IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 113

Suit 1775

Between

Low Swee Tong

… *Plaintiff*

And

Liew Machinery (Pte) Ltd

… *Defendant*

GROUNDS OF DECISION

Civil Procedure — Appeals; Damages — Measure of damages — Personal injuries cases; Damages — Measure of damages — Personal injuries cases

Version No 1: 11 Sep 2026 (01:05 hrs)

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Low Swee Tong v Liew Machinery (Pte) Ltd

[1993] SGHC 113

Suit 1775
MPH Rubin JC
22 May 1993

1 Cur Adv Vult

2 On 25 February 1985 the plaintiff issued a writ by his next friend claiming damages from the defendants, his former employers, Liew Machinery (Pte) Ltd for injuries suffered by him whilst at work on 7 March 1984. He was 20 years of age at the time of the accident and was then in the employment of the defendants as a vehicle mechanic.

3 The plaintiff alleged in his statement of claim that whilst he was repairing the braking system of a lorry which was held up in place by a jack, the jack slipped, causing the lorry to surge forward and injure him. He suffered injuries to his right knee joint and fracture of the pelvis with partial rupture of the urethra. Further, as a result of those injuries, the plaintiff suffered some residual disability, namely, impotence, urethral strictures and early osteoarthritis of his right knee joint.

4 The defendants accepted 90% liability and judgment was therefore entered against them by consent under which the plaintiff was ordered to receive 90% of the damages to be assessed. The learned assistant registrar after hearing

evidence, including the evidence of specialists, awarded the plaintiff damages as follows:

> *Agreed special damages $ 2,163*
>
> *General damages*
>
> *(A) Pain and suffering*
>
> (1) Haemathrosis of knee $10,000
>
> (2) Osteoarthritis at knee $ 1,000
>
> (3) Pelvis and ruptured urethra $25,000
>
> (4) Operation scar $ 2,000
>
> (5) Impotency $ 45,000
>
> (B) Pre-trial loss of earnings
>
> (1) From January 1985 to September 1987 ($400 x 32 months): $12,800
>
> (2) CPF - from 1985 to April 1986 at 25% and May 1986
>
> to September 1987 at 10%: $ 640
>
> (3) October 1987 to trial at $500 per month - ($500 x 451U2 months): $22,750
>
> CPF at 15%: $ 3,412.50 $ 41,202.50
>
> (C) Future loss allowed at $650 per month for 15 years
>
> ($650 x 12 x 15) $117,000
>
> CPF loss at 17.5%: $ 20,475
>
> $137,475

5 The defendant/appellants being dissatisfied with the amount of damages awarded, appealed against the award in relation to all major items except for items A2 (osteoarthritis at knee), A3 (fracture of pelvis and ruptured urethra) and A4 (operation scar). However when the appeal was in train, Mr Pillai, counsel for the appellants, informed the court that they would not be pursuing their appeal as respects item A1 (haemathrosis of knee). The appeal was

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therefore confined to only three items of the award, ie impotency ($45,000), pre-trial loss of earnings ($41,202.50) and loss of future earnings ($137,475).

6 Mr Pillai`s main criticism was that the learned assistant registrar`s awards were extremely high and way above the norm in respect to impotency and loss of pre-trial as well as future earnings. As regards pre-trial loss he submitted that the figure arrived at by the learned assistant registrar for the relevant period was wrong and in any event there was no medical evidence to support the conclusion that the respondent would be unable to pursue his vocation as a mechanic. His criticism on the award for loss of future earnings was that the learned assistant registrar should have awarded damages for loss of earning capacity rather than for loss of future earnings. Mr Pillai ventured that damages for impotency should not exceed $22,500 inclusive of costs of corrective surgery, damages for loss of past earnings (pre-trial loss) should be $25,000 and the amount for loss of earning capacity should be $20,000.

7 Mr Choo for the respondent contended otherwise. Both counsel were however agreed on one principle that is, in order to justify any reversal of the trial judge`s decision on the amount of damages, it would be necessary for the appellate court to be convinced either that the judge acted upon some wrong principle of law or that the amount awarded was so extremely high or very small as to make it, in the judgment of the appellate court, an entirely erroneous estimate of the damages to which the plaintiff was entitled.

