IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 41

Suit No 776 of 2013

Between

(1) Rahman Lutfar

… Plaintiff

And

(1) Scanpile Constructors Pte Ltd
(2) Or Kim Peow Contractors (Private) Limited

… Defendants

GROUNDS OF DECISION

[Damages] – [Assessment] – [Personal Injuries]

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This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Rahman Lutfar
v
Scanpile Constructors Pte Ltd and another

[2016] SGHC 41

High Court — Suit No 776 of 2013
Aedit Abdullah JC
25, 26, 27 August 2015; 9 November 2015

17 March 2016

Aedit Abdullah JC:

Introduction

1 This was a trial on quantum of damages. In the present case, the plaintiff, Mr Rahman Lutfar ("the Plaintiff") was a Bangladeshi national who worked in Singapore at the time of the accident. He was employed by the 1st defendant, Scanpile Constructors Pte Ltd ("the 1st Defendant"), a subcontractor of a road works project in which the 2nd defendant, Or Kim Peow Contractors (Private) Limited ("the 2nd Defendant") was the main contractor (collectively "the Defendants"). The Plaintiff had been run over by a heavy piece of machinery while working at the project site of the Defendants. As a result of the accident, the Plaintiff's right leg had to be amputated, leaving a stump around where his right knee was. His left leg was crushed as well leaving him with various injuries on that limb. The Plaintiff

sued his employer, the 1st Defendant as well as the main contractor, the 2nd Defendant. Interlocutory judgment was entered against the Defendants by consent at 95%. The quantum of damages claimed by the Plaintiff was about $1.06 million but the Defendants argued that only about $137,000 should be awarded. After considering the evidence as to the injuries suffered, including the loss of the leg, the pain the Plaintiff continued to suffer, and the difficulties faced by him back in Bangladesh because of those injuries and pain, I awarded the Plaintiff $426,437.90. The Defendants, being dissatisfied with my decision, have appealed.

Background

2 The Plaintiff was employed by the 1st Defendant, who was the subcontractor for a road widening project at old Chua Chu Kang Road. He was earning about $1,100 per month. The 2nd Defendant was the main contractor of the project. It would appear that the Plaintiff in his work would be directed by either the 1st or 2nd Defendant.

3 In April 2012, when he was 36 years old, the Plaintiff got into an accident and suffered injuries at the work site. On the day of the incident, the Plaintiff had been carrying out his work as a signalman performing lifting work for either the 1st or 2nd Defendant. The Plaintiff and his co-workers were assigned to carry out a lifting operation to remove a steel casing of about 15m from a stationary hydraulic boring rig. Upon completing the lifting operation, the Plaintiff stood behind the stationary boring rig. Sometime later, the stationary boring rig was moved to make room for a truck. At this point, the tracks of the rig hit and ran over the Plaintiff, crushing his legs.

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4 Due to the injuries suffered, the Plaintiff was admitted into the National University of Singapore Hospital ("NUH") for about 2 months. He was subsequently admitted into West Point Hospital for care and treatment. His injuries were reviewed at NUH in July, August and October 2012. He was also seen at Tan Tock Seng Hospital for rehabilitation. Approximately 8 months after the accident, the Plaintiff consulted Dr Tan Mak Yong ("Dr MY Tan") and Dr Lim Boon Leong ("Dr Lim") for the preparation of specialist medical reports.

5 On 28 December 2012, the Plaintiff was sent back to Bangladesh. A sum of $25,000 was paid as interim payment to the Plaintiff on 20 February 2014.

The Plaintiff's Case

6 The Plaintiff claimed for various injuries and losses following on from the accident, covering:

(a) the various injuries he suffered, especially of course the amputation of the right leg, and injuries to the left leg;

(b) depression;

(c) loss of various amenities, including prayers, additional marriage prospects, and conjugal relations;

(d) loss of earnings, both pre-trial and post-trial;

(e) future medical expenses, including modification of his home and an orthopaedic bed;

(f) transportation costs; and

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(g) other additional expenses in Bangladesh relating to the injury.

In all, the Plaintiff claimed, at 95% liability, a sum of about $1.06 million, excluding legal costs.

7 The Plaintiff's medical witnesses included rehabilitative medicine physicians, an orthopaedic expert, and psychiatrists. Their evidence was based on his condition shortly after the accident, and more recently ahead of the trial. The Plaintiff argued that the medical evidence showed that he suffered from various injuries and pain, and that much of this would continue to the future.

The Defendants' Case

8 The Defendants argued in essence that while the Plaintiff did suffer injuries to his legs, the aftermath was not as bad as the Plaintiff had made it out to be. They argued that his claim for pain and discomfort arising from the injuries was not supported by the Defendants' medical evidence, which was to be preferred and pointed out that the Plaintiff's own medical evidence did not support his contentions. Examples of this included the medical evidence in respect of osteoarthritis, the use of a prosthetic for his right leg, depression and scarring.

9 The Defendants also argued that the Plaintiff did not adduce sufficient evidence to support his claim for various losses, including loss of marriage prospects, nursing, reconstruction of the house, and treatment of and support for the various injuries suffered, especially in Bangladesh. They also submitted that the Plaintiff's loss of earnings both in Singapore and in Bangladesh was not as great as he made them out to be. Thus, the evidence showed that the award should be more modest than he claimed.

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The Decision

10 I concluded that a number of the claims made by the Plaintiff were indeed not substantiated sufficiently and thus were not appropriate for an award. As for the amounts for claims that were substantiated, a number of these were only made out to a lesser extent, considering both the evidence and case law. But in respect of the medical evidence as to the continued and future effect of the injuries suffered, I generally preferred the evidence of the Plaintiff's medical witnesses. Having considered both the case authorities and the facts in this case, several adjustments were made to the amounts claimed. In most instances, the amounts awarded matched neither the Plaintiff's nor Defendants' quantification.

