IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 74

Civil Appeal No 162 of 2017

Between

LUA BEE KIANG
(ADMINISTRATOR OF THE ESTATE OF CHEW KONG SENG, DECEASED)

… Appellant

And

YEO CHEE SIONG

… Respondent

In the matter of Suit No 1260 of 2014

Between

YEO CHEE SIONG

… Plaintiff

And

(1) SALPAC (S) PTE LTD
(2) LUA BEE KIANG
(ADMINISTRATOR OF THE ESTATE OF CHEW KONG SENG, DECEASED)

… Defendants

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JUDGMENT

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

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Lua Bee Kiang
(administrator of the estate of Chew Kong Seng, deceased)
v
Yeo Chee Siong

[2018] SGCA 74

Court of Appeal — Civil Appeal No 162 of 2017
Andrew Phang Boon Leong JA and Judith Prakash JA
17 August 2018

5 November 2018 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

Introduction

1 This appeal raises two issues of principle concerning the measure of damages in personal injury cases. The first is the proper approach to assessing damages for pain, suffering and loss of amenity where the claimant has suffered multiple serious injuries. The second is the proper approach to assessing damages for future loss in the form of the costs of managing the possible onset of a medical condition which would be attributable to an injury that was caused by the defendant's negligence.

Background

2 The respondent, Mr Yeo Chee Siong ("Mr Yeo"), is 64 years old this year. He was a carpenter for a company called Salpac (S) Pte Ltd ("Salpac") for

nearly two decades. Every day before dawn, he was ferried to work from Woodlands, where he stayed, on a lorry owned by Salpac and, in the later part of his career with Salpac, driven by his colleague, Mr Chew Kong Seng ("Mr Chew"). On the morning of 29 December 2012, Mr Yeo boarded the lorry but did not make it to work. The lorry had collided into a bus as result of being carelessly driven by Mr Chew. The accident caused Mr Chew's death. Mr Yeo, on the other hand, suffered serious injuries to his head and body. Although he has since made good recovery, he survives with permanent cognitive impairment of some measure, and with an aching and debilitated frame. He can no longer return to his trade and now works as a cleaner. In the event, he sought to recover damages in negligence from Salpac as well as from Mr Chew's estate, which is being administered by Mr Chew's widow, Mdm Lua Bee Kiang ("Mdm Lua"), the appellant.

3 In December 2015, Mr Yeo obtained interlocutory judgment against Mr Chew's estate and withdrew his claim against Salpac. The matter proceeded before the High Court for Mr Yeo's damages to be assessed. In August 2017, the High Court Judge ("the Judge") awarded Mr Yeo damages in the total sum of $576,626, and the reasons for her decision are set out in *Yeo Chee Siong v Salpac (S) Pte Ltd and another* [2017] SGHC 304 ("the GD"). The Judge arrived at the total sum by using the "component" method for assessing damages, by which she first awarded separate amounts for each item of loss and then added up the amounts to arrive at the total sum. Out of the total sum, $96,826 was for four items, namely, pre-trial loss of earnings, medical expenses, nursing home expenses and transport expenses. Before the Judge, Mdm Lua did not dispute that Mr Yeo was entitled to recover for that amount. But she challenged his claim for damages for four other heads of loss, namely, (a) pain,

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suffering and loss of amenity; (b) loss of earning capacity; (c) loss of future earnings and (d) cost of future nursing care.

4 The Judge allowed Mr Yeo's claim on each of those four items. She awarded Mr Yeo $326,000 for pain, suffering and loss of amenity. This comprised $200,000 for his head injuries and $126,000 for his bodily injuries. She awarded him $72,000 for loss of future earnings and $5,000 for loss of earning capacity. And she awarded him $76,800 for the cost of future nursing care. In making this award, the Judge took into account the fact that Mr Yeo's brain injury had increased his risk of developing dementia in the last two to three years of his life, and that if the condition did manifest, he would need to be institutionalised. Accordingly, the award was for the cost of being placed in a nursing home for two years. In sum, the Judge allowed substantially the whole of Mr Yeo's claims. Mdm Lua now appeals against the Judge's decision on each of those four heads of loss.

