 (Jan – Dec)	$39,000	$156,403.63	$117,403.63
2017 (Jan – Mar)	$9,000	$36,093.14	$27,093.14
Total			**$578,244.32**[120]

The figures in the third column in the table above were drawn entirely from the Plaintiff's Forecasts. As can be seen, the Forecasts formed the cornerstone of the Plaintiff's claim, and must be carefully considered.

96 The first issue to be considered is the admissibility of the Forecasts. It was not disputed that the Plaintiff had produced these Forecasts entirely by herself, for the purpose of litigation, and that they had not been independently verified. The defendants objected to the admissibility of the Forecasts on the ground that they constituted opinion evidence and that the Plaintiff, being a witness of fact, could only give evidence on facts that she had perceived. That is, she was only entitled to present primary documents in support of RXP's and RXPPL's actual earnings. The defendants argued that the Plaintiff could only give opinion evidence if the exceptions set out in ss 47–53 of the Evidence Act

120 Flowing from the calculation error noted above, the correct figure representing the total in this column should be $578,245.02.

(Cap 97, 1997 Rev Ed) ("EA"), or in case law, were met. The defendants submitted that these requirements were not met – the Plaintiff was not an "expert" in the field of forecasting business growth and earnings, because her expertise was actually in the field of accountancy.[121] They further argued that the Plaintiff could not be her own expert because of her direct interest in the outcome of the matter.[122]

97 In response, the Plaintiff first argued that the Forecasts were admissible as they were matters of fact.[123] I can quickly dispose of this argument. Quite clearly the Forecasts were not merely statements of fact. Creating a forecast requires interpreting, drawing inferences from and making assumptions about an underlying state of affairs. The underlying state of affairs would be factual in nature, but the forecast itself must necessarily be to some extent opinion. In other words, the Forecasts depended in part on matters of fact and in part on matters of opinion (in particular, assumptions).

98 Further or in the alternative, the Plaintiff argued that the Forecasts were admissible pursuant to s 32B(3) of the EA,[124] which reads:

> Where a person is called as a witness in any proceedings, a statement of opinion by him on a relevant matter on which he is not qualified to give expert evidence, if made as a way of conveying relevant facts personally perceived by him, is admissible as evidence of what he perceived.

I pause to note that since the Plaintiff was relying on s 32B(3) of the EA, this was essentially a concession that the Plaintiff was "not qualified to give expert

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121 DCS, paras 23–31.

122 DRS, paras 7–9.

123 PCS, para 89.

124 PCS, paras 88–91.

evidence". There is thus no need to address the defendants' argument that the Plaintiff was not an "expert" or that she was not impartial.

99 The Plaintiff then cited several English cases where witnesses of fact were permitted to provide opinion evidence. In the English Court of Appeal decision of *David Michael Lusty v Finsbury Securities Ltd* [1992] 59 BLR 66 ("*Lusty*"), the claimant Mr Lusty was an architect suing for fees. He appeared as a witness of fact and gave evidence as to the work he had performed, the hours he had spent on it and the rates on which his charges were based. In addition, he also gave evidence as to whether it was customary to value his services in this way and whether he considered his fees to be reasonable. Although the court observed that this was opinion evidence, the court held that Mr Lusty was qualified as an architect to give such evidence. Further, the court observed that opinions or beliefs of witnesses who are were not experts could be admissible on the grounds of necessity, if more direct and positive evidence were unobtainable. The fact that Mr Lusty was also the claimant only affected the weight of his opinion evidence (at 71).

100 The Plaintiff also cited the English High Court decision of *Multiplex Constructions (UK) Ltd v Cleveland Bridge UK Ltd* [2008] EWHC 2220 (TCC) ("*Multiplex*"). That case concerned a dispute between the main contractor and sub-contractor of the Wembley Stadium in England. One Mr Taylor had been called as a witness of fact. The question was whether he could also give opinion evidence, bearing in mind that he possessed considerable engineering expertise and had personal knowledge of the roof design and erection engineering decisions in the Wembley Stadium project. The High Court held that he could give statements of professional opinion bearing upon facts within his personal

knowledge. The fact that he was not an independent expert witness went only to the weight of his evidence (at [665]–[672]).

101 Although these two English decisions are not on all-fours with the present case, and neither do they appear to apply the English statutory equivalent of s 32B(3) of the EA, I agree with the Plaintiff that the Forecasts are admissible. Although the Plaintiff was a witness of fact, she was the person in charge of RXP's and RXPPL's business development. There was no other person in a better position than she to render an opinion on their business performance and the likely increase in profitability. Her evidence was crucial for this court to assess how RXP and RXPPL would have developed over the years. Accordingly, in my view, the Forecasts are admissible.

102 As in *Lusty* and *Multiplex*, however, the weight to be ascribed to such evidence is a different matter. The defendants pointed out several aspects of the Forecasts, which they said were problematic:[125]

(a) The Forecasts did not take into account RXP's financial performance for the pre-accident years of 2008–2009, and neither were financial documents for those years disclosed. The defendants alleged that this was selective since 2010 appeared to be the best-performing year on record. The defendants said that the Plaintiff should instead have taken the average of the three years and used that to forecast the business growth for 2011 onwards.

(b) Each year's forecast earnings were represented as a percentage increase of the previous year. The starting point for the Forecasts was therefore RXP's financial performance in 2010. RXP allegedly had a

125 DCS, paras 32–56.

total income of $227,667.28 that year. However, the financial documents for 2010 were not in evidence. Thus, the defendants alleged that the Forecasts were premised or built on an alleged fact that remained questionable and unsubstantiated.

(c) Although the Plaintiff has provided an explanation for each year's forecast, the defendants said that the factual matters referenced in these explanations were not supported by documentary evidence. For instance:

(i) For the forecast for 2011, the Plaintiff said that RXP became the authorised reseller of certain accounting solutions in 2011 and that RXP had been awarded a prize for being a "top new reseller" for the first quarter of 2010. The defendants pointed out that no documentary evidence was provided in support of these assertions.