Analysis

Difficulties in the case

11 The evidence adduced by the Plaintiff was wanting in several respects. Firstly, there was little adduced about various costs incurred or to be incurred in Bangladesh: there were no quotations from suppliers of goods or services for instance, or receipts for expenses incurred in the meantime. On several occasions, this meant that I could not give any award at all. However, on other occasions, while the evidence was somewhat lacking, an award was still made bearing in mind the probabilities of the situation, particularly where I found that injuries had indeed been suffered. In those instances, the Plaintiff was entitled to damages to address these injuries, including treatment and other compensation, such as costs of renovation of the home. The difficulty did still remain that there was no clear indicator of the amount that should be awarded. As I had found that there was loss suffered, I quantified it as best as I could, taking guidance from decided cases, what evidence there was about the likely

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costs in Singapore and whatever else I could draw on. In respect of these claims, the lack of evidence was not such that I could find that no award at all or only a nominal award should be made as there was some evidence of loss and its extent. Ultimately, in some instances a broad brush had to be applied. To my mind, this approach adhered with that in personal injury cases generally: the claim was proven, and assessment of quantification proceeded as best as could be done. In other words, in several instances, despite the dearth of evidence, I found that on the balance of probabilities, some loss arose and compensation should be made. The Defendants relied on *Jet Holdings and Ors v Cooper Cameron (Singapore) Pte Ltd and other appeals* [2006] 3 SLR(R) 769 ("*Jet Holdings*") at [21], for the proposition that only nominal damages would be awarded where damages are not proven. That proposition does not preclude the Court finding that on what was before it, the evidence thin as it is, may sufficiently indicate that the harm suffered could be quantified as some amount beyond a nominal sum.

12 The other issue concerned the relative cost of items in Bangladesh as compared to Singapore. There was, as I had noted above, lack of evidence adduced by the Plaintiff about the cost of items or services in Bangladesh. On occasion, the Plaintiff referred to costs in Singapore, essentially relying on the point that this was the best that could be adduced. The Defendants however contended that there should be a discount as costs in Bangladesh were generally lower. In general, I accepted the Defendants' argument that costs would be lower in Bangladesh. However, I did not find that such a discount to Singapore prices should be applied across the board. In some instances, I was not persuaded that the cost in Bangladesh would indeed be lower. In these instances, I took the Singapore costs as the cost to be awarded.

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13 There was also an issue with the division of heads between general and special damages. The general damages in this case are the claims for which the damages remain at large, as exact quantification would not be possible. This category encompasses pecuniary damages, primarily future earning loses, and non-pecuniary losses, consisting of loss of amenities as well as pain and suffering. Special damages would cover the pecuniary losses actually suffered, or expenses that had been incurred. There may be some authorities that seem to suggest that strict proof is applied to special damages: see *Wee Sia Tian v Long Thik Boon* [1996] SLR(R) 420 at [15]. This is not necessarily so. Although the Plaintiff as the claimant would have to bear the legal burden of proving his case, this did not translate into any greater obligation in respect of special damages. The real distinction between special and general damages is that the former has to be pleaded specifically but there is no real distinction in the standard of proof.

14 There was some difference as to what constituted general and what constituted special damages. I concluded that the only specific pecuniary claim actually suffered was that for loss of pre-trial earnings. In the end though, I did not think anything significant resulted from the difference in distribution of heads of damages.

General Damages

Injuries

15 As for the medical evidence, I would note generally that I accepted the evidence of the Plaintiff's medical witnesses, particularly as regards his back injury, left leg injuries and osteoarthritis. I note in particular that in respect of the left knee injuries, there was an issue that this was not disclosed in the NUH reports, but I am of the view that this has been sufficiently explained by the

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Plaintiff's expert. Taking the injuries suffered as a whole, I accepted that an award should be given for the use of prosthesis finding that the Plaintiff had given a sufficient explanation for why he had not used it much to date.

Right leg

16 The right leg was amputated above the knee. An award of $80,000 was given for this head of damages, encompassing the amputation, pain and loss of amenity associated with it. There was little dispute on the medical evidence as such.

17 The Plaintiff had argued for $100,000 on the basis that there had to be an adjustment upwards of the $42,000 which had been awarded in the 1980s for a similar injury in *The Kohekohe (Owners) and others v Supardi Bin Sipan* [1985] 2 MLJ 422 ("*The Kohekohe*").

18 The Defendants on the other hand submitted that the appropriate amount was $50,000 following *The Kohekohe.* The Defendants also relied on other cases such as *Lee Yew Hoe v Lee Bock Huat* [1979-1980] SLR(R) 647, in which $40,000 was awarded, and *Pang Teck Kong v Chew Eng Hwa* [1992] SGHC 31 ("*Pang Teck Kong*") in which $50,000 was awarded to a military serviceman serving a combat role. Further, the Defendants argued that the medical evidence showed that the stump that was left after amputation had healed. This meant that the Plaintiff was ready for prosthesis fitting and training, and was expected to be independent with the use of a prosthetic limb. They submitted that this showed that the Plaintiff would have been able to get around and carry out daily activities. The Defendants argued as well that the Plaintiff did not need prosthesis as he had indicated he was content to use a wheelchair.

