

**IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC  
OF SINGAPORE**

**[2021] SGHC 184**

Suit No 853 of 2018

Between

Lau Keuk Ling William  
Ignatius

*... Plaintiff*

And

Chan Chun Sheng Gary

*... Defendant*

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**JUDGMENT**

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

[Damages] — [Assessment]

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**Lau Keuk Ling William Ignatius**

**v**

**Chan Chun Sheng Gary**

**[2021] SGHC 184**

General Division of the High Court — Suit No 853 of 2018

Lai Siu Chiu SJ

1–5 February, 31 March 2021

29 July 2021

Judgment reserved.

**Lai Siu Chiu SJ:**

**Introduction**

1 Suit No 853 of 2018 (“this Suit”) arose from most unfortunate circumstances. William Lau (“the plaintiff”) now aged 66 met with a road accident (“the Accident”) on 14 February 2017 with consequences that were life changing.

2 On that day, the plaintiff was driving his motor vehicle numbered SCZ 168C (“the plaintiff’s car”) along Buangkok Green in the direction towards Sengkang East Drive. He had stopped at the junction of Buangkok Link when the traffic light was red. Gary Chan (“the defendant”) who was driving motor vehicle numbered SJB 585A (“the defendant’s car”), collided into the rear of the plaintiff’s car at high speed, causing the plaintiff’s car in turn to hit the back

of a lorry in front of the plaintiff's car. The plaintiff sustained, *inter alia*, injuries to his neck and head.

3 The plaintiff sued the defendant in this suit and interlocutory judgment based on 100% liability against the defendant was granted in his favour on 11 July 2019 ("the interlocutory judgment") with damages to be assessed and with interest and costs reserved to the Registrar.<sup>1</sup>

4 The defendant's car was insured with NTUC Income Cooperative Limited ("NTUC Income"). Due to the defendant's uncooperative conduct, NTUC Income repudiated liability under the defendant's insurance policy on 14 February 2019. However, by virtue of the agreement of the Motor Insurance Bureau of Singapore ("MIB") and pursuant to ss 7 and 9 of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed) ("the MVTPR Act"), NTUC Income may be called upon to satisfy any judgment for damages obtained by the plaintiff against the defendant.<sup>2</sup>

5 Consequently, NTUC Income obtained leave from court and joined this suit as interveners on 27 March 2019. The assessment for damages was heard over 3½ days by this court.

### ***The plaintiff's injuries***

6 On the day of the accident, the plaintiff was admitted into Tan Tock Seng Hospital ("TTSH") and was diagnosed to be suffering from a "right frontal

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<sup>1</sup> Intervener's Closing Submissions at [1].

<sup>2</sup> Intervener's Closing Submissions at [2].

subarachnoid haemorrhage” according to the neurologist who attended to him.<sup>3</sup> In plain English, the plaintiff suffered from a mild traumatic brain injury and also experienced chest pains. Contrary to the plaintiff’s closing submissions, he did not “suffer very severe injuries” from the accident.<sup>4</sup> This is seen in the fact that the plaintiff was discharged from TTSH, after only an overnight stay.

7 However, thereafter the plaintiff appeared to continue to experience headaches, chest discomfort and nasal discharge. Hence, on 17 February 2017, the plaintiff readmitted himself into TTSH for observation and treatment. He was discharged six days later on 22 February 2017.<sup>5</sup>

8 According to the many medical specialists the plaintiff has consulted over the years after the accident and is still seeing, he suffered and/or continues to suffer, from the following symptoms:

- (a) Post-concussion syndrome resulting in mild cognitive impairment;<sup>6</sup>
- (b) Neck/cervical injury (whiplash);<sup>7</sup>
- (c) Left shoulder injury;<sup>8</sup>
- (d) Psychiatric conditions:

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<sup>3</sup> Plaintiff’s Bundle of Documents (“3AB”) 1, Medical Report of Dr Daniel Oh (undated).

<sup>4</sup> Plaintiff’s Closing Submissions (“PCS”) at [3].

<sup>5</sup> 3AB1, Medical Report of Dr Daniel Oh (undated).

<sup>6</sup> PCS at [52] – [58] and [65] – [76].

<sup>7</sup> PCS at [37] – [40].

<sup>8</sup> PCS at [29] – [32].

- (i) major depressive disorder (“MDD”);<sup>9</sup>
- (ii) possibly treatment resistance depression;<sup>10</sup> and,
- (iii) compensatory pain from persistent headaches.<sup>11</sup>

It was the plaintiff’s case, repeated frequently in court, that the doctors/specialists he has seen over the years do not know the cause of his pain and there is no cure.<sup>12</sup> In the plaintiff’s own words, he remains a “medical conundrum”.<sup>13</sup>

9 At the time of the accident, the plaintiff was 62 years of age and working as a Grab driver (temporarily according to him).<sup>14</sup> He is currently unemployed.<sup>15</sup> Prior to being a Grab driver, the plaintiff in his affidavit of evidence-in-chief (“AEIC”), deposed he was a seasoned regional sales and marketing director with significant Asia-Pacific experience and global collaborators in various companies/multinational corporations.<sup>16</sup>

10 The plaintiff started his career in 1985 working as a strategic account manager with Motorola Semiconductor (Singapore) Pte Ltd (“Motorola”).<sup>17</sup> He

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<sup>9</sup> PCS at [119].

<sup>10</sup> PCS at [166].

<sup>11</sup> PCS at [175] – [179].

<sup>12</sup> Notes of Evidence (“NE”), 1 February 2021, at p 36, lines 23 – 29.

<sup>13</sup> PCS at [14].

<sup>14</sup> PCS at [347].

<sup>15</sup> PCS at [348].

<sup>16</sup> Affidavit of Evidence-in-Chief (“AEIC”) of Lau Keuk Ling William Ignatius at [42].

<sup>17</sup> AEIC of Lau Keuk Ling William Ignatius at [29].

rose through the ranks in Motorola and held the position of regional sales manager in 2004 when Motorola was bought out by private equity investors who changed its name to Freescale Semiconductor Pte Ltd (“Freescale”).<sup>18</sup>

11 In end-2014, the plaintiff left Freescale’s services (with a severance package) when it was about to be taken over by NXP Semiconductor Pte Ltd. Within six months, he found a position as the regional sales manager for Asia and Japan with Basler Asia Pte Ltd (“Basler”), a company which provides premium quality industrial cameras, with its parent company being a public listed company in Germany.<sup>19</sup> Within six months of his employment with Basler, the plaintiff was promoted to regional sales director earning a basic monthly salary of \$11,800, excluding a transport allowance of \$700.<sup>20</sup>

12 After about two years’ employment with Basler, the plaintiff tendered his resignation on 21 September 2016,<sup>21</sup> he deposed in his AEIC that he was unable to fit in with Basler’s management style.<sup>22</sup> He left Basler at end-October 2016. He then applied for various positions which included the following:<sup>23</sup>

- (a) Business development director at APAC/Enterprise Market (on 31 December 2017);

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<sup>18</sup> AEIC of Lau Keuk Ling William Ignatius at [33].

<sup>19</sup> AEIC of Lau Keuk Ling William Ignatius at [40].

<sup>20</sup> AEIC of Lau Keuk Ling William Ignatius at [41].

<sup>21</sup> 3AB466.

<sup>22</sup> AEIC of Lau Keuk Ling William Ignatius at [43].

<sup>23</sup> AEIC of Lau Keuk Ling William Ignatius at [44].

- (b) Territory sales manager at Global Digital Software Vendor (17 January 2018), for which the salary offered was \$300,000 per annum;
- (c) Director of Partnerships & Business Development Asia at Jivox Corporation (17 January 2018);
- (d) Sales manager at Pangea Resourcing (7 March 2017); and,
- (e) APAC regional sales director at Comcast Technology Solutions formerly known as Platform (15 May 2017).

Nothing was said about the outcome of his applications.

13 On or about 22 January 2017, the plaintiff was informed by a head-hunter of a position as a senior client engagement manager with Microchip Technology, an American manufacturer. However due to the accident, the plaintiff was unable to contact the head-hunter until 19 February 2017, by which time he was told that the position was no longer available.<sup>24</sup>

14 Thereafter, the plaintiff's attempts to find equivalent high positions that he used to occupy met with no success. He deposed that given his current cognitive state, he is slow to comprehend and respond, is often lethargic and unable to maintain energy and cannot see himself conducting business meetings and conference calls.<sup>25</sup>

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<sup>24</sup> AEIC of Lau Keuk Ling William Ignatius at [45] – [46].

<sup>25</sup> AEIC of Lau Keuk Ling William Ignatius at [58].



15 The plaintiff was undoubtedly very successful in his career prior to the accident. Unfortunately, he can no longer hold the top managerial positions that he used to occupy. Hence his very substantial claim for loss of future earnings/loss of earning capacity.<sup>26</sup>

16 Between 17 February 2017 and 6 April 2021 which was a span of 51 months, the plaintiff was on medical leave for a total of 1,461 days, and was issued 33 medical certificates by TTSH.<sup>27</sup> He has consulted to-date the following specialists who were his witnesses at the assessment hearing:

- (a) Dr Ho King Hee (“Dr Ho”), a consultant neurologist and physician in private practice;
- (b) Dr Donald Yeo (“Dr Yeo”), a clinical neuropsychologist in private practice;
- (c) Dr Chan Lai Gwen (“Dr Chan”) from TTSH, a consultant in psychological medicine.