(ii) For the forecast for 2012, the Plaintiff said that RXP had been offered a demo interview session with the Infocomm Development Authority of Singapore ("IDA") and was successfully listed on the iSprint Accounting Solutions by IDA as per their agreement in September 2011. This meant that RXP was listed as an authorised reseller of certain accounting IT solutions and so the government would provide subsidies to small and medium enterprises which purchased solution packages from RXP. RXP's listing would therefore have helped drive sales.[126] The defendants said there was no documentary evidence of the demo session, the listing and the agreement with

126 NE, 5 April 2017, 37:16–38:10.

IDA. The plaintiff also said that they ventured into IT software that year and became authorised resellers of Lenovo and HP products. The defendants again pointed out that there was no documentary evidence for this.

(iii) For the forecast for 2013, the Plaintiff said that RXP's products and services were eligible for Productivity Innovation Credit ("PIC") grants. Since there were government initiatives to assist companies through PIC grants, this would "definitely push [RXP's] sales up further because of the increased percentage of cash payout from 30% to 60% plus the PIC bonus of $15000 to help companies".[127] The defendants pointed out that no documentary evidence was adduced to prove that RXP was eligible for PIC grants.

(d) For each year's forecast, the Plaintiff applied a percentage increase to the total income for the year before to obtain the forecast income. From 2010 to 2011, the Plaintiff applied a 50% increase. From 2011 to 2012, the Plaintiff applied a 50% increase. From 2012 to 2013, the Plaintiff applied a 40% increase. From 2013 to 2014, the Plaintiff applied a 25% increase. The defendants asserted that these percentage increases were arbitrary as no reference had been made to market forces (*eg*, supply-demand, competition, market share and recession).

103 The plaintiff's submissions addressed several of these points.

(a) The Plaintiff justified the omission of 2008 and 2009's financial documents on several bases:

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127 PBD 531.

(i) The Plaintiff only joined RXP on 23 February 2009 and hence RXP's financial performance prior to that was irrelevant.[128]

(ii) As mentioned at [81], prior to 2011, RXP was in the business of digital imaging rather than the provision of accounting and IT solutions. It also employed an entirely different business model. Thus RXP's financial performance prior to 2011 was irrelevant.[129]

(b) The Plaintiff explained that the Forecasts were prepared based on the exponential moving average method and on three years' average percentages of actual sales turnover for the years 2012–2014. These methods were used to derive the forecast gross profit, total expenses and profit before director's remuneration. This refuted the defendants' claim that the Forecasts were arbitrarily drawn up.[130]

(c) The Plaintiff pointed out that she had explained at trial why she applied a 50% increase to 2010's actual figures to obtain her forecast for 2011:[131]

> Court: ---why not 10%, so why 50? What did you say?
>
> Witness: I said 50% is based on very prudent basis. Number one, I have actually increased headcounts in 2011 to boost up the sales figure. And number two, if not because of the accident, I would have performed hundred percent to the optimal to achieve a small 50% of the

128 PRS, para 23.

129 PRS, para 24.

130 PRS, para 26.

131 PRS, para 31; NE, 5 April 2017, 104:18–24.

> figure. The 50% is not unachievable because of the grants and the government schemes that were during at that point of time to help us boost up the revenue figure.

(d) The Plaintiff said that she had not included any agreements with IDA and other government agencies in her affidavit because those agreements contained confidentiality clauses and she was afraid that doing so would amount to a breach of the agreement. Nonetheless, she had brought along those original documents to court with her and invited counsel for the defendants to examine those documents, although he declined to do so.[132]

104 It must be borne in mind that the Plaintiff sought an award for pre-trial loss of earnings by way of special damages, which have to be strictly proved: *Wee Sia Tian v Long Thik Boon* [1996] 2 SLR(R) 420 at [15]. However, it is not in every case that pre-trial loss of earnings can be quantified with precision. In certain cases, such as where the Plaintiff's monthly income fluctuates, the quantification may be approximate: *Practitioners' Library – Assessment of Damages: Personal Injuries and Fatal Accidents* (LexisNexis, 3rd Ed, 2017) at para 2-2. As the High Court said in *Ariffin Bin Omar v Goh Beng Kee and Another* [1994] SGHC 15:

> Special damages represent the plaintiff's pecuniary loss between the date of injury and the trial and the plaintiff must show that it can be calculated. *Pre-trial loss of earnings must be pleaded and proved but every dollar cannot always be proved with the same degree of certainty …*
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> Pre-trial loss of earnings is usually the biggest sum under special damages, as in this case, and it is the loss of earnings that must be proved which is generally calculated on the basis of what the plaintiff was earning at the date of the accident. The

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132 PRS, paras 33–34; NE, 5 April 2017, 104:26–106:17.

> plaintiff is entitled to the net earnings he would have made but as a result of the injury has not made between accident and trial or assessment as in this case. Where the plaintiff can show, but for the accident and the injuries suffered he would have had an increase in his earnings, obtained better employment, a promotion or developed his business, the realistic chance of increased and decreased earnings must be valued by the court between the date of the accident and the trial.
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> *The degree of particularity required will depend upon the facts of each case. … Minute accuracy is not expected and the pleading should make clear what measure of damage is relied on, and if the plaintiff is able to base his claim on a precise calculation he must give the defendants access to the facts which make that calculation possible.* Thus, in personal injury cases the plaintiff should give full details of his loss of earnings to date, his out of pocket expenses and any benefits such as unemployment or social security benefits which he may have received. …
>
> [emphasis added]

105 Accordingly, since the Plaintiff claimed pre-trial loss of earnings by way of special damages, it was incumbent on the Plaintiff to "give the defendants access to the facts which make that calculation possible". The Plaintiff has attempted to do so by providing the Forecasts to justify the quantum of damages she claimed. However, as the defendants pointed out, these Forecasts were lacking in many respects.

106 For instance, the Forecasts were essentially built on RXP's actual financial performance for 2010. Yet the Plaintiff did not disclose the financial documents for that year. In the Plaintiff's reply submissions, the Plaintiff merely reiterated that her IRAS Notice of Assessment for that year had been disclosed.[133] However, the Plaintiff's IRAS Notice of Assessment only contains information relating to *her* taxable income.[134] It does not contain particulars of RXP's total revenue, cost of goods or expenses. In the circumstances the

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133 PRS, para 21.

134 PBD 428.

defendants and this court are in no position to verify the critical factual underpinning of the Forecasts.