5 Mdm Lua argues that the Judge's award was manifestly excessive. On Mr Yeo's pain, suffering and loss of amenity, she complains that the Judge's award is based on a misapplication of the relevant assessment guidelines, does not account for overlapping injuries and is out of line with awards in previous cases where the claimants survived with much more severe permanent disabilities than Mr Yeo. Mdm Lua also argues that the Judge was wrong to apply the component method in this case, and asks that the award be reduced from $326,000 to $179,000. On Mr Yeo's loss of future earnings, Mdm Lua criticises the Judge for using a multiplier and a multiplicand that fail to account for contingencies, and asks that the award be reduced from $72,000 to $12,000. Mdm Lua also contends that Mr Yeo should be awarded nothing for loss of earning capacity because it has not been established on the evidence. And she argues that he should receive nothing for the cost of future nursing care because

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it is a speculative loss. In particular, she submits that Mr Yeo has not proved on a balance of probabilities that he will develop dementia in the future, and therefore ought not to be awarded the cost of nursing care for the purpose of managing that condition.

6 Mr Yeo makes opposing submissions in relation to each of these four heads of loss. On the award for pain, suffering and loss of amenity, he contends that the Judge arrived at the right quantum by correctly applying the component method. He also submits that the award is not out of line with the precedents because he suffered more serious injuries than the claimants did in the cases relied upon by Mdm Lua. On loss of earning capacity and loss of future earnings, he disagrees with Mdm Lua that the Judge's awards were not supported by the evidence. He also submits that the Judge's award for loss of future earnings did account for the relevant contingencies. And he defends the Judge's award for cost of future nursing care on the basis that it is supported by the evidence.

Issues to be determined

7 Our task is to determine whether the Judge's awards of $326,000 for Mr Yeo's pain, suffering and loss of amenity, $5,000 for his loss of earning capacity, $72,000 for his loss of future earnings and $76,800 for the cost of future nursing care are manifestly excessive or otherwise unjustified as a matter of fact or law. We shall address each item of loss in turn.

Issue 1: Pain, suffering and loss of amenity

8 Mdm Lua argues that the Judge was wrong to use the component method because it "leads to a situation of over compensation and is not appropriate for a case such as this" where multiple injuries have been sustained. Mr Yeo, on the

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other hand, submits that the Judge did not err in adopting this method. He refers to a number of cases which, in his view, show that the method is appropriate in the present context. In brief, we agree with Mdm Lua that the award of $326,000 is manifestly excessive. It seems to us that the error in the award consists in a failure to consider whether the aggregate sum yielded by the component method reflects the totality of Mr Yeo's injuries and is in line with past awards. In our judgment, $200,000 is the correct amount. We turn now to explain our reasons, beginning with the applicable principles.

Applicable principles

9 As with any claim in the tort of negligence, the basic principle for determining the quantum of damages for personal injury is to award the claimant "full compensation" for his loss (see Peter Cane and James Goudkamp, *Atiyah's Accidents, Compensation and the Law* (Cambridge University Press, 9th Ed, 2018) ("*Cane and Goudkamp*") at p 131). This means that the award should, as far as money can accomplish, restore him to the position that he would have been in had the injury not been sustained (see the House of Lords decision of *Livingstone v The Rawyards Coal Co* (1880) 5 App Cas 25 at 39 *per* Lord Blackburn). In the case of pecuniary losses, such as lost earnings, the idea of full compensation gives rise to little difficulty, at least in principle. However, where non-pecuniary loss is concerned, such as pain, suffering and loss of amenity, full compensation is inherently difficult to measure because such loss cannot be assessed by mathematical calculation. The guiding principle, in this context, is therefore that of "fair compensation", in the words of Field J at first instance in the English Court of Appeal decision of *Phillips v The London and South Western Railway Co* (1879) 5 QBD 78 at 80. This means that compensation ought to be reasonable and just, and need not be "absolute" or "perfect" (see *Cane and Goudkamp* at pp 131–132 and the English Court of

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Appeal decision of *Fletcher v Autocar and Transporters Ltd* [1968] 2 QB 322 ("*Fletcher*") at 335A–B *per* Lord Denning MR).