The plaintiff has spent \$24,132.64 thus far on his medical expenses (which NTUC Income does not dispute).<sup>28</sup>

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<sup>26</sup> See *infra*, at paragraph [100].

<sup>27</sup> PCS at [21].

<sup>28</sup> PCS at [22].

17 Over and above the aforesaid specialists, the plaintiff was sent to other departments in TTSH or was seen by other doctors and/or specialists there, some of whose medical reports were exhibited in his AEIC.<sup>29</sup> These included:

- (a) an ear, nose and throat (“ENT”) specialist;
- (b) an eye specialist;
- (c) a pain management specialist;
- (d) the rehabilitation clinic;
- (e) the orthopaedic department; and,
- (f) the department of psychological medicine.

18 As a result of the brain injuries he suffered and being on medication constantly, the plaintiff deposed that the accident has adversely affected his interpersonal skills and activities of daily living. He suffers from nausea, blurred vision, poor memory and sleeps for prolonged periods. His sleep is disturbed by headaches, neck and shoulder pain as well as involuntary twitching of his limbs in the middle of the night. He is forgetful and is easily irritated sometimes speaking very loudly and angrily uncontrollably. His behaviour has affected his relationship with his family and other people around him.<sup>30</sup>

19 The plaintiff added that on outings with his family, he tired easily and needed to take frequent rest breaks, thus lagging behind his family due to his

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<sup>29</sup> AEIC of Lau Keuk Ling William Ignatius, Exhibit LKL-2.

<sup>30</sup> AEIC of Lau Keuk Ling William Ignatius at [19] – [24].

slow walk. He no longer had or enjoyed social gatherings as he used to before the accident as he did not want his friends to see him in his present state of pain and his haggard appearance, having lost 10-15 kg in weight.<sup>31</sup>

20 The plaintiff deposed he no longer enjoyed one of his favourite pastimes of reading up on technological developments as he could not absorb the technical information due to the deterioration in his cognitive functions. He no longer enjoys listening to hi-fi music as he experiences ringing noises in his head. Neither does he watch television or watch movies as he gets tired easily or cannot comprehend the entire plot of the film(s).<sup>32</sup>

21 I should add that NTUC Income engaged private investigators to conduct surveillance on the plaintiff. This was carried out by Nemesis Investigations Private Limited (“Nemesis”) on 29 and 31 July 2019, as well as on 13 and 20 August 2019. Nemesis rendered a report dated 21 August 2019 (“Nemesis’ report”)<sup>33</sup> to NTUC Income on the surveillance it had conducted. Nemesis’ report was an agreed document to dispense with formal proof by Nemesis. The plaintiff was cross-examined on Nemesis’s report and what the surveillance conducted revealed of his activities. The court will return to Nemesis’ report later in the course of this judgment.<sup>34</sup>

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<sup>31</sup> AEIC of Lau Keuk Ling William Ignatius at [22] – [23].

<sup>32</sup> AEIC of Lau Keuk Ling William Ignatius at [24].

<sup>33</sup> Supplementary Bundle of Agreed Documents (“2AB”) 1 – 18.

<sup>34</sup> See *infra*, at paragraph [108].

## **The evidence**

### ***(i) The plaintiff's case***

22 Besides himself, Drs Ho, Yeo and Chan, the plaintiff also called Dr Daniel Oh Chia Theng (“Dr Oh”) to testify. On its part, NTUC Income called only one witness namely Dr Lim Yun Chun (“Dr Lim”) a psychiatrist. NTUC Income had requested the plaintiff to be reviewed by Dr Lim as well as Dr Alvin Hong (“Dr Hong”). Dr Hong did not testify but his medical report dated 31 July 2019 was produced in court by NTUC Income.<sup>35</sup>

23 The plaintiff had procured AEICs from Dr Jikku Haniball, Dr Goh Jia Jun (“Dr Goh”), Lui Wen Li (“Dr Lui”) and Dr Loo Swee San (“Dr Loo”). Except for Dr Goh who is from the National Neuroscience Institute (“NNI”), the other three doctors are all from TTSH. However, all four doctors did not take the witness stand as NTUC Income’s solicitors agreed to dispense with them as witnesses and accept their medical reports without the need for formal proof.

24 When the plaintiff came to court for the trial, he had stopped driving for Grab under “Ignatius Transport”, which was the name of his private hire business. His three years’ vocational licence expired on 18 November 2020 and was not renewed.<sup>36</sup> As a Grab driver, the plaintiff said he earned about \$2,100 to \$2,500 per month.<sup>37</sup> However, he did not produce his income tax returns to support his figures.

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<sup>35</sup> Intervener’s Bundle of Documents (“5AB”) 1 – 8.

<sup>36</sup> NE, 1 February 2021, p 12, ln 16 – 29.

<sup>37</sup> AEIC of Lau Keuk Ling William Ignatius at [4] and [70].

25 During his cross-examination, the plaintiff confirmed that the residual injury he suffered from the accident was head pain due to dysesthesia and post-concussion syndrome.<sup>38</sup> In an undated letter received by his lawyers on 7 February 2019 (“Dr Oh’s Report”) from Dr Oh then with NNI, the plaintiff was diagnosed with post-concussion syndrome which caused him to suffer (possibly) post-traumatic stress disorder and myofascial pain (muscle or soft tissue pain) in the neck.<sup>39</sup>

26 During cross-examination, the plaintiff agreed that since 22 June 2017 (when he was referred to Dr Loo of the pain management clinic of TTSH by Dr Goh) to the trial dates, he had consistently taken more than 10 types of painkilling medication to address his pain. He disclosed that he continues to suffer pain despite the painkillers he has been taking.<sup>40</sup>

27 The plaintiff’s TTSH medical bills were incorporated into the agreed bundle marked 3AB1 – 650. It was noted therefrom that he was prescribed, *inter alia*: (i) tramadol; (ii) etoricoxib (or Arcoxia); (iii) codeine; (iv) diclofenac; and, (v) pregabalin (or Lyrica).

28 The plaintiff testified that Arcoxia made him nauseous and dizzy,<sup>41</sup> codeine could be addictive if he took it long term because it is morphine-based,<sup>42</sup> while diclofenac caused drowsiness although it addressed his pain and made

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<sup>38</sup> NE, 1 February 2021, p 41, ln 18 – 22.

<sup>39</sup> 3AB1 – 2.

<sup>40</sup> NE, 1 February 2021, p 42, ln 2 – 18.

<sup>41</sup> NE, 1 February 2021, p 48, ln 16-23.

<sup>42</sup> An opiate, NE, 1 February 2021, p 49, ln 25 – 28.

him calmer.<sup>43</sup> It was suggested to the plaintiff by NTUC Income’s counsel (“Mr Yeo”) that a side-effect of pregabalin from prolonged usage is depression.<sup>44</sup> It was noted that the plaintiff’s prescription of pregabalin was changed from 25mg to 75mg capsules, a threefold increase. The plaintiff denied he suffers from depression.<sup>45</sup> His testimony did not accord with the evidence of Dr Chan.<sup>46</sup>

29 Dr Yeo, a clinical neuropsychologist had issued two reports on the plaintiff, the first dated 29 July 2018 (“Dr Yeo’s first medical report”)<sup>47</sup> and the other dated 10 November 2019 (“Dr Yeo’s second medical report”).<sup>48</sup>

30 In Dr Yeo’s first medical report, he assessed the plaintiff to be suffering from mild cognitive impairment consistent with post-concussion syndrome and the plaintiff “is likely to continue struggling with mental tasks requiring cognitive processing under time pressure...[a] post-injury cognitive disability that may persist and likely compromise his ability to resume his pre-accident level of occupational competence.”<sup>49</sup>

31 In Dr Yeo’s second report, he noted that there had been no significant improvement or changes to the plaintiff’s condition since his first report dated about 17 months earlier. By then, almost 3 years had passed since the accident.

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<sup>43</sup> NE, 1 February 2021, p 51, ln 1 – 12.

<sup>44</sup> NE, 1 February 2021, p 54, ln 2 – 9.

<sup>45</sup> NE, 1 February 2021, p 63, ln 1.

<sup>46</sup> See *infra*, at paragraph [67].

<sup>47</sup> 3AB10 – 12.

<sup>48</sup> 3AB21 – 23.

<sup>49</sup> 3AB12.

Dr Yeo opined that the plaintiff's cognitive recovery had stabilised, and he was likely to continue struggling with complex mental tasks requiring cognitive processing under time pressure in the future.<sup>50</sup>

32 As for Dr Loo's AEIC, she referred to her medical report dated 1 February 2018 which stated that treatment of the plaintiff's post-concussion headaches with a significant neuropathic (shooting or burning pain) contribution was an on-going process.<sup>51</sup> She opined that addressing the other injuries the plaintiff suffered required a multidisciplinary approach using psychotherapy and neuropathic medication.

33 In Dr Lui's report dated 2 February 2018, she stated that notwithstanding the pain he suffers from, the plaintiff is independent in his activities of daily living and his symptoms of post-concussion syndrome had improved. However, because he was still troubled by his symptoms, the plaintiff had not returned to work after his medical certificate expired on 8 March 2017.<sup>52</sup>

34 Dr Lui's diagnosis of the plaintiff's activities seemed to be borne out by Nemesis' report.<sup>53</sup> The videos shown in court of the surveillance Nemesis conducted showed that the plaintiff went about his daily activities without trouble, such as visiting Dr Lim for a medical review at Raffles Specialist Centre on 29 July 2019. After leaving Dr Lim's clinic, the plaintiff drove his car to

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<sup>50</sup> 3AB22.