107 It seemed to me that despite the responses provided above at [103], the Plaintiff has not addressed the nub of the defendants' contention that there was a near complete lack of primary evidence supporting the factual matters referenced in the Forecasts. All that this court has to go on are the brief explanations provided in the plaintiff's Forecasts and her oral testimony. For instance, consider the Plaintiff's assertion that she had chosen not to include copies of RXP's contracts with IDA and various government agencies in her affidavit for fear of breaching the confidentiality clauses contained within. This should not have been an issue at all. If the Plaintiff was only relying on these contracts to prove that RXP was an approved vendor of the accounting solutions, it surely would have been possible to redact the irrelevant portions of these contracts. Alternatively, permission could have been sought from the various government agencies for disclosure in these litigation proceedings. Counsel for the Plaintiff should have arranged for such matters. It certainly should not have been left to the Plaintiff to bring the original contracts to court on the day she was supposed to testify and offer them to the defendants' counsel for viewing.

108 As a result of these evidentiary failings, the factual matters referenced in the Forecasts were virtually unverifiable. As to her assumptions, I accept that the Plaintiff did provide an explanation for why she applied a 50% increase in deriving her forecast for 2011. There were also brief written explanations provided for the figures used in deriving the forecasts for 2012, 2013 and 2014. I accept that business forecasts are subjective and there is only so much justification that can be provided as to why a certain figure is used in

forecasting. Yet, a claimant cannot simply make a bare assertion – particularly where the factual underpinnings are already in doubt – and expect the court to award damages in that amount without question. The claimant must do her level best to show that these assumptions are reasonable.

109 A comparison with the English High Court decision of *XYZ v Portmouth Hospitals NHS Trust* [2011] EWHC 243 (QB) ("*XYZ*"), recently cited in the Singapore High Court decision of *Ramesh s/o Krishnan v AXA Life Insurance Pte Ltd* [2017] SGHC 197 at [83]–[85], will demonstrate this. *XYZ* involved a claimant who brought a claim in medical negligence against the defendant for negligent advice and performance of an operation. One area in dispute was the quantum of damages to be awarded for the claimant's loss of future earnings. The claimant had resigned from his very senior position in the pharmaceutical industry to set up his own pharmaceutical market research agency, which purportedly would have been highly profitable. The claimant sought compensation for the loss of his prospects of setting up and developing this business for several years and upon retirement, selling that business (at [42]–[45]).

110 Spencer J noted that where there cannot be certainty as to the way in which the claimant's business would have developed, the court may assess damages by evaluating the chance that particular events would have happened at particular times (at [54]). The learned judge then quantified the claimant's loss by expressing in percentage terms the likelihood that the claimant would achieved certain milestones, *eg*, the chances that the business would have obtained a turnover of £2m (at [43]).

111 Critically, however, in assessing these chances and possibilities, Spencer J had before him an extensive amount of evidence which had been led on this issue. Particularly, there was testimony from witnesses who had set up businesses similar to the ones that the claimant had intended to establish. Spencer J noted that the financial performances of these witnesses were useful comparisons (at [48]). The claimant also adduced the evidence of a forensic accountant who had examined the financial accounts of these witnesses with a view to analysing the prospects of the claimant's business and its likely profitability (at [51]).

112 Like the claimant in *XYZ*, the Plaintiff in the present case was also required to engage in a hypothetical exercise to prove how much RXP and RXPPL would have made between 2011 and 2017 had the accident not happened. However, the difference in the state of evidence could not have been more stark. While the claimant in *XYZ* made every effort to show how his business would have developed, the Plaintiff in the present case only provided a single spreadsheet document and very sparse primary evidence.

113 The Plaintiff attempted to provide other evidence in the form of the Occupational Wages Survey 2015 conducted by the Central Provident Fund Board in which the following average monthly gross wages were stated:[135]

(a) Business Development Manager: $8,000 to $12,050.

(b) Company Director: $13,039 to $20,000.

(c) Sales and Marketing Manager: $7,391 and $10,646.

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135 PBD 415.

The Plaintiff said that her role was essentially one that combined the three roles above and she thus would have earned a monthly figure between $7,391 and $20,000.[136] The Plaintiff relied on this as a broad justification for her claim of $578,244.32.

114 However, I agree with the defendant that the Plaintiff's reliance on the aforementioned survey was not appropriate. It was clear from the description of the survey that the "occupational wage data presented [was] for full-time employees only".[137] That was not a useful gauge for the Plaintiff's income, which would have been derived from her start-up and based on the performance for each month.

115 There were other problems with the Plaintiff's case. First, the Forecasts extended only to 2014. There was no evidence as to what RXP and RXPPL would have made in 2015, 2016 and up till March 2017. The Plaintiff at trial acknowledged that the forecast figure for profit before director remuneration in 2014 was the "peak" that the business would attain.[138] Thus in the plaintiff's closing submissions, the pre-trial loss of earnings claimed for 2015, 2016 and 2017 were based on the forecast figure for 2014.[139] The fact that this only came up during trial itself contributed to my impression that the Plaintiff lacked proper evidence to support her claim for special damages.

116 Second, the computation technique used in Annexure B of the Plaintiff's closing submissions was also incorrect for the year 2011. The third column of

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136 NE, 5 April 2017, 96:3–28; PCS, para 96.

137 PBD 411.

138 NE, 5 April 2017, 110:31–111:17.

139 PCS, Annexure B.

the table at [95] above reflects the amount that the Plaintiff should have earned for the year. Counsel for the Plaintiff had taken $119,164.47 (being the net profit for the year 2011) and divided it by two. This was on the basis that as one of the two equity partners, the Plaintiff would have been entitled to 50% of the business's earnings. However, counsel seemed to have overlooked that the claim for 2011 was only for half a year, from July to December. Therefore $119,164.47 should have been divided by four instead.

117 In the circumstances, I hold that the Plaintiff has failed to strictly prove that she suffered a pre-trial loss of earnings in the amount of $578,244.32. I should add that in my view, this was in large part due to the fact that the Plaintiff's case had been poorly prepared.

(3) The Plaintiff's alternative computation method

118 The Plaintiff's alternative computation method employs a different premise. It will be recalled from [74] above that prior to joining RXP, the Plaintiff was employed as a Finance Manager with JWT and drew a fixed monthly salary of $6,300. She left JWT in October 2008 and joined RXP in November 2008.