10 Guidelines have been developed over time in precedents and treatises as to the likely level of award for a particular type of injury, and the task of the court in each case is to apply these guidelines in a way that results in fair compensation for the claimant. Singapore courts have traditionally employed two methods for doing so (see the decision of this Court in *Poh Huat Heng Corp Pte Ltd and others v Hafizul Islam Kofil Uddin* [2012] 3 SLR 1003 at [32] *per* Chao Hick Tin JA). The first is the component method, which we have referred to, by which the loss arising from each item of injury is individually quantified and then added up to estimate the overall loss that the claimant has suffered. The second is the global method, by which all the injuries sustained by the claimant are considered holistically to arrive at an estimation of his overall loss. The principle behind the component method is that damages should be awarded for losses that may properly be regarded as distinct or discrete (see the High Court decision of *Tan Yu Min Winston (by his next friend Tan Cheng Tong) v Uni-Fruitveg Pte Ltd* [2008] 4 SLR(R) 825 ("*Winston Tan*") at [16] *per* Chan Seng Onn J). A concern regarding this method, however, is that the overall quantum must be a reasonable sum that reflects the totality of the claimant's injuries (see the decision of this Court in *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587 ("*Samuel Chai*") at [49] *per* Chao Hick Tin JA). And this last-mentioned point, in fact, is the principle which animates the global method.

11 It is sometimes suggested, as it is in Mdm Lua's and Mr Yeo's submissions, that there is a choice to be made between applying the component method and applying the global method. In our judgment, however, it is more helpful to view the two methods as ***complementary*** *rather than mutually*

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exclusive. That is because they are simply *different practical modes* of producing a fair estimate of the claimant's loss. They do not purport to estimate different types of loss in the way that, for example, the expectation measure and reliance measure of damages in the law of contract purport to do. Hence, there is no contradiction between the respective premises of the component method and the global method that requires one method to be excluded as a matter of principle when the other is applied. To the extent that one of them may tend towards an overestimation or underestimation of the claimant's loss, the other may apply as a *counterweight*. By working between these two methods, the court aims at an acceptable coherence between the result produced by each to achieve a certain reflective equilibrium in deciding the appropriate award.

12 This means that the proper relationship between the component method and the global method is governed by practicality and not doctrine, still less mechanistic computation. Thus, where one method is said to be "preferred" to the other, it can only be because practical reasons justify it, in the sense that the chosen method is likely to conduce towards a fairer estimate of the claimant's loss. For example, where the claimant's only injuries are a broken arm and a broken leg, the component method would be a sensible starting point, given that the injuries are obviously distinct from each other. In many cases, however, the claimant will have suffered multiple injuries across his body. Some of them may have contributed, either individually or in combination, to long term impairments. In such cases, it will be difficult to obtain a fair estimate of loss if recourse is had to only one of the two methods.

13 The application of both methods ought nevertheless to be performed in a transparent and systematic manner. In our judgment, the analysis may proceed in two stages. First, the court should apply the component method to ensure that the loss arising from each distinct injury suffered is accounted for and

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quantified. Second, the court should apply the global method to ensure that the overall award is reasonable and neither excessive nor inadequate.

14 Quantification of individual items of loss, at the first stage, is essential because it requires the court as far as possible to explain its reasons for arriving at the final sum awarded. The court does this by placing a monetary value on compensation for each discrete injury, and explaining why the value is appropriate, having regard to the nature of the injury and its effect on the claimant. This promotes transparency in reasoning, and will give the parties as clear an understanding as possible of how the final sum was arrived at, such that if they decide to challenge the award, they will be able to (and indeed, to have any chance of succeeding, will be compelled to) explain specifically which aspect of the award they think is in error. This is the virtue of the component method, and it is evidenced in the present case because, as we shall see below, while Mdm Lua submits that the sum awarded for Mr Yeo's head injuries was excessive, she accepts that, taken on their own, the sums awarded for his bodily injuries were not. This position could not have been adopted if the Judge had simply awarded a single sum for pain, suffering and loss of amenity without breaking that sum down into its component parts.

15 Reference may be made to assessment guidelines at the first stage of the analysis. In Singapore, the main resource is Charlene Chee *et al*, *Guidelines for the Assessment of General Damages in Personal Injury Cases* (Academy Publishing, 2010) ("the Guidelines"), to which the Judge made extensive reference in her written grounds when applying the component method. The Guidelines are of assistance because they set out indicative assessment ranges for most types of personal injury. However, it should be borne in mind that they are no more than guidelines. As the former Chief Justice Chan Sek Keong observed in the foreword (at p vii), they provide a "good starting point" for

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negotiation. More importantly, the Guidelines' own premise behind the validity of the indicative assessment ranges is that the injury concerned is the dominant injury or is a distinct injury that the claimant has suffered. That is why the Guidelines state (at p 2) that "[i]f, in addition to the most significant injury, there are other injuries, it is *not appropriate to add up values* to determine the amount of compensation. There is likely to be minor adjustments within the value range to provide for overlapping pain and suffering" [emphasis added].

