IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC(A) 14

Civil Appeal No 81 of 2021

Between

Lau Keuk Ling William Ignatius

… *Appellant*

And

Chan Chun Sheng Gary

… *Respondent*

And

NTUC Income Insurance Co-operative Limited

… *Intervener*

In the matter of Suit No 853 of 2018

Between

Lau Keuk Ling William Ignatius

… *Plaintiff*

And

Chan Chun Sheng Gary

… *Defendant*

And

NTUC Income Insurance Co-operative Limited

… *Intervener*

JUDGMENT

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

TABLE OF CONTENTS

Lau Keuk Ling William Ignatius
v
Chan Chun Sheng Gary
(NTUC Income Insurance Co-operative Limited, intervener)

[2022] SGHC(A) 14

Appellate Division of the High Court — Civil Appeal No 81 of 2021
Quentin Loh JAD, Chua Lee Ming J
10 February 2022

1 April 2022 Judgment reserved.

Quentin Loh JAD (delivering the judgment of the court):

Background facts

1 Mr Lau Keuk Ling William Ignatius, the "appellant", being dissatisfied with the quantum of damages awarded to him below, appeals against the various aspects of the damages awarded or disallowed by the learned trial judge (the "Judge") in *Lau Keuk Ling William Ignatius v Chan Chun Sheng Gary* [2021] SGHC 184 (the "Judgment").

2 The appellant was injured in a road traffic accident on 14 February 2017 when a car, driven by Mr Chan Chun Sheng Gary (the "respondent") at high speed, collided into the rear of the appellant's stationary car. This caused the appellant's car to collide into the rear of the stationary lorry in front; both these vehicles were at a traffic light-controlled junction awaiting the green light. The appellant suffered, *inter alia*, neck and head injuries.

3 The respondent failed to cooperate with his motor insurer, NTUC Income Cooperative Limited, or take any part in the proceedings. On 11 July 2019, interlocutory judgment was entered with damages to be assessed. The respondent's insurer, repudiated liability to indemnify the respondent but nonetheless intervened in the action (the "intervener") as it was liable to satisfy any judgment obtained by the appellant for damages for bodily injuries under the Motor Vehicles (Third Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed) (the "MVTPR Act"), if the respondent failed to pay the same. Having intervened, the intervener was entitled to raise any defences or raise any arguments open to the respondent in resisting the appellant's claims, subject of course to costs.

4 The appellant was 62 years old at the time of the accident and was 66 at the time of the trial for the assessment of damages (though turning 67 years old in 2021). At the time of the accident, the appellant was a driver for Grab Holdings Inc ("Grab driver") but his contention was that it was only a temporary job. He was diagnosed to have suffered a right frontal subarachnoid haemorrhage and he was discharged after an overnight stay. He subsequently complained of headaches, chest discomfort and nasal discharge and was readmitted to Tan Tock Seng Hospital ("TTSH") for observation and treatment on 17 February 2017. He was discharged six days later on 22 February 2017.

The proceedings below

The parties' cases below

5 The appellant made the following claims totalling $2,510,202.40 for general damages (Judgment at [46]):

(a) pain and suffering: $147,000.00;

(b) traumatic brain injury: $70,000.00;

(c) psychiatric conditions: $65,000.00;

(d) left shoulder injury: $5,000.00;

(e) neck/cervical C4-5 and C5-6 disk protrusions (whiplash): $7,000.00;

(f) future medical expenses: $161,702.40;

(g) future transport expenses: $2,500.00; and

(h) loss of earning capacity/future earnings: $2,052,000.00.

6 The intervener agreed to the following claims:

(a) left shoulder injury: $5,000.00; and

(b) neck/cervical C4-5 and C5-6 disk protrusions (whiplash): $7,000.00.

7 The appellant made the following claims totalling $950,091.64 for special damages (Judgment at [47]):

(a) medical expenses (and continuing): $24,132.64;

(b) transport expenses: $1,000.00;

(c) pre-trial loss of earnings: $861,800.00;

(d) total loss of car: $37,959.00; and

(e) loss of use of car: $25,200.00.

8 The intervener agreed to the following claims:

(a) medical expenses (and continuing): $24,132.64; and

(b) transport expenses: $1,000.00.

9 The intervener disputed the remaining claims for various reasons, including an alleged overestimation of the *quantum* of damages suffered and *denial of the bodily injury suffered* based on their expert's evidence which we shall deal with below.

The decision below and the parties' cases on appeal

10 A summary of the parties' respective positions on each of the relevant heads (and sub-heads) of damages as against the Judgment can be conveniently tabulated as follows:[1]

Damage	**Judgment (Reference)**	**Appellant's Position**	**Intervener's Position**
General Damages			
Pain and Suffering – Brain Injury	$70,000.00	Not appealed against	
Pain and Suffering – Psychiatric Conditions (major depressive disorder ("MDD"); treatment	$ 45,000.00 (with MDD, no TRD, CP not addressed)	$65,000.00 (with MDD, with TRD, with CP)[2]	$45,000.00 (with MDD, no TRD, with CP)[3]

1 Appellant's Case (Amendment No 1) ("AC") at para 5; Intervener's Case ("IC") at para 5.

2 AC at para 27.

3 IC at paras 16, 27 and 35–36.

resistance depression ("TRD"); compensatory pain ("CP"))	(at [70], [79] and [81])		
Pain and Suffering – Shoulder Injury	$5,000.00	Not appealed against	
Pain and Suffering – Neck Injury	$7,000.00	Not appealed against	
Future Medical Expenses ("FME")	$12,746.00 (Medical Treatment / Consultations for five years) (at [94])	$161,702.40 (Medical Treatment / Consultations with rTMS for life)[4]	$26,426.00 (Total for FME for five years)[5]
	$13,680.00 (repetitive Transcranial Magnetic Stimulation ("rTMS") for two years) (at [89])		

4 AC at para 46.

5 IC at paras 47 and 50.

Future Transport Expenses	$1,000 (for five years) (at [97])	$2,500 (for lifetime)[6]	$1,000 (for five years)[7]
Loss of Future Earnings ("LFE")	$50,000.00 ($10,000/year discounted from the intervener's $13,020/year for five years) (at [128])	$2,052,000.00 ($19,000/month for 9 years)[8]	$50,000 (as per the Judgment at [128])[9]
Special Damages			
Medical Expenses	$24,132.64	Not appealed against	
Transport Expenses	$1,000.00	Not appealed against	
Pre-Trial Loss of Earnings	$13,020.00 ($70/day for 186 days) (at [114]–[115])	$861,800 ($16,900/month for 42 months; $19,000/month for 8 months)[10]	$13,020.00 (as per the Judgment)[11]

6 AC at para 47.

7 IC at para 50.

8 AC at para 92.

9 IC at para 70.

10 AC at para 96.

11 IC at para 84.

Total Loss of Car	Dismissed	$37,959.00[12]	Not liable; unsupported by evidence[13]
Loss of Use of Car	Dismissed	$25,200.00[14]	
Others			
Costs	$45,000 (at [133])	$158,000 (inclusive of costs of the appeal)[15]	$45,000[16]
Disbursements	$8,500 (at [133])	$42,981.95 (inclusive of disbursements for the appeal)[17]	No submission

11 In brief, the appellant contends that the Judge erred in her findings of facts which thereby resulted in the granting of erroneous sums of damages.