119 The Plaintiff argued that she would not have resigned from JWT in order to join a start-up if she was not confident of earning, at the very least, $6,300 per month.[140] She submitted that her pre-trial loss of earnings could be approximated by taking what she would have earned (based on her last-drawn monthly salary of $6,300) less the amount she actually earned for the period July 2011 to March 2017. Therefore, her pre-trial loss of earnings was at least **$265,061.54**.[141]

140 PCS, para 95.

120 I reiterate that special damages like pre-trial loss of earnings must be strictly proved (see [104] above). In the first place, I do not think that it is sufficient for the Plaintiff to point to her last-drawn salary of $6,300 as a proxy for what she would have earned. To prove her pre-trial loss of earnings, she should have adduced evidence as to how RXP's and RXPPL's business would have developed had the accident not occurred.

121 In any event, there are further difficulties with the Plaintiff's approach of using her last-drawn salary as a proxy for what she would have earned had the accident not occurred. The underlying premise of the Plaintiff's argument was that she would not have chosen to resign from JMT had she not been confident of earning more than $6,300 per month. In my view, this premise is flawed: the Plaintiff could not have joined RXP realistically expecting to make at least $6,300 from the very outset. The Plaintiff herself acknowledged the instability and unprofitability of RXP in its early days.

122 First, during cross-examination, the Plaintiff in explaining her IRAS Notice of Assessment for calendar year 2009 alluded to the fact that a start-up normally makes losses in its first few years:[142]

> So the---page 426 is for calendar year 2009. This was the year when I entered the partnership business with Alvin Wong Kok Mun. And it reflected a loss because, as I mentioned, our first year, er, normally a business, first 3 years, we have to seed et cetera, you know, do a lot of business development so we were not making any income out of this business. So there is a trade loss of 10,000, this is derived from RXP.

123 Second, the Plaintiff also said that she and Wong had discussed that if the business could not "make it" (*ie*, turn profitable) within three years, they

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141 PCS, para 99 and Annexure C.

142 NE, 31 March 2017, 51:11–17.

would have to return to the workforce. In her words, "3 years is the norm for, like, businesses to determine whether the business going to be viable or not."[143]

124 Third, the Plaintiff testified that when she joined RXP in November 2008, RXP had not yet even decided on its product and service offerings:[144]

> Q: Okay. How about---when did you all started recruiting staff?
>
> A: Mm, we---in actual fact, I join him November 2008. At that point in time, we were talking about business, er, stra---er, er, what kind of business we are going in. So, initially, we were not even talking about accounting and IT. We wanted to do digital imaging, which is the part that we have actually opt out now, as for now. The digital imaging part we have the same goals and idea was to put all the physical documents into the digita--- digital copy.

125 Fourth, the Plaintiff testified that her drawings from RXP were as follows. From January 2010 to October 2010, she did not draw any earnings. From November 2010 to April 2011, she drew $800 per month. From May 2011 to December 2011, she drew $850 per month.[145] In re-examination, the Plaintiff was asked to explain how this sum of $850 was derived.[146]

> Q: All right. What I would---right, then I would ask this question. How was this salary of $850 derived from or upon what basis is this $850 salary s---
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> A: On---honestly speaking, erm, the $850 is just purely a very small amount that we are giving ourself the, er, start-off point because we start our own business, by right, whatever profits that is maintained in RXP's account is also, our, er our profits---our own individual partners', er, profits. However, this $850 is to have a

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143 NE, 5 April 2017, 88:20–28.

144 NE, 31 March 2017, 16:30–17:4.

145 NE, 5 April 2017, 20:9–20.

146 NE, 31 March 2017, 104:26–105:2.

> start-off point as an entrepreneur, you know, to kick-off and give ourself for basic needs' purpose. "Basic needs" meaning, example, phone bills, you know, er, er, you know---cover our own hou---personal, er, basic expenses et cetera.

126 In sum, the Plaintiff's own evidence shows that she knew that a start-up would be unprofitable in its early years. She could not have reasonably expected to make at least $6,300 per month from the moment she joined RXP. It appeared from the evidence that up till December 2011, the Plaintiff was willing to take home a small token sum as a basic allowance, or nothing at all. It might be that the Plaintiff expected to take home at least $6,300 per month *eventually*, but there was no evidence before me that shed any light on when that would have happened.

127 Furthermore, it must be borne in mind that because RXP is a partnership, the Plaintiff's monthly earnings are directly related to RXP's profits for that month. That is quite different from being an employee with a fixed salary. It was the Plaintiff's deliberate choice to leave a job with a stable pay to enter a riskier business venture. Unless the Plaintiff can satisfy this court that she *would have earned* at least $6,300 per month, this court will not award the Plaintiff a sum that would be tantamount to making the defendants pay towards insuring the Plaintiff against the risks of business failure.

128 In the circumstances, I hold that the Plaintiff has failed to strictly prove that she suffered a pre-trial loss of earnings in the amount of $265,061.54.

(4) The defendants' computation method

129 I turn now to consider the defendants' computation method, which quantified the Plaintiff's pre-trial loss of earnings at **$21,267.70**.[147] The

defendants purport to apply the methodology used in *Koh Soon Pheng*. There, in support of his claim for pre-trial loss of earnings, the plaintiff adduced his financial statements for the pre-accident years of 1995 to 1999, for the accident year of 2000 and for the post-accident years of 2001 and 2002.

130 The court awarded the plaintiff pre-trial loss of earnings of two and a half years from June 2000 to 2002. The court took the five pre-accident years, omitted the years with the highest and lowest earnings, and took the average of the remaining three years to obtain the plaintiff's average earnings, pre-accident. This amount was computed to be $23,154.33. The court then compared this amount to the financial statements for 2001 where the plaintiff suffered a net loss of $23,436. The court thus awarded the plaintiff $23,154.33 plus $23,436 for the year 2001. The court applied a similar approach to determine that the plaintiff should be awarded $23,154.33 plus $6,000 for the year 2002 (at [12]–[14]).

131 The defendants sought to apply the methodology in *Koh Soon Pheng* to the present case.[148] They relied on the table at [79] above, which showed that except for 2011, RXP's net profit exceeded the average pre-accident net profit of $37,123.95. Thus the defendants submitted that RXP's total monetary loss was $85,070.79 (*ie*, $37,123.95 plus $47,946.84 being RXP's net loss in 2011). Since the Plaintiff was only entitled to 50% of the business earnings, she was only entitled to $42,535.40 (*ie*, $85,070.79 divided by two).