<sup>51</sup> Bundle of Agreed Documents ("1AB") 2 – 3.

<sup>52</sup> 1AB4 – 5.

<sup>53</sup> See *supra*, at paragraph [21].

Changi Airport twice, once to pick up passengers on their arrival and on the second trip to send his passengers to the departure terminal.

35 Similar activities were seen in the video clip of 31 July 2019 when the plaintiff visited Dr Hong at Neurosurgery Clinic, Mount Elizabeth Medical Centre, as well as picked up fares from Changi Airport.

36 Nemesis' report concluded with the following observations on the plaintiff:<sup>54</sup>

- (a) He was able to drive for up to 38 minutes at a time;
- (b) He could assist his passengers in unloading luggage and other items;
- (c) He could descend staircases and bend forward;
- (d) He could get in and out of vehicles.

37 The plaintiff was cross-examined<sup>55</sup> on 3 of Dr Chan's 7 medical reports namely, those dated 13 February 2018 (Dr Chan's first report"),<sup>56</sup> 26 June 2019

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<sup>54</sup> 2AB18

<sup>55</sup> NE, 1 February 2021, pp 56 – 76.

<sup>56</sup> 3AB8 – 9



(“Dr Chan’s second report”),<sup>57</sup> and 1 November 2019 (Dr Chan’s third report”).<sup>58</sup>

38 In Dr Chan’s first report, she assessed him as being rather slow in speech. Based on what the plaintiff told Dr Chan, she reported that he feels unwell due to multiple physical, psychological and cognitive symptoms that resulted in him seeing multiple healthcare professionals and having to quit his well-paying job of sales director of the Asia Pacific region.<sup>59</sup>

39 In Dr Chan’s second report, she indicated she would use pharmacotherapy to treat the plaintiff’s depression and estimated the cost of his medical consultation and medication at \$300 per month.<sup>60</sup>

40 In Dr Chan’s third report, she stated that the plaintiff had responded quite well to the most recent pharmacotherapy regime she administered which consisted of methylphenidate extended release (or Concerta)<sup>61</sup> and trazadone.<sup>62</sup> In the event pharmacotherapy is no longer effective or contraindicated because of new health issues on the plaintiff’s part, Dr Chan would then recommend non-pharmacological treatment particularly repetitive Transcranial Magnetic

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<sup>57</sup> 3AB15.

<sup>58</sup> 3AB20.

<sup>59</sup> 3AB8.

<sup>60</sup> 3AB15.

<sup>61</sup> A stimulant.

<sup>62</sup> An antidepressant.

Stimulation (“rTMS”) which would be carried out at the Institute of Mental Health (“IMH”).<sup>63</sup>

41 Nothing much turns on the medical reports and/or evidence of Drs Oh, Goh, Loo and Lui. The more relevant reports/evidence is that of Dr Chan.

***(ii) NTUC Income’s case***

42 As stated earlier,<sup>64</sup> Dr Lim was NTUC Income’s only witness. In his AEIC, he stated that he had examined the plaintiff on 29 July 2019. Dr Lim’s report dated 19 October 2019 (Dr Lim’s first report),<sup>65</sup> gave an overview of the plaintiff’s consultations with and diagnosis from his many doctors including Dr Chan. Dr Lim did not come to a definite finding on the plaintiff’s symptoms. Instead, in his conclusion he merely said the suggestion of the plaintiff suffering from post-traumatic stress disorder was not pursued nor was treatment prescribed for it, by the plaintiff’s doctors.<sup>66</sup>

43 In response to the reports of: (i) Dr Ho dated 26 September 2019; (ii) Dr Chan dated 26 June 2019, 1 November 2019 and 9 January 2020; as well as (iii) Dr Yeo dated 10 November 2019, Dr Lim wrote a memorandum dated 22 April 2020 (“Dr Lim’s memo”).<sup>67</sup> In Dr Lim’s memo, he agreed with Dr Chan’s clinical decision in her report of 26 June 2019 to use pharmacotherapy to treat the plaintiff for depression. Dr Lim however disagreed with Dr Chan’s usage

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<sup>63</sup> 3AB20.

<sup>64</sup> See *supra*, at paragraph [22].

<sup>65</sup> 5AB9 – 13.

<sup>66</sup> 5AB12 – 13.

<sup>67</sup> 5AB14 – 16.

of Concerta and trazadone to treat the plaintiff as stated in Dr Chan’s third report. He further disagreed with her estimates of future medical expenses for the plaintiff of \$400 per month each for medication and consultation and \$4,000 for hospitalization.<sup>68</sup>

44 Dr Lim’s memo pointed out that Dr Yeo’s evaluation was based on the battery of psychological tests Dr Yeo had administered, and Dr Yeo’s conclusion based on the results therefrom. However, Dr Lim noted that Dr Yeo did not conduct a full psychiatric examination of the plaintiff. This is correct as in Dr Yeo’s two reports referred to earlier at [30] – [31], he only conducted cognitive tests when he saw the plaintiff on 27 June 2018 and on 2 November 2019 respectively.

45 In his second report dated 20 October 2020 (“Dr Lim’s second report”),<sup>69</sup> Dr Lim gave his opinion on future medical treatment required by the plaintiff. Dr Lim disagreed with Dr Chan’s recommendation to treat the plaintiff for depression for 19.5 years. Relying on medical literature and/or recommendations, he opined that patients being treated for depression should be reviewed after 2 years of treatment.<sup>70</sup>

### ***The claims***

46 The plaintiff has made the following claims totalling \$2,363,202.40 for general damages:<sup>71</sup>

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<sup>68</sup> 5AB15 – 16.

<sup>69</sup> 5AB18 – 23.

<sup>70</sup> 5AB18.

<sup>71</sup> PCS at [403].

1	Pain & suffering	\$147,000.00
2	Traumatic brain injury	\$70,000.00
3	Psychiatric conditions	\$65,000.00
4	Left shoulder injury	*\$5,000.00
5	Neck/cervical C4-5 and C5-6 disk protrusions (whiplash)	*\$7,000.00
6	Future medical expenses	\$161,702.40
7	Future transport expenses	\$2,500.00
8	Loss of earning capacity/future earnings	\$2,052,000.00

\*Items agreed by NTUC Income

47 The plaintiff made the following claims for special damages totalling \$950,091.64:<sup>72</sup>

1	Medical expenses (and continuing)	*\$24,132.64
2	Transport expenses	*\$1,000.00
3	Pre-trial loss of earnings	\$861,800.00
4	Total loss of car	\$37,959.00
5	Loss of use of car	\$25,200.00
	Total	\$950,091.64

\*Item agreed by NTUC Income

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<sup>72</sup> PCS at [403].

48 The plaintiff's total claim for general and special damages (respectively \$2,363,202.40 and \$950,091.64) is \$3,313,294.04.

49 The plaintiff's high figures for both categories of claims are to be contrasted with the figures submitted by NTUC Income.<sup>73</sup> For general damages, NTUC Income's figure is \$72,000.00 based on the following breakdown:

1	Mild traumatic brain injury	\$25,000.00
2	Post-concussion syndrome	Nil
3	Neck/cervical injury	\$7,000.00
4	Left shoulder injury	\$5,000.00
5	Psychiatric conditions	\$15,000.00
6	Loss of future earnings	Nil
7	Loss of earning capacity	\$20,000.00
	Total	\$72,000.00

50 For special damages, NTUC Income submitted a figure of either \$47,120.64 or \$60,140.64 based on the following breakdown:

1	Future medical expenses	\$21,988 (\$10,994.70 per year x 2 years)
2	Pre-trial loss of earnings (since 14.2.17)	Nil, alternatively \$13,020.00
3	Total loss of car	Not claimable

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<sup>73</sup> Intervener's Closing Submissions ("ICS") at [96].

4	Total loss of use of car	Not claimable
5	Transport expenses	\$1,000.00
6	Medical expenses to-date and continuing	\$24,132.64
	Total:	\$47,120.64 or \$60,140.64

The plaintiff's figures for both general and special damages were poles apart from NTUC Income's figures.

### **The findings**

#### ***(i) The medical claims***

51 Physical pain would affect any person's quality of life what more constant physical pain. The court empathises with the plaintiff. It is most unfortunate that as a result of a "run-of-the-mill" motor accident in which his vehicle was hit with considerable force that resulted in the plaintiff sustaining a concussion, the plaintiff ends up suffering chronic pain and has become a "medical conundrum" whose many doctors and/or specialists are unable to cure him, or they do not know what the cure is.<sup>74</sup>

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<sup>74</sup> NE, 1 February 2021, p 39, ln 17 – 27.

52 Based on the Dr Oh’s Report,<sup>75</sup> Dr Ho’s report dated 12 October 2017,<sup>76</sup> as well as Dr Hong’s report dated 31 July 2019,<sup>77</sup> there is no doubt that the plaintiff had suffered a whiplash injury. Parties have agreed to the sum of \$7,000 for the plaintiff’s whiplash injury.