The principles applicable to appellate intervention for assessment of damages

12 The appellant relies on *Sandz Solutions (Singapore) Pte Ltd and others v Strategic Worldwide Assets Ltd and others* [2014] 3 SLR 562 at [37] to argue that the threshold for appellate intervention is crossed where "it can be established that the trial judge's assessment is plainly wrong or against the

12 AC at para 97.

13 IC at para 86.

14 AC at para 97.

15 Appellant's Costs Schedule at p 11.

16 IC at para 88.

17 Appellant's Costs Schedule at p 11.

weight of the evidence".[18] It bears mentioning, however, that the word "assessment" in the cited paragraph does *not refer to the assessment of damages* but rather the ***assessment of fact***:

> As much of the present appeal hinges on findings of fact made by the Judge, we think it apposite to first set out the principles governing appellate intervention *vis-à-vis* findings of fact by the trial judge. In Singapore, the applicable principles have been authoritatively elucidated in *Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 as follows (at [41]):
>
> > … The appellate court's power of review with respect to finding[s] of facts is limited because the trial judge is generally better placed to assess the veracity and credibility of witnesses, especially where oral evidence is concerned … However, this rule is not immutable. Where it can be established that the trial judge's assessment is plainly wrong or against the weight of the evidence, the appellate court can and should overturn any such finding …

13 The intervener relies on *Tan Boon Heng v Lau Pang Cheng David* [2013] 4 SLR 718 ("*Tan Boon Heng*"),[19] another case relating to the assessment of damages arising from a road traffic accident, for the applicable legal principles to appellate intervention in cases concerning the assessment of damages. In that regard, the appellate court (at [7]):

> … may vary the quantum of damages awarded by the judge only if it is shown that the latter: (a) acted on the wrong principles; (b) misapprehended the facts; or (c) had for these or other reasons made a wholly erroneous estimate of the damages …

As such, while the parties rely on two separate case authorities, the two authorities, when read together, are consistent and applicable to the present case.

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18 AC at para 1; Appellant's Bundle of Authorities ("BOA") Tab C at p 36.

19 Intervener's BOA Tab D at p 114.

14 We add that the objective of damages is, in turn, meant to compensate the claimant for his loss (*Lua Bee Kiang (administrator of the estate of Chew Kong Seng, deceased) v Yeo Chee Siong* [2019] 1 SLR 145 ("*Lua Bee Kiang*") at [9]):

> As with any claim in the tort of negligence, the basic principle for determining the quantum of damages for personal injury is to award the claimant "full compensation" for his loss … This means that the award should, as far as money can accomplish, restore him to the position that he would have been in had the injury not been sustained … In the case of pecuniary losses, such as lost earnings, the idea of full compensation gives rise to little difficulty, at least in principle. However, where non-pecuniary loss is concerned, such as pain, suffering and loss of amenity, full compensation is inherently difficult to measure because such loss cannot be assessed by mathematical calculation. The guiding principle, in this context, is therefore that of "fair compensation", in the words of Field J at first instance in the English Court of Appeal decision of *Phillips v The London and South Western Railway Co* (1879) 5 QBD 78 at 80. This means that compensation ought to be reasonable and just, and need not be "absolute" or "perfect" (see *Cane and Goudkamp* at pp 131–132 and the English Court of Appeal decision of *Fletcher v Autocar and Transporters Ltd* [1968] 2 QB 322 ("*Fletcher*") at 335A–B per Lord Denning MR).

15 The Court of Appeal in *Lua Bee Kiang* thereafter discusses two methods for quantifying damages (*ie*, the "component method" and the "global method" (at [10])). In the present case, the Judge adopted the "component method" (without mentioning it as such) and the *method adopted* is not disputed by parties. As such, we highlight the principles applicable to the "component method" (*Lua Bee Kiang* at [14]–[18]):

> Quantification of individual items of loss, at the first stage, is essential because it requires the court as far as possible to explain its reasons for arriving at the final sum awarded. The court does this by placing a monetary value on compensation for each discrete injury, and explaining why the value is appropriate, having regard to the nature of the injury and its effect on the claimant. …

> Reference may be made to assessment guidelines at the first stage of the analysis. In Singapore, the main resource is Charlene Chee *et al*, *Guidelines for the Assessment of General Damages in Personal Injury Cases* (Academy Publishing, 2010) ("the Guidelines") … The Guidelines are of assistance because they set out indicative assessment ranges for most types of personal injury. However, it should be borne in mind that they are no more than guidelines. As the former Chief Justice Chan Sek Keong observed in the foreword (at p vii), they provide a "good starting point" for negotiation. More importantly, the Guidelines' own premise behind the validity of the indicative assessment ranges is that the injury concerned is the dominant injury or is a distinct injury that the claimant has suffered. …
>
> That explains the need for the second stage, which considers whether the aggregate award is reasonable and neither excessive nor inadequate. If either obtains, then the award will have to be adjusted. This is not an impressionistic exercise, but is instead guided by at least two well-defined considerations.
>
> The first is what is often called "overlapping" injuries. This refers to the phenomenon of injuries which either (a) together result in pain that would not have been differentially felt by the claimant (*Winston Tan* ([10] supra) at [16]) or (b) together give rise to only a single disability (*Samuel Chai* ([10] supra) at [49]). In such circumstances, compensating for each distinct injury would likely result in an excessive award. … Ultimately, the court must be astute in assessing the claimant's true loss, whether in the context of pain, suffering and loss of amenity or future expenses, in order to avoid making duplicative awards.
>
> The second consideration is precedent. Reference to precedent assists in arriving at a fair estimate of loss by drawing on experience contained in previous decisions. It also ensures that like cases are treated alike. …

Issues to be determined

16 We now turn to those items of damages that are the subject of the appeal before us, *viz*:[20]

(a) general damages:

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[20] AC at para 5.

(i) pain and suffering for psychiatric conditions, *ie*, MDD, TRD and CP;

(ii) LFE;

(iii) FME;

(iv) future transport expenses;

(b) special damages:

(i) pre-trial loss of earnings;

(ii) dismissal of the appellant's claim for loss of his car;

(iii) dismissal of the appellant's claim for loss of use of his car; and

(c) costs for the proceedings below fixed at $45,000; and

(d) disbursements for the proceedings below fixed at $8,500.

17 The issue before this court is thus whether the Judge erred in the assessment of damages. In that regard, the threshold for appellate intervention is crossed only if the appellant shows that the Judge: (a) acted on the wrong principles; (b) misapprehended the facts; or (c) had for these or other reasons made a wholly erroneous estimate of the damages (*Tan Boon Heng* at [7]).

18 We shall first deal with the largest head of claim and the findings of fact will encompass two items on appeal, *viz*, pre-trial loss of earnings and LFE. It will be convenient to deal with them in a reverse order.

Loss of earnings (LFE and pre-trial loss of earnings)

The parties' arguments below

19 The appellant claimed, unsuccessfully, $861,800 for pre-trial loss of earnings and $2,052,000 for LFE (Judgment at [46]–[47], [100]). The LFE is based on a multiplicand of $19,000/month with a multiplier of nine years (*ie*, to work until he was 75 years old). The pre-trial loss of earnings is similarly based on a multiplicand of $19,000/month for 50 months (from 14 February 2017 to September 2020, and October 2020 to 7 April 2021), less the appellant's monthly income of $2,100 as a Grab driver for 42 months (from 14 February 2017 to September 2020).[21]

20 According to the appellant's affidavit of evidence-in-chief ("AEIC"), his employment history is as follows (Judgment at [10]–[11]):

(a) Motorola Semiconductor (Singapore) Pte Ltd (1985–2004), starting as a strategic account manager in 1985 and promoted to territory manager in 1987;[22]

(b) Freescale Semiconductor Pte Ltd (2004–2014) ("Freescale") as the regional sales manager and took a severance package in end-2014;[23]

(c) looked for another job in the industry for six months (during which the appellant belatedly alleges that he worked as a taxi driver with Comfort Transportation Pte Ltd at the appeal but not in his AEIC);[24]

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21 AC at para 96.

22 Appellant's Core Bundle ("CB") Vol II at pp 14–15 (Mr Lau's AEIC at paras 29–30).

23 Appellant's CB Vol II at p 23 (Mr Lau's AEIC at para 40).

24 AC at para 48.

(d) Basler Asia Pte Ltd ("Basler") (mid-2015–late-2016), starting as the regional sales manager and promoted to regional sales director, drawing a monthly basic salary of $11,800 (excluding a $700 monthly transport allowance).[25] The appellant tendered his resignation on 21 September 2016 and left in end-October 2016 (Judgment at [12]).

21 The appellant thereafter applied for various positions, including the following, for which there were no replies:[26]

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

(b) territorial sales manager at Global Digital Software Vendor (on 17 January 2018) which offered a salary of up to $300,000 a year;

(c) director of partnerships and business development Asia at Jivox Corporation (on 17 January 2018);

(d) sales manager at Pangea Resourcing (on 7 March 2017); and

(e) APAC regional sales director at Comcast Technology Solutions (on 15 May 2017).