16 That explains the need for the second stage, which considers whether the aggregate award is reasonable and neither excessive nor inadequate. If either obtains, then the award will have to be adjusted. This is not an impressionistic exercise, but is instead guided by at least two well-defined considerations.

17 The first is what is often called "overlapping" injuries. This refers to the phenomenon of injuries which either (a) together result in pain that would not have been differentially felt by the claimant (*Winston Tan* at [16]) or (b) together give rise to only a single disability (*Samuel Chai* at [49]). In such circumstances, compensating for each distinct injury would likely result in an excessive award. This is part of the general principle, which applies to the assessment of all kinds of loss in a personal injury claim, that the claimant should not be compensated for more than what he has lost. To borrow an example from Lord Denning MR in *Fletcher*, if a claimant is being compensated for the cost of future accommodation, he cannot also be compensated for his full salary, for that would mean that he would be saving his full salary and spending nothing (at 337D–E). Ultimately, the court must be astute in assessing the claimant's true loss, whether in the context of pain, suffering and loss of amenity or future expenses, in order to avoid making duplicative awards.

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18 The second consideration is precedent. Reference to precedent assists in arriving at a fair estimate of loss by drawing on experience contained in previous decisions. It also ensures that like cases are treated alike. As Lord Diplock put it in the House of Lords decision of *Wright v British Railways Board* [1983] 2 AC 773 at 777C–D, "the aim is that justice meted out to all litigants should be even-handed instead of depending on the idiosyncrasies of the assessor, whether jury or judge, the figure must be 'basically a conventional figure derived from experience and from awards in comparable cases'." As will be seen, it appears that the excessiveness of the Judge's award in this case is, with respect, attributable to a failure to engage in the inquiry required under the second stage.

19 We find support in the authorities for the two-stage approach that we have just described. In *Winston Tan*, the assistant registrar ("the AR") had adopted only the global method in quantifying damages for pain, suffering and loss of amenity arising from the claimant's multiple head injuries. Chan J stated that while he did not think that "mak[ing] one global award for all the injuries to the head would *per se* be wrong", he considered that it would be difficult to arrive at an appropriate and fair award "without breaking the discrete injuries down into its manageable components" (at [15]). He proceeded to hold that the component method was the "preferable" approach in that case because the claimant's injuries had given arise to the loss of distinct and separate functions and amenities. Critically, he then stated that at the end, it was necessary to "perform a further check on … whether the aggregate amount … remained reasonable and was not excessive" (at [16]).

20 Next, in *Samuel Chai*, the courts below had applied the component method, and it was contended by the appellant that this approach "would lead to a high possibility of over-compensation as a result of sub-itemisation" (at [48]). This Court took the view that "sub-itemisation was no more than an

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instrument to aid the court to determine what would be a fair and reasonable quantification for a particular injury or disability having regard to precedents" (at [48]). Relying on this sentence, Mr Yeo in the present case submits that the court in *Samuel Chai* "endorsed the component approach taken by [Chan J] in *Winston Tan*", and, therefore, the Judge was not wrong to use just the component method. However, this ignores the fact that this Court in *Samuel Chai* also stated that "in awarding damages by way of the component approach, courts should always be mindful that the overall quantum must be a reasonable sum *reflective of the totality of the injury*" [emphasis added] (at [49]).

21 Similar observations were made in the English Court of Appeal decision of *Brown v Woodall* [1995] PIQR Q36. In that case, the trial judge had arrived at a figure for pain, suffering and loss of amenity by adding up the various figures for the awards for various heads of injuries. The court decided that her award was excessive because she failed to consider whether the aggregate figure was reasonable compensation for the totality of the injury to the claimant. Sir John May put it this way (at Q39):

> I respectfully agree that the learned judge's approach of adding up the various figures for the awards that she thought appropriate for the various different injuries could well lead one to an award which, compared with other awards, is in the aggregate larger than is reasonable.
>
> In this type of case, in which there are a number of separate injuries, all adding up to one composite effect upon a plaintiff, *it is necessary for a learned judge, no doubt having considered the various injuries and fixed a particular figure as reasonable compensation for each, to stand back and have a look at what should be the global aggregate figure and ask if it is reasonable compensation for the totality of the injury to the plaintiff or whether it would in the aggregate be larger than was reasonable*?
>
> I think that towards the end of a very careful and detailed judgment, the learned judge did err in failing to stand back and look at the case as a whole. …