8 The foregoing principle was enunciated by Greer LJ in ***Flint v Lovell*** , at p 360 and was restated by him with clarity in ***Owen v Sykes*** , at p 198 as follows:

> *... An appeal from a decision of a judge trying a case without a jury with regard to damages is a rehearing of the case, and if we*

> *are satisfied that the assessment of damages was made on a wrong principle, we ought to reopen the question of damages and ourselves decide what the proper damages should be. It has been laid down in* ***Flint v Lovell*** *(1), that this court does not readily interfere with the estimate of damages made by a learned judge at the trial. An assessment of damages is necessarily an estimate, and an estimate is necessarily a matter of degree, and it seems to me that, unless we come to the conclusion that the learned judge took an erroneous view of the evidence as to the damage suffered by the plaintiff, or made some mistake in giving weight to evidence that ought not to have affected his mind, or in leaving out of consideration something that ought to have affected his mind, we ought not to interfere. ...*

9 In Singapore the Court of Appeal in ***Chow Khai Hong v Tham Sek Khow & Anor*** , at p 7 (B-C) and p 8 (A-B) adopted and approved the test laid down in ***Flint v Lovell*** , and a similar pronouncement by Lord Wright in ***Davies & Anor v Powell Duffryn Associated Collieries Ltd (N0 2)*** , at p 617 where he said:

> *In effect the court, before it interferes with an award of damages, should be satisfied that the judge has acted on a wrong principle of law, or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. ...*

10 Bearing in mind that an appeal judge would not readily interfere with the award of damages made by the assistant registrar and noting of course that the assistant registrar`s decision was arrived at after lengthy examination and cross-examination of all material witnesses, including many specialists, I proceeded to consider the criticisms of the appellants` counsel. Set out hereunder are my conclusions on the respective claims under appeal.

11 **Impotency claim**

12 On impotency, counsel for the appellants contended that the respondent was under a duty to mitigate his loss by seeking medical help to correct his

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disability as there are means to do so and that the respondent could not continue to prosecute his claim on the basis that he would remain impotent for the rest of the life. He relied in this context, on the evidence of Dr Beng Kian Siew (DW-2), a consultant surgeon and urologist. Insofar as material to the issues at hand, the relevant portions of the urologist`s evidence are as follows:

> *Impotence can be corrected by medical or surgical procedure. Medical procedure involves injection of drugs into the penis. Drug will lead patient to a full erection. However, this must be injected prior to the sexual act. It then wears off and must be injected in future prior to the sexual act. Surgical procedure involves insertion of a pair of prosthesis which are artifical implants that will operate to help patient achieve erection by demand. Implants alone cost $3,000-$5,000. Therefore surgical fees are $5,000-$10,000. `$25-$50 for life` at #3 means each injection would cost $25-$50. `For life` refers to this step. For sexual performance, both procedures are not very different. But for plaintiff`s tender age, I would recommend the surgical procedure. Both methods have complications. Medical method is relatively new. Repeated injections may cause fibrosis that is scarring of tissues which is a known complication. Therefore possible that plaintiff may have to abandon this step after a period of time. For implant, if introduced, apart from uncommon malfunctions, plaintiff will be able to use this method with very little complications. After surgical procedure, plaintiff would be able to live a normal sexual life. There are risks in surgical step for example implant is rejected by the body either following infection or migration of the implant into an unusual anatomical site. Also implant may malfunction after a period of time and may necessitate a re-operation. I have performed such surgical procedures. Rate of success is 95% for surgery done by myself. Generally, ie done by other surgeons, also. ...*

13 Injuries that he sustained is not going to be a physical disability to plaintiff but he will have two problems: sexual cripple which is serious; and stricture if left alone would cause damage to the bladder and possibly to kidneys over a longer term. I would definitely recommend correction of plaintiff`s stricture. Whether he can father a child or not has not been assessed yet. Erectile status will have to be examined, followed by fertility status. After corrective surgery to stricture, it is notoriously prone to recurrence. On recurrence, it is

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difficult to say what can be done. A lot of possibility depending on different situations, short, long, complicated, simple stricture. Rate of success to correct stricture would be 85%. ...

14 Counsel for the appellants submitted that in the light of the opinion by the urologist and the fact that corrective surgery is indeed available, the award of damages should not be more than $22,500 including the cost of corrective surgery. Counsel especially invited the court`s attention to the case of ***Harry Seah Hong Meng v Tan Siow Cher*** where Sinnathuray J awarded a 52-year-old personnel officer a sum of $20,000 for permanent impotency.