22 The appellant was also approached by a head-hunter with an opportunity for Microchip Technology over a message on LinkedIn on 22 January 2017. Due to the accident, the appellant was unable to contact the head-hunter until 19 February 2017, by which time he was told that the position was no longer

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25 Appellant's CB Vol II at p 23 (Mr Lau's AEIC at paras 40–41).

26 Appellant's CB Vol II at p 25 (Mr Lau's AEIC at para 44).

available.[27] The appellant thereafter corresponded with other head-hunters for other managerial/directorial positions, but was unsuccessful.

23 At the time of and after the accident, the appellant worked as a Grab driver earning about $2,100 a month. Oddly, the appellant did not produce his income tax returns to support his estimated monthly earning as a Grab driver (Judgment at [24]). Rather, the appellant submitted his income tax returns from 2011, 2013, 2014 and 2015 (*ie*, for incomes earned some *three years before the accident*) only. In support of his position that his income as a Grab driver is a "significant decrease from [his] pre-accident earnings of about $19,000/month", the appellant relied on his income tax returns:[28]

Notice of Assessment	**Year of Assessment (Earnings in Calendar Year)**	**Total Income**
18 July 2011	2011 (2010)	$275,602.00
2 May 2013	2013 (2012)	$230,152.00
31 October 2014	2014 (2013)	$258,698.00
21 April 2016	2015 (2014)	$151,256.00
Yearly average (four years)		$228,927.00
Monthly average		$19,077.25

24 As for the multiplier, the appellant asserted that in his "previous vocation as a regional sales director, the typical age of retirement is 72 years old" based on research findings on company directors published by the Stanford Graduate School of Business (the "Stanford Publication").[29] In that regard, "if

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27 Appellant's CB Vol II at pp 25–26 (Mr Lau's AEIC at paras 45–46).

28 Appellant's CB Vol II at p 36 (Mr Lau's AEIC at para 70); ROA Vol III at pp 66–69 (Notice of Assessments); AC at para 81.

29 Appellant's CB Vol II at p 36 (Mr Lau's AEIC at para 71).

not for the accident", the appellant "would have continued working" as he was "at the peak of [his] previous career as a regional sales director" and is confident he would work till "75 years old given [his] senior management position".[30]

25 The intervener did not dispute the appellant's employment history as reproduced above. However, the intervener disagreed that the appellant had voluntarily resigned from Basler by tendering his resignation on 21 September 2016 (with his last day in office being 31 October 2016). This is because, a few days prior to that on 19 September 2016, Basler had already issued the appellant a notice of severance (the "Notice").[31] The Notice, issued to the appellant by Basler's managing director, stated that the appellant's "last day of work with the company is 19 Sept 2016" and the appellant "will be paid severance benefits" in the sum of $17,719.50.

26 More pertinently, the intervener disputed the appellant's computation for damages at $19,000 per month for nine years amounting to $2,052,000 based on a retirement age of 75 years (Judgment at [107]). In that regard, the appellant had already left or lost his previous employment with Basler "for 4 months 26 days before the accident". Furthermore, in cross-examination, the appellant testified that he informed his superior at Basler that he wanted to retire and conceded that 62 was the retirement age in Singapore, subject to re-employment opportunities:[32]

> Q August. And you left in September, you have been 62 already.

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30 Appellant's CB Vol II at pp 36–37 (Mr Lau's AEIC at para 72).

31 Intervener's Supplemental CB at pp 31–32 (Notice of Severance dated 19 September 2016).

32 ROA Vol III Part D at p 144–145 (Transcript dated 1 February 2021 at pp 15–16).

A Yah.

Q Alright. Are you aware that the official retirement age in Singapore is 62 and you are entitled to ask for re-employment to 67?

A At that point, I didn't really look into age. I think age is just a number, it's how---

Q Mr Lau, my question is---

…

Court: The retirement Singapore as of now is 62. Do you accept that? And even then, right?

Witness: Yes.

…

Q And---but of course, we accept that you are entitled to request re-employment up to 67 or 8. Do you accept that statement?

A Right.

Q Thank you. And you will be 67 years of age today this year by August?

A Correct.

Q Thank you. And just another point in case I overlook. Your departure from Basler in September of 2016 was departure where you were given a severance of 1½ months, is that correct?

A No, I spoke to my boss, the MP of Singapore, and I told him I wanted to retire and then there were some problems over should I get a quarter for bonus. So at the end of all our discussion, it ended up to be a 1½ month.

27 Furthermore, the appellant did not disclose that he was working as a Grab driver at the time of the accident in his AEIC or that he had applied for a Taxi Driver's Vocational Licence ("TDVL") as early as *November 2014*. Weekly statements obtained from Grab showed that the appellant worked as a Grab driver from May to November 2019 after the accident, averaging at $2,100 per month (Judgment at [108]). On 28 September 2020, the appellant received

a letter from the Land Transport Authority ("LTA") informing him that his TDVL would be expiring on 18 November 2020. If the appellant wanted to renew his TDVL, he would have to first attend a five-hour refresher course conducted by the LTA. However, the appellant failed to do so (Judgment at [111]).

28 The intervener's position is that the appellant's loss of earnings was due to his act of giving up his TDVL. Nevertheless, in the alternative, if the court rules in favour of the appellant, then the multiplicand awarded should be based on $2,100 per month. For pre-trial loss of earnings, the appellant should be limited to claim only the days on which he was unable to work (*ie*, sought medical treatment based on his medical bills). This totalled 186 days. As such, the appellant's pre-trial loss of earnings would be $13,020 ($70 per day multiplied by 186 days) (Judgment at [113]–[114]).

The Judgment

29 The Judge accepted the intervener's submission for pre-trial loss of earnings at $13,020. As for LFE, the Judge declined to use 75 years as the retirement age for the present case. The Judge distinguished the present case from *Lua Bee Kiang*, on which the appellant sought to rely, in order to claim beyond Singapore's minimum retirement age of 62 years (Judgment at [115], [118]–[119]). The claimant in *Lua Bee Kiang* was a carpenter, an occupation which is not limited by one's age and could very well have worked until 70. While one could indeed request for re-employment for another five years at 62 (*ie*, until he is 67 years old), such option was not available to the appellant because he was not in gainful employment at age 62, having left Basler in October 2016.

30 As for the Stanford Publication, the Judge held that the "retirement age in the US has no relevance to Singapore" (Judgment at [121]). The Judge also remarked that, in the US, "the founders of technology/e-commerce behemoths like Microsoft and Amazon have stepped down from their positions well before they even reach 60".

31 Rather, an award for LFE compensates a victim for a real and assessable drop in income (*ie*, for the difference between the post-accident and pre-accident income) (*Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587 at [20]).[33] The claimant bears the burden of proving the damage claimed and a claim for LFE must be "real assessable loss proved by evidence" (at [19]). In contrast, loss of earning capacity ("LEC") compensates for the risk or disadvantage, which the claimant 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]). The Court of Appeal confirmed that LFE and LEC are "separate and distinct" (at [20]).

32 The Judge assumed *arguendo* that the appellant did suffer LFE for five years until the mandatory retirement age of 67 and awarded him $50,000. This is based on a multiplicand of $10,000 per year (which is a discount on the intervener's figure of $13,020 due to accelerated receipt) multiplied by five years (Judgment at [128]).

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[33] Intervener's Supplemental BOA Tab B at p 89.

The parties' cases on appeal

33 The appellant appeals against the Judge's "erroneous calculation of LFE" as they are "against the weight of the evidence".[34] First, the multiplicand used of $10,000 is based on the intervener's "calculation of **pre-trial loss of income over a period of four years**, more specifically over 186 days" [emphasis in original]. As a matter of computation, if the Judge accepted the appellant's private hire driving income as the basis for the multiplicand, then the figure of $25,200 (before factoring accelerated receipt) should be used instead (*ie*, $2,100/month multiplied by 12 months). Secondly, such an award essentially allows for some double recovery to the appellant. Using a multiplier of five years (from 62 to 67 years of age) would overlap with the pre-trial loss of earnings of $13,020 (when the appellant was 62 at the time of the accident to 66 at the time of the trial).