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19 I accepted that the awards in the various cases cited should be considered in the light that they were older judgments. In my view, maintaining the award at close to the level of the 1980s and 1990s would not be sound. Nonetheless, the impact of amputation would be greater on parties such as that in *Pang Teck Kong*. This was not to diminish the impact of the injury on the Plaintiff here, but claimants such as the soldier in *Pang Teck Kong* would undoubtedly have faced greater difficulties as compared to general workers such as the Plaintiff. However, I could not accept the argument made by the Defendants that those physically impaired would be able to recover and do just as well. That really depended on the specific circumstances of each person. The loss of a limb causes pain and suffering.

20 The medical evidence was that there did not appear to be any major complications, and that the Plaintiff was assessed to be ready for the fitting of prosthesis. I did not think that a claim of $100,000 was made out. I noted that the *Guidelines for the Assessment of General Damages in Personal Injury Cases* (Academy Publishing, 2010) ("the 2010 guidelines") at p 48 recommended an award of up to $80,000 for above knee amputation. Taking into account the severity of the injury, and what was claimed, I was of the view that $80,000 was an appropriate amount for this injury.

Left leg

21 I awarded $50,000 for the left leg injuries. This award covered the left knee, ankle, foot, ankle and toe, excluding osteoarthritis.

22 The Plaintiff claimed a total of $75,000 in all. Dr MY Tan was of the view that there would be limited range of motion even after therapy.

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23 The Defendants submitted $20,000 would be fair figure. They cited authorities such as *Seah Yit Chen v Singapore Bus Service (1978) Ltd and other* [1990] 1 SLR(R) 490 at [5] and *Mah Chee Kok v Cheng Chee Kim* [2003] SGHC 277 at [4] for the proposition that overlapping injuries should generally attract a single global award. The Defendants argued that the evidence showed that the left foot had generally healed, such that the Plaintiff could put his weight on his left leg, though he would have permanent stiffness in his left ankle.

24 The left foot flap had healed well and the Plaintiff could have full weight bearing on his left leg. The fractures had also healed, and according to Dr Chang Wei Chun ("Dr Chang"), the Defendants' orthopaedic expert, the toe injury would not lead to long term effects.[1] The medical opinion that there may be some long term effects was not supported by the Plaintiff's own testimony which did not disclose any problems with his toe. Furthermore, the opinion that there would be long term effects seemed to be about the left foot rather than the toe fracture itself. As for the knee, the Defendants argued that the contemporaneous records gave no indication of any complaint of a knee injury. The Defendants attempted to discount the evidence of Dr Chang, who conducted his examination more than 2 years after, that there was a knee contusion. They also took issue with Dr MY Tan's examination of the Plaintiff, which had taken place 8 months after the accident, and was based on the Plaintiff's complaint and magnetic resonance imaging ("MRI") scans showing raised signals. The Defendants argued that the MRI signals were inconclusive and the Plaintiff already had a degenerated knee. Dr MY Tan himself could not say if the Plaintiff sustained a meniscus injury from the accident. In terms of the quantification, the Defendants argued that the 2010

[1] Agreed Bundle of Documents at p 133.

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guidelines showed that for foot injuries the range would be between $2,000 and $8,000; for ankle injuries, between $1,000 and $10,000; for toe fractures, about $2,000 for each toe fracture. The 2010 guidelines also showed that leg and feet injuries received $11,000 to $13,000, and that $2,500 was awarded for pain and suffering for toe injuries.

25 In general, I preferred the evidence relied on by the Plaintiff and the submissions made. Dr MY Tan, the Plaintiff's expert, noted that the Plaintiff felt persistent left knee pain, attributable to injury, and would be permanent, though it could be alleviated.[2] There would also probably be osteoarthritis developing – this is dealt with below. The limitations on the left knee were evidenced by limited knee motions, noted in December 2012. That would be to my mind sufficient contemporaneous indication of an injury.

26 It is noteworthy that the Plaintiff's condition could worsen even after therapy, with the knee suffering early degeneration. The pain over the left ankle and left foot would also worsen.

27 While Dr Chang for the Defendants found no deformity in the knee, and that the physical examination conducted by him found nothing remarkable, the Plaintiff did complain to him of stiffness and recurrent pain. Dr Chang also discounted the possibility of pain from carrying loads as the Plaintiff should not be carrying loads or for standing long periods, especially if he does not use an artificial limb. However, I found that the Plaintiff would still need to move around, and would thus need to impose weight on his left leg, with prosthesis or crutches. I did not conclude that the Plaintiff would be able to use his wheelchair all the time or that he would not have to carry loads;

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[2] Agreed Bundle of Documents at p 42.

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this was unlikely as the Plaintiff would have to live and work in a rural setting in Bangladesh. This was to my mind reinforced by Dr Chang's own conclusion that the Plaintiff would have difficulty with mobility.[3] The Defendants also referred to his ability to have full weight bearing, being able to ambulate safely. Safe ambulation was to my mind different from easy ambulation, and did not outweigh the evidence that the Plaintiff suffered pain and difficulties from his left leg injuries.

28 I also did not accept the argument by the Defendants that the assessment of degeneration was not sufficiently quantified. While the assessment was not quantified in numerical terms, Dr MY Tan's assessment of definite predisposition to early degeneration, for instance, or pain probably being with the Plaintiff for many years to come indicated that the likelihood was sufficiently high as to merit an award.

29 I accepted that a holistic award covering the various injuries to the left leg should be made; this will in this instance better cover the pain and loss of amenities caused by the cumulative effect of a set of injuries that were close in location and impact.