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[emphasis added]

22 Finally, in the English Court of Appeal decision of *Sadler v Filipiak and another* [2011] EWCA Civ 1728, the trial judge had similarly arrived at a figure for pain, suffering and loss of amenity by adding up the various figures for the awards for various heads of injuries. As a result, the court found, there was "an overlap" in the awards in which scarring was reflected and "a significant degree of overlap between individual orthopaedic injuries" (at [35]), which meant that the award had to be reduced. Pitchford LJ, with whom Etherton and Ward LJJ agreed, held that the trial judge erred by failing to consider whether the aggregate award reflected the totality of the claimant's injuries. His Lordship was careful to note that the aggregate award may be either inadequate or excessive, and that would justify adjusting it, sometimes significantly. The point was put this way (at [34]):

> It is in my judgment always necessary to stand back from the compilation of individual figures, whether assistance has been derived from comparable cases or from the JSB [*ie*, Judicial Studies Board] guideline advice, to *consider whether the award for pain, suffering and loss of amenity should be greater than the sum of the parts in order properly to reflect the combined effect of all the injuries upon the injured person's recovering quality of life or, on the contrary, should be smaller than the sum of the parts in order to remove an element of double counting*. In some cases, no doubt a minority, no adjustment will be necessary because the total will properly reflect the overall pain, suffering and loss of amenity endured. In others, and probably the majority, *an adjustment and occasionally a significant adjustment may be necessary*. [emphasis added]

23 These authorities, in our judgment, support the two-stage analysis which we have suggested. But we hasten to add, for the avoidance of doubt, that we are not prescribing this as the only analysis to be applied in every personal injury case. It should be applied where the claimant has suffered multiple injuries, because it is in such cases where complications arising from overlapping injuries and from the assessment of the totality of the injuries are most likely to

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arise. Where the claimant has suffered only a single fracture, for example, there would naturally be little profit in pursuing the two-stage analysis. The present case, however, seems to us clearly suitable for this analysis, given the nature of Mr Yeo's injuries. We therefore turn now to apply it.

Applying the two-stage analysis

24 Mdm Lua's case is that the Judge's award of $326,000 for Mr Yeo's pain, suffering and loss of amenity, comprising $200,000 for head injuries and $126,000 for bodily injuries, is excessive. She makes three principal submissions in this regard. First, the award of $130,000 for Mr Yeo's brain damage is based on an incorrect classification of that damage under the Guidelines. Second, the award of $70,000 for Mr Yeo's facial injuries, although based on correct classifications, is too high and does not account for overlapping. Third, the total award of $200,000 for Mr Yeo's head injuries and the total award of $126,000 for his bodily injuries are out of line with the precedents.

25 For the reasons set out below, we agree largely with all three submissions. We shall deal first with whether the Judge erred in applying the component method, in particular, whether her application of the Guidelines has been fairly criticised by Mdm Lua. We shall then consider whether the aggregate award adequately takes into account overlapping injuries and whether it is in line with the existing precedents.

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Stage one: Quantifying individual items of loss

(1) Brain damage

26 The Judge awarded $130,000 for Mr Yeo's brain damage. The question is whether Mr Yeo's brain damage for the purposes of the Guidelines should be regarded as "moderately severe", as the Judge thought (see the GD at [12]), or just "moderate", as Mdm Lua contends. The Guidelines state the following about those two classifications (at pp 4–6):

> **(b) Moderately severe brain damage $120,000–$160,000**
>
> Cases falling under this category include injured persons who are, although more aware of their physical environment than those in (a) above [*ie*, Very severe brain damage], still have severe physical and cognitive limitations such that there is heavy reliance on care-givers for constant care. The GCS [*ie*, Glasgow Coma Score] may be between 8–10. This category also includes persons whose intellect and personality undergo a significant change subsequent to the injuries sustained.
>
> The quantum of the award will be affected by the following factors:
>
> (i) the degree of awareness of the physical environment and response to stimuli;
>
> (ii) life expectancy;
>
> (iii) the extent of physical limitations;
>
> (iv) the degree of dependence on others for activities of daily living;
>
> (v) significant cognitive impairment and personality change (with associated behavioural problems); and
>
> (vi) epilepsy or a significant risk of epilepsy.
>
> **(c) Moderate brain damage**
>
> This category is distinguished from (b) above by the fact that the degree of dependence on care-givers is significantly lower and the person is able to perform simple tasks of daily life. The GCS scale may be between 9–12.
>
> (i) Moderate to severe cognitive impairment with accompanying personality change resulting in