34 The appellant contends, contrary to the Judge's findings of fact, that:[35]

(a) the appellant "had **no intention to retire or settle for private hire driving after leaving Basler**" and "needed to continue working in senior management positions to adequately provide for his family financially";

(b) the appellant's age "**would not put him at a disadvantage** in competing for senior management positions given his wealth of experience and expertise";

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[34] AC at p 32 and para 60.

[35] AC at paras 61–62.

(c) the appellant was "**incapable of testing himself by accepting a senior management position**, due to his **reduced physical and mental abilities**" which had "**greatly compromised his performance in interviews**"; and

(d) the appellant's decision "to not renew his private hire license upon its expiry in November 2020 was **in accordance with medical advice** on his injuries and disabilities consequent to the accident" [emphasis in original].

35 The appellant also submits that the Judge erred in awarding $13,020 for the appellant's pre-trial loss of earning. The appellant maintains that he "had **not intended to settle for private hire driving** and the multiplicand used should not be his monthly salary for the same" and that the appropriate multiplier should be "based on his number of days of medical leave" of 50 months and "**not for 186 days**" [emphasis in original].[36] In that regard, using a multiplicand of $19,000/month, the appellant submits that his true pre-trial loss of earnings amount to $861,800 as follows:[37]

Period	**Quantum**
14 February 2017 to September 2020 (42 months)	($19,000 - $2,100) x 42 = $709,800
October 2020 to 7 April 2021 (8 months)	$19,000 x 8 = $152,000
Total	$861,800

36 AC at para 93.

37 AC at para 96.

36 The intervener's position is that the Judge's award of $50,000 for LFE (assessed in *arguendo*) is "most reasonable and should not be disturbed".[38] In this regard, the appellant "failed to make out a case for LEC and/or LFE based on the evidence".[39] The intervener does not dispute the appellant's employment history, save for the circumstances in which the appellant had left Basler. In that regard, the intervener maintains that the appellant did not leave Basler "on his own volition as he was unable to fit well with the management style".[40]

37 The intervener submits that the appellant had to "adduce sufficient evidence to show on a balance of probabilities that" the requirements for LEC or LFE (see [31] above) are met; however the appellant has failed to do so for several reasons:

(a) the appellant did not lose his job at Basler as a result of the accident;[41]

(b) the appellant was working as a driver for Grab at the time of the accident and had in fact held a TDVL since November 2014;[42]

(c) the appellant is able to continue working as a driver for Grab after the accident (and in fact did so in the period of May to November 2019) and is otherwise not at risk of losing his job as such due to the accident despite a doctor's memo dated 8 October 2020 that the

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38 IC at para 70.

39 IC at paras 53 and 58.

40 IC at p 21.

41 IC at para 59.

42 IC at para 60–62.

appellant "has not been driving and is unable to drive in the near future for medical reasons" (the "October Doctor's Memo");[43] and

(d) in any case, the appellant did not tender any evidence of being unable to find employment at a senior management level *as a result* of his residual disabilities.[44]

38 Likewise, the intervener's position in respect of the pre-trial loss of earnings is that the quantum of $13,020 (which is based on the appellant's income as a driver for Grab for 186 days) is "the only reasonable and logical conclusion" for the following reasons:[45]

(a) the appellant conceded at the trial that he worked as a Grab driver since November 2016 save for days on which he sought medical treatment (as reproduced below);[46] and

(b) the appellant was in fact driving in the period from May to November 2019 during the period of his medical leave (17 February 2017 to 15 June 2020).[47]

39 For completeness, we reproduce the relevant extract of the cross-examination at the trial:[48]

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43 IC at paras 63–66; Appellant's CB Vol II at p 245 (Dr Chan's Memo dated 8 October 2020).

44 IC at paras 67–69.

45 IC at paras 75–79.

46 IC at para 80.

47 IC at paras 81–84.

48 Intervener's Supplemental CB at p 4 (Transcript dated 1 February 2021 at p 30, lines 16–21).

> Q … Between November 2016, after you left Basler and until you---your licence expired last November [2020], am I correct to suggest that you have been driving Grab as an occupation or employment on days other than days when you could not drive? Say, for instance, you're hospitalised or you were at medical treatment. Is that correct?
>
> A Correct.

40 In response, the appellant emphasises that whether the appellant had lost his job as a regional sales manager *because of the accident* is immaterial. Rather, it is material that the appellant only intended to work as a Grab driver *temporarily*, whilst searching for another job involving some managerial position. As such, the appellant's work at the time of the accident does not demonstrate the appellant's intention to work as a Grab driver full-time "for the rest of his life".[49]

41 The appellant also contends that the intervener's reliance on the October Doctor's Memo (see [37(c)] above) is misplaced and the intervener failed to appreciate that, although the appellant may have been working consistently in the period from May to November 2019, the appellant's latest medical condition is that he is unable to work and stopped work as a private hire driver. Thus, the appellant could not earn an income from private hire driving since October 2020.[50]

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[49] Appellant's Reply at para 28.

[50] Appellant's Reply at para 31.

Our analysis on loss of earnings

The quantum of damages for LFE

42 Having considered the submissions and the evidence, we agree with the learned Judge that the evidence did not support a multiplicand of $19,000 per month. The appellant's contention that he would have worked in a senior management position in a company until he was 75 is without any valid basis.

43 The October Doctor's Memo states the appellant's date of birth as 16 August 1954. The Judge correctly assessed the evidence as regards his employment history, which we have reproduced above at [20]. The appellant was about 60 years old when he took the severance package from Freescale in 2014. He proceeded to look around for another job in the industry for six months before securing a job at Basler. The appellant's position was that he tendered his resignation on 21 September 2016 because he was unable to fit in well with the management style and left at the end of October 2016. However, the evidence shows Basler issued the appellant the Notice on 19 September 2016 which stated that his last day of work was 19 September 2016 and that he would be paid severance benefits which came up to $17,719.50. We highlight that the appellant would have been 62 when he left Basler.

44 As set out at [21]–[22] above, the appellant had contacts with various head-hunters and recruiters but there were no concrete job offers forthcoming up to the time of the accident. The appellant attempts to link the accident to his failure to secure a job offer by two reasons: first, one of those positions was no longer available by the time he had replied; and secondly, that he struggled to recall details and hesitated during a conversation with one head hunter on

9 April 2017 (*ie*, about two months after the accident), which prejudiced his chances with that head hunter.[51]

45 On the evidence that emerged at trial, it transpired that the appellant had applied and obtained a TDVL in November 2014 which was not mentioned in the appellant's AEIC (as mentioned at [27] above). That seems to have coincided with the time he left Freescale. It also transpired that he was working as a Grab driver at the time of the accident. The objective evidence showed that the appellant driving as a Grab driver from May to November 2019 averaging $2,100 per month (*ie*, well over two years after the accident and prior to the assessment of damages).

46 We note that the Judge carefully considered the evidence relating to the appellant's work history, what occurred after the accident and the medical evidence and came to her findings of fact. The undeniable objective fact was that at the age of 62, his employment with Basler ceased. Without being unduly unkind to the appellant, his claims of being at the height of his career are not at all convincing given the evidence of the Notice (as mentioned at [25] above) and it is the appellant's own evidence that he left because he could not fit in with their management style. The appellant could not find another job up to the time of the accident; and that was not for want of trying.

47 We therefore see no reason to intervene on the learned Judge's finding of fact on this score. Indeed, we agree with the learned Judge that there was no realistic prospect of the appellant being employed in a similar senior management position after he left Basler.

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[51] Appellant's Written Submissions at para 30.

48 We emphasise that the appellant's case for his LFE claim *on the basis of his intention to work in a senior management position* is unconvincing and untenable at law. As we mentioned at the hearing before us, such *intention* to work does not necessarily mean that damages must be awarded *based on a claimant's intention*. Counsel for the appellant was unable to point us to any local authority in support of his point. On the contrary, as we set out at [14] above, it is trite that compensation should, as far as money can accomplish, restore a claimant to the position that he would have been in had the injury not been sustained. In the circumstances and given the appellant's employment history at the material time of the accident, we are satisfied that allowing the appeal on LFE *based solely on the appellant's intention* without more would put him in ***a better position than he would otherwise been in***.