15 Mr Choo for the respondent contended that the corrective surgery suggested was just an artifical supplement which would inevitably result in considerable embarrassment and inconvenience to the respondent who is a young man. Counsel submitted that the respondent has to cope with such a handicap during his lifetime and would be unable to lead a normal sexual life. Counsel especially drew the court`s attention to the evidence of Dr Yeow Yew Kim (PW2), a consultant neurologist at Tan Tock Seng Hospital who testified (p 14 of the notes of evidence) as follows:

> *Recovery if at all will be a natural process, ie no medicine will help anyway and it will have to recover on its own. No medical treatment for its recovery. No surgical treatment to return to original state. Full recovery for natural erection of penis, is not possible, that is without influence of drugs, erection not possible.*

16 With drugs it is possible to cause erection. Mild erection in second paragraph of my report is a natural one, but inadequate for sexual intercourse. ...

17 Surgical procedures to correct this are implants into the penis. Different types of implants. I do not know whether it will give a complete erection. If

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desired, plaintiff should see a urologist. In my experience, injury of such nature that is inability to sustain erection, I cannot predict chances of recovery. It depends on many factors. For a normal person (male), I cannot give a definite answer as to what age sexual activity is still possible. It varies from 50 plus to 70 plus.

18 To my mind, even accepting all that was suggested by Dr Beng, the amount awarded under this head is not unusually large or out of proportion to damages awarded in the past. The respondent, a young man of 20 at the time of the accident, is altogether in a different bracket from Harry Seah who was 52 at the time of the accident. In ***Ghulam Hussain v Shaharom & Anor,*** Abdul Aziz J awarded $45,000 on a full measure of damages for a 29-year-old storeman who suffered complicated fracture of the pelvis with rupture of the urethra and was likely to remain impotent and sterile. No doubt in that case the learned judge took into account the factors that Ghulam Hussein would be unable to pass urine or motion normally and another operation would have to be performed on him to make his life more comfortable.

19 Given the facts, an award of $45,000 in the nineties is not, in my view, so extremely high as to warrant an interference with the decision of the assistant registrar. I therefore do not propose to vary the award under this head.

20 **Pre-trial loss of earnings**

21 The period the court was concerned with in this regard was from January 1985 to mid-July 1991, the latter date being the date of the assessment hearing. The period between 7 March 1984 (the date of the accident) and January 1985 was not in issue. The learned assistant registrar`s computations of the loss of the respondent`s income for the period January 1985 to mid-July 1991 is as follows:

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(1) Loss of income from January 1985 to September 1987
($400 per month for 32 months) $12,800
(2) Non-receipt of employers` CPF contribution
(at the prevailing rate of 25%) from January 1985
to April 1986 ($400 x 16 months x 25%) $ 1,600
(3) Non-receipt of employers` CPF contribution
(at the prevailing rate of 10%) from May 1986
to September 1987 ($400 x 16 months x 10%) $ 640
(4) Loss of income from October 1987 to mid-July 1991
($500 per month for 451U2 months) $ 22,750
(5) Non-receipt of employers` CPF contribution
at a median of 15% for the said 451U2 months
($500 x 451U2 months x 15%) $ 3,412.50
$41,202.50

22 There were two main contentions by counsel for the appellants. Firstly, that the learned assistant registrar`s finding as to loss per month was erroneous as it was not based on best evidence and secondly there was no medical evidence to substantiate that the respondent would be unable to continue working as a mechanic.

23 On the first point it must be observed that the learned assistant registrar had the advantage of the oral testimony of the witnesses who were subjected to some detailed cross-examination. Another noticeable feature at the hearing before the assistant registrar was that no representative of the appellants was produced to rebut the evidence of the respondent. In the circumstances, the learned assistant registrar was well entitled to accept the respondent`s testimony that his monthly salary at the time of the accident was between $800 and $900 and using perhaps a broad estimate, he arrived at the conclusion that there was

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a monthly loss of $400 to the respondent from January 1985 to September 1987. Again by a rough estimate, he gave an increment of $100 for the period between October 1987 and mid-July 1991.

24 As regards the second contention, counsel`s argument is not without merit. It was the evidence of the respondent that he was unable to work as a mechanic because whenever he was required to carry heavy objects, he would feel pain in his legs and would have no strength for lifting heavy objects (p 12 of the notes of evidence). He went on to say that the heavy objects he would be required to lift in the course of his employment included wheels, engines and gear boxes.

