Choy Kuo Wen Eddie v Soh Chin Seng
[2008] SGHC 113

Case Number : Suit 711/2006 (NA 10/2008)

Decision Date : 08 July 2008

Tribunal/Court : High Court

Coram : Chew Chin Yee AR

Counsel Name(s) : Palaniappan S (Straits Law Practice LLC) for the plaintiff; Lee Sien Liang Joseph & Ng Hui Min (Rodyk & Davidson) for the defendant

Parties : Choy Kuo Wen Eddie — Soh Chin Seng

Tort

Damages

8 July 2008

AR Chew Chin Yee:

1 The Plaintiff was engaged in a motorcycle accident on 14 November 2003. He suffered extensive injuries, as set out in the medical report of Dr Chou Ning from the National University Hospital ("NUH") dated 17 March 2005:

a. Right Brachial plexus injury

b. Right acromio-clavicular joint dislocations and right scapular fracture

c. Subarachnoid haemorrhage and diffuse axonal injury

d. Pulmonary contusion and fracture right 8th rib

e. Right thigh laceration

f. Burn injuries

2 Due to his injuries, the Plaintiff was hospitalised for a total of 40 days. After his discharge, the Plaintiff underwent another operation on his right shoulder subsequently. A third procedure was necessitated due to infection. In all, the Plaintiff spent another 10 days in hospital for these operations.

3 Consent interlocutory judgment was entered at 20% liability for the Defendant, with the Plaintiff to pay costs from date of Writ to 24 September 2007, and the Defendant to pay costs from 24 September 2007 onwards.

Overview

4 I awarded the following sums under the items below:

1) Special Damages - $13,196.93

2) General Damages for Pain and Suffering/Loss of Amenities - $70,000

3) Loss of Pre-Trial Earnings - $34,000

4) Loss of Earning Capacity - $40,000

5) Interest on items 1 and 3 from 14 Nov 2003 to 8 July 08 at 2.66% p.a.

6) Interest on items 2 and 4 from date of Writ to 8 July 08 at 5.33% p.a.

For clarity, the above figures are awarded on a 100% liability basis.

Loss of Pre-Trial Earnings

5 Mr Jeffrey Chen ("Chen"), Senior Human Resources Officer for Chevron Phillips, submitted payroll records for the pay given to the Plaintiff during the hearing, which was marked P3. Plaintiff's counsel confirmed that they accepted the figures set out within as accurately reflecting what was paid to the Plaintiff by Chevron.

6 From November 2003 to April 2004, P3 indicated that the Plaintiff was paid in full, inclusive of his allowances. Based on what is set out in P3, the basic pay of the Plaintiff was $2512 ($1632+$220+$660). I note that this was different from the figures represented by Chevron in their letter dated 20 June 2006, where they indicated that the pay of the Plaintiff was $2596. I accepted the figure in P3 as being the more accurate figure of the Plaintiff's salary at the relevant time.

7 Based on P3, the Plaintiff was only paid half his allowance in May 2004. I found that this was a loss that was incurred by the Plaintiff which the Defendant should be liable for. I awarded a sum of $497.20 for this month. (inclusive of employer's CPF)

8 The Plaintiff was on half pay from June 2004 to July 2004. His losses for this period totalled $2838.56. From August 2004 to December 2004, when the Plaintiff was medically boarded out, the loss was $3535.29. This figure took into the account of the fact that the Plaintiff received Employer's CPF contributions during some months, and also the fact that he received a sum of $6443.83 from Chevron Phillips when he was medically boarded out.

9 For the period from 2005 to February 2006, the Plaintiff was unemployed, except for a brief stint as a sales representative, drawing $1366. The Plaintiff was employed for slightly more than a month, from 22 June 2005 to 2 August 2005. By February 2006, the Plaintiff was employed by Motorimage as a storekeeper, drawing around $1547.19 a month.

10 I accepted the argument by the Defence that the Plaintiff ought to have found a job during this period. I note from the Plaintiff's evidence that the reason why he was unable to find a stable job during this period was predominantly because he didn't find the jobs suitable for him. Hence, there was no physical impediment arising from his injuries that prevented him from obtaining stable employment.

11 The Plaintiff was hospitalised in January 2005. Taking into account a 2 month period for his recovery, I find that he should have found stable employment for the months of April 2005 to February 2006. Based on the salaries he drew from his employment within this period, I find that the Plaintiff would have at least been able to earn a sum of around $1300 a month. Hence, I awarded a sum of $18,006.72 for his losses in this period, as the differential in salaries between his pre-trial

earnings and what he ought to have been able to earn from April 2005 onwards.