132 The defendants went further. They argued that Wong, the Plaintiff's partner in the business, had also been injured and his injuries would also have

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147 DCS, para 80.

148 DCS, paras 75–82.

contributed to the loss. Since they were both equal shareholders, they both would have contributed equally to the loss. This brought the Plaintiff's claim for pre-trial loss of earnings to $21,267.70 (*ie*, $42,535.40 divided by 2).

133 I do not think that the defendants' proposed computation is acceptable. First, as I have mentioned at [81] above, RXP was engaged in a completely different business in 2009 and 2010. Its earnings from that period of time are not an accurate gauge of RXP's profitability for 2011 and beyond.

134 Second, the method in *Koh Soon Pheng* does not take into account business growth. The plaintiff there had been in the motorcycle repair business for about ten years. That is quite different from a start-up business like the Plaintiff's. In the early years of a start-up, it is not unexpected that the partners would be focusing on getting in more clients and business. There was some evidence of that before this court, although those details provided were insufficient for me to accept the Plaintiff's computation *in toto*. Nonetheless, this court cannot turn a blind eye to the fact that RXP was clearly in a stage of growth. It would not be appropriate to shackle the assessment to the performance of the pre-accident years, particularly in light of the fact that RXP had been engaged in a completely different business then.

135 For the foregoing reasons, I also reject the defendants' submission that pre-trial loss of earnings be quantified at $21,267.70.

136 To recapitulate, I have thus far found that the Plaintiff did suffer a loss of earnings, that being her share of the profits that RXP and RXPPL would have otherwise made had the Plaintiff been able to develop the businesses but for the disruption caused by the accident and the resulting injuries. However, I have also rejected the methods suggested by the Plaintiff and the defendants to

quantify the Plaintiff's loss. This was largely due to the lack of evidence as to how the Plaintiff's business would have developed but for the accident. I have also mentioned that in my view, the evidential failings were in large part due to poor preparation by the Plaintiff's counsel.

137 Is the Plaintiff then to go uncompensated for her loss? I do not think so. In my view, a fair and appropriate outcome in this case is to award the Plaintiff damages in respect of her pre-trial loss of earning capacity.

Pre-trial loss of earning capacity

138 The differences between an award of loss of earnings and loss of earning capacity were summarised by the Court of Appeal in *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587 ("*Shaw Linda Gillian*") at [16], citing *Teo Sing Keng v Sim Ban Kiat* [1994] 1 SLR(R) 340 at [40]:

> An award for loss of earning capacity, as opposed to an award for loss of earnings, is generally made in the following cases:
>
> (a) where, at the time of trial, the plaintiff is in employment and has suffered no loss of earnings, but there is a risk that he may lose that employment at some time in the future and may then, as a result of his injury, be at a disadvantage in getting another job or an equally well paid job; or
>
> (b) where there is no available evidence of the plaintiff's earnings to enable the court to properly calculate future earnings, for example, young children who have no earnings on which to base an assessment for loss of future earnings.

139 The point was also made in *Shaw Linda Gillian* that the lack of sufficient evidence for proving loss of future earnings does not by itself convert a claim for loss of future earnings into a claim for loss of earning capacity. The Court of Appeal made clear that these two heads of damages were intended to

compensate for different losses: "loss of future earnings compensates for the difference between the post-accident and pre-accident income or rate of income, while loss of earning capacity compensates for the risk or disadvantage, which the plaintiff would suffer in the event that he or she should lose the job that he or she currently holds, in securing an equivalent job in the open employment market" (at [20]).

140 However, it seems to me that this proposition stated in *Shaw Linda Gillian* at [20] applies only to situation (a) mentioned at [138] above. The question of the risk of loss of employment simply does not feature at all in situation (b), where the focus is simply on the lack of available evidence for the court to properly calculate future earnings. One example is where the plaintiff is a young child. Another example where such evidentiary difficulties arise is where the plaintiff is a self-employed person. This latter point was made in the High Court decision of *Clark Jonathan Michael v Lee Khee Chung* [2010] 1 SLR 209 ("*Clark Jonathan Michael*") at [84], where Prakash J (as she then was) commented on her earlier decision of *Koh Soon Pheng*:

> [T]he plaintiff there was a self-employed owner of a motorcycle repair workshop whose ability to repair motorcycles was affected by the accident and whose business takings were therefore adversely affected by the accident. The issue was not so much one of the plaintiff's being at risk of losing employment but of his ability to earn as much as he had done previously because he would have to employ others to do work he had once done and the only reason that the award was for loss of earning capacity rather than for loss of future earnings was that there was not enough evidence in the case to fix a multiplier. …

141 Like the plaintiff in *Koh Soon Pheng*, the Plaintiff does not face the risk of losing her employment. Her loss arises because she would have earned more but for the accident. Yet, the court does not know – and in fact, cannot know with much certainty – what would have happened if the accident had not

happened. For instance, the court cannot be certain as to how much more time and effort the Plaintiff would have committed, how many more client meetings she would have arranged and attended, and how those clients would have responded. While I have observed that the Plaintiff could have done more to support her claim (at [112] above), ultimately there are too many "what-ifs" at play to allow this court to be entirely certain as to how RXP and RXPPL would have performed if the accident had not occurred.

142 Nonetheless, this does not mean that the Plaintiff cannot be compensated for her loss at all. Situations involving such uncertainties are not new to the court. In the context of claims for loss of future earnings, the English courts follow the approach of Court of Appeal in *Blamire v South Cumbria Health Authority* [1993] PIQR Q1. The plaintiff was a nurse who met with an accident. She claimed an award for loss of future earnings. The court noted that there were far too many uncertainties, such as the plaintiff's prospects of obtaining other employment, any possible intention of having children and any possibility that she might wish eventually not to work. Thus the court held that in such cases where there exist so many "imponderables", the court is entitled to eschew the conventional multiplier-multiplicand approach and instead adopt a broad-brush approach in quantifying an award for loss of future earnings. This came to be known as the "*Blamire* approach".