25 In this regard, the evidence of Dr Tong G On (PW4) who examined the respondent on 22 April 1991 was that osteoarthritic changes had set in as a result of the injuries suffered by the respondent and that these would be sources of pain for the patient when squatting and climbing. Dr Tong added however that unless the respondent had to walk and climb, carrying heavy objects would not be a difficult task but as a vehicle mechanic the respondent might experience difficulties in squatting and climbing.

26 In cross-examination when Dr Tong was asked whether it was impossible for the respondent to perform the job of a vehicle mechanic the doctor said that the respondent could certainly perform the work but might have difficulty.

27 Dr Krishnamoorthy, Head of the Department of Orthopaedic Surgery at Tan Tock Seng Hospital, in his report to the respondent`s solicitors dated 18 February 1985, stated that the respondent had recovered from the fracture and that there was no functional disability.

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28 Dr KH Yeoh, another orthopaedic surgeon, in his earlier report to the appellants` solicitors dated 25 August 1987 stated that when he examined the respondent on 20 August 1987, the respondent walked normally and said that he had no problem coping with his work. The doctor said there was no muscle wasting of the right thigh and the ligaments of his knee were intact. He added that as far as the pelvic fractures and right knee injury were concerned, the respondent had fully recovered and there was no detectable residual disability.

29 In the context of all the medical evidence, the court is left with great doubt as to whether the learned assistant registrar did indeed give due weight to the medical opinion of the experts. The doubt is even more pronounced when the respondent`s own specialist, Dr Tong did not even venture an opinion that the respondent would be unable to carry out the duties of a vehicle mechanic. I am therefore left with a clear impression that the purport of the medical opinion had not been adequately appreciated by the learned assistant registrar.

30 An appellate court should not lightly differ from a finding of the trial judge on a question of fact, but where no question arises as to the credibility of the witnesses and the sole question is as to the proper inferences to be drawn from specific facts, an appellate court is in as good a position to evaluate the evidence as the trial judge and should form its own independent opinion though it will give weight to the opinion of the trial judge: see ***Benmax v Austin Motor Co Ltd.***

31 Reviewing the medical evidence, I cannot help but notice that the assertion by the respondent that he was unable to carry on with his vocation could not be supported. The handicap alluded to did not restrict his physical movements, mental agility and dexterity of hand movements. The lifting of heavy objects might have been a problem but that factor by itself could not lend

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support to the view that his career as a vehicle mechanic had come to an end. Another feature of his evidence is that he now works as a spray painter. Would not such an occupation require that the respondent walk, climb and carry a certain amount of weight? In fine, there is a question mark whether the assertion of the respondent that he could not carry on with his vocation as a vehicle mechanic could be accepted on balance of probabilities.

32 Having said that, it must however be remarked that it was not unlikely that the respondent, due perhaps to the trauma of 12 operations since the accident, was either unable to carry out his job or was afraid to do so. I am therefore inclined to support the award for at least the period until he saw Dr Yeoh in August 1987. But for the period after September 1987, the medical evidence does not support the conclusion that the accused could not have continued with his vocation.

33 In the circumstances of this case, allowing an element for the knee problem, ie problems emanating from osteoarthritis, the revised figure of $25,000 proposed by the appellants` counsel is a fair sum. I therefore set aside the award of $41,202.50 and award in its place a sum of $25,000.

34 **Loss of future earnings**

35 The learned assistant registrar awarded a sum of $137,475 under this head on the basis of a monthly loss of $650 and a multiplier of 15 years (with an element for CPF). The figure of $650 was perhaps a figure the learned assistant registrar fixed after comparing the current salary of Ng Kwai Fong (PW3), a former colleague of the respondent at his work place, who said that he was in a similar job and was at the time of the trial earning a gross sum of $1,700 with a different employer, and the current salary of the respondent with Bala

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Enterprises. Mr Pillai`s contention in this context was that given the facts of the case, the award should be one for loss of earning capacity and not for loss of future earnings.