12 For the period of February 2006 to December 2006, I accepted the Defendant's figure of $14,041.75 as the loss suffered by the Plaintiff.

13 The total amount of loss awarded in this period, rounded up, is $38,920. Giving an allowance for income tax and expenses of travelling to work, I assessed the loss to be $34,000. The Plaintiff rejoined Chevron Phillips in November 2006 as a material coordinator.

Loss of earnings from December 2006 onwards

Could the Plaintiff have returned to work as a process technician

14 The Defendant has argued strenuously that the Plaintiff had suffered no loss of future earnings from the date of his re-employment with Chevron Phillips. They contend that the Plaintiff had failed to prove that he could not return back to his previous occupation as a process technician.

15 In support of his claim that he could no longer return to his job as a process technician, the Plaintiff pointed to the various medical reports tendered. Of most significance was the review on his right shoulder done by the Defendant's doctor, Dr WC Chang, in 2007. In his report of 9 April 2007, Dr Chang found that there was some limitation in the range of movement of the Plaintiff's right shoulder, with complaints of weakness and residual stiffness. Dr Chang concluded that

> "Generally, Mr Choy had recovered well from his accident. However, it would be difficult for him to return to his job as a petrochemical technician in view of the stiffness [sic] right shoulder. He would have trouble doing above shoulder work such as climbing ladders and attending to valves and pipes required of him as a petrochemical technician"

16 Another medical examination done on the Plaintiff earlier, by Dr Low Chee Kwang, in May 2006, found that the Plaintiff had a limitation of motions of the right shoulder, with a 6% disability.

17 Against this, the Defendant pointed to prior medical examinations done on the Plaintiff on earlier dates. Dr Hee Hwan Tak found in a review on 13 September 2005 that the "*range of motion of the right shoulder was full*". In addition, the Defendants raised the fact that while the Plaintiff had experienced improvement in his flexion and abduction plane movement of his right shoulder by about 40 degrees when he was examined by Dr Chang, he had a limitation in external rotation, which had not been recorded by Dr Low in his examination. The Defendant submitted that the apparently deteriorating state of the Plaintiff's right shoulder was an act put forth by the Plaintiff during his examinations, and that Dr Hee's finding that the Plaintiff was suffering no limitation of movement of his right shoulder should be preferred.

18 I noted that there was no finding of any loss of power by the Plaintiff in his right arm and shoulder, in the various medical examinations. Accordingly, the only issue before me was whether the Plaintiff's loss of motion in his right shoulder was proven, and whether such disability prevented him from returning to work as a process technician.

19 I noted the apparent contradictions in the various medical reports on the range of motion for the right shoulder of the Plaintiff. By consent of the parties, none of the doctors who had performed the medical examinations were called to testify. Since the Defendant did not elect to challenge the evidence of the doctors as given in their various medical reports, I accepted the findings as true and accurate. I found that on the balance, the Plaintiff did suffer some impairment to the range of motion

in his right shoulder.

20 The next question to be answered was whether the Plaintiff could, or can in future, return to his former occupation as a process technician.

21 According to Mr Chen, the Plaintiff did not apply to return to his former job. Mr Chen testified that the Plaintiff could return to his former job on application, provided that he passed the fitness test. No such fitness test had been conducted on the Plaintiff to date.

22 I also noted that the Plaintiff himself appeared ambivalent on whether he was physically able to return to his former post. This is apparent from the following extract of the notes of evidence:

> Ct: Have you, at any point after accident, requested Chevron Phillips to allow you to assume your former position as a process technician?
>
> A: No
>
> Ct: Why is that?
>
> A: I don't think I can take up the job, what I heard is that the work is more physical now. In the past job, I already had a bit of a problem, I don't think I can take up the position now
>
> Ct: What do you mean when you say that you already had some problems?
>
> A: It was already quite physical, now even more so. I don't think I can do it
>
> Ct: Did you have trouble fulfilling your duties previously?
>
> A: No
>
> Ct: Why didn't you apply and see if you can pass the physical test?
>
> A: Even if I pass the test, I already know what the work consist of, I know that I wouldn't be able to do the task as efficiently without the help of others
>
> Ct: There is a difference between being unable to do the job at all, and only being able to do it poorly?
>
> A: yes
>
> Ct: In your view, are you totally unable to do the work, or merely unable to do it in an optimal manner?
>
> A: I am totally unable to do the job, because part of the work involves carrying heavy loads and carrying these, I am afraid that it will aggravate my shoulder
>
> A: Even if I pass the test, I already know what the work consist of, I know that I wouldn't be able to do the task as efficiently without the help of others
>
> Ct: There is a difference between being unable to do the job at all, and only being able to do it poorly?