30 The Plaintiff's left leg was crushed – there was a fracture of his left ankle, dead tissue had to be removed, infections had to be managed, his toe was fractured, and skin was torn off his left foot. The Plaintiff cited *Pang Teck Kong* for an award of $50,000 for a crushed leg to justify an award at this time of $75,000. The Defendants referred to a number of cases in which awards were made for injuries to feet, ranging from $2,500 (for a toe injury) to $11,000 (for degloving, stiffness in toes, numbness and difficulty in wearing

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[3] Agreed Bundle of Documents at p 133.

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shoes) to $13,000 (for swelling of feet and ankle). These cases cited by the Defendants were of a different scale of injury from what was before me.

31 Thus, taking into account what recovery there was as well as the extent of injuries, the probabilities of degeneration and continued pain, I was of the view that $50,000 would be appropriate.

32 It may appear that an award of $50,000 for the left leg was overly generous as the award for the loss of the right leg was $80,000. In other words, that ordinal proportionality was offended as it would have been expected that the loss of a leg or much of the leg should receive proportionately greater compensation. However, while amputation undoubtedly causes pain and suffering, it would not always be that injuries to functioning limbs would always be several magnitudes lower: multiple injuries may occur that cause so much pain and suffering that the level comes much closer than normal to the level of amputation. In this specific case, I found that the injuries on the extant left leg were sufficiently serious and debilitating that they merited the award given.

Osteoarthritis

33 A head of injury which was taken separately from the rest of the leg injuries was the claim for osteoarthritis of the knee and ankle. I gave an award for $13,000.

34 The Plaintiff sought $30,000. He relied on Dr MY Tan's evidence that there would be an increased risk of early onset of osteoarthritis in the left knee and left ankle. Dr MY Tan was of the view that while osteoarthritis is part of normal aging, the degeneration that would be suffered by the Plaintiff would occur faster because of his reliance on one leg. The fact that the Plaintiff might

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use a wheelchair occasionally did not avoid that faster degeneration. The Plaintiff relied on awards of $8,000 for knee osteoarthritis in *Nursarina bte Salim v Noorhakem bin Kamil* (unreported, DC Suit No 2532 of 2003) and $5,000 for ankle osteoarthritis in *Goh Feng Ji Mervin (an infant, suing by his father and next friend Goh Lip Meng) v Yeo Tze Phern* (unreported, DC Suit No 1686 of 1999).

35 The Defendants argued that no award should be made for osteoarthritis as the possibility was at best remote. They relied on Dr Chang's opinion that the Plaintiff's knee was not predisposed to osteoarthritis and that the risk was remote at best. They also argued that there was insufficient evidence of predisposition to early degeneration. This is because given that the Plaintiff would be expected to be less active physically, the risk of degeneration would be lower. As such, Dr Chang found that no long term consequences would be expected.

36 I have found above that there was injury to the left knee and ankle. Flowing from that, I accepted that there was a continued and heightened risk of osteoarthritis, and faster degeneration because of the injuries suffered by the Plaintiff. For the reasons given above in relation to the other left leg injuries, I was of the view that the increased use of the left leg would add to the likelihood of osteoarthritis developing.

37 I did not think the Plaintiff made out his case for an award as high as $30,000. Taking into account the loss of amenities that was awarded for the other left leg injuries above, I was of the view that an appropriate figure given the increased reliance on one leg, was a figure of $13,000.

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Back injury

38 The Plaintiff claimed $20,000, citing the medical evidence of Dr MY Tan and Dr Chang, indicating that back injury was likely.

39 The Defendants argued there were no contemporaneous medical reports showing this because the NUH clinical notes did not record any complaint of back injury. They also argued that Dr MY Tan's opinion that there was probable injury was on the sole basis of the Plaintiff's complaint of pain with stiffness and muscular spams noted in his examination. During cross-examination, counsel for the Defendants asked Dr MY Tan on whether there was a possibility that the Plaintiff's complaints and stiffness were not related to the accident. Dr MY Tan's response was mainly that such a conclusion may be possible but mentioned that it was also possible that the back injury may have been masked at the time by the use of painkillers and pain from other injuries and that the back pains may have only surfaced later after the medication and pain had eased off. The Defendants also argued that Dr Chang's opinion that there was most likely contusion of the back was based on a re-examination conducted 2 years after and not at the contemporaneous time of the accident. Thus, the Defendants submitted that no award should thus be made, or even at most a sum of $2,000.

40 I was satisfied that there was back injury – I accepted the evidence that there was probably masking of that injury at the time of the treatment due to the treatment given to the Plaintiff shortly after the incident. As noted by the Plaintiff, Dr Chang himself noted that there would be contusion following the accident. Dr MY Tan's finding of probable lumbar spondylosis was also sufficient to establish the claim – it is not necessary for a conclusive diagnosis to be formed to justify such a claim, contrary to what was submitted by the

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Defendants. It may be that there was already some degeneration of the back, which would not be surprising given the line of the Plaintiff's work. But I did not see anything in the evidence which would place the cause entirely on such work, and not on the accident.

41 In view of the above, I find that the likelihood of masking of pain from the back would be present, and that was a sufficient explanation for the lack of complaint at the time or even for several months after. Consequently, I concluded that an amount of $20,000 should be awarded for this.