36 The distinction between loss of [future] earnings and loss of earning capacity is clearly spelt out in ***Fairley v John Thompson (Design And Contracting Division) Ltd.*** In that case Lord Denning MR observed at p 42:

> *... It is important to realize that there is a difference between an award for loss of earnings as distinct from compensation for loss of earning capacity. Compensation for loss of future earnings is awarded for real assessable loss proved by evidence. Compensation for diminution in earning capacity is awarded as part of general damages. If I may give an instance, a manual worker may be incapacitated for manual work, but after the accident he may learn a clerical trade. At his new trade he may actually earn more than he would have done before. He will have diminished earning capacity, but he has not lost any future earnings. ...*

37 Then came the decision in ***Smith v Manchester Corporation*** where the English Court of Appeal dealt with these two elements. The facts of the case as set out in the headnotes are as follows.

38 The plaintiff, a woman of 49, while carrying a tray in the course of her employment as a part-time domestic worker in an old people`s home, slipped on some substance deposited on the floor and fell, sustaining injuries to her right elbow. As a result of prolonged strapping up she developed a frozen shoulder and movement of her right arm was permanently impaired so that she was under a disability in her day to day tasks and her normal social activities. She was off work for 14 months but then returned to light work with her pre-accident employers, at her pre-accident pay of Â£16.50 a week. She brought an action for damages against her employers alleging that her accident was due to their negligence. The employers admitted liability but denied that the plaintiff had

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suffered the damage alleged. At the trial they gave an undertaking through their counsel that they would keep the plaintiff in their employment as long as they could properly do so. The trial judge accepted the medical evidence that the plaintiff was considerably disabled, and awarded her Â£2,300 in general damages, Â£2,000 for pain and suffering, physical handicap, interference with amenities, etc and Â£300 for loss of future earnings.

39 She appealed on the ground that the awards under both heads were too low. The Court of Appeal in allowing the appeal, that the award of Â£2,000 was not so low as to justify the court in interfering, but that the sum awarded for loss of future earnings was too low because, in the event of the plaintiff`s present employers (despite their undertaking) not being able to retain her in their employ, her position in the competitive labour market would be considerably weakened as the result of her disability; that although there was no clearly forseeable loss, there was an existing and permanent reduction in her earning capacity for which she must be genuinely compensated and accordingly the award of Â£300 was increased to Â£1,000.

40 Touching upon the two elements in the loss of future earnings or future earning capacity, Scarman LJ (as he then was) said at pp 7 and 8:

> *Loss of future earnings or future earning capacity is usually compounded of two elements. The first is when a victim of an accident finds that he or she can, as a result of the accident, no longer earn his or her pre-accident rate of earnings. In such a case there is an existing reduction in earning capacity which can be calculated as an annual sum. It is then perfectly possible to form a view as to the working life of the plaintiff and, taking the usual contingencies into account, to apply to that annual sum of loss of earnings a figure which is considered to be the appropriate number of years` purchase in order to reach a capital figure. Fortunately in this case there is no such loss sustained by the plaintiff because, notwithstanding her accident, she has continued with her employment at the same rate of pay and, as long as she is employed by Manchester Corporation, is likely, if*

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> *not certain, to continue at the rate of pay appropriate to her pre-accident grade of employment. That element of loss, therefore, does not arise in the present case.*

41 The second element in this type of loss is the weakening of the plaintiff`s competitive position in the open labour market: that is to say, should the plaintiff lose her current employment, what are her chances of obtaining comparable employment in the open labour market? The evidence here is plain - that, in the event (which one hopes will never materialize) of her losing her employment with Manchester Corporation she, with a stiff shoulder and a disabled right arm, is going to have to compete in the domestic labour market with women who are physically fully able. This represents a serious weakening of her competitive position in the one market into which she can go to obtain employment. It is for that reason that it is quite wrong to describe this weakness as a `possible` loss of earning capacity: it is an existing loss: she is already weakened to that extent, though fortunately she is protected for the time being against suffering any financial damage because she does not, at present, have to go into the labour market.

42 ***It is clearly inappropriate, when assessing this element of loss, to attempt to calculate any annual sum or to apply to any annual sum so many years` purchase*** . The court has to look at the weakness so to speak `in the round`, take a note of the various contingencies, and do its best to reach an assessment which will do justice to the plaintiff. [Emphasis added.]

43 That brings me to ***Moeliker v Reyrolle (A) and Co.*** In ***Moeliker*** , the plaintiff was employed by the defendant at the time of the accident and was still employed by the defendant at the time of the trial. There was no loss in earnings suffered by the plaintiff as at the date of the trial but an award was made to reflect the risk that the plaintiff might still suffer losing his present job and

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having to look for alternative employment and being at a disadvantaged position because of the injuries and disabilities suffered by him.