A: yes

Ct: In your view, are you totally unable to do the work, or merely unable to do it in an optimal manner?

A: I am totally unable to do the job, because part of the work involves carrying heavy loads and carrying these, I am afraid that it will aggravate my shoulder.

23 From the above, it seemed clear to me that the Plaintiff was more concerned about any difficulties he may experience in performing his duties, rather than on whether he was actually, in fact, physically capable of doing so. In this regard, it was also notable that Dr Chang concluded that the Plaintiff "*would have trouble doing above shoulder work*", as opposed to finding that the Plaintiff would be unable to do these things.

24 Without any physical test having been conducted on the Plaintiff, I found that the Plaintiff had failed to prove his claim that he was unable to return to his former employment as a process technician. There was no other evidence to show that his limitation of movement would prevent him from being employed as a process technician. Since the Plaintiff was reemployed by Chevron Phillips in November 2006, he was at liberty to apply for a physical test from that time on. In the result, the Plaintiff has failed to prove his claim for loss of earnings (pre and post trial) from December 2006 onwards.

Loss of future earnings

25 For the reasons I have stated above, I disallowed the Plaintiff's claim for loss of future earnings.

Loss of earning capacity

26 The Plaintiff initially did not ask for loss of earning capacity in his submissions. It was submitted that they believed that their proposed multiplier and multiplicand in respect of loss of future earnings would be sufficient compensation. On my invitation, the Plaintiff submitted that a figure of $100,000 was appropriate. The Defendant has submitted that he ought to be barred from recovery of loss of earning capacity, since it was not specifically pleaded for. They also submit that the two claims are in the alternative, and are not cumulative. The Defendant has also submitted that they could have adduced further evidence, such as his potential future employment and job prospects, to rebut any claim on this head. In the alternative, they submitted that a figure of $10,000 would be appropriate.

27 Before dealing with these issues, it would be useful to briefly examine the relationship between loss of earning capacity and loss of future earnings.

Loss of future earnings and loss of earning capacity

28 It is trite law that compensation for loss of future earnings is based on real assessable loss, whereas an award for loss of earning capacity is to compensate for the diminished chance of the plaintiff in the future of getting work in the labour market (or work as well paid as before the accident) should he lose his current job. In *Moeliker v Reyrolle & Co* [1977] 1 WLR 132 at 140, a decision of the English Court of Appeal, Browne LJ described this head of claim in the following terms

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,……, he has a claim for loss of future earnings which is assessed on the ordinary multiplier/multiplicand basis. ***But in either case, he may also have a claim, or an additional claim, for loss of earning capacity if he should ever lose his present job****.* [emphasis added]

29 It is quite clear that both heads of damages are in compensation of different things, and an award can be made for both at the same time.

30 It has been suggested that an award for loss of earning capacity can only be given when the plaintiff returns to his former employment. While this may be true of the cases where loss of earning capacity is generally awarded, I do not see any reason in principle for such a restriction.

31 In my view, the principles underlying this can be understood thus: where the plaintiff is gainfully employed at a lower pay after the accident, he is entitled to the difference between the higher pay he was drawing prior to the accident and his current remuneration as compensation. This is of course subject to him proving that the accident caused this loss. The award of damages under the head of loss of future earnings compensates him for being unable to continue in his previous, more lucrative, job due to the accident.

32 The sum awarded for loss of future earnings in the above scenario is predicated on the assumption that the plaintiff can ordinarily continue in his current employment. The court then has to take into account whether the plaintiff would be disadvantaged in seeking alternative employment which is equivalent to his current job in future due to his handicap. The risk of the plaintiff losing his current job also has to be assessed – such risk may also be exacerbated by his handicap. An award for loss of earning capacity can be made if there is a real risk that the plaintiff may, at some point in his working life, be thrown back into the job market; and would find it harder to get employment comparable in pay to his current job.