49 We accordingly dismiss the appellant's claim for LFE at $2,052,000 based on a multiplier of nine years at $19,000 per month with little hesitation. The learned Judge's award of LFE at $50,000 based on earning a discounted figure of $10,000 a year for five years was a reasonable conclusion based on the evidence and in our view, must stand.

50 For completeness, we briefly address the appellant's point that the award based on a multiplier of five years from 62 to 67 years of age essentially *overlaps* with the appellant's pre-trial loss of earnings (see [33] above). Nevertheless, the intervener agrees with the Judge's order for LFE for a sum of $50,000 and we are of the view that there is no need to disturb the Judge's order on LFE. We recognise that this would *in effect* grant LFE from the period of about 2021 (*ie*, the time of the trial) to 2026, when the appellant would be about 72 years old. We find no basis to disturb such award in principle as the applicable multiplier was based on the appellant's earnings as a *Grab driver* –

for which he may have continued beyond the retirement age of 67 years if his health allowed it.

51 We qualify that our remarks should in no way be interpreted to mean that a claim for LFE should ordinarily go *beyond* the prevailing retirement age in Singapore to 72 or otherwise endorsing the Stanford Publication mentioned at [24] above. It is axiomatic that each case must be assessed on its own particular facts. As in the case of *Lua Bee Kiang*, an occupation is not necessarily limited by one's age, depending on the *precise nature* of the job for that occupation (see [29] above).

The quantum of damages for pre-trial loss of earnings

52 The appellant faces the same difficulty with the multiplicand for his pre-trial loss of earnings. As we set out at [35], the appellant likewise takes the position that the applicable multiplicand is $19,000 a month in respect of his pre-trial loss of earnings. For the same reasons which we elaborate at [42]–[48] above, we reject the appellant's position in this regard.

53 It will be noted that the appellant (as we elaborated at [35] above), accepts that for a period of 42 months (from the date of the accident to, presumably, end September 2020), the sum of $2,100 representing his average earnings as a Grab driver should be deducted from the multiplicand of $19,000. The evidence before the court in respect of the appellant's earnings was that for the period 29 May 2019 to 27 November 2019, the appellant was driving for Grab and the parties accept averaged earnings of $2,100 per month. We also note that the significance of the latter date (*ie*, September 2020) is that on 8 October 2020, he was certified medically unfit to drive pursuant to the October Doctor's Memo and therefore could not work as a Grab driver thereafter.

54 The learned Judge awarded the appellant pre-trial loss of earnings based on his earnings as a Grab driver, at $13,020 or $70 per day and limited to the 186 days when he was not driving but seeking medical treatment. The appellant accepted in cross-examination that he was driving as a Grab driver during that period except for those periods he sought medical treatment (as we reproduced at [39] above) and that same approach was echoed somewhat in his submissions before us but, perhaps with more time for reflection, refined to take into account the period from 8 October 2020 onwards after he was medically certified as unfit to drive. With respect, we do not agree that this award for pre-trial loss of earnings was entirely correct on the facts and evidence before the court.

55 For a start, it is undisputed that the appellant was on medical leave from 17 February 2017 to 15 June 2020 (as mentioned at [38]). At the hearing before us, counsel for the intervener admitted that it was likewise highly unlikely that the appellant could have possibly driven immediately after the accident (*ie*, from the period of 14 to 16 February 2017). We are satisfied that the appellant's medical certificates constitute objective evidence which must be accorded some weight. This is consistent with appellant's contention that on some days, he did not feel so well and could not drive a full day or even not at all. As against that, we have evidence that the appellant was driving substantial hours per day *from 29 May 2019 to 27 November 2019* and his admission in court as to his driving everyday save for the 186 days' during which he was seeking medical treatment. From this, the parties accept and we agree with the Judge, that there is sufficient evidence to show that the appellant's earnings as a Grab driver is about $2,100 per month or $70 per day. However, we allow the appeal as against the *multiplier* as the Judge's finding below *on the applicable multiplier* is against the weight of the evidence.

56 In our view, the starting point is that the pre-trial loss encompasses the periods for which the appellant was on medical leave between 14 February 2017 to 1 February 2021, which total 1,401 days. We note briefly that, although the appellant was readmitted to TTSH only on 17 February 2017, the intervener does not seriously dispute that from 14 to 16 February 2017 (*ie*, immediately following the traffic accident), the appellant would be unable to work as a driver for Grab. As such, in our judgment, it would be more accurate to take those dates into account when determining the appropriate multiplier. On the evidence before us, the appellant was able to and did drive for a period of about 183 days (from 29 May 2019 to 27 November 2019). If we take this into account in calculating the appropriate multiplier, the result is 1,218 days. We pause to note some discrepancy in the evidence below. In the appellant's AEIC, he states that he has been "driving Grab for five days a week." However the parties accepted below that the earnings of the appellant as a Grab driver is $70 per day based on $2,100 per month, which means thirty working days per month. These figures of $70 per day and $2,100 per month are not in contention before us. We will therefore not disturb these figures because this is not contradicted by the evidence from Grab for the period referred to above and it would make little difference to the final figure because any decrease in the number of working days per month would result, in view of the parties' acceptance of the earnings of $2,100 per month, an increase in the multiplicand.

57 We further highlight that, despite the appellant's evidence, we are not satisfied that the intervener has shown that on a balance of probabilities that the appellant had worked on *every single day* ***whilst he was on medical leave*** *except for the days on which he had sought treatment* (*ie*, 186 days) on the evidence before the court. For example, it is undisputed that the appellant was certified medically unfit to drive since 8 October 2020 and his TDVL expired shortly

thereafter, on 18 November 2020. If the intervener's contention was that the appellant had worked beyond the period from 29 May 2019 to 27 November 2019 but simply failed to disclose *all* of Grab's weekly statements in his possession, then it was for the intervener to have sought specific discovery for the same and if that was not forthcoming from the appellant, it could subpoena Grab for its records. Counsel for the intervener candidly admitted that neither was done in the proceedings below.

58 At the hearing before us, counsel for the intervener also admitted that of the four days on which the intervener had conducted a discreet surveillance on the appellant (*ie*, 29 July 2019, 31 July 2019, 13 August 2019, 20 August 2019), the appellant was seen to be driving *only on the first two days of surveillance* ***but not the latter two***.[52] In our judgment, such evidence of the appellant working on certain days (but not all) only buttresses our analysis for our finding. We also take into the account the fact that the appellant was certified medically unfit to drive on 8 October 2020 and his medical certificates ended on 6 April 2021. Accordingly, we award pre-trial loss of earnings of $85,260 based on a multiplier of 1,218 days and a multiplicand of $70 per day.

Conclusion on loss of earnings

59 From the foregoing, we dismiss the appeal against the LFE but allow the appeal against pre-trial loss of earnings in part. The appellant is thus entitled to $50,000 for LFE as the Judge decided below and $85,260 for the pre-trial loss of earnings.

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[52] Intervener's Supplemental CB at pp 17–29 (Report of Nemesis Investigations Private Limited).

Pain and suffering for psychiatric conditions

The parties' arguments below and the Judge's finding

60 As we noted at [10] above, the appellant claimed damages of $65,000 for psychiatric conditions. The appellant submitted that he suffers from: (i) MDD, (ii) TRD and (iii) CP. The intervener argued that "notwithstanding the [appellant's] litany of complaints such as headaches, fatigue and depression, he is fully independent in his activities of daily living and he manages his pain through medication", which was evident from the fact that he was able to work as a Grab driver (Judgment at [65]).

61 The intervener also referred to Charlene Chee *et al*, *Guidelines for the Assessment of General Damages in Personal Injury Cases* (Academy Publishing, 2010) (the "Guidelines") for the quantum of awards in cases of general psychiatric disorders for claims for depressions, avoidant phobias, anxiety attacks etc (Judgment at [80]). The Judge agreed with the intervener that the appellant's "depression is only moderately severe" but rejected the appellant's figure of $65,000 and the intervener's figure of $15,000 (Judgment at [81]). We note that the typical range for quantum awarded for "moderately severe" general psychiatric disorders is $8,000–$25,000 whereas the typical range for "severe" general psychiatric disorders is $25,000–$55,000 under the Guidelines (Judgment at [80]). Although the Judge made no reference to the appellant's claim for CP, the Judge held that "a more appropriate figure would be $45,000" – which is well beyond the upper limit for a "moderately severe" general psychiatric disorder.