143 Unfortunately, the *Blamire* approach provides no solution to the present dilemma. That approach relates to *future* loss of earnings, and not *pre-trial* loss of earnings which must be strictly proven. Nonetheless, it shows that the court is cognisant that there exist situations where it may be impossible to quantify losses due to the sheer number of uncertainties and "imponderables". In response to such practical difficulties, the court adopts a broad brush approach

instead of the strict multiplier-multiplicand approach. In the pre-trial context, a similar outcome can be reached by awarding the plaintiff damages in respect of his or her loss of earning capacity instead.

144 The case of *Chang Mui Hoon v Lim Bee Leng* [2013] SGHCR 17 ("*Chang Mui Hoon*") is instructive. The plaintiff there was a full-time housewife with no significant income at the time of the accident. However, she testified that she had planned to resume working life as a dog groomer by starting a small dog grooming business, and this plan was thwarted because of her injuries from the accident. She thus claimed pre-trial loss of earnings quantified at $3,000 per month, being the monthly income of a pet stylist in Singapore (at [47]). The learned assistant registrar considered the distinction between special damages and general damages, and had this to say (at [52]–[53]):

> *The law is thus not so rigid – nor should it be – such that all claims tending to assume the character of seeking pre-trial loss of income must be shoehorned as claims for special damages (for which there must be strict proof). It cannot be taken for granted that all claims of such character are "capable of being estimated with a close approximation to accuracy", although instances of such incapability are quite uncommon in practice. What this means is that when a claim is made by a plaintiff seeking compensation for pre-trial income that he asserts he could actually have earned but for his injuries suffered from the accident, and what the plaintiff would have actually earned is as doubtful as what would have been earned post-trial, it is to be preferred that pre-trial loss of earning capacity attracting general damages and not pre-trial loss of income attracting special damages be used as the proper measure of damages for the purposes of assessment.* This is, however, not to say that the former approach must invariably prevail where the plaintiff was not employed at the time of the accident … The court's evaluation at the end of the day must depend on the factual matrices of each and every case.
>
> In the present case, the proper measure of damages to be applied in respect of the Plaintiff's claim for pre-trial earnings-related loss should be the Plaintiff's pre-trial loss of earning

> capacity attracting general damages. As compared to what she could earn post-trial, I find it equally if not more doubtful what the Plaintiff, having been a housewife for almost five years at the time of the accident, would actually have earned during the period leading up to the date of trial. The fact that the Plaintiff has obtained a dog grooming certificate sometime after the accident does not in any way alter my analysis because the Plaintiff has pitched her claim as one seeking income that she would otherwise have been able to earn by way of setting up a dog grooming business. In other words, the claim, properly characterised, is for loss of pre-trial business earnings, not loss of pre-trial wages that she would have earned as an employee in the job market. There is no business without any commercial risks, and there is no guarantee of success in business. To assess and award the Plaintiff special damages under the rubric of pre-trial loss of income using the method [counsel for the Plaintiff] has adopted … would be tantamount to making the Defendant insure the Plaintiff against all risks of business failure in the dog grooming business that she had intended to start, and that cannot be right. This is precisely what the learned author in *Assessment of Damages for Personal Injury and Death: General Principles* would have cautioned against in the light of his warning against the danger that "proof of precise figures could implant in the minds of a jury the idea that the earnings would definitely have been received and make the jury forgetful of contingencies to which such earnings were subject" …
>
> [emphasis in original omitted; emphasis added]

145 The assistant registrar then disregarded the evidence before him relating to pre-trial loss of income, and quantified the plaintiff's loss of earning capacity at $10,000 (at [55]). In so doing, he applied the approach espoused by the High Court in *Clark Jonathan Michael* at [91]:

> … The assessment for damages for loss of earning capacity can be an exercise in speculation as often the court does not know the extent to which a plaintiff will be disadvantaged by his disabilities if he has to seek a new position. In the end, it is clear from the cases that the assessment is a *rather rough and ready one which really reflects the amount that the particular court thinks is reasonable in the particular circumstances to compensate the particular plaintiff* for the disadvantage he has been put into in the job market by his disabilities.
>
> [emphasis added]

146 *Chang Mui Hoon* makes the astute observation that in certain factual circumstances, pre-trial loss of earnings can be as difficult to quantify as future loss of earnings. This creates significant difficulties for the plaintiff because pre-trial loss of earnings are a form of special damages and must be strictly proved to be claimable. In such circumstances, the better approach would be to seek damages for *pre-trial loss of earning capacity*. Such loss can be quantified by applying a "rough and ready approach" and the court's aim is simply to achieve what is reasonable in the circumstances.

147 I agree with the learned assistant registrar in *Chang Mui Hoon*. Bearing these principles in mind, I return to the case before me. As I have mentioned, the Plaintiff has failed to strictly prove her claim for pre-trial loss of earnings on both the primary and alternative computation methods. Nonetheless, in my view, the Plaintiff can support a claim for pre-trial loss of earning capacity.

148 In quantifying this loss, I am guided by the Plaintiff's last-drawn salary at JWT (*ie*, the measure used in the Plaintiff's alternative computation method). I hasten to add that this *by no means suggests that the Plaintiff is being compensated for any loss of salary*. That would be entirely inaccurate seeing as the Plaintiff was not in fact employed as a Finance Manager at JWT at the time of the accident. I am simply using the Plaintiff's last-drawn salary as a proxy for the Plaintiff's earning capacity.

149 I have earlier identified several difficulties with the Plaintiff's alternative computation method (see [121]–[127] above). These centred on the fact that start-ups are relatively unstable and unprofitable in their early years. The Plaintiff was clearly aware of this, and therefore could not have realistically expected to earn $6,300 per month from the moment that she joined RXP.