33 Therefore, the award for future loss of earnings can be seen as compensation to the plaintiff for not being able to continue in his pre-accident job. The loss of earning capacity is to compensate the plaintiff for his handicap in finding a job equivalent to his present job post-trial. The two are distinct and essential elements in an overall assessment of the impact on a plaintiff's earning ability.

34 Where a plaintiff is totally unable to work as a result of the accident, there would normally be no separate award for loss of earning capacity – his loss of earning capacity, being total, is the same as his loss of future earnings. Conversely, where a plaintiff is being employed at an equivalent or higher pay than what he was drawing prior to the accident, there can only be an award for loss of earning capacity, since there is no factual loss of earnings. The damage to him is essentially his diminished chance in future of finding a similarly paid job should he lose this current one. Effectively, the plaintiff is awarded zero damages for loss of future earnings, but awarded damages for loss of earning capacity. Such situations, in my view, still treat loss of future earnings and loss of earning capacity as cumulative claims.

35 An example of this approach can be seen in *Araveanthan and Another v Nippon Pigment (S) Pte Ltd* [1992] 1 SLR 545, where Yong Pung How CJ examined the claims of the plaintiff in that case for both loss of future earnings and loss of earning capacity. The learned Chief Justice found that the plaintiff had suffered no loss of earnings, since he was earning the same salary as he was before the injury. Yong CJ further went on to examine the effect of the plaintiff's handicap on his future job prospects, and made an award for loss of earning capacity.

36 The position set out above can be described as the "cumulative measure" category, where both

heads of damages can potentially be awarded. See also *Chow Khai Hong v Tham Sek Khow* [1992] 1 SLR 5, *Neo Kim Seng v Clough Petrosea Pte Ltd* [1996] 3 SLR 522 and *Choong Peng Kong v Koh Hong Son* [2003] 4 SLR 225

Loss of earning capacity as a substitute award

37 There is another category of cases where the court have stated that it awards damages for loss of earning capacity as a substitute measure in preference to awarding for loss of future earnings. This is where the evidence of a plaintiff's loss in future earnings may not be available or ambiguous, making it impossible for a proper calculation of loss of future earnings, on the basis of the multiplicand/multiplier method.

38 In essence, the courts in such situations find it more appropriate to award a figure in the round as compensation for the reduction in a plaintiff's earning ability. The damage on a plaintiff is more effectively assessed in terms of his reduced ability to work and/or maintain a certain level of income.

39 This second category can be described as the "alternate measure" category. In making any award in such fashion, the court considers the entire impact on a plaintiff's earning ability, including the effects of his handicap on his job prospects. The damages awarded in this instance reflects the court's assessment on how much the earning ability of the plaintiff has been diminished. Factors such as the plaintiff's ability to resume his previous employment, the effect of his handicap on his remuneration are all relevant in this category of cases.

40 This other category was put in the following terms by the Court of Appeal in *Teo Sing Keng and Another v Sim Ban Kiat* [1994] 1 SLR 634:

> *An award for loss of earning capacity, as opposed to an award for loss of earnings, is generally made in the following cases:*
>
> *(1) ……;*
>
> *(2) where* ***there is no available evidence of the plaintiff's earnings to enable the court to properly calculate future earnings****, for example, young children who have no earnings on which to base an assessment for loss of future earnings. [emphasis added]*

4 1 An example of this approach can be seen in the case of Karrupiah Nirmala v Singapore Bus Services Ltd [2002] 3 SLR 415. The plaintiff in that case had worked as an editor earning $4300 prior to the accident. After the accident, she left her job and worked as a part time lecturer, earning $2300 a month. In substituting an award for loss of earning capacity instead of for loss of future earnings, Judith Prakash J held

> *30 On appeal, the defendants submitted that the editorial work on the basis of which the plaintiff claimed the loss of future earnings, took up a period of one and a half years out of a total career period of 15 years. Since the accident, she had gone back to what she had been doing before her stint in editing. They submitted that the plaintiff was not disabled from pursuing her vocation in which she had adequate training and plenty of experience and in fact was now carrying on. That work would pay comparably to her editor's work once she was able to take on additional assignments. At the time of the hearing she was giving two or three lectures a week and working as a practicum supervisor between one and three times a week. She had quite a number of free hours a week and it would not be difficult for her to work up to three hours a day and there would be reasonable opportunities for her to take up work assignments for up to*

five days a week. This would be particularly so if her shoulder injury is corrected.