62 Regarding TRD in particular, the Judge found that "it is unlikely that the [appellant] suffers from TRD" as only one doctor, Dr Chan Lai Gwen ("Dr

Chan"), has confirmed the same (Judgment at [67]) and Dr Chan based her assessment of the appellant's intolerance to two drugs based on what the appellant had told her. In that sense, the Judge found that no "clinical trials/tests were conducted to determine if the [appellant] has TRD" (Judgment at [68]). The Judge instead preferred the opinion of another doctor, Dr Lim Yun Chun ("Dr Lim"), who was of the opinion that it was premature to conclude whether the plaintiff has TRD (Judgment at [66] and [69]).

The parties' cases on appeal

63 Parties disagree whether the appellant suffers from TRD. The appellant submits that the Judge "erred in preferring Dr Lim's opinion because it is against the weight of the evidence" and instead, "Dr Chan's testimony that [the appellant] suffers from TRD should have been preferred" for several reasons:[53]

(a) Dr Chan is the appellant's primary healthcare coordinator and psychiatrist with the relevant sub-speciality in traumatic brain injuries for more than four years;[54]

(b) Dr Chan used a comprehensive arsenal of diagnostics to ascertain that the appellant has TRD such as various clinical trials and did not rely *solely* on what the appellant had told her;[55] and

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53 AC at para 12.

54 AC at paras 13–14.

55 AC at paras 15–22.

(c) in comparison, Dr Lim only examined the appellant for a limited period of time and could only make general observations of the appellant's psychiatric conditions.[56]

64 The intervener submits that the Judge's finding that the appellant did not suffer from TRD is "well ground in Dr Lim's evidence and ought not be disturbed".[57] The intervener relies on *Armstrong, Carol Ann (executrix of the estate of Peter Traynor, deceased and on behalf of the dependents of Peter Traynor, deceased) v Quest Laboratories Pte Ltd and another and other appeals* [2020] 1 SLR 133.[58] In that case, the Court of Appeal rejected the argument that a judge must "*inexorably* make a finding that accepts the *entirety* of an expert's opinion" (at [89]). Rather, the court's determination as to whether it should accept parts of an expert's evidence (and if so, which parts) is guided by considerations of consistency, logic and coherence which requires a scrutiny of the expert's methodology and the *objective facts* he had based his opinion upon (at [90]–[92]).[59] The appellant accepts this to be the applicable test but contends that Dr Chan's evidence is "supportable in logic and evidence" and "guided by considerations of consistency, logic, and coherence".[60]

65 Upon a closer scrutiny of Dr Chan's evidence, the intervener submits that she "did not provide any further explanation as to why she had come to such an absolute conclusion" (*ie*, that the appellant had TRD). In contrast, Dr Lim explained that while the failure of two courses of prescribed treatments

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56 AC at para 23.

57 IC at para 16.

58 Intervener's Supplemental BOA Tab A at pp 33–36.

59 IC at para 17.

60 Appellant's Reply at para 16.

can lead to a diagnosis of TRD, a definitive conclusion of TRD cannot be drawn since the courses were terminated prematurely due to side effects. Rather, the dosage and duration must be for a sufficient duration and calibrated before such conclusion could be drawn.[61]

66 In response, the appellant submits that Dr Chan had cogently documented and explained her diagnosis of TRD over time via a series of medical reports as the appellant's treating doctor for four years. In that regard, Dr Chan's diagnosis is carefully guided by her clinical experience with the appellant over time.[62] The appellant also submits that the intervener misunderstood Dr Lim's evidence on Dr Chan's diagnosis of TRD.[63]

Our analysis on the appellant's pain and suffering

Whether the appellant suffered from TRD

67 The areas of disagreement on Dr Chan's diagnosis lie on two fronts: (a) whether a *scrutiny of Dr Chan's methodology in diagnosing the appellant's psychiatric condition* reveals that her methodology is medically unsound; and (b) whether Dr Lim is of the view that the appellant does not have TRD and, if so, whether Dr Lim's evidence is preferrable.

68 We deal with the first point of contention briefly. From the outset, it bears mentioning that the court is not concerned with assessing the doctors' respective preferred methods of assessing the appellant's TRD. Judges are not medical experts and it would be wholly unhelpful for us to *scrutinise the precise*

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61 IC at paras 18–20.

62 Appellant's Reply at paras 5–8.

63 Appellant's Reply at paras 9–14.

methods used *to assess the appellant's psychiatric condition* as the parties contend unless there is clear evidence to the contrary, which is not the case before us. Rather, the true – and sole – issue to be determined in this regard was whether the Judge erred in *preferring* Dr Lim's evidence to Dr Chan's. In our judgment, the evidence of the parties' respective experts are not as contradictory as the intervener submits.

69 At the trial, Dr Lim frankly admitted that his opinion was limited to a short interview on one occasion:[64]

> Q Okay, I just want to understand this: When you said you have conducted a mental state evaluation, is that an interview that you have conducted with the Mr William Lau?
>
> A That's correct.
>
> Q Okay, and of course, you would invite him to sit down, and then you would write down what the patient tells you, is that correct?
>
> A That's correct.
>
> Q And you would be asking him about his general background, his age, and what he's doing, then after that, you go to---the next step is his physical health, and so on and so forth, is that correct?
>
> A That's correct.
>
> Q How long did the whole process take, Dr Lim?
>
> A Usually, I earmark about 1 hour to 1½ hour for the interview. …

[64] Appellant's CB Vol II at p 220 (Transcript dated 5 February 2021 at p 339, lines 20–32).

It is unsurprising, therefore, that Dr Lim said he would "defer" to Dr Chan's opinion on her diagnosis of requiring lifelong treatment:[65]

> Q Nobody wants to be lifelong dependent on drugs.
>
> A That's right.
>
> Q … Now, doctor, but going back to the paragraph that you have stated, page 85, you did say that, based on these guidelines, if it's a case of 2 years, whereby we are talking about maintenance treatment of antidepressant, and it is a case whereby it is still non-responsive, based on this guideline, purely on what you have written and what Dr Chan is of the opinion that it's lifelong, would you then defer to her?
>
> A I think she would do a---make a critical judgment at the right time.
>
> Q So you would defer to her?
>
> A Yah, if---yah, that's right, yah.

70 The only doubt which Dr Lim casted on Dr Chan's diagnosis, on which the intervener seeks to rely, is as follows:[66]

> A I think, conventionally, TRD is only fulfilled if the patient is given a chance to complete the medication regime that is first recommended. …
>
> …
>
> A … In other words, you know, she tried, and the patient was never given - what we would say - adequate medication. The trouble with antidepressant, that you must give the patient the dosage that is seen to be therapeutic and for a duration that is accepted that this will be the therapeutic period before you can say it's not working. *So that was not Dr Chan's experience* ***as far as I read her notes****, that* ***this patient couldn't tolerate, and then he let go****. Not by Dr Chan's desire, but* ***the patient don't want to take****.* So I think that's where the---the

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65 Appellant's CB Vol II at p 225 (Transcript dated 5 February 2021 at p 356, lines 12–23).

66 Appellant's CB Vol II at pp 221–222 (Transcript dated 5 February 2021 at p 347, line 21 to p 348, line 5).

> definition of treatment-resistant depression could be disputed on that grounds.
>
> [emphasis added in italics and bold italics]

From the foregoing, it is clear that Dr Lim was careful to *qualify* his opinion for disagreeing with Dr Chan's diagnosis of TRD. In that regard, Dr Lim *qualified* his evidence by stating that it was based on what he could tell from a reading of Dr Chan's notes only. Given Dr Lim's admission that he had only one short interview with the appellant, Dr Lim would not be in the position to reliably postulate that the basis upon which Dr Chan made her diagnosis was because the appellant did not want to take the previously prescribed antidepressants without first attempting to complete trials for various antidepressants (of the appropriate dosage and duration).