150 These difficulties remain valid even in the context of determining the appropriate award for loss of earning capacity. However, I am mindful that in adopting a "rough and ready approach" approach, the question is simply whether the award is reasonable in the circumstances. In my view, the Plaintiff's alternative computation method leads to an award that is, overall, reasonable in the circumstances. Although RXP started off small and was not so profitable, it grew more profitable over time. The numbers speak for themselves. In 2011, RXP had a net loss of $47,946.84. By the next year, RXP began turning a profit – net profit for 2012 was $61,520.53, peaked at $122,367.83 in 2013 and fell back to $76,587.98 in 2014. Correspondingly, the Plaintiff's monthly earnings increased from around $360 in 2011 to around $1,400 in 2012, peaked at around $5,000 in 2013, and fell to around $3,200 in 2014.[149]

151 In my view, RXP's performance was commendable. As I have mentioned, that was in no small part due to the Plaintiff's driven nature. I have little doubt that the Plaintiff, if unencumbered by the accident and the resulting injuries, would have developed RXP and RXPPL to such a level that her earnings would have been at least as much as her last-drawn salary at JWT. In other words, although she might have made less than $6,300 per month in her early days at RXP, I am satisfied that she would have *eventually* started to draw $6,300 or more per month. Further, given the significant improvement in RXP's and RXPPL's performance over 2011 to 2017 (bearing in mind that both the Plaintiff and Wong had been involved in the accident), it did not seem implausible that this could have been achieved by 2017.

152 The court must endeavour to find the appropriate figure which the Plaintiff should receive in compensation. In the circumstances, the best measure

149 PBD 529–533; PCS, Annexure A.

that was available to this court was that used in the Plaintiff's alternative computation method. Accordingly, I award the Plaintiff **$265,000** for her pre-trial loss of earning capacity (based on the Plaintiff's alternative computation method, rounded down to the nearest thousand).

Loss of future earnings and/or loss of earning capacity

153 The final disputed item relates to the Plaintiff's post-trial losses. The Plaintiff sought an award of **$585,000** in respect of her loss of future earnings, calculated as follows:[150]

> (a) The Plaintiff took the position that her earnings from RXP and RXPPL would peak at $12,000 per month.[151] This $12,000 figure was derived from the forecast net profit for 2014 in the Forecasts (*ie*, 50% of $312,807.26 divided by 13 months).[152]
>
> (b) The Plaintiff took the position that because of the accident, it would take five years from now for RXP and RXPPL to reach peak profitability, *ie*, the same level of profitability it should have reached in 2014 mentioned at [(a)] above.[153]
>
> (c) The Plaintiff is currently only earning about $3,000 per month. Subtracting $3,000 from $12,000 gives a difference of $9,000. $9,000 multiplied by 65 months (*ie*, five years and five 13th months) gives a total of $585,000.

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150 PCS, paras 107–108.

151 NE, 5 April 2017, 109:6–17; 110:31–111:17.

152 NE, 5 April 2017, 66:25–31.

153 NE, 5 April 2017, 116:24–31.

154 Further and in the alternative, the Plaintiff submitted that if the court took the view that there were too many unknown variables to compute the Plaintiff's loss of future earnings, the court should award the Plaintiff **$230,000** representing her loss of earning capacity instead. This was based on the Plaintiff's age at the time of the accident (35 years old), her occupation (director of company and partner of firm providing accounting and IT services) and her gender (female).[154]

155 In response, the defendants argued that the Plaintiff was not entitled to post-trial loss of earnings. They pointed out that the five years figure was mere guesswork. The defendants also submitted that the Plaintiff had failed to prove that RXP and RXPPL would have been more profitable than it already was, and thus she failed to show the extent of any identifiable assessable loss of income at all.[155]

156 As for the Plaintiff's alternative claim, the defendants agreed that the Plaintiff was entitled to such an award for loss of earning capacity.[156] However, the defendants disputed the quantum to be awarded. As against the $230,000 sought by the Plaintiff, the defendants proposed **$30,000**. The thrust of their argument was that the Plaintiff's injuries would not have much of an adverse impact on her ability to work.[157]

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154 PCS, para 108.

155 DCS, paras 85–86.

156 DCS, para 3.

157 DCS, paras 87–96.

Loss of future earnings

157 I first consider the Plaintiff's claim for loss of future earnings. While I can accept that it is difficult to accurately quantify future losses, it seems to me that the evidence in this particular case is simply too inadequate. I have already pointed out some significant problems with the Plaintiff's Forecasts (see [102] and [107]–[108] above). These include the fact that the forecast figure for 2014 is not supported by primary evidence, and that certain key assumptions used in the Forecasts were not adequately justified. I also agree that with the defendants that there is no apparent basis for applying the five years figure. I therefore decline to award the Plaintiff her claim of $585,000 for loss of future earnings.

Loss of earning capacity

158 This brings me to the Plaintiff's alternative claim for loss of earning capacity. For clarity, this relates only to *post-trial* loss of earning capacity as I have already made an award in favour of the Plaintiff in respect of pre-trial loss of earning capacity (see [152] above).

159 As mentioned at [156] above, the defendants did not dispute that the Plaintiff was entitled to an award for post-trial loss of earning capacity. The difficulty lies in the quantification. To their credit, both sides have cited case law supporting their respective positions but I find limited guidance in these cases which all concerned very different factual circumstances and can be distinguished on numerous grounds. The inquiry into quantum must necessarily be specific to the facts of each case.

160 As mentioned at [85] above, the Plaintiff's business development role in RXP and RXPPL requires her to travel frequently within Singapore to meet

existing and potential clients, and to conduct various demonstrations and presentations.[158] The question is whether the Plaintiff's injuries, or any medical conditions that she may develop in the future as a result of the accident, will affect her future ability to work in this capacity, if at all.

161 I can accept that mobility is fairly important to the Plaintiff's job. On this point, the evidence is clear that the Plaintiff is still troubled by pain in her right ankle. The Plaintiff said that she is unable to walk distances further than two bus stops' length without feeling throbbing pain or sometimes even cramps in her ankle and foot.[159] The Plaintiff also said that she was still suffering other "side effects" of her surgeries:[160]

> Court: What side effects?
>
> Witness: Your Honour, even until today, just now I was pushing my bag, I still have pain on the hand. But like I s---I mentioned before that, even in Dr Singh's report, I recovered because I can twist my hand, my ankle, my elbow. But the effects of the pain, holding heavy documents, and I'm an accountant, I have to do accounts using files, and all these are being pushed---the pain was pushed all on the left side. So that means, I'm using the left more than the right. And this pain, in fact, also happened on my left. As at today, because I'm pushing more weight on the left, even if I stand, if I walk, so all this I'm going through, it will affect a normal person.