Depression

42 An award of $20,000 was given for this head.

43 The Plaintiff claimed $30,000, arguing that the psychiatric evidence, from his psychiatric expert, Dr Lim Boon Leng ("Dr Lim"), supported the point that the Plaintiff suffered a major depressive episode with moderate severity.[4] Dr Ho Chun Man ("Dr Ho"), another psychiatrist for the Plaintiff, similarly concluded that he suffered from a major depressive episode.[5] It was noted that the Plaintiff was concerned about the future of his family. While not disputing the fact of depression, the Defendants argued that an award of $4,000 was appropriate. The Defendants argued that the Plaintiff was seen by doctors who had prescribed the Plaintiff anti-depressants, and when examined by this own experts was found to be calm and responsive. They also pointed out that the Plaintiff's primary concern was looking after his family. The Defendants also raised the point that no update was given to the psychiatric condition after examination in 2012 and that the Plaintiff had made no

[4] Agreed Bundle of Documents at p 35.

[5] Agreed Bundle of Documents at p 30.

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mention of any psychiatric complaints or treatment in his testimony. Further, the Defendants argued that the evidence showed that the Plaintiff could rely on extensive support from family and friends, which showed that financial concerns would be alleviated, thus removing one of the drivers of his depression. The 2010 guidelines indicate an award of $3,000 to $8,000, for moderate general psychiatric disorders.

44 The Defendants did not take issue with the psychiatric medical evidence.

45 While it may be that the Plaintiff could rely on some wider family support in Bangladesh, I did not find that this was so sufficient that it counteracted any depression that the Plaintiff would suffer. I did accept that there was no evidence that the Plaintiff was undergoing treatment at present in Bangladesh – whatever the reason for this, there was nothing to show that any pain or suffering of this nature was caused by the Plaintiff's inaction. The failure to take medication did not mean that the loss was not suffered. The loss of a limb would be a significant hindrance and the impact on a person's psychiatric wellbeing would be significant. Similar concerns underlay the opinion of Dr Lim, the Plaintiff's expert who noted that major depressive disorder is highly recurrent, with 50% or more having additional episodes in his lifetime; relapse would more likely occur if his social circumstances were poor.[6]

46 $30,000 was submitted by the Plaintiff to be appropriate, citing the case of *Mei Yue Lan Margaret v Raffles City Pte Ltd* [2005] 4 SLR(R) 740 for a similar disorder. Taking into account that there was some possibility that he

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6 Agreed Bundle of Documents at p 36.

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would be able to avoid a relapse in the circumstances, I was of the view that an award of $20,000 would be appropriate.

Scars

47 The Plaintiff claimed $30,000 for multiple scars suffered by him over this right thigh and left leg. The 6 primary ones ranged from 3 cm to 21 cm. Dr MY Tan testified that these would cause discomfort or illness.

48 The level of discomfort that would be caused by scarring was disputed. The Defendants relied on Dr Chang's evidence, for the position that the scars would not cause such discomfort or itchiness that antihistamines or steroids would be required. The Defendants also cited Dr MY Tan's concession that the chance of discomfort would lessen over time. In any event, the 2010 guidelines indicated an award of $5,000 to $15,000 for multiple scars. The Defendants relied on the case of *Chiam Kim Loke v Lee Wing Hoong and another* [2004] SGHC 37 where an award of $20,000 was awarded in respect of more than 25 scars with complications. They submitted that the present case was distinguishable and did not show a similar level of complication. An award of $8,000 was thus suggested by the Defendants.

49 Given the extent and size of the scars, as well as the evidence of Dr MY Tan, it was more probable than not that discomfort would result. While it was true that the Defendant's medical expert Dr Chang examined the Plaintiff more recently than the Plaintiff's expert, who had also accepted that the risk of discomfort would lessen over time, I did not find that these outweigh the likelihood of discomfort relied upon by the Plaintiff. An award of $8,000 would undercompensate the Plaintiff given the extensive scarring. In the

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circumstances, an award of $15,000 was appropriate; taking into account the possibility that discomfort would lessen.

Loss of future income

50 In respect of the loss of earnings and other future matters, consideration had to be made of the relevant multipliers.

51 Several different multipliers had to be derived. The first relates to the time the Plaintiff would have left in Singapore but for the accident. A multiplier for working life in Bangladesh would also be required. Finally, a multiplier representing his expected life span would also be needed.

Singapore working life

52 The Plaintiff faced an upper limit of 10 years total working life in Singapore. A longer period of 22 years would be available if he qualified as a higher skilled worker. This was not disputed between the parties.

53 What was in issue was whether the Plaintiff would have qualified for the longer period. The Defendant adduced evidence through Mr Chan Sian Wah, the 1st Defendant's representative, that only about 20% of their workers would make it to that level. The Defendants argued that the Plaintiff would face difficulties in getting promoted because of his lack of English skills, which was not disputed by the Plaintiff. The Defendants also pointed out that the Plaintiff lacked other relevant skills.

54 In view of this, I concluded that the relevant multiplier for Singapore should be 2 years. The Plaintiff had already worked in Singapore for about 5 years at the time of the accident. That would have left 5 years more. It has

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been 3 years since the accident, so that 3 years should be taken into account in pre-trial earnings as special damages, or more precisely 34 months up to trial from the last payment of salary, as submitted by the Plaintiff in his submissions. The limit of 10 years' total employment at his skill level meant that only 2 years was left. As the period of time was short, I did not consider that any discount need be given in this situation. Discounts are after all intended to offset the effect of exigencies as well as to avoid overcompensation through early payment of money. While the Defendants pointed to the possibility that workers such as the Plaintiff could leave early, or could lose their jobs because of changing economic conditions, the probabilities were much reduced in this case because of the short duration left for the Singapore multiplier. A reduction by 50% for instance would just leave a multiplier of 1, and be unfair. In view of the short duration, no discount was necessary here.