53 The other injury the plaintiff sustained was the traumatic subarachnoid haemorrhage (namely bleeding in the space between the brain and the surrounding membrane) which showed up in a computed tomography (“CT”) scan done on the day of the accident and referred to in Dr Oh’s report.<sup>78</sup> Dr Goh’s report dated 24 March 2017,<sup>79</sup> had also confirmed the findings in the CT scan.

54 According to Dr Chan, the post-concussion syndrome is what causes the plaintiff to suffer persistent pain, headache, cognitive impairment and depression.<sup>80</sup>

55 As stated earlier,<sup>81</sup> the plaintiff called four medical specialists as his witnesses while NTUC Income had one. None of them suggested that the plaintiff’s chronic pain was not genuine or that he was exaggerating his

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<sup>75</sup> 3AB1 – 3.

<sup>76</sup> 3AB4 – 7.

<sup>77</sup> 5AB6.

<sup>78</sup> See *supra*, at paragraph [45]; 3AB1 – 3.

<sup>79</sup> 1AB1.

<sup>80</sup> NE, 3 February 2021, p 57, ln 5 – 20.

<sup>81</sup> See *supra*, at paragraph [22].

symptoms. It is therefore the court's conclusion that the pain suffered by the plaintiff is real and continuing.

56 Pain however is highly subjective and individuals have different thresholds of pain. Some people feel more pain than others suffering from the same disease or ailment. What is considered intolerable pain to one person, may well be tolerable to another. It all depends on the individual. The court is therefore in no position to know the extent of the plaintiff's pain and whether it is as bad as he has testified. The court can only look to the objective medical evidence to determine if the plaintiff does suffer pain, and will continue to suffer pain in the long term or indefinitely, and what quantum of damages he should be awarded by way of compensation for his suffering.

57 In regard to the medical evidence, Dr Chan appears to be the specialist that the plaintiff has seen most often. Indeed, she described herself as his primary treatment provider.<sup>82</sup> Further, in his closing submissions, the plaintiff referred extensively to Dr Chan's reports.<sup>83</sup>

58 The plaintiff's claims physical injuries suffered as a result of the accident are not disputed by NTUC. These are his claims for: (i) left shoulder of \$5,000; and, for (ii) his whiplash injury of \$7,000. Neither is the sum he has spent of \$24,132.64 on medical expenses to-date disputed.

59 NTUC Income also does not dispute that the plaintiff sustained a mild traumatic brain injury in the accident and suffers from post-concussion

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<sup>82</sup> NE, 3 February 2021, at pp 10, 46 and 63.

<sup>83</sup> PCS at [86] – [102].



syndrome. The parties’ dispute is on the severity of his residual disabilities resulting therefrom.

60 The court had earlier at [46] and [47], set out the plaintiff’s and NTUC Income’s disparate figures for the claims in this regard. The plaintiff made separate claims for: (i) pain and suffering; and, (ii) traumatic brain injury totalling \$217,000,<sup>84</sup> whereas NTUC Income offered \$25,000 for the traumatic brain injury and nothing for post-concussion syndrome. NTUC Income argued in its closing submissions that since the brain injury was the genesis of the plaintiff’s post-concussion syndrome, the two items cannot be assessed in isolation as the latter is a residual symptom of the former.<sup>85</sup>

61 In its submissions,<sup>86</sup> NTUC Income also referred to Charlene Chee *et al*, *Guidelines for the Assessment of General Damages in Personal Injury Cases* (Academy Publishing, 2010) (“the Guidelines”),<sup>87</sup> for the quantum of awards in cases of head injuries with moderate brain damage. The table of awards helpfully reproduced in NTUC’s submissions is as follows:

(a) Moderate brain damage  This category is distinguished from moderately severe brain damage by the fact that the degree of dependence on care-givers is significantly lower and the person is able to perform simple tasks of daily life. The GCS <sup>88</sup> scale may be between 9-12.	
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<sup>84</sup> See *supra*, at paragraph [45], Items 1 and 2.

<sup>85</sup> ICS at [20].

<sup>86</sup> ICS at [22].

<sup>87</sup> At pp 5 – 6.

<sup>88</sup> Glasgow Coma Scale

(i) Moderate to severe cognitive impairment with accompanying personality change resulting in behavioural problems, a reduced awareness of danger present in the physical environment, reduced sight, speech and sensory abilities with a significant risk of epilepsy and no prospect of employment.	\$80,000 - \$120,000
(ii) Moderate to modest cognitive impairment – the person’s chances of competing in the job market with other able-bodied persons is significantly reduced and there is some risk of epilepsy.	\$50,000 - \$80,000
(iii) Person is able to perform the activities of daily life competently with minimal or no dependence on others but concentration and memory are affected, such that the ability to work is reduced and there is small risk of epilepsy.	\$25,000 - \$50,000
<p>(b) Minor brain damage</p> <p>The injured person has made good recovery and will be able to take part in normal social life and to return to work. There may not have been a restoration of all normal functions so there may still be persistent problems such as poor concentration and memory and disinhibition of mood, which may interfere with lifestyle, leisure activities and future work prospects to a certain extent. The award should be higher if there is a small added risk of epilepsy.</p> <p>Cases in this category should also include post-concussion syndrome.</p> <p>The quantum of the award will be affected by the following factors:</p> <p>(a) The extent and severity of the initial injury;</p>	<p>\$8,000</p> <p>-</p> <p>\$25,000</p>

(b) Whether there is any personality change with associate behavioural problems; and (c) Depression	
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62 In submitting an award of \$25,000 is appropriate, NTUC Income took the lowest figure in the above guideline at item (a)(iii) or the highest amount under item (b). The court does not accept NTUC Income’s figure.

63 Looking at the evidence, the court finds NTUC Income’s offer too low. The court believes that the \$70,000 proposed by the plaintiff would be appropriate, having taken into account that there has been some impairment to the plaintiff’s cognitive functions resulting from the accident.

64 The plaintiff’s claim for pain and suffering totalled \$147,000 and comprised of: (i) traumatic brain injury (\$70,000); (ii) psychiatric conditions (\$65,000); (iii) left shoulder injury (\$5,000); and, (iv) neck injury (\$7,000). The court has awarded \$70,000 for (i) in [63] whilst (iii) and (iv) are agreed by the parties. Item (ii) is dealt with below.<sup>89</sup>

65 In regard to the post-concussion syndrome, the plaintiff’s submissions<sup>90</sup> argued that he suffers from: (i) major depressive disorder; (ii) treatment resistant depression (“TRD”); and, (iii) compensatory pain from headaches. NTUC Income on the other hand, contends that notwithstanding the plaintiff’s litany of complaints such as headaches, fatigue and depression, he is fully independent

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<sup>89</sup> See *infra*, at paragraphs [73] – [81].

<sup>90</sup> PCS at [84].

in his activities of daily living and he manages his pain through medication.<sup>91</sup> This is evident from the fact he is able to work as a Grab driver. NTUC Income concedes item (i) but disputes item (ii).<sup>92</sup> NTUC Income also argued that there was no evidence tendered to support the plaintiff's change in his personality as set out earlier at [18] to [20].

66 Regarding item (ii), the court has to determine whether to accept Dr Chan's view that the plaintiff does suffer from TRD because the plaintiff failed to respond positively to two separate courses of treatment, or Dr Lim's opinion that it is premature to say the plaintiff does as he is intolerant to the antidepressants that were prescribed to him.

67 Based on the evidence adduced from the AEICs as well as the testimony of the medical witnesses, the court finding that it is unlikely that the plaintiff suffers from TRD as, apart from Dr Chan, this symptom was not confirmed by any other doctor. Dr Chan had testified that she prescribed the plaintiff clomipramine and trazodone, which are both antidepressants.<sup>93</sup> She did so as the plaintiff had other symptoms that met the diagnostic criteria for depression notwithstanding he denied he suffered from depression.<sup>94</sup> She also prescribed to him zopiclone a sleeping tablet, and bromazepam to relieve him from anxiety

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<sup>91</sup> ICS at [24].

<sup>92</sup> ICS at [31].

<sup>93</sup> NE, 3 February 2021, p 24, ln 4 – 24.

<sup>94</sup> See *supra*, at paragraph [28].

and panic attacks.<sup>95</sup> Dr Chan had also opined that painkillers like codeine, tramadol and pregabalin are for short term relief.<sup>96</sup>

68 Dr Chan had based her assessment that the plaintiff suffers from TRD because of his intolerance to two drugs,<sup>97</sup> one of which was mirtazapine.<sup>98</sup> However it was noted<sup>99</sup> that it was the plaintiff who told Dr Chan (which she accepted without more) that he stopped taking an antidepressant because it had side-effects. No clinical trials/tests were conducted to determine if the plaintiff has TRD.

69 Dr Lim on the other hand opined that to be considered to have TRD, the patient should be given adequate dosage of an antidepressant seen to be therapeutic for an acceptable duration before it can be determined if the patient has TRD.<sup>100</sup> Dr Lim's opinion seems to the court to be an eminently more reliable test than Dr Chan's two drugs tolerance test which was not supported by any medical literature.

70 Consequently, the court finds that the plaintiff does not suffer from TRD in all probability and no award is made for this claim.

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<sup>95</sup> NE, 3 February 2021, p 26, ln 16 – 22.

<sup>96</sup> NE, 3 February 2021, p 28, ln 11 – 31.