31 I accept the defendants' submissions. In my opinion, although the accident has meant that an editing career would be difficult for the plaintiff to maintain, it has not affected her main skills or her ability to exploit those skills profitably. At the same time, there may be some restriction on her ability to work long hours on a continuous basis even after the shoulder operation since she has to take care of her neck in order to avoid complications in that area. ***Whilst her earning ability has been adversely affected by the accident the circumstances of the case make an award for loss of earning capacity more appropriate than one for the loss of future earnings****.* ***The editing path was one that was new to the plaintiff and it is not possible to be certain that she would have continued in that line. There are other remunerative avenues still open to her*** *[emphasis added]*

42 It is clear in the above case that the evidentiary difficulty in assessing future loss of earnings, due to the uncertainty on what pecuniary loss the plaintiff would suffer in future, made an award for loss of earning capacity more appropriate. While the evidence showed that the plaintiff would suffer some kind of loss of her future earnings, the extent of loss could not be determined to the degree of specificity required for an assessment of loss of future earnings using the multiplicand/multiplier method.

43 The Defendant says that the two awards must be in the alternative and that the Plaintiff, having claimed for an award under loss of future earnings, could not be awarded damages for loss of earning capacity. The Defendant referred to the dicta of GP Selvam J in *Teo Seng Kiat v Goh Hwa Teck* [2003] 1 SLR 333, where the learned Judge had opined at paragraphs 9 to 11,

9 The expressions "loss of earnings" and "loss of earning capacity" are often confused. Sometimes they are used tautologically. In this sense, they encompass past and future loss of ascertainable earnings. The loss may be total or partial. In either case, the loss is attributable to loss or reduction in earning ability. A claim for damages under this head is relatively easy to assess because the numbers that work the established formula are readily available.

10 There is another sense to the expression "loss of earning capacity". This arises when the claimant returns to work without any immediate loss of earning. There is, however, the risk that in the future, he may be at a disadvantage, due to a lingering disability by reason of the injury, in getting another job if he loses the present job. Alternatively, he may suffer a pay-cut in the future on account of the disability. This is sometimes referred to as "handicap" in the labour market. In this sense, the expression is a term of art. To justify an award under this head, there must be a substantial or real risk that the plaintiff would lose his present employment during his working life. If there was such a risk, the assessment of damages would depend on the degree of the risk, the time when the loss of employment might occur and the factors affecting the plaintiff's chances of obtaining other employment: see Moeliker v A Reyrolle & Co Ltd[1977] 1 WLR 132,Low Swee Tong v Liew Machinery (Pte) Ltd[1993] 3 SLR 89 and Teo Sing Keng v Sim Ban Kiat [1994] 1 SLR 634. A claim under this head is hugely speculative and difficult to assess. Except when clear evidence is adduced, a large amount will not be given under this category. In any event, a claim under this head cannot arise where the injured was working before the accident and suffered a permanent total or partial loss of earnings.

11 ***The two heads are alternative and not cumulative****. In the case before me, as the loss of earnings was in respect of past and prospective earnings, there can be no additional claim for loss of earning capacity in the second sense of the term. The plaintiff in this case was working before the accident and returned to work after the accident, and the loss of earnings was*

known and assessable. Accordingly he was not entitled to additional general damages for handicap in the future as loss of earning capacity in the second sense of the expression

44 The learned Judge was clearly cognisant of the dual categories of an award for loss of earning capacity. In respect of his remarks at paragraph 11, it can be seen that the learned Judge had been of the view, on the facts of the case, that the plaintiff in that case had no real risk of losing his current employment. This is patently correct as the plaintiff returned to his previous job after the accident, and had been continuously employed up to the time of trial, some two years later. With sufficient evidence of the extent of future loss, the Judge then went on to assess for loss of future earnings on the basis of the multiplicand/multiplier method. With respect, the learned Judge could not have meant to hold that there can never be an award for loss of earning capacity in addition to one for loss of future earnings when the plaintiff is employed and has suffered loss of earnings after the accident.

Whether loss of earning capacity should be awarded in this case

45 While I held that the Plaintiff had failed to prove his loss of earnings from December 2006 onwards, I was of the view that an award ought to be made to him for the loss of his earning capacity as an alternate measure. This was in light of the limitation in shoulder movement he had suffered. With the Plaintiff's previous background, technical qualifications and experience, the natural job for him would be his prior job as a technical engineer, and his shoulder handicap would make it more difficult for him to be employed as such.