Bangladesh working life

55 I found that the appropriate multiplier for the Plaintiff's working life in Bangladesh was 14 years. As there was no clear evidence of working life in Bangladesh, I took the figure of 65 years. Leaving aside his 2 additional years in Singapore, this would result in a working life in Bangladesh of 63 years. Deducting his present age of 39 years from the figure of 63 years would leave 24 years in Singapore. As such, I found a multiplier of 14 appropriate in the circumstances, considering the cases on multipliers for life expectancy considered below.

Life expectancy

56 Life expectancy would give guidance as to the multiplier for expenses relating to medical treatment and the like. As for the life expectancy in all, I

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considered a total discounted life expectancy multiplier of 16 years. The life expectancy in Bangladesh is about 70 years, leaving about 31 more years in his life expectancy.

57 15 years as the life expectancy multiplier was left untouched by the Court of Appeal in *Lai Wai Keong Eugene v Loo Wei Yen* [2014] 3 SLR 702 ("*Lai Wai Keong*"). A range of cases was considered by the High Court judge in *Lai Wai Keong:* 17 for 32 remaining years in *Tan Juay Mui v Sher Kuan Hock* [2012] SLR 496; 16 for 38 in *Chin Swey Min v Nor Nizar bin Mohamed* [2004] 2 SLR (R) 361; 15 for 33 in *Ang Leng Hock v Leo Ee Ah* [2004] 2 SLR (R) 361; 15 for 51 in *TV Media Pte Ltd v De Cruz Andrea Heidi* [2004] 3 SLR (R) 543.

58 I was of the view that a multiplier of 16 for a life expectancy of 31 more years was appropriate.

59 I would note that the figures used above result in the multipliers between the total working life for Singapore and Bangladesh on the one and life expectancy on the other are the same. As working life and life expectancy in Bangladesh were not that far apart at 65 and 70 years, this coincidence of figure was mainly the result of not discounting the Singapore working life multiplier; otherwise there would have been a difference between the total working life and life expectancy multipliers, reflecting the actual difference between working life and life expectancy. For the reasons I had given above, I did not consider it appropriate or necessary to discount the Singapore multiplier, and left the figures as they were after I had gone through the process of discounting. Discounting further to avoid coincidence of figures would not seem to be fair.

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Loss of income in Singapore

60 As to the multiplicands, the case law, such as *Poh Huat Heng Corp Pte Ltd and others v Hafizul Islam Kofil Uddin* [2012] 3 SLR 1003 ("*Poh Huat*"), make it clear that expenses should be excluded. In the circumstances, considering the various factors, the Singapore multiplicand should be $914 per month.

61 It was not in dispute that the Plaintiff earned about $1,100 per month. There was some issue about the amount of overtime possible, but the stable figure was $1,100. There were expenses that were incurred in Singapore, usually involving transport, food, and mobile phone charges. Such expenses had to be deducted as they would have to be incurred in order to bring in the income here: see *Poh Huat.* From the evidence adduced in court, the expense would range from $136 to $236, as submitted by the Defendants. I took the median expenses, *ie*, $186 per month. That would leave about $914 per month as his income.

62 The Defendants' approach was to take his likely income after he returned home, as a storekeeper, leaving $300 per month. That would not to my mind be appropriate to compensate for the loss of income in Singapore, as but for the accident, he would have continued in his previous role and obtained his previous income.

63 The loss of income before trial will be dealt with below. The general damages covering his loss of future income in Singapore assuming that he would have remained here for another two years would be $21,936.

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Loss of future income in Bangladesh

64 I consider a reasonable Bangladesh multiplicand should be SGD $250 per month.

65 The evidence on this was contested. The Defendants, using Bangladeshi statistics indicated that the likely cost of an assistant running whatever business the Plaintiff stated would have to be paid a salary of about SGD $200 (or 11,000 Bangladeshi Takas) each month. This would have to come out of what the Defendant's suggested would be a figure of SGD $800 as earnings for a person running a store. Taking into account other expenses, it was submitted by the Defendants that an appropriate multiplicand would be about SGD $200.

66 The Plaintiff suggested that he could have worked in textiles earning about $1,556 per month. I was doubtful of this as it was higher than his income in Singapore. If he could earn this amount, there was no reason for him to come to Singapore at all. The Plaintiff also put forward an alternative basis of $733 per month, on the basis that this was what he would earn from running a poultry business. But again, that figure seems quite high when weighed against an income in Singapore of about $900 after expenses. In the circumstances, I could not accept his evidence. Nevertheless, I accepted that it would seem that he hoped to run some sort of business. As for the Defendants' figure of $200 per month in Bangladesh, this seemed to me conversely to be too low. Using the average monthly income of a Bangladeshi worker which was SGD $160 in 2010, I was of the view that a more appropriate figure for his Bangladesh income would be $250. I did not think that a shop assistant's salary should be taken into account, since that would have been something that arose out of the accident.

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67 From that, at $250 per month for 14 years, the award for loss of income in Bangladesh would be $42,000.

Future medical expenses

Prosthesis and physiotherapy

68 I awarded $29,135 for prosthesis and physiotherapy. The Defendants submitted that the Plaintiff did not need prosthesis and its replacements, since he had testified in cross-examination that he found it painful and was content to use his wheelchair. On this point, I accepted the Plaintiff's explanation that this was the consequence of using the prosthesis with little instruction since he was repatriated before this could be provided. I am of the view that for a person with an amputated leg, it is mostly likely that over his life-time, there will be a need to use different aids at different times and the availability of prosthesis should not be readily taken away from the Plaintiff. It may be otherwise if an amputee has spent decades in the wheelchair only, but the Plaintiff was far from that.