<sup>97</sup> NE, 3 February 2021, p 51, ln 20 – 32.

<sup>98</sup> Prescribed by IMH.

<sup>99</sup> Dr Chan's first report, 3AB9.

<sup>100</sup> NE, 5 February 2021, p 13, ln 26 – 32; p 14, ln 1 – 5.

71 I should point out at this juncture that Dr Chan gave an estimate post-trial (at the court’s request) on 8 February 2021<sup>101</sup> to the plaintiff’s solicitors that the cost of the plaintiff’s medication for trazodone, clomipramine, zopiclone and bromazepam would be \$474.50 per year. Treatment for rTMS for depression for a course of 24 sessions at IMH costs \$95 per half hour session at unsubsidized rates, or \$2,280 for a course. She estimated the plaintiff would need two courses a year amounting to \$4,560. Dr Chan added that the plaintiff’s consultations with TTSH psychiatry unit would costs \$144 per year at \$38 per visit every 3 months. The plaintiff would also require psychiatric hospitalization twice a year at \$4,086 (or \$2,043 per visit). Dr Chan added that the cost of Concerta was excluded from the estimated medication cost.

72 Dr Chan followed up on her letter dated 8 February 2021 with a second letter dated 25 February 2021 to the plaintiff’s solicitors<sup>102</sup> wherein she stated that Dr Loo<sup>103</sup> had informed her that the plaintiff was likely to need medication for pain management on a long term basis, namely Tramadol (at 50mg 4 times a day, for a cost of \$0.48 per day) and Pregabalin (75mg 4 times a day, for a cost of \$1.60 per day). The total cost of these medications would be \$759.20 per year.

73 Next, there is the claim categorised as “psychiatric conditions” by the plaintiff as well as NTUC Income. This refers to the major depressive disorder (“MDD”) supposedly suffered by the plaintiff, according to Dr Chan’s report

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<sup>101</sup> 1AB8.

<sup>102</sup> 1AB10.

<sup>103</sup> See *supra*, at paragraph [32].

dated 23 June 2020.<sup>104</sup> The plaintiff claimed \$65,000 for this item while NTUC Income offered \$15,000. The court would point out at this juncture that Dr Chan's diagnosis that the plaintiff suffers from depression is based not so much on her clinical assessment of him, but on what he told her,<sup>105</sup> even though she had observed that he responded well to mirtazapine, venlafaxine and clomipramine.<sup>106</sup> She did not administer the DSM-5 test, but used the Hospital Anxiety and Depression Scale for her assessment as well as the plaintiff's answers in the Patient Health Questionnaire 9.<sup>107</sup>

74 According to Dr Lim,<sup>108</sup> the criteria for MDD is set out in the Diagnostic Statistical Manual of the American Psychiatric Association known as DSM-5, and that the DSM-5 criteria<sup>109</sup> requires a patient to display five out of nine stipulated symptoms in order to be said to be suffering from MDD.<sup>110</sup> In this regard, he noted the initial difficulties diagnosing the plaintiff, and when the plaintiff was sent to IMH, even the doctors there could not make the diagnosis of MDD, but only concluded that the plaintiff suffered from post-concussion syndrome.<sup>111</sup> However, he conceded fairly during cross-examination, that the

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<sup>104</sup> 3AB26-29.

<sup>105</sup> NE, 3 February 2021, p 40, ln 1 – 15.

<sup>106</sup> NE, 3 February 2021, p 62, ln 18 – 22.

<sup>107</sup> NE, 3 February 2021, p 39 ln 15 – 32.

<sup>108</sup> NE, 5 February 2021, p 10, ln 26 – 31.

<sup>109</sup> 3AB31.

<sup>110</sup> NE, 5 February 2021, p 10, ln 26 – 31.

<sup>111</sup> NE, 5 February 2021, p 15, ln 9 – 14.

plaintiff suffered/suffers from MDD,<sup>112</sup> although he opined that the plaintiff's depression did not occur in isolation, and that if the perpetuating cause of the depression was treated, the plaintiff would not require lifelong medication.<sup>113</sup>

75 Further, in re-examination<sup>114</sup> Dr Lim was asked if the following caveat found in the DSM-5 criteria would have had a bearing on the plaintiff's diagnosis of MDD, bearing in mind that he suffered from post-concussion syndrome and was taking a cocktail of painkillers (such as codeine, tramadol and pregabalin) which carried the risk of side-effects, and of which two (*ie*, codeine and tramadol) were opiate-based.<sup>115</sup> The caveat found in the DSM-5 criteria is as follows:<sup>116</sup>

The symptoms are not attributable to the physiological effects of a substance (e.g. a drug of abuse, medication) or another medical condition.

76 Dr Lim testified he would be concerned that the cocktail of drugs would have a bearing on the plaintiff's depression.<sup>117</sup> In addition, he opined that people who take opiate drugs for a long period would have problems as they would

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<sup>112</sup> NE, 5 February 2021, p 12, ln 16 – 22.

<sup>113</sup> NE, 5 February 2021, p 22, ln 1 – 8.

<sup>114</sup> NE, 5 February 2021, p 23, ln 3 – 24.

<sup>115</sup> NE, 5 February 2021, p 24, ln 6 – 32; p 25, ln 1 – 4.

<sup>116</sup> 3AB31.

<sup>117</sup> NE, 5 February 2021, p 24, ln 15 – 18.



suffer from fatigue, lack of concentration, *etc*,<sup>118</sup> and could (in addition to the pain he suffered) perpetuate his depression.<sup>119</sup>

77 Dr Lim had grouped the causes of depression<sup>120</sup> into 3 categories: (i) predisposition; (ii) precipitation; and, (iii) perpetuation. He elaborated as follows:

- (a) Predisposition: this referred to the plaintiff's state before the accident (*ie*, was he depressed?). That was not known in the present case;
- (b) Precipitation: this referred to what precipitated the plaintiff's depression. In the present case, it was the Accident;
- (c) Perpetuation: this referred to the factors that perpetuate the plaintiff's depression. In the present case, it could be the plaintiff's ongoing struggle with pain. If his pain subsided or he obtained a job, it was possible that the plaintiff could recover from his depression or be less depressed.

78 In answer to the court's question<sup>121</sup> as to what he would do if he was the plaintiff's treating doctor, Dr Lim opined that he would detoxify the plaintiff from all his opiates, give him the confidence that there are antidepressants on the market that can relieve him of pain/depression, and if the medicine was

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<sup>118</sup> NE, 5 February 2021, p 24, ln 20 – 32; p 25, ln 1 – 4.

<sup>119</sup> NE, 5 February 2021, p 25, ln 13 – 20.

<sup>120</sup> NE, 5 February 2021, p 21, ln 18 – 32; p 25, ln 1 – 8.

<sup>121</sup> NE, 5 February 2021, p 25, ln 24 – 32; p 26, ln 1 – 22.

doing more harm, advise the plaintiff to look to alternatives for pain management such as therapy from psychologists or traditional Chinese medicine (“TCM”). Dr Lim’s answer is telling as Dr Chan herself had expressed the view in her report dated 13 February 2018,<sup>122</sup> that the plaintiff “was seeing too many healthcare professionals and a more targeted approach towards his symptoms was appropriate.”

79 Based on the totality of the evidence presented in court, the court finds that the plaintiff did suffer from MDD but not to the severity claimed by the plaintiff, nor does he suffer from TRD for that matter as elaborated above at paragraph [70].

80 NTUC Income’s submissions<sup>123</sup> referred to the Guidelines again for the quantum to be awarded for general psychiatric disorders for claims for depressions, avoidant phobias, anxiety attacks etc. The Guidelines are as follows:

<p>The factors to be taken into account in valuing claims of this nature are as follow:</p> <ul style="list-style-type: none"><li>(i) The person’s ability to cope with life and work in general as compared to his or her pre-trauma state;</li><li>(ii) The effect on the person’s relationships with family, friends and those with whom he or she comes into contact with;</li></ul>	
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<sup>122</sup> 3AB9.

<sup>123</sup> ICS at [43].

<p>(iii) whether the person is suicidal as a result of his or her psychiatric condition;</p> <p>(iv) whether medical help has been sought;</p> <p>(v) the extent to which treatment would be successful;</p> <p>(vi) the extent to which medication affects the person's work and social life;</p> <p>(vii) whether the person adheres faithfully to counselling sessions and takes his or her medications;</p> <p>(viii) the risk of relapse in the future; and</p> <p>(ix) the chances of full recovery in the future.</p>	
<p>(a) Severe</p> <p>The person suffers from marked problems with respect to factors (i) to (vi). Despite treatment, the prognosis remains very poor as the person is unlikely to be able to return to employment permanently or even take charge of his daily affairs.</p>	<p>\$25,000</p> <p>—</p> <p>\$55,000.</p>
<p>(b) Moderately severe</p> <p>There are significant problems associated with factors (i) to (vi) above but the prognosis will be much more optimistic than in (a) above. However, the person may still have long-term problems coping with stressors of work life and the demands of social life thus preventing a return to pre-trauma employment. He is however, able to perform the activities of daily life independently.</p>	<p>\$8,000</p> <p>—</p> <p>\$25,000.</p>

NTUC Income submitted that the plaintiff's symptoms came under category (b) and a sum of \$15,000 was appropriate as compensation for his depression. The plaintiff's figure on the other hand was \$65,000.