44 In ***Moeliker,*** an uncomplicated test was laid down by Bowen LJ at p 15 where he observed:

> *... As I have said, this problem generally arises in cases where a plaintiff is in employment at the date of the trial. If he is then earning as much as he was earning before the accident and injury (as in the present case), or more, he has no claim for loss of future earnings. If he is earning less than he was earning before the accident (as in* ***Nicholls v National Coal Board****), he has a claim for loss of future earnings which is assessed on the ordinary multiplier/multiplicand basis. But he may have a claim, or an additional claim, for loss of earning capacity if he should ever lose his present job.*

45 In Singapore the distinction between the two elements received attention in ***Chi Jau alias Er Ah Jau v Lee Kok Bing & Anor*** where Judith Prakash JC, citing the decision by the Singapore Court of Appeal in ***Chow Khai Hong v Tham Sek Khow & Anor*** said:

> *An award under the heading `loss of earning capacity` is made when the injured party has resumed the employment he had prior to the injury but there is a real risk that at sometime during his remaining working life, he would have to leave that employment and enter the labour market. The award is made to compensate him for the disadvantage he would suffer at that stage in view of the handicap resulting from the injuries. Here from the start the* ***plaintiff was unable to resume his former employment and was forced to take up an occupation which pays him less****. In these circumstances, the proper award should be for loss of future earnings unless the multiplicand cannot be determined.*

46 This position is supported by the case of ***Chow Khai Hong v Tham Sek Khow & Anor*** [1992] 1 SLR 4 . In that case the plaintiff had been injured in a road accident. At the time of the accident, he held two jobs: one with the Housing & Development Board (`HDB`) during the day and the other as a security guard during the evening. After the accident, he ***was able to resume***

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his job with the HDB but was unable to continue to work as security guard . He claimed damages for, inter alia, loss of future earnings arising out of his job as a security guard. The district court awarded him $10,920 under this head. On appeal by the defendants to the High Court, the High Court varied the trial judge`s order and, interalia, substituted a lump sum award of $4,200 for loss of future earnings. The plaintiff appealed to the Court of Appeal.

47 In the Court of Appeal, the plaintiff`s counsel`s submission that the plaintiff had a steady income which provided a firm basis for calculating his loss of future earnings was accepted. The appellate court stated that there was nothing in the case to make an arbitrary lump sum assessment more appropriate than the multiplier/multiplicand method. It restored the trial judge`s award for loss of future earnings.

48 In the instant case, there are no circumstances which would make it appropriate to award the plaintiff an arbitrary sum in respect of his loss of future earnings. The plaintiff`s present income is fixed and can be used to determine the multiplicand. Also there was evidence before the court as to the amounts which the plaintiff would earn if he was currently working in Singapore. [Emphasis added.]

49 It should be presently observed that in ***Chi Jau*** , there was a finding by the court that the plaintiff was unable to resume his former employment and was forced to take up a vocation which paid him less. Judith Prakash JC arrived at that finding having regard to the medical evidence which confirmed that the plaintiff in that case could not attend work for two years after the accident as the multiple injuries sustained were severe. The doctor in that case stated that the working efficiency and capacity of the plaintiff had been affected by the accident. The doctor also testified that there was an overall reduction in the

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plaintiff`s working ability of 24%; the plaintiff had degenerative osteoarthritis of his elbow due to the trauma and the condition was not curable and would get worse whenever he carried out strenuous work. Above all, there was an additional factor, namely, that the plaintiff tried to resume his former employment in Singapore a year after the accident but was unable to meet the demands of that job. So he had to return home to Johore and take up less remunerative employment. In the circumstances, the learned judicial commissioner (with whose lucid analysis of the applicable principles I fully agree) awarded the plaintiff loss of future earnings.

50 Similarly in ***Chow Khai Hong*** , the Court of Appeal supported an earlier finding that the pain from the injuries suffered made it impossible for the plaintiff to continue with his second job as a security guard.

51 Reverting to the appeal before me, the medical evidence adduced on behalf of the plaintiff was at best ambivalent. Dr Tong would not and did not venture an opinion that the plaintiff in his condition could not engage himself as a vehicle mechanic. There was no satisfactory evidence to show that the plaintiff did indeed attempt to perform the duties of a vehicle mechanic but was unable to as a result of the disability.