71 For the foregoing reasons, we respectfully disagree with the learned Judge that Dr Lim's opinion is to be preferred over Dr Chan's. We thus find, on the weight of the evidence, that the appellant does suffer from TRD. We also mention that the Judge had likewise recognised the appellant's condition at least in principle. In that regard, the Judge ultimately awarded the appellant with two years' worth of rTMS partly "in deference to the views of [his] doctors" (Judgment at [89]). We now turn to address the quantum of damages to be awarded, in the light of the appellant's TRD.

The quantum of damages for the appellant's psychiatric conditions

72 Although we find that the appellant does suffer from TRD, we disagree that such TRD (and CP) should be used to increase the awarded amount for psychiatric conditions from $45,000 to $65,000 as the appellant contends.[67] We

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67 Appellant's Reply at para 17.

highlight that $65,000 would be substantially higher than the upper end of the range for damages in respect of "severe" general psychiatric disorders under the Guidelines[68] (*ie*, $25,000–$55,000). One relevant description for "severe" cases is that "[d]espite 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". In contrast, the typical range for "moderately severe" is $8,000–$25,000 where the "prognosis will be much more optimistic" than in the "severe" cases and the person is "able to perform the activities of daily life independently".

73 In our judgment, the learned Judge was correct to find that the appellant's general psychiatric disorder can be described as only "moderately severe". Even if the appellant has TRD, it is undisputed that he is able to conduct the activities of daily life independently. Although the Judge may not have *expressly* mentioned CP, we are satisfied that such CP is adequately accounted for in the awarded sum of $45,000. We agree with the intervener's submission that the sum awarded of $45,000, which would be in between the typical range for "severe" cases and an uplift from the typical range for "moderate" cases appropriately recognises the level of the appellant's pain and suffering.

74 Accordingly, the Judge cannot be said to have made a "wholly erroneous estimate of the damages" (*Tan Boon Heng* at [7]). In our view, $45,000 sufficiently compensates for the appellant's MDD, TRD and CP and we dismiss the appellant's appeal on this issue.

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68 Intervener's Supplemental BOA Tab F at pp 166–167.

FME and future transport expenses

The parties' arguments below and the Judge's finding

75 Given that the Judge had found the appellant did not suffer from TRD, the Judge thus remarked that "the rTMS procedure would appear to be unnecessary". However, the intervener accepted two courses of rTMS a year (*ie*, for a sum of $4,560) instead of three courses a year as claimed by the appellant (Judgment at [87]). As such, the Judge awarded the appellant "two years' worth of rTMS" for a sum of $13,680 (*ie*, $6,840 for three courses per year multiplied by two years) (Judgment at [89]).

76 As regards the appellant's claim for lifelong medication, the Judge found that the appellant would be "doing himself a great disservice – if he continues with his cocktail of drugs for the rest of his natural life". In that regard, the appellant should be "detoxified from opiate-based drugs and if his pain cannot be controlled or eased with conventional drugs, then alternatives such as TCM should be explored" (Judgment at [90]). The Judge expressed that the appellant should not be deprived of medication "in the short term but is loath to award him lifelong medication that would probably do him more harm than good" (Judgment at [91]). The Judge thus reduced the period for which the appellant is awarded medication from 12 years to five years only (Judgment at [92]).

The parties' cases on appeal

77 The appellant appeals against the Judge's decision against only the multiplier (and not the multiplicand) for pharmacotherapy, consultations with TTSH psychiatry ($144.00 per year) and rTMS ($6,840.00 per year).[69] The

[69] Appellant's Written Submissions at para 19.

plaintiff's pharmacotherapy includes trazodone, clomipramine, zopiclone, bromazepam, Concerta, tramadol and pregabalin for a total of $2,405.20 per year (Judgment at [94]).

78 The appellant submits that the Judge erred in preferring Dr Lim's unsubstantiated approach of detoxifying the appellant from painkillers and thereafter explore alternative treatments. The appellant contends that Dr Lim's concern was based on general observations and not borne out in the face of other medical experts' evidence. Furthermore, painkillers are appropriately and necessarily prescribed to the appellant and, in any case, he has already attempted alternative treatment methods which proved to be ineffective.[70]

79 The intervener's position is that the damages awarded for FME on a five-year basis (and associated future transport expenses) is eminently reasonable and ought not to be disturbed.[71] In that regard, the intervener highlights that the applicable legal test for determining whether a medical expense should be allowed is one of reasonableness (*Poh Huat Heng Corp Pte Ltd and others v Hafizul Islam Kofil Uddin* [2012] 3 SLR 1003 at [63]);[72] and we would add that "reasonableness" is, in turn, dependent on a range of circumstances including whether or not the particular treatment in question is necessary and whether or not it was taken pursuant to a doctor's advice. The intervener submits that:[73]

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70 AC at paras 30–36.

71 IC at para 50.

72 IC at para 39; Intervener's Supplemental BOA Tab E at p 156.

73 IC at paras 40–47.

(a) Dr Chan's recommendation for psychiatric treatment (*eg*, particularly for trazodone and Concerta) was not based on a lifetime basis but instead between two to five years;[74]

(b) the appellant's FME in relation to pain is contingent on the outcome of his psychiatric treatment (in particular, rTMS); and

(c) there is a risk of overcompensation if FME is allowed on a lifetime basis.

80 In response, the appellant argues that Dr Chan did not opine that rTMS for two years would be sufficient. Rather, according to her letter dated 9 January 2020, treatment is "usually lifelong".[75] Furthermore, rTMS is not only for recovery but also for "maintenance of recovery".[76] The appellant further accepts, in the alternative, that there may be a "significant reduction" in the appellant's need for pharmacotherapy if rTMS proves effective.[77]

Our analysis on the appellant's FME and future transport expenses

The need for rTMS and pharmacotherapy

81 From the outset, we agree with the parties' common position that the appellant's need for pharmacotherapy may be *significantly reduced* if rTMS proves effective. While we understand the Judge's concern that "lifelong medication" may do the appellant "more harm than good", we respectfully

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74 Intervener's Supplemental CB at pp 10–11 (Transcript dated 3 February 2021 at pp 283–284); Appellant's CB Vol II at p 43 (Dr Chan's Letter dated 1 November 2019).

75 Appellant's CB Vol II at p 44 (Dr Chan's Letter dated 9 January 2020).

76 Appellant's CB Vol II at p 43 (Dr Chan's Letter dated 1 November 2019).

77 Appellant's Written Submissions at para 19.

disagree that it was for the Judge to make such a finding on the long-term effect of the appellant's prescribed medications in the circumstances – this being *a medical question for the appellant's doctors to determine*. Rather, the overarching guiding principle for the award of damages in the present case is to restore the appellant into the position that he would have been in, as far as possible, if not for the accident.

82 Having considered the parties' submissions, we respectfully disagree with the Judge in respect of the applicable multiplier for rTMS. Given our preference for Dr Chan's evidence that the appellant does indeed suffer from TRD, we see no reason to reject Dr Chan's evidence that the rTMS treatment would be lifelong. We agree that the appropriate multiplier for rTMS treatment should be 12 years as submitted by the appellant, which is based on the male life expectancy of 84.3 years according to the Ministry of Health's data on Population and Vital Statistics 2018 (Judgment at [83]) and taking a discount of about 1/3.[78]

83 Having considered the appellant's alternative position, we are satisfied that there is no need to disturb the Judge's multiplier of five years for pharmacotherapy. To be clear, we disagree with the Judge's holding that the appellant is not entitled to *lifelong* pharmacotherapy as "that would probably do him more harm than good" (as mentioned at [76] above) and our judgment should not be read as such. It bears emphasising that the appropriateness of pharmacotherapy for a claimant is ultimately a *medical decision* for which judges lack the medical expertise to decide. Rather, we accept the Judge's multiplier of five years for a wholly different reason – that such

[78] AC at para 45.

pharmacotherapy would likely not be lifelong in view of the lifelong rTMS treatment. As parties agree that pharmacotherapy is meant to be a short-term solution, there is no need to further increase the multiplier from five years to six years. The appellant's appeal to increase the quantum of damages for pharmacotherapy is accordingly dismissed. The Judge's award totalling $12,026 (*ie*, $2,405.20 per year as mentioned at [77], multiplied by five years) for the appellant's pharmacotherapy stands.