81 The court agrees with NTUC Income that the plaintiff's depression is only moderately severe. However, it does not accept NTUC Income's figure of \$15,000 nor the plaintiff's figure of \$65,000 for this claim. The court thinks a more appropriate figure would be \$45,000 and awards this sum to the plaintiff.

82 The court next addresses the issue of the plaintiff's future medical expenses. Earlier, the court had set out the plaintiff's claim of \$161,702.40,<sup>124</sup> which was computed on the basis of lifelong medication against NTUC Income's offer of \$21,988 for two years' medication.<sup>125</sup>

83 In the plaintiff's closing submissions,<sup>126</sup> he relied on Dr Chan's letters to the court post-trial dated 8 and 25 February 2021<sup>127</sup> respectively for the medication costs as well as the treatment he needs and would need, based on a multiplier of 12 years. The plaintiff's multiplier of 12 years was based on a male's life expectancy of 84.3 years<sup>128</sup> according to the Ministry of Health's data on Population and Vital Statistics 2018.

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<sup>124</sup> See *supra*, at paragraph [46].

<sup>125</sup> See *supra*, at paragraph [50].

<sup>126</sup> PCS at [257] – [262].

<sup>127</sup> See *supra*, at paragraph [72] – [73].

<sup>128</sup> According to the Ministry of Health's data in 2018 on Population and Vital Statistics, see 3BA645 – 650.

84 The breakdown for the plaintiff's claim is as follows:

	<b>Treatment</b>	<b>Cost per year</b>	<b>Costs for lifetime (Multiplier of 12)</b>
1	Pharmacotherapy (trazodone, clomipramine, zopiclone and bromazepam)	\$474.50	$\$474.50 \times 12 = \$5,694$
2	Pharmacotherapy (Concerta)	\$1,171.50	$\$1,171.50 \times 12 = \$14,058$
3	Pharmacotherapy (tramadol and pregabalin)	\$759.20	$\$759.20 \times 12 = \$9,110.40$
4	rTMS	$\$2,280 \times 3$ Courses = \$6,840	$\$6,840 \times 12 = \$82,080$
5	Consultations with TTSH Psychiatry	\$144	$\$144 \times 12 = \$1,728$
6	Psychiatric hospitalisation	\$4,086	$\$4,086 \times 12 = \$49,032.40$
	Total	\$13,475.20	\$161,702.40

85 The court is unable to accept the plaintiff's above computations as it is of the view that the plaintiff does not need nor should he be awarded, lifelong treatment.

86 In regard to item 4 above, there is no evidence that the plaintiff underwent the procedure for rTMS at all. This is clear from the plaintiff's own evidence.<sup>129</sup> Further, the plaintiff's reliance on Dr Chan's letter of 8 February 2021 to make this claim is misconceived as she did not state with any certainty that the plaintiff requires rTMS. Dr Chan's letter dated 9 January 2020 (after she had given a breakdown of medical costs) stated, *inter alia*, that:<sup>130</sup>

If indeed [the plaintiff] turns out to have [TRD] then treatment is lifelong.

In such a case of [TRD] and where rTMS treatment is required, he may need 2 to 3 courses of 24 sessions per year.

87 The court has already found<sup>131</sup> that the plaintiff does not suffer from TRD. Consequently, the rTMS procedure would appear to be unnecessary. However, the court notes that NTUC Income has in its closing submissions<sup>132</sup> accepted Dr Chan's recommendation of rTMS, although it proposed two (instead of the three courses a year claimed by the plaintiff) at a total cost of \$4,560 (\$2,043 multiplied by 2). The trade-off by NTUC Income for accepting rTMS as the recommended treatment for the plaintiff, was its reduction in the sum it proposed for his future medication and medical expenses. NTUC Income's figure in this regard was \$10,944.70<sup>133</sup> based on the unsubsidised rates provided in Dr Chan's letters dated 8 and 25 February 2021.<sup>134</sup>

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<sup>129</sup> NE, 1 February 2021, p 70, ln 19 – 31.

<sup>130</sup> 3AB25.

<sup>131</sup> See *supra*, at paragraph [69].

<sup>132</sup> ICS at [71].

<sup>133</sup> ICS at [71].

<sup>134</sup> See *supra*, at paragraph [72] – [73].

88 NTUC Income had produced an article on rTMS<sup>135</sup> from the Mayo Clinic (“the Mayo article”) in the United States of America (“US”), which described transcranial magnetic stimulation as “a noninvasive procedure that uses magnetic fields to stimulate nerve cells in the brain to improve symptoms of depression. [Transcranial magnetic stimulation] is typically used when other depression treatments haven’t been effective”.<sup>136</sup> The Mayo article was an attachment to Dr Lim’s memo<sup>137</sup> which was exhibit LYC-5 in his supplementary AEIC filed on 11 June 2020.

89 In the light of NTUC Income’s agreement and in deference to the views of the plaintiff’s doctors, the court awards the plaintiff two years’ worth of rTMS to be carried out at IMH. The sum is \$13,680 (\$2,280 multiplied by three courses per year, over two years).

90 The court is of the view that the plaintiff’s claims for lifelong medication would be doing himself a great disservice – if he continues with his cocktail of drugs for the rest of his natural life. It does not seem right to the court that the plaintiff takes sleeping tablets (*ie*, trazodone and zopiclone) at night to get himself to sleep and he then take stimulants (*ie*, Concerta) during the day to keep himself alert. Taking drugs simultaneously that have opposite effects surely cannot be good for one’s health. The court prefers the approach of Dr Lim<sup>138</sup> – that the plaintiff should be detoxified from opiate-based drugs and if

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<sup>135</sup> 5AB27 – 31.

<sup>136</sup> 5AB27.

<sup>137</sup> See *supra*, at paragraph [43].

<sup>138</sup> See *supra*, at paragraph [78].

his pain cannot be controlled or eased with conventional drugs, then alternatives such as TCM should be explored.

91 The court will not deprive the plaintiff of medication he needs in the short term but is loath to award him lifelong medication that would probably do him more harm than good. It does not make sense for the plaintiff to be prescribed antidepressants when he denies he is depressed and he does not take the prescribed antidepressants. It bears noting that in the course of his cross-examination,<sup>139</sup> the plaintiff disclosed that doctors at IMH had advised him that he suffers from a “loss syndrome” – the higher he was on the corporate ladder, the harder his fall. If the plaintiff was/is depressed, it may well be due to the “loss syndrome” and nothing to do with the accident. In any case, the court has awarded the plaintiff two years’ worth of rTMS, as stated earlier.<sup>140</sup>

92 Therefore, the period for which the plaintiff is awarded medication is reduced to five years from 12 years. In this regard, Dr Chan’s third report gave a horizon of two to five years for the plaintiff’s treatment by Concerta and trazodone.<sup>141</sup>

93 It is this court’s hope that the plaintiff will eventually be weaned from all the medication he took and continues to take, by going for alternatives such as TCM and/or therapy to resolve his chronic pain issues. The monies saved from this item of award can then be channelled to TCM and/or therapy.

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<sup>139</sup> NE, 1 February 2021, p 43, ln 19 – 31.

<sup>140</sup> See *supra*, at paragraph [89].

<sup>141</sup> 3AB20.



94 Based on the figures in the table at [84], the plaintiff should only be awarded \$12,746.00 with the breakdown as follows:

	<b>Treatment</b>	<b>Cost per year, for 5 years</b>
1	Pharmacotherapy (trazodone, clomipramine, zopiclone and bromazepam)	$\$474.50 \times 5 = \$2,372.50$
2	Pharmacotherapy (Concerta)	$\$1,171.50 \times 5 = \$5,857.50$
3	Pharmacotherapy (tramadol and pregabalin)	$\$759.20 \times 5 = \$3,796.00$
4	Consultations with TTSH (Psychiatry)	$\$144.00 \times 5 = \$720.00$
	Total	\$12,746.00

95 At this juncture, the court would also state that it is not convinced that the plaintiff underwent a drastic personality change as a result of the accident or that his self-confidence is “shattered”.<sup>142</sup> There was a dearth of evidence in this regard apart from the plaintiff’s assertion. It would have been helpful if his wife had been called as a witness to corroborate his change in personality and/or lack of self-confidence.

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<sup>142</sup> PCS at [334] – [344].

96 The plaintiff testified<sup>143</sup> he was filled with self-doubt after the accident on whether his cognitive abilities had been affected by the accident. However, he never tested himself by accepting a job in senior management or any job for that matter. In the witness stand, the plaintiff came across to the court as more frustrated than depressed, and it was obvious he was very unhappy with his lot in life.

97 The plaintiff's remaining claims for special damages in the table at [47] are: (i) transport expenses; (ii) total loss of his car; and, (iii) loss of use of his car. Although NTUC Income argued that the transport charges were not proven as no receipts in support thereof were produced, the court allows the amount of \$1,000 as the sum is not significant. NTUC Income has offered the same figure for future transport charges<sup>144</sup> which the court accepts as reasonable.

98 However, as regards items (ii) and (iii) above, relating to loss of and use of, his car, these are not claimable from NTUC Income under the provisions of the MVTPR Act.

99 This can be seen from s 4 of the MVTPR Act which states:

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<sup>143</sup> NE, 1 February 2021, pp 121 – 123.

<sup>144</sup> See *supra*, table at paragraph [50].