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> behavioural problems, a reduced awareness of danger present in the physical environment, reduced sight, speech and sensory abilities with a significant risk of epilepsy and no prospect of employment. **$80,000–$120,000.**
>
> (ii) Moderate to modest cognitive impairment – the person's chances of competing in the job market with other able-bodied persons is significantly reduced and there is some risk of epilepsy. **$50,000–$80,000**
>
> (iii) Able to perform the activities of daily life competently with minimal or no dependence on others but concentration and memory are affected, such that the ability to work is reduced and there is a small risk of epilepsy. **$25,000–$50,000**

27 In the present case, Mr Yeo sustained significant cognitive deficits and acquired an amnestic disorder. After the accident, his personality changed. He became easily agitated and (according to his nephew) even displayed behavioural problems. On the other hand, he has on the whole made good recovery from his brain injury. In particular, he is now able to live independently. No doubt his injury has caused him significant disadvantage in seeking employment. According to Dr Chang Wei Chun, one of Mdm Lua's expert witnesses, "if [Mr Yeo] chooses to return to work, it would be sedentary, repetitive, and not requiring much mental input". Fortunately for Mr Yeo, that has not prevented him from finding and holding down a job as a cleaner, which is not a particularly "sedentary" job.

28 While we have great sympathy for Mr Yeo's plight, when his circumstances are viewed in their totality, it cannot be said that he shows "heavy reliance on care-givers for constant care", which is the defining characteristic of moderately severe brain damage under the Guidelines. His ability to live independently means that the degree of his dependence on others is low and implies that he is able at least to "perform simple tasks of daily life", which is the defining characteristic of moderate brain damage under the Guidelines. And

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while he has experienced a reduction in intellect and a change in personality, his faculties of communication and perception have not been significantly compromised, nor does he have "no prospect of employment" (see para (c)(i) quoted at [26] above). Para (c)(ii), which speaks of "[m]oderate to modest cognitive impairment" and one's ability to compete for employment being "significantly reduced", seems a closer fit to Mr Yeo's current position.

29 Against this, Mr Yeo highlights, firstly, that after the accident, his Glasgow Coma Score, which measures the severity of brain damage, was 4, and that that is regarded as very severe brain damage under the Guidelines. But the Judge found specifically that Mr Yeo had made good recovery, and in the light of his ability to live independently, that score could not be said to represent his current mental condition (see the GD at [10]). Second, Mr Yeo points out that Dr Simon Lowes Collinson ("Dr Collinson") and Dr Donald Yeo, who were Mr Yeo's and Mdm Lua's respective experts, agreed in their joint report that Mr Yeo "needs regular supervision and a degree of home help presently and into the future". However, needing supervision is not quite the same as "heavy reliance on care-givers for constant care" (see para (b) quoted at [26] above). The kind of supervision that Mr Yeo needed was explained by Dr Collinson during witness conferencing in the following terms:

> Court: I would just like to clarify with the doctors. When you say that he needs regular daily, although not necessarily constant, and when you think of nursing care where you are in a place where there are doctors, nurses or those who would usually give you that kind of care and you compare these two, is the plaintiff somewhere in between? And when you are in between, do you try to be independent but have someone living with you at least or should you actually go into that kind of nursing environment if you do not have anyone in the same home when you try to live independently? … It could be in Singapore, you know, a helper, you know, domestic helper

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> or a family member. And suppose we compare that with living in a residential accommodation with no one there, could you sort of give me some views on that, please?
>
> [Dr Collinson]: Er, yes, erm, the first part of your question, Your Honour, was whether he's somewhere in the---middle. Er, and I think that *he doesn't require the kind of intensive medical and nursing supervision that you might get in a nursing home. Er, he needs someone to keep an eye on him.* That's the best way I could describe it, er, on a daily basis to make sure that he is eating, er, that he is sharing, that he isn't---isn't spending all his money unnecessarily. Er, and usually that is done by family members in Singapore. That's my experience. Er, so some kind of, er, step down care, sheltered care where he's free to come and go; but he must return at night, would be ideal for a patient like him. …
>
> [emphasis added]

30 While it may be desirable that someone watches over Mr Yeo as he goes about his daily tasks, he remains sufficiently resilient and able to go about those tasks independently. Indeed, that is the basis upon which Mr Yeo is asking the court not to disturb the Judge's finding on his remaining working life expectancy, upon which the multiplier for the calculation of his loss of future earnings is based. Therefore, we do not think that he has demonstrated the heavy reliance on care-givers for constant care which justifies treating him as having sustained moderately severe brain damage.