69 Further, the Plaintiff claimed maintenance costs of $400 per year for the prosthesis and a one-off sum of $1,500 for physiotherapy.

70 I allowed 4 prostheses over the discounted life-time at $6,000 each. I did not discount the cost of prosthesis despite the figure of $6,000 being derived from Singapore figures, as I did not think that the cost in Bangladesh would necessarily be cheaper. However, for the maintenance costs over his lifetime and one-time physiotherapy, I applied a 35% discount to the figure of $400 per annum and $1,500 respectively. In all, I awarded the Plaintiff4 prostheses at $6000 each, with 65% of $400 for maintenance for 16 years and

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65% of $1,500 for one-time physiotherapy. This resulted in a total amount of $29,135.

Wheelchairs

71 $1,620 was awarded for this. The Defendants did not take issue with the fact that a wheelchair was needed by the Plaintiff. However, they argued that the amount of replacement was not as frequent as the Plaintiff made it out to be pointing to the fact that the Plaintiff was still using the same wheelchair that he had been given in 2012. I find that it would be sufficient to replace wheelchairs once every three years instead of every year as the Plaintiff claimed. Hence, I awarded 5 wheelchairs over the lifetime of the Plaintiff, at $300 each, and 4 pairs of crutches at $30 each. This resulted in an award of $1,620.

Anti-depressants

72 $37,440.00 was awarded in respect of medical treatment. I awarded $300 per month for 16 years at a discounted rate of 65% of the cost estimated in Singapore.

73 The Defendants argued that there was no proof of the medication that was required in Bangladesh, particularly that there was no proof that he had been receiving treatment there. Nonetheless, I accepted that the Plaintiff probably required treatment in Bangladesh. Again, I was willing to countenance that the Plaintiff may not have obtained treatment thus far because of limitations on his resources, even with the interim payment, and this did not mean that he chose not to take any treatment whatsoever going forward.

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Back treatment

74 The Plaintiff sought physiotherapy and medication for his back injuries at $1,500 per month. The Defendants argued that because the Plaintiff would not be likely to impose any load on his back in future, the amount of treatment and medication required would be less than that required by a more active person. No evidence was given by the Plaintiff of the frequency of his medical treatment in Bangladesh. In the circumstances, the Defendants submitted that a fair award would be $7,312.50. I was of the view that $15,600 should be awarded for this. I arrived at this figure by taking the Plaintiff's figure of $1,500 and applying the discount rate of 35%, before applying the multiplier of 16.

75 The Plaintiff also sought $25,000 for a possible spinal fusion operation. The Defendants argued that no award should be made for any fusion of the lumbar spine as the Plaintiff's own expert evidence was that the likelihood of such a surgery being required was low. I found that there was little evidence of the likelihood of this, and I thus made no award.

Left knee

76 An award of $18,200 was given. I was satisfied, as above, that a knee injury was made out on the balance of probabilities. In the similar vein, I was also satisfied that an operation would be required at some point. The Plaintiff asked for $10,000 for arthroscopy and $18,000 for arthroplasty. The Defendants maintained that even if the Plaintiff did suffer a knee injury, based on the medical evidence, any surgical operation would not be useful, I disagreed.

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77 I granted an award of $18,200 to the Plaintiff. As these are expenses, I took the discount rate of 35% for medical expenses in Bangladesh, which gave a figure of about $18,200 for the operation to occur in Bangladesh.

Left ankle and foot

78 The claim in this regard was in respect of likely operations on the ankle and foot. The Plaintiff claimed $18,000 for arthroplasty. Though this was not in his submissions, there was a claim of $15,000 for physiotherapy in his opening statement. There was also a claim of $15,000 for toe injuries. The Defendants reiterated that the Plaintiff would not be very active and thus would not need intensive physiotherapy. They further submitted that no evidence was adduced to show that the Plaintiff would suffer from early degeneration of his ankle and that no award should be made in the circumstances. Similarly, the Defendants argued that no award should be made for toe injuries.

79 Indeed, there was not much evidence of the need for physiotherapy for the ankle, and the Plaintiff did not appear to pursue these claims fully. Nevertheless, there was supporting medical evidence, particularly from Dr MY Tan of his claims. In the circumstances I awarded $18,000 for future treatment of the left ankle and whole of the foot.

Scars

80 I was satisfied that the amount of $975 should be provided to account for medication in Bangladesh for scars. The Plaintiff had indeed suffered scarring on his body. The Plaintiff claimed $1,500. The Defendants contended that this was not proven. Nonetheless, I preferred the evidence of Dr MY Tan[7]

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that the Plaintiff could develop discomfort after the fact in that it was more probable than not that the Plaintiff would require medication to address itchiness from scarring. I applied a 65% discount to the figure of $1,500 and thus derived the amount of $975.

Future Transport

81 $2,000 was awarded for future transport costs. The Plaintiffs claimed figures of $6,882 for travel for medical appointments and $27,528 for travel for social matters, taking a 1 to 3 ratio for medical to social trips. There was no documentary evidence of what had been incurred by him so far in Bangladesh. While it could be accepted that there would have to be trips for medical treatment given the Plaintiff's condition, there was nothing to show what kind of and what duration the social trips claimed would entail. In the face of the lack of concrete evidence, what I could award was a broad brush figure of $2,000 only.

Remodelling of house

82 I awarded $3,500 for the costs of remodelling the Plaintiff's home.

83 The Plaintiff sought a sum of between $33,962 and $37,745.80, representing a sum between 1.8 million and 2 million Bangladeshi Takas. He claimed that this was what was quoted to him. The Defendants argued that no evidence was adduced at all on the difficulties with movement within the home or what would be needed. Further, they also argued that no evidence was adduced on the cost of reconstruction. The Defendants argued that there should be no weight placed on the oral quotation given by the Plaintiff since it

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[7] Agreed Bundle of Documents at p 43.