(1) In order to comply with the requirements of this Act, a policy of insurance must, subject to subsection (4), be a policy which —

(a) is issued by an insurer who at the time the policy is issued is lawfully carrying on motor insurance business in Singapore; and

(b) insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them *in respect of the death of or bodily injury* to any person caused by or arising out of the use of the motor vehicle in Singapore and in any territory specified in the Schedule.

2 It is hereby declared that a policy of insurance —

(a) which was issued on or before 21st October 1998 by an insurer who at the time the policy was issued was lawfully carrying on motor insurance business in Singapore; and

(-) which insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them *in respect of the death of or bodily injury* to any person caused by or arising out of the use of a motor vehicle in any territory specified in the Schedule,

shall be deemed always to have been a policy of insurance —

(i) issued for the purposes of this Act; and

(ii) under which third parties are conferred rights by sections 9, 11, 13 and 14.

[emphasis added]

The above provisions read with ss 7 and 9 of the MVTPR Act, makes it clear that NTUC Income is only liable to the plaintiff for claims for bodily injury, not chattels such as his car. The plaintiff's two claims relating to his car are therefore dismissed.

***(ii) claims for loss of earnings***

100 The court turns next to the plaintiff's contested claims relating to his pre-trial loss of earnings of \$861,800 and his loss of earning capacity/future earnings amounting to \$2,052,000. NTUC Income submitted that the plaintiff is not entitled to claim for loss of future earnings but only to loss of earning capacity for which it proposed \$20,000.<sup>145</sup>

101 NTUC Income set out the plaintiff's employment history in the following table:<sup>146</sup>

	<b>Period of employment</b>	<b>Place</b>	<b>Positions</b>
1	1985-2004	Motorola Semiconductor Pte Ltd	Account, sales & marketing manager
2	2004- 2014	Freescale Semiconductor Pte Ltd	Regional sales manager
3	June 2015- Sept 2016	Basler Asia Pte Ltd	Regional sales manager

102 Earlier,<sup>147</sup> the court had also alluded to the plaintiff's employment history. From starting off in Motorola as a strategic account manager, the plaintiff rose through the ranks and became the company's regional sales

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<sup>145</sup> ICS at [65] – [68].

<sup>146</sup> ICS at [49].

<sup>147</sup> See *supra*, at paragraph [10] – [12].

manager by the time Motorola was taken over by private equity managers and renamed Freescale.

103 The plaintiff left Freescale towards the end of 2014 because of the change of corporate structure and its imminent acquisition by NXP Semiconductor. In his AEIC,<sup>148</sup> he deposed that he took a severance pay and left Freescale to look for another job which he found at Basler. The plaintiff was at Basler for only 15 months.

104 During his cross-examination as well as in its submissions, NTUC Income took issue with the plaintiff's departure from Basler asserting that the plaintiff did not resign voluntarily as he claimed since the Notice of Severance dated 19 September 2016<sup>149</sup> ("the Notice") clearly stated that he was given severance benefits for loss of office in the sum of \$17,719.50 (1½ months' salary). The plaintiff had purportedly tendered his resignation on 21 September 2016<sup>150</sup> with his last day in office being 31 October 2016. By then however, the Notice appeared to have been already handed to him and it was stated therein that his last day at Basler would be the Notice day itself. In his testimony however, the plaintiff stated he did stay on in Basler until end October 2016 and produced his October 2016 payslip as proof.<sup>151</sup>

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<sup>148</sup> AEIC of Lau Keuk Ling William Ignatius at [40].

<sup>149</sup> 3AB467.

<sup>150</sup> 3AB466.

<sup>151</sup> 3AB465.

105 NTUC Income argued that the plaintiff is not entitled to loss of future earnings as he had already reached the retirement age in Singapore of 62 by the time he left Basler.<sup>152</sup>

106 It was the plaintiff's case however that after leaving Basler, he looked for employment opportunities commensurate with his credentials and experience at companies listed at [12].<sup>153</sup> He alleged that the accident caused him to miss an employment opportunity with an American company Microchip Technology as he was unable to contact the head-hunter involved in the recruitment exercise until 19 February 2017 by which time the position was no longer available.<sup>154</sup>

107 NTUC Income further disputed the plaintiff's computation for loss of future earnings at \$19,000 per month for nine years amounting to \$2,052,000 based on a retirement age of 75 years, for a skilled worker occupying a senior managerial position.<sup>155</sup> NTUC Income pointed out that the plaintiff had left or lost, his job with Basler for 4 months 26 days before the accident. In cross-examination,<sup>156</sup> the plaintiff had testified he told his boss at Basler that he wanted to retire, and had conceded that 62 was the retirement age in Singapore subject to re-employment opportunities.

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<sup>152</sup> ICS at [49].

<sup>153</sup> PCS at [316].

<sup>154</sup> See *supra*, at paragraph [13].

<sup>155</sup> ICS at [51].

<sup>156</sup> NE, 1 February 2021, p 16, ln 7 – 26.

108 NTUC Income noted that the plaintiff failed to disclose in his AEIC that he was working as a Grab driver at the time of the accident. He also did not disclose that he had applied for a taxi vocational licence as early as November 2014, prior to his departure from Freescale.<sup>157</sup> The surveillance conducted by Nemesis<sup>158</sup> in July and August 2019 showed that the plaintiff continued to work as a Grab driver after the accident. Indeed, Grab's weekly statements<sup>159</sup> showed that the plaintiff was a Grab driver from May to November 2019. The plaintiff's average net income was around \$2,100 per month.

109 NTUC Income added that it was revealed during his cross-examination that the plaintiff did not send out any resumes after the accident and even if he did, none of the recruitment head-hunters or potential employers were aware of his accident.<sup>160</sup> NTUC Income also submitted that the plaintiff did not have regard to his age of 63 in 2017 as a barrier to finding employment in senior management positions. NTUC Income pointed out he skirted the issue in cross-examination<sup>161</sup>.

110 The plaintiff produced his CPF statements of account for the years 2009 to 2018,<sup>162</sup> and his income tax assessment for the years 2010, 2012, 2013 and 2014,<sup>163</sup> but not those for the years before and after the accident which would

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<sup>157</sup> ICS at [57].

<sup>158</sup> See *supra*, at paragraph [21].

<sup>159</sup> 3AB482 – 503.

<sup>160</sup> ICS at [63].

<sup>161</sup> ICS at [64]; NE, 1 February 2021, pp 122 – 123.

<sup>162</sup> 3AB504 – 535.

<sup>163</sup> 3AB459 – 462.

have given a far more accurate view of his income from 2016 to-date. This omission was noted by NTUC Income.<sup>164</sup>

111 The plaintiff had produced a letter addressed to him dated 28 September 2020 from the Land Transport Authority<sup>165</sup> (“LTA”) reminding him that his taxi driver’s vocational licence (“TDVL”) would be expiring on 18 November 2020 and in order to renew the licence, he was required to first attend a five hours refresher course conducted by LTA. Apparently, the plaintiff did not renew his TDVL, the refusal of which NTUC Income criticised as being unwarranted as there was no evidence that the plaintiff was unable to drive for hire, save for hospitalization on 15 January 2020 due to a suspected stroke.<sup>166</sup>

112 NTUC Income submitted that since the plaintiff’s loss of earnings was due to his act of giving up his TDVL, he brought about his own loss and should not be entitled to make any claim for pre-trial loss of earnings.<sup>167</sup>

113 However, should the court rule in favour of the plaintiff, NTUC Income submitted that the plaintiff’s claim should be limited to his income as a Grab driver at \$2,100 per month and should be limited to the days that the plaintiff sought medical treatment based on his medical bills:<sup>168</sup>

	<b>Year</b>	<b>Number of trips</b>
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<sup>164</sup> ICS at [90].

<sup>165</sup> 3AB558.

<sup>166</sup> ICS at [92].

<sup>167</sup> ICS at [93].

<sup>168</sup> ICS at [94].



1	2017	57 (see 3AB101 – 102)
2	2018	43 (see 3AB197 – 198)
3	2019	45 (see 3AB269 – 270)
4	2020 to Jan 2021	41 (see 4AB6)
	Total number of days	186

114 Based on the plaintiff's average income per day of \$70 (\$2,100 divided by 30 days), the plaintiff's entitlement to pre-trial loss of earnings would be limited to \$13,020 (\$70 multiplied by 186 days).

115 The plaintiff on the other hand relied on the reports (which extracts he quoted) of Dr Ho, Dr Yeo, Dr Lim, Dr Lui and Dr Hong to substantiate his claim for pre-trial loss of earnings due to his mental state. He contended that had it not been for the accident, he would have secured employment in a similarly well-paying role. It was never his intention to retire or settle for private hire driving.<sup>169</sup> The court rejects the plaintiff's arguments for the reasons set out below<sup>170</sup> and accepts NTUC Income's submission as well as its figure of \$13,020 for pre-trial loss of earnings.

116 In regard to the issue of his retirement age, the plaintiff sought to argue that he intended to and was confident he could, work up to the age of 75 in

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<sup>169</sup> PCS at [368].