46 For the sake of clarity, my finding is that his shoulder handicap has not been proven to have extinguished his chances of obtaining employment as a process technician with Chevron Phillips, or any other similar position. In other words, I took the view that this was a case of no *evidentiary loss of earnings*, making the multiplicand/multiplier method of assessment inapplicable, and that the more appropriate measure of compensation in this case would be for loss of earning capacity. It cannot be gainsaid that his right shoulder handicap has diminished his chances of gaining employment as a process technician, or would affect his performance in it. I am further fortified in this conclusion by the Dr Chang's findings that *"it would be difficult for [the Plaintiff] to return to his job as a petrochemical technician in view of the stiffness [sic] right shoulder."*

47 I found support for this approach in *Low Swee Tong v Liew Machinery (Pte) Ltd* [1993] 3 SLR 89. In this case, the plaintiff was a vehicle mechanic who suffered, *inter alia*, permanent disability in his right knee. The plaintiff claimed for loss of future earnings and was awarded damages on that basis. On appeal, the defendants argued that an award for loss of earning capacity should be given instead. In agreeing and substituting an award for loss of earning capacity, Rubin JC (as he then was) found that *"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."*

48 The learned judicial commissioner (as he then was) then held

"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"

49 The situation in *Low Swee Tong* is in *pari materia* to the present case. The evidence does not

conclusively show a permanent loss of future earnings. However, there is a clear handicap which would affect the Plaintiff's earning ability. An award for loss of earning capacity is plainly the most appropriate course.

50 The Defendant argues that it has been disadvantaged by the fact that the Plaintiff has not claimed for an award for loss of earning capacity. The Defendant says that had they been aware of this claim, evidence would have been adduced during the hearing on the likelihood of the Plaintiff losing his current job, as well as the impact, if any, his handicap would have on his future job prospects.

51 The Defendant's objections would be valid if this was a case where an additional award for loss of earning capacity was being made. However, this is not so.

52 As I have stated, this is a situation where an award for loss of earning capacity is given in lieu of an award for loss of future earnings, or a case in the "alternate measure" category. The relevant evidence to be considered is the effect of the handicap on the plaintiff's earning ability and his chances of getting back his previous employment. All this was the subject matter in the hearing, and the Defendant's cross-examination and evidence adduced was focused on this aspect. No disadvantage has been suffered by the Defendant in this instance.

53 At the time of trial, the Plaintiff was 31 years old. He could have continued working until retirement, a good 30 years at least. Based on the testimony of Chen, the Plaintiff would have earned around $3200, assuming he was promoted to Senior Technician 2 in a few years. This meant a potential annual salary of around $43,392. The current annual pay of the Plaintiff is around $36,205. (both inclusive of Employer's CPF contribution) Taking into account the differential, the number of working years left for the Plaintiff, and the impact his shoulder handicap would have on his chances of working as a process technician, I was of the view that a reasonable award for loss of earning capacity is $40,000.

Claim for pain and suffering/loss of amenities

54 The claim for injuries could be divided into four distinct areas – head, shoulder, lungs and other injuries.

Head injuries

55 The Plaintiff relied on the cases of *Muhamed Ilyas bin Mirza Abdul Hamid v Kwek Khim Hui* [2004] SGHC 12, *Siti Rabiah bte Ahmad v Abu bin Nachak (S 1328/1997)* and *Ang Siam Hua v Teo Cheng Ho* [2004] SGHC 147.

56 In *Muhamed*, the Plaintiff suffered diffuse axional brain injury, right orbital wall fracture, right malar fracture and bilateral mandible fractures, in respect of which a global sum of $80,000 was awarded for pain and suffering. While the Plaintiff submitted that there had been no haemorrhage in *Muhamed*, I was of the view that this could not be confirmed, based on the sparse facts available in the case summary submitted. I also noted that no details of treatment were available. Consequently, I was of the view that *Muhamed* should not be relied on, given that the award given him was for injuries beyond what the Plaintiff had suffered in this case.

57 For *Siti*, an award of $55,000 was given in respect of diffuse brain injury with traumatic subarachnoid haemorrhage, injury to the third cranial nerve and right parieto occipital scalp haematoma and left periorbital haemotoma with disabilities. While her injuries were similar to that of

the Plaintiff's, the award again covered more than what the Plaintiff suffered.