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only came out in cross-examination, implying that it was nothing but an afterthought.

84 Despite the absence of documentary evidence or anything more convincing than the Plaintiff's recount of an oral quote given to him, I accepted that some remodelling would probably be required given the injuries the Plaintiff suffered. Not awarding anything at all would be to ignore the reality of those injuries and the difficulties the Plaintiff would consequently need to face.

85 I compared the amount awarded for remodelling awarded in *Ng Song Leng v Soh Kim Seng Engineering & Trading Pte Ltd* [1997] SGHC 289 ("*Ng Song Leng*"), where $7,500 was awarded for re-levelling and retiling to facilitate the movements of the plaintiff in that case. *Ng Song Leng* was decided in the 1990s in respect of renovation in Singapore. I had very little before me to calibrate what should be the amount awarded in this case, and for what work. I accepted that there would at the very least be a need to make sure the floor of his home was even, so that he could move around easily, and that the Plaintiff should be provided with his own bathroom and toilet facilities. Again applying a broad brush approach, I was of the view that a sum roughly about half of that in *Ng Song Leng* in the absence of any other evidence would be a fair amount.

Orthopaedic bed

86 I awarded $2,200 as the likely cost of the orthopaedic bed required by the Plaintiff.

87 No evidence was given as to the cost of such a bed in Bangladesh although the Court was provided with a printout showing the cost of such a

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bed in Singapore. As the Plaintiff was found to have suffered back injuries, and thus likely to have back pains, I found that the need for an orthopaedic bed was proven. As to its cost, I was not persuaded that the figure should be lower in Bangladesh, and I was of the view that on the best evidence before me, it would be appropriate to award the cost of the bed in Singapore.

Prayers

88 The injury to the Plaintiff would have affected his ability to pray. While there are no doubt measures that could be taken around this disability, the loss of the ability to pray or perform religious rituals of whatever nature would be a relevant loss of amenity that requires compensation. Such loss of amenity would not generally be captured by the general award for loss of a limb. I accordingly gave a small sum of $3,000 for this loss.

Nurse or Maid assistance

89 I was doubtful about the level of evidence given by the Plaintiff as to this, especially as regards the costs involved. He indicated that this would be about $613 per month. Nonetheless, given the extent of injuries, I was of the view that some assistance would clearly be needed. I took this at a rate of $100 per month, over the discounted period of 16 years for his lifespan, giving $19,200.

Conjugal relations

90 As to the Plaintiff's claim for loss of conjugal amenity, there was again little evidence of this. I noted that no medical evidence was brought in to support this loss. However, given the extent of injury suffered, it was apparent that some loss would be suffered, and I thus awarded a sum of $5,000 for this.

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Special damages

91 The lost income over the intervening years since the injury up to the trial was the sole head of special damages. As noted above, it has been 3 years since the accident, so that 3 years, or rather 34 months' of wages based on his last drawn salary should be taken into account in calculating his pre-trial earnings as special damages. Taking the quantification of $914 per month, this would lead to a sum of $31,076.

Heads not awarded

92 The Plaintiff had also claimed for various additional expenses that he incurred, claiming about $15,360 per year. These were not substantiated and there was nothing linking any such expense to the injuries suffered. I did not find that these were established.

93 Finally, the Plaintiff claimed for loss of future marriages, on the basis that he had the right to have additional wives. There was no argument before me as to whether this was a claimable loss in principle. Moreover, there was insufficient proof of the position under his school of Islamic law. There was also no evidence of permission from either his present wife or the relevant authorities in Bangladesh, which he claimed was what was stipulated. Accordingly, I dismissed the Plaintiff's claim in this respect.

Credibility of the Plaintiff

94 Through the proceedings, the Defendants attacked the credibility of the Plaintiff during cross-examination. While I found that the Plaintiff was certainly vague on some matters, and did not substantiate many of his claims, I nevertheless did not find any of these shortcomings in his evidence of such a degree that the whole of his evidence should be rejected.

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Conclusion

95 For ease of reference, the awards I have made and the total are summarised as below:

Item	Award
General damages	
Right leg	$80,000.00
Left Leg	$50,000.00
Back	$20,000.00
Osteoarthritis	$13,000.00
Depression	$20,000.00
Scars	$15,000.00
Nursing Care/Maid	$19,200.00
Prayers	$3,000.00
Marriage prospects	$0.00
Conjugal relations	$5,000.00
Future earnings, earning capacity	$63,936.00
Future medical expenses (prosthesis and physiotherapy)	$29,135.00
Wheelchair	$1,620.00
Anti-depressants	$37,440.00
Back treatment	$15,600.00
Left knee	$18,200.00
Left ankle and foot	$18,000.00
Scars	$975.00
Future transport costs	$2,000.00
House remodelling	$3,500.00
Orthopaedic bed	$2,200.00
Additional expenses	$0.00
Special damages	
Pre-trial earnings	$31,076.00
Total	**$448,882.00**
Award to Plaintiff at 95%	**$426,437.90**

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96 Lastly, I awarded costs of $50,000 plus reasonable disbursements and GST to the Plaintiff.

Aedit Abdullah
Judicial Commissioner

Bhaskaran Shamkumar (APAC Law Corporation) for the plaintiff;
Anparasan S/O Kamachi, Lin Hui Yin, Sharon and Wong Jing Ying Audrey (Khattarwong LLP) for the first and second defendants.

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