<sup>170</sup> See *infra*, at paragraph [119].

senior management positions were it not for the accident. Hence, he used a multiplier of nine years for his claim for loss of future earnings.<sup>171</sup>

117 It would be appropriate at this juncture to consider one of the cases the plaintiff relied on to support his claim.

118 The plaintiff cited *Lua Bee Kiang (administrator of the estate of Chew Kong Seng, deceased) v Yeo Chee Siong* [2019] 1 SLR 145 (“*Lua Bee Kiang*”). The court is of the view that this case does not assist the plaintiff to advance his claim. The deceased/respondent in that case was a carpenter, an occupation that is not limited by one’s age. So long as a carpenter has a steady pair of hands and good eyesight, age would not be a barrier to his continued employment pass 62 or even 70 years of age. Indeed, it can even be said that the older a carpenter, the better his skills. It is therefore not a like-for-like comparison to measure the plaintiff’s employability beyond 62 years with that of the respondent in *Lua Bee Kiang*, whom the appellate court accepted could have worked as a carpenter until he reached 70. After all, as stated in *Lua Bee Kiang* at [53], the particular characteristics of the claimant and the nature of the work concerned are factors to be considered in determining the multiplier to be applied when assessing damages for loss of earnings.

119 In our case, the plaintiff was never self-employed prior to leaving Basler in 2016, he was always an employee. However able/capable he may have been in his previous positions with Motorola, Freescale and Basler, the court cannot ignore the fact that he had reached Singapore’s minimum retirement age of 62

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<sup>171</sup> PCS at [385].

at the time of the accident, and is now 66 to 67 years old. The plaintiff argued<sup>172</sup> that he could ordinarily request to be re-employed for another five years until he reaches 67 years old. That may well be the case in normal circumstances except that such an option was not open to the plaintiff because he was *not* in gainful employment at age 62, having left Basler in October 2016. As NTUC Income pointed out, the plaintiff did not lose his job because of the accident.<sup>173</sup> At 62 years of age then, if the plaintiff were to apply for other senior management positions, he would be at a disadvantage as it is likely he would have to compete with other candidates who were equally qualified and have comparable experience, but who were much younger.

120 The plaintiff had also cited *Quek Yen Fei Kenneth v Yeo Chye Huat* [2016] 3 SLR 1106, *Quek Yen Fei Kenneth (by his litigation representative Pang Choy Chun) v Yeo Chye Huat and another appeal* [2017] 2 SLR 229 and *Zaiton Bee Bee bte Abdul Majeed v Chan Poh Teong* [2010] 3 SLR 697. The court does not think any of these cases assist the plaintiff as the courts' findings therein were specific to the facts in those cases.

121 The plaintiff also relied on an article<sup>174</sup> purportedly from Stanford Business that stated that the average mandatory retirement age among public corporations in the US is 72. The short answer to that submission is that the retirement age in the US has no relevance to Singapore. In any case, the court takes judicial notice of the fact that the founders of technology/e-commerce

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<sup>172</sup> PCS at [370].

<sup>173</sup> ICS at [54].

<sup>174</sup> 3AB542.

behemoths like Microsoft and Amazon have stepped down from their positions well before they even reach 60.

122 NTUC Income cited *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587 (“*Shaw Gillian*”) for its submission<sup>175</sup> that an award for loss of future earnings compensates a victim for a real and assessable drop in income as provable through evidence consequent to injuries and disabilities suffered. The court accepts NTUC Income’s submission.

123 In regard to the multiplicand, the plaintiff used \$19,000, a figure which NTUC Income criticised as unfounded.<sup>176</sup> NTUC Income pointed out that the plaintiff was *not* earning this amount as his monthly salary at the time of the accident – he was then a Grab driver earning around \$2,000 a month. NTUC Income pointed out that the plaintiff had used his average income extracted from his notices of assessment for the years 2010, 2012, 2013 and 2014 as the basis for calculating his pre-trial earnings. Yet, he skipped his 2011 income in his calculation and offered no explanation for the omission.<sup>177</sup> It should be noted that the law does not compute loss of earnings in the manner that the plaintiff did.

124 In any case, it was NTUC Income’s case that the plaintiff’s figure of \$19,000 as his earned income was inflated as it did not reflect what he was paid while he was employed by Basler. The plaintiff’s October 2016 payslip<sup>178</sup>

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<sup>175</sup> ICS at [52].

<sup>176</sup> ICS at [83].

<sup>177</sup> ICS at [84].

<sup>178</sup> 3AB465; See *supra*, at paragraph [102].

showed his monthly salary was \$12,563 (\$11,813 salary plus transport allowance of \$750). The plaintiff was also selective in disclosing his notices of assessment – he chose not to disclose his tax assessments for the years 2016 to 2017, which the court believes would have shown his actual earnings from Basler.

125 The plaintiff’s claim of \$2,052,000 was for loss of earning capacity/loss of future earnings. There is however a distinction between the 2 categories of claims. The court can do no better than to refer to *Shaw Gillian* where the appellate court said:<sup>179</sup>

19 ...as Lord Denning MR clearly pointed out in *Fairley* ([12] *supra*), loss of future earnings must be “real assessable loss proved by evidence” (at 42). Therefore, if a plaintiff should fail to provide sufficient evidence of loss of future earnings, his or her claim for loss of future earnings cannot succeed.

20 Secondly, in the event that there is a lack of sufficient evidence proving loss of future earnings, this cannot, by itself, *convert* a claim for loss of future earnings into a claim for loss of earning capacity. These two heads of damages are meant to compensate for different losses – loss of future earnings compensates for the difference between the post-accident and pre-accident income or rate 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. Since loss of future earnings and loss of earning capacity are separate and distinct, the Appellant’s suggestion that the failure to prove loss of future

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<sup>179</sup> *Shaw Gillian* at [19] – [25].

earnings should lead to an award for loss of earning capacity is conceptually erroneous

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...

24 Finally, there is one other general comment which we would make. There is nothing in principle which bars a plaintiff from being entitled to claim for both loss of future earnings and loss of earning capacity, provided that the necessary evidence is present...

25 We reiterate again, loss of future earnings and loss of earning capacity compensate different losses. We can best illustrate the point by an example. Suppose an injured person was taken back by his pre-accident employer to do a less demanding job due to his disabilities but at a lower pay. If the employer cannot guarantee how long he will be so employed but will do so as long as possible, it seems to us that the injured victim should be entitled to awards based on both heads of damages.

126 NTUC Income had submitted that the plaintiff should not be given any award for loss of earning capacity or at best, he should be awarded a nominal sum of \$20,000.<sup>180</sup>

127 Whether it is a claim for pre-trial loss of earnings (\$861,800) or loss of earning capacity or future earnings (\$2,052,000) it is incumbent on the plaintiff to produce the necessary supporting evidence which unfortunately he did not.

128 It is therefore the finding of this court that the plaintiff has not suffered any actual loss of future earnings or loss of earning capacity. He was driving for Grab at the time of the accident and he continued to drive for Grab after the accident until he voluntarily chose not to renew his TDVL upon its expiry in

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<sup>180</sup> ICS at [68].

November 2020. The plaintiff suffered some pre-trial loss of earnings as a Grab driver for which he has been given an award.<sup>181</sup> Assuming *arguendo* that the plaintiff did suffer loss of future earnings for five years until the mandatory retirement age of 67, the court awards the plaintiff the sum of \$50,000 (\$10,000 per year multiplied by five years) which is a discount on NTUC Income's figure of \$13,020 in [114] due to accelerated receipt.

129 As for loss of earning capacity, the court finds that this claim was not proven. Earlier, the court had dismissed his two claims relating to his car.<sup>182</sup>

### Conclusion

130 The parties had agreed to the following claims for the plaintiff:

	Items	Amount
1	Left shoulder injury	\$5,000
2	Neck/cervical injury (whiplash)	\$7,000
3	Medical expenses incurred	\$24,132.64
	Total	\$36,132.64

While the court made the following awards:

	Items	Amount
1	Brain injury	\$70,000.00

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<sup>181</sup> See *supra*, at paragraph [115].

<sup>182</sup> See *supra*, at paragraph [99].

2	Psychiatric conditions (post-concussion syndrome)	\$45,000.00
3	Transport (before and after trial) \$1,000 x 2	\$2,000.00
4	Future medical expenses	\$12,746.00
5	rTMS	\$13,680.00
6	Pre-trial loss of earnings	\$13,020.00
7	Loss of future earnings	\$50,000.00
	Total	\$206,446.00

131 Added together, the total sum awarded to the plaintiff is \$242,578.64, a far cry from his original claim totalling \$3,313,294.04.<sup>183</sup> The plaintiff is awarded interest on the damages less the loss of future earnings (*ie*, on \$192,578.64) at 5.33% interest from the date of the writ until payment.

### **Costs**

132 At the court's directions, parties submitted their respective schedules on costs. The plaintiff's estimate of party and party costs was \$100,000 far higher than NTUC Income's figure of \$65,000. The court notes that the award to the plaintiff is below the jurisdiction limit of \$250,000 for civil claims in the State Courts.

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<sup>183</sup> See *supra*, at paragraph [48].



133 Taking into consideration the total sums awarded to the plaintiff as well as the fact that trial took place over 3½ days, the court awards costs to the plaintiff of \$45,000, with disbursements of another \$8,500.

Lai Siu Chiu  
Senior Judge

Han Hean Juan and Lu Zhao Bo Yu (Hoh Law Corporation) for the  
plaintiff;  
Yeo Kim Hai Patrick and Ooi Jing Yu (Huang Jingyu) (Legal  
Solutions LLC) for the defendant.

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