52 A somewhat analogous situation arose in the case of ***Araveanthan & Anor v Nippon Pigment (S) Pte Ltd.*** In that case the plaintiff claimed damages for negligence and/or breach of statutory duties, in respect of personal injuries suffered in an industrial accident on 11 October 1985. He was then a machine operator employed by the defendant. The machine he operated was equipped with a safety device intended to prevent its parts from moving at times when its gate guard was open. He sustained the injuries when a machine part closed on his right hand as he was removing a plate from the machine with the gate guard

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open. As a result of this accident, his right hand index, middle and right fingers had to be amputated and his last finger turned out to be deformed and stiff. He was assessed to have 70% permanent incapacity for the purposes of estimating workmen`s compensation.

53 Yong Pung How CJ allowed the plaintiff`s claim. However, in declining to award the plaintiff loss of future earnings and awarding him loss of earning capacity instead, the learned Chief Justice observed at p 551:

54 **Loss of future earnings**

> *It is not possible to accept the first plaintiff`s assertion that, if not for the injury, he would now be earning a basic salary of $2,000. In fact, even with overtime, it is highly unlikely that his earnings each month would be anywhere near that, even if he were not injured. At the time of trial, his basic salary was $836 and it appears that when he resumed work after being discharged from hospital, he did so at the same salary he was earning when he was injured. As for the fact that he has not been promoted, this was explained to the first plaintiff as being caused by a change of management. This reason was not doubted by the first plaintiff and has certainly nothing to do with his injury. In my opinion, no compensation can be due under this head.*

55 **Loss of earning capacity**

> *The first plaintiff is now still employed by the defendant as a weighing assistant, a job that he can perform despite his handicap. He is only 25 years old. It may not be very likely that in the near future he will need to seek another job, but he has a long working life left. Even though the defendant has quite honourably continued to find a place for him for more than six years after the accident, and no criticism may be directed against the defendant in this regard, it must nevertheless be recognized that there is a real risk that the vicissitudes of time will at some point during that long remaining working life compel him to leave the defendant`s employ and find another place. When that happens, since his handicap is permanent, he will have difficulty finding a job that would pay him as well as if he could have complete use of his right hand. His vocational qualification is now useless to him. Consequently, any future employment he may find, in the event that he loses his present one, is not likely to*

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> *pay him as well as if he could use that skill as well as his hand. Moreover, some allowance will have to be made for the effect of his injury upon his chances of advancement even in the defendant`s employ. For these reasons, I award him a lump sum of $55,000 under this head, without interest thereon, for his handicap in the labour market.*

56 A similar approach was adopted by Lai Kew Chai J in ***Tan Yok Joo v Lim Yap Nghee & Anor.*** In that case, the plaintiff was still employed as an architect by the Housing and Development Board after the accident and enjoyed her normal increment but had lost out on promotion when compared to her contemporaries. She lagged behind her contemporaries on at least two promotions. Lai Kew Chai J, on appeal changed the award made for loss of future earnings on a multiplier/multiplicand method of $160,000 to one for loss of future earning capacity at $80,000. (This figure was subsequently revised by the Court of Appeal to $110,000.)

57 **Loss of earning capacity**

58 In the case before me, there are no justifiable reasons which would make it appropriate for the court to award loss of future earnings. The evidence does not point to the direction that there is loss of future earnings on a total and permanent basis. Moreover there is no satisfactory evidence that the respondent has been incapacitated from working as a mechanic. What the court has before it is the onset of osteoarthritis which would necessarily interfere with his work. In the circumstances I am driven to conclude that an award for loss of future earnings would be inappropriate.

59 Counsel for the appellants however conceded that the respondent should be awarded a lump sum compensation for loss of earning capacity on account of injuries to his knee. He suggested a sum of $20,000 based on a rough formula of $300 x 12 x 5 years = $18,000. In my view justice will be served if I awarded

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the respondent a lump sum of $55,000 for loss of earning capacity - in view of the osteoarthritic condition of the respondent. I therefore set aside the award by the assistant registrar of a sum of $137,475 for loss of future earnings and award the respondent in its place a sum of $55,000 for loss of earning capacity.

60 There will also be interest at 6% on the damages awarded from the date of writ till judgment. I will hear parties on the question of costs.

61 Order accordingly.

MPH Rubin JC

Nirumala K Pillai (Harry Elias & Partners) for the appellants
Choo Kwan Kiat (Choo & Yap) for the respondents

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