162 In connection with the above, I have accepted Dr Chang and Dr Tan's evidence that the Plaintiff has developed early ankle osteoarthritis (see [17]–[18] and [26]–[33] above). I further note that in Dr Tan's report dated 23 February 2016, Dr Tan recommended a permanent incapacity of 14% for

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158 Yap Boon Fong Yvonne's AEIC dated 13 January 2015, para 29.

159 NE, 30 March 2017, 31:25–32:15

160 NE, 5 April 2017, 93:29–30; 94:1–11.

stiffness of right ankle and knee based on the Guide to the Assessment of Traumatic Injuries and Occupation Diseases for Workmen's Compensation.[161] Dr Tan's subsequent report dated 18 July 2016 also contained the following observations:[162]

> Her current symptoms are likely to limit her scope of employment. Her current job requires her to travel from place to place to meet clients. Excessive working will precipitate exacerbation in ankle pain and swelling. She also had difficulty carrying heavy loads around while walking especially on big case files that are common in her profession as she sometimes require[s] one hand to use a walking stick to relieve pressure on her right ankle.

163 It is unfortunate that the accident has left the Plaintiff with a need to cope with such residual disabilities. Nonetheless, it seems to me that the effects of these injuries on the Plaintiff's future earning capacity are somewhat overstated.

164 While the Plaintiff encounters difficulty in walking long distances, I am not convinced that her role in RXP and RXPPL requires this of her. For instance, the Plaintiff is not required to travel to far-flung locations by public transport or on foot to meet clients and vendors. By the Plaintiff's own evidence, she is capable of driving unassisted.[163] She would therefore be able to drive herself to whatever location she is required to visit. Any walking within that location itself is likely to be minimal, and in any case, probably not for the distance of two bus stops. To be fair, it appears that the Plaintiff had shifted her "business direction" towards the provision of training in order to accommodate her residual disabilities and reduce the need to travel:[164]

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161 PBD 96.

162 PBD 97.

163 NE, 30 March 2017, 41:26–29.

> Q: Now, we are talking about future loss of earnings which is---which means to say it is---we are now in April 2017. So, does your answer apply to future loss of earnings as meaning with effect from 2017?
>
> A: It does have an effect because of the physical condition that I'm going through. *And because of that I've tried to change my business direction into training. Right now, we got our course registered under the SkillsFuture credits so that I do not need to really travel to client's place and at a place to give---provide my services to my clients*. …
>
> [emphasis added]

However, the Plaintiff did not give any evidence on whether this change in business direction had resulted or would result in lower business earnings.

165 The Plaintiff further suggested that her lack of mobility had compromised her ability to conduct trainings effectively, and that this would in turn adversely affect her earnings:[165]

> A: … However, even with this decision of new business coming in till I had my training---I first started my training last year, somewhere in November at ERC. *And I do have participants that saw me, I couldn't stand for long. And I've asked to sit down and give training. Because my course is a facilitation course which also require to move around rather than just give a lecture training. So all these does---do impact me in terms of how I perform. And definitely, it will have an impact on my earnings if I cannot perform to the optimal*. I used to be able to run, to talk confidently because of my style, my dressing, et cetera. But now, I have to change the entire lifestyle, the habits that I used to have. All these are extremely traumatising to me till today.
>
> [emphasis added]

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164 NE, 5 April 2017, 107:3–16.

165 NE, 5 April 2017, 107:16–25.

166 I accept that the Plaintiff's inability to remain on her feet for long periods of time would prevent her from being able to conduct her training courses as she desired, *ie*, involving her moving around to interact with the participants. However, it remains unclear exactly how much this will affect the effectiveness of her training courses and correspondingly, the Plaintiff's earnings. There was, for instance, no indication of how frequently such training courses were conducted and how much revenue these training courses generated.

167 The Plaintiff made one other argument. She submitted that as she will be required to undergo further surgeries for her residual disabilities, she will continue to suffer disruption to her businesses.[166] I have agreed with the Plaintiff that she will be required to undergo some medical procedures to treat her right ankle pain (see [33] above). I also agree that having to undergo these medical procedures will result in further downtime for the Plaintiff. But again it is unclear how much of an impact this will have on the Plaintiff's earnings. It seems to me that these three medical procedures will likely only have an impact on a fraction of the entire remaining span of the Plaintiff's working life. I am therefore of the view that any adverse impact on the Plaintiff's future earning capacity would be somewhat limited. At the end of the day, based on the medical opinion of the Plaintiff's own expert, Dr Chang, the Plaintiff "should be able to continue to work in her firm in the future".[167]

168 In the circumstances, I will grant the Plaintiff an award for post-trial loss of earning capacity assessed at **$80,000**, in the round. I consider this to be an appropriate amount given the facts of this case.

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166 PCS, para 100.

167 PBD 78.

Conclusion

169 The amounts awarded to the Plaintiff in general damages are as follows:

(a) Pain and suffering (inclusive of interest)	$108,000 (agreed)
(b) Future medical expenses and future transport for medical treatment	
(i) Intra-articular visco-supplementation or steroid injection	$480
(ii) Right ankle supramalleolar/tibia realignment osteotomy (inclusive of hospital charges)	$10,000
(iii) Ankle fusion (inclusive of implants and hospital charges)	$12,000
(iv) Total ankle replacement (inclusive of implants and hospital charges)	Nil
(v) Scar excisions and fat grafting	$20,000
(vi) Tissue expansion surgery	Nil
(vii) Follow-up reviews and treatments/medication (estimated)	$10,000
(viii) Future transport for medical treatment	$500
(c) Pre-trial loss of earning capacity	$265,000
(d) Post-trial loss of earning capacity	$80,000
Total	**$505,980**

170 The amounts awarded to the Plaintiff in special damages are as follows:

(a) Medical expenses	$18,941.85

	(agreed)
(b) Transport for medical treatment	$2,000 (agreed)
(c) Domestic helper expenses	$32,815.95
Total	**$53,757.80**

171 Consequently, the Plaintiff shall have final judgment in the global sum of **$559,737.80**. Interest at 5.33% is awarded on the item of general damages in [169(c)] and the items of special damages in [170(a)]–[170(c)] from the date of the writ of summons.

172 I will hear parties on costs.

Andrew Ang
Judge

Neo Kee Heng (Hoh Law Corporation) for the plaintiff;
Narayanan Ramasamy and Daniel Cheong (Tan Kok Quan Partnership) for the second defendant.