31 In our judgment, Mr Yeo should be regarded as having sustained "moderate brain damage" and, within that category, "moderate to modest cognitive impairment" under para (c)(ii) quoted at [26] above, for which the assessment range is $50,000–$80,000. We would give him an award at the higher end of this range, *ie*, $70,000, to take into account the fact that he has experienced an appreciable change in personality and also the fact that it would

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be desirable for him to be subject to a degree of supervision even though he is able to live independently. For the same reasons, we disagree with Mdm Lua's submission that Mr Yeo falls under para (c)(iii), for which the assessment range is $25,000–$50,000.

(2) Skull fractures and facial injuries

32 Next, we turn to the Judge's award of $40,000 for Mr Yeo's skull fractures and $30,000 for his facial and eye injuries. The Guidelines prescribe the quantum of damages for such injuries as follows at pp 13–15:

> **G. FACE**
>
> Where the injured person is young or a female or suffers from severe psychological/psychiatric reaction as a result of the injury to the face, an award in the higher range is appropriate, especially if there are complications arising during the recovery period.
>
> (a) Multiple facial fractures (severe injury requiring extensive reconstructive surgery and long recovery period) **$25,000–$45,000**
>
> (b) Fractured malar complex **$10,000–$20,000**
>
> (c) Fractured maxilla (facial bone, upper jaw) **$10,000–$20,000**
>
> (d) Fractured zygoma (cheek bone) **$6,000–$10,000**
>
> (e) Nerve palsy **$7,000–$15,000**
>
> (f) Lacerations **$2,500–$5,000**
>
> …
>
> **J. SKULL**
>
> **(a) Fracture**
>
> The quantum of the award depends on whether serious complications arise as a result of the fractured skull, *eg*, epidural haematomas, swelling of the brain, laceration of the brain from the broken skull fragments, *etc*. In less serious cases, the person suffers only from a hairline fracture of the skull and achieves full recovery with minimal, if any, residual disabilities.

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> (i) Severe fracture **$50,000–$75,000**
>
> The injured person suffers from compound fractures of the skull and the skull fragments have lacerated the brain, resulting in serious brain injury. Haematomas following the fracture of the skull resulting in severe brain injury also fall into this category.
>
> (ii) Moderate fracture **$30,000–$50,000**
>
> The severity of the cases in this category is less than that of (a)(i) above but there is extensive surgery done to repair the skull fracture with a long recovery period. The higher end of the range of the award is appropriate where there are complications arising during the recovery period, *eg*, further surgery to relieve brain pressure, *etc*.
>
> (iii) Minor fracture **$20,000–$30,000**
>
> Cases in this category include those where the injured person suffers from a hairline fracture of the skull which does not result in severe consequences. Conservative treatment is needed and there are few, if any, residual disabilities in the long run.

33 Mr Yeo suffered multiple facial fractures and injuries, including a 10cm forehead laceration, zygomatic arch fractures (cheekbones), sinus fractures, extensive hemosinus and complex facial fractures involving the anterior, lateral and posterior walls of both maxillary sinuses. He also sustained blunt trauma injury to his right eye.

34 Mdm Lua does not appear to dispute that Mr Yeo suffered "moderate" skull fractures for the purposes of the Guidelines, and that the applicable assessment range is therefore $30,000–$50,000. However, she contends that $40,000 is too generous because the Judge erred in finding that the fractures were "extensive" (see the GD at [15]). Mdm Lua suggests that the Judge misread a medical report dated 30 July 2013 prepared by Dr Collinson on Mr Yeo's neuropsychological assessment in arriving at that conclusion. In our view, however, the Judge did not misread the report. In the report, it is stated that "[a] CT scan performed [up]on [Mr Yeo's] admission reflected extensive

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facial and skull vault fractures …" (as quoted in the GD at