Other consequential adjustments

84 Consequently, consultations with TTSH Psychiatry would likely need to continue for that duration of rTMS treatment and the same multiplier should be adopted as well.

85 In respect of psychiatric hospitalisation, the Judge is correct to have omitted it from the award. This is because the appellant has not proved the *reasonableness* of such expenditure on a *yearly* basis, especially if the appellant and the appellant's doctor, Dr Chan, are hopeful that rTMS would be effective.

86 Finally, as the appellant would require lifelong treatment and consultation, we consequently award future transport expenses on a lifetime basis (instead of a five-year basis).

Conclusion on FME and future transport expenses

87 In summary, we:

(a) dismiss the appeal against the quantum of damages awarded for pharmacotherapy (totalling $12,026, being $2,405.20 per year for five years);

(b) allow the appeal to increase the multiplier for rTMS (totalling $82,080.00), consultations with TTSH Psychiatry (totalling $1,728.00) and future transport expenses to 12 years (totalling $2,500); and

(c) dismiss the appeal against the dismissal of the claim for psychiatric hospitalisation.

Damage to car

88 The appellant made a claim for the loss of his car at $37,959. The learned Judge dismissed the claim on the ground that the intervener is only liable to the appellant for claims for bodily injury. With respect, this is not correct. The appellant, as plaintiff, sued the respondent, as the tortfeasor, for damage caused to his car. There can be no doubt that the respondent is fully liable for the accident, interlocutory judgment has been entered on that basis and it follows that the respondent must be liable to the appellant for damage caused to his car as a result of the accident. Judgment is entered against *the respondent/defendant*, not the intervener, even for those items of loss and damage caused by the personal injuries suffered by the appellant. The appellant did not sue the intervener.

89 The intervener becomes liable to pay the appellant only because s 4 read with ss 7 and 9 of the MVTPR Act provides that if the respondent fails to pay the appellant the loss and damage for personal injury as a result of the road accident, then notwithstanding the fact that the intervener is entitled to repudiate liability to indemnify the respondent, its insured, under the motor vehicle policy, the intervener has to satisfy the judgment provided certain conditions under s 9 of the MVTPR Act are met (this is not in issue here). The MVTPR Act then enables the insurer to seek an indemnity from the respondent.

90 In this case, there was evidence that the appellant 's car was a constructive total loss. GTG Appraiser Services LLP ("GTG") noted, in its Inspection Report dated 9 October 2017, that the appellant's car sustained bad damage to the rear and front portions of the car. There were photographs to evidence the damage. GTG's licensed appraiser stated that the market value of the car was $79,800 at the time of the accident and the repairer's estimate to repair the car was $150,000. The car was therefore a constructive total loss and its salvage value was $46,300. The appellant was subsequently informed that the salvage value was $42,941 as stated in a sale and purchase agreement for the wreck and after deducting a service charge of $1,100, the appellant received $41,841. The appellant's loss was therefore $37,959 ($79,800, less $41,841). This evidence and figures were, for obvious reasons, not challenged below.

91 We therefore allow the appeal on this item and enter judgment for the appellant for $37,959 in respect of his loss of his car as a result of the respondent's negligence.

Loss of use of the car

92 The appellant's claim for loss of use for 7 months from 14 February 2017 to the date of inspection of his car on 11 September 2017 was also dismissed by the learned trial judge on the same ground, *viz*, that the intervener was "not liable" for the property damage. With respect, this is wrong for the same reason in respect of the damage to the car.

93 We have not been told why it took so long for the car to be inspected. There is no evidence as to who caused this delay. As it is the appellant who is making the claim, it is incumbent on him to prove why it took so long to justify a loss of use claim of 7 months. The appellant is entitled to a reasonable period

for loss of use of his car. If we take into account the immediate aftermath of the accident and the appellant's injuries, we take the view that the appellant should have pushed for resolution of inspection and appraisal and therefore decided whether he wished to go into the second-hand market to purchase an equivalent used car. We would therefore award the appellant loss of use for 60 days. This is the equivalent of about two months and we understand this consistent with the practice of the State Courts to have a maximum period of two months barring any exceptional facts that militate a longer period. The appellant's car was a Category B car (above 1,600 cc) being a Volvo S60 with a two-litre engine and two-wheel drive. The State Courts again peg the loss of use of Category B cars at between $100 to $120 per day.

94 In our view, it would be fair to enter judgment in favour of the appellant against the respondent for $6,600 being 60 days at $110 per day in respect of his claim for loss of use of his car as a result of the accident.

Costs and disbursements

95 The appellant appeals against the Judge's order of costs at $45,000 and disbursements of $8,500 based on the appellant's Schedule of Costs. The intervener, however, agrees that given the damages awarded and that the proceedings at the court below was limited to *only* the assessment of damages which took place over three and a half days, the Judge's award in costs and disbursements are fair.[79] In response, the appellant submits that a total of $158,000 in costs and $42,981.95 in disbursements would be "fairly commensurate with the work done considering the appeal and quantum

[79] IC at para 88.

submitted in this matter". In the alternative, the appellant asks for "costs and disbursements to be taxed, if not agreed".[80]

96 On face value, the appellant's Schedule of Costs shows a breakdown for the total of $158,000 in costs and $42,981.95 in disbursements (inclusive of costs and disbursements for the appeal). At the time of the assessment of damages, the previous Appendix G was applicable. It does counsel no credit when extravagant claims for costs are put forward which can bear no reference to the guidelines in Appendix G. There is *no* question of this being a very difficult case.

97 We have taken note of the issues upon which the appellant succeeded below and upon which he failed to prevail. The largest quantum related to his LFE and pre-trial loss of earnings. On both these items, he failed. Considerable time was spent on these issues. Considerable medical evidence was also called. Bearing all the facts of this case, the course of the assessment of damages below, and the modest success on appeal, we see no reason to disturb the Judge's exercise of discretion. If anything, it is not ungenerous from the point of view of the appellant.

Conclusion

98 For the foregoing reasons, we allow the appeal in part as set out above. In summary, we allow the following claims for particular items of damages as follows:

Damage	**Judgment**	**Appeal**	**Quantum**

[80] Appellant's Written Submissions at para 45.

Pain and Suffering – Brain Injury	$70,000.00	Not appealed	-
Pain and Suffering – Psychiatric Conditions (MDD, TRD, CP)	$45,000.00	Dismissed	$45,000.00
Pain and Suffering – Shoulder Injury	$5,000.00	Not appealed	-
Pain and Suffering – Neck Injury	$7,000.00	Not appealed	-
FME	$12,746.00 (Medical Treatment / Consultations)	Dismissed as against pharmacotherapy, allowed as against TTSH Psychiatry consultations	$13,754.00
	$13,680.00 (rTMS)	Allowed	$82,080.00
Future Transport Expenses	$1,000.00	Allowed	$2,500.00
LFE	$50,000.00	Dismissed	$50,000.00

Medical Expenses	$24,132.64	Not appealed	-
Transport Expenses	$1,000.00	Not appealed	-
Pre-Trial Loss of Earnings	$13,020.00	Allowed	$85,260.00
Total Loss of Car	Dismissed	Allowed	$37,959.00
Loss of Use of Car	Dismissed	Allowed	$6,600.00
Costs	$45,000.00	Dismissed	-
Disbursements	$8,500.00	Dismissed	-

99 As for the costs of the appeal before us, the appellant submitted a sum of $50,000 and disbursements of $7,786.83. Bearing in mind that the appellant has not succeeded on all his claims before us, especially his claims of LFE and damages for pain and suffering for his psychiatric condition, and bearing in mind the converse success of the intervener on those and other issues where the intervener prevailed, we order that each party bears its own costs.

100 However, the appellant is entitled to his costs against the respondent in respect of his property damage and loss of use claim. We accordingly award the

appellant $2,500 all in, payable by the respondent, for these two items of damage. There will be the usual consequential orders.

Quentin Loh
Judge of the Appellate Division

Chua Lee Ming
Judge of the High Court

Han Hean Juan and Lu Zhao Bo Yu (Hoh Law Corporation) for the appellant;
The respondent absent and unrepresented;
Yeo Kim Hai Patrick, Lim Hui Ying and Ooi Jingyu (Legal Solutions LLC) for the intervener.