58 In *Ang*, the Court awarded a sum of $50,000 for head injuries, memory impairment, loss of consciousness for 16 days, and epilepsy. I noted that the award here took into account the memory impairment and epilepsy, which were lifelong conditions. This was markedly different from the Plaintiff's situation in the present case.

59 The Defendant contended that a sum of $21,000 should be awarded in respect of the head injuries. They derived this figure by reference to the sum awarded in *Koh Lu Kuang v Abdul Jalil bin Kader Hussien* (DC Suit 4293/98), which included awards for fractures to the skull and head injuries. The Defendant submitted that the proper award should be derived by subtracting the normal award for skull fractures from the total sum awarded in *Koh*.

60 Taking into account the various cases, I was of the view that $25,000 was a fair award for the claim under this head.

Lung injury

61 The Plaintiff claimed a sum of $15,000 under this head. They drew attention to the various surgical procedures which were performed, including extubation of the Plaintiff for 9 days. They also pointed out that the Plaintiff had suffered chemical pneumonitis. The Defendant submitted that a sum of $4000 was appropriate, and pointed out that the Plaintiff had actually been extubated for only 8 days.

62 I did not find the cases cited by the Plaintiff useful, as the claimants had suffered far more extensive injuries than the Plaintiff. In the case of *Yeong Kim Lan v Salim bin Ahmad & Anor* (MC Suit 5475/95), the claimant was awarded a total of $6800 in respect for fracture of 3 ribs and left pulmonary contusion. I found this case to be a useful guide. No particulars of treatment were stated in that case. Taking into account the rib fracture, pulmonary contusion, chemical pneumonitis and the extubation done on the Plaintiff, I found that a sum of $5000 a reasonable award under this head.

Right shoulder and arm injuries

63 The parties agreed that $10,000 was appropriate for the right brachial plexus injury.

64 As for the right acromio-clavicular joint dislocations and right scapular fracture, the Plaintiff submitted that an award of $17,000 was appropriate, with an additional $8000 for residual stiffness and weakness. The Defendant submitted that an award of $10,000 ought to be made in respect of the injuries, and that no award ought to be made for any residual stiffness or weakness, as these were unproven.

65 Based on the medical reports, I found that the Plaintiff has suffered a permanent handicap in respect of the range of motion of his right shoulder. In *Teo Liang Heng v Tan Cher Cheng* (DC Suit No 1016 of 1996), $12,000 was awarded in respect of acrimio-clavicular joint separation. The Plaintiff in that case also suffered permanent limitation of the right shoulder motion, which appeared to be more severe than the Plaintiff in the present case. In *Chin Swee Min v Nor Nizar bin Mohd* [2004] SGHC 27, the Plaintiff in that case was awarded $10000 and $7000 respectively for a right clavicular fracture and a right scapular fracture.

66 Bearing in mind the amounts awarded in these previous cases, and the disability suffered by the Plaintiff, I was of the view that $20,000 was a reasonable award for these injuries.

Other injuries

67 The Plaintiff also claimed for pain and suffering/loss of amenities in respect of his burn injuries, scarring and lacerations, loss of memory, stuttering, loss of control of his limbs, and a fear of riding motorcycles in future.

68 I disallowed his claim for loss of memory, stuttering and loss of control of his limbs, as these were not sufficiently proven. As for the other items claimed, I was of the opinion that a global award of $10,000 was reasonable.

Special Damages

Medical expenses

69 There was little dispute between the parties on the amount of medical expenses that ought to be awarded. Based on the documents submitted, I awarded a total of $10,222.53 for hospitalisation, and $1964.40 for outpatient charges.

Transport allowances

70 The Plaintiff claimed $3255 for transport expenses incurred. It was rightly pointed out by the Defendants that the Plaintiff had submitted no receipts, and had travelled mostly by bus and MRT in his trips for treatment. I accepted the Defendant's estimation of $1010 in respect of this head of the claim as being a more accurate reflection.

Motorcycle

71 No documents were submitted by the Plaintiff in respect of his claim for the loss of his motorcycle. Without any supporting documents, there could be no substantiation of the quantum that the Plaintiff claimed. I disallowed the claim under this head.

72 I awarded interest at 5.33% on the general damages for pain and suffering from date of writ to the date of this judgement, and interest at 2.66% from date of accident to the date of judgement on the special damages. I will hear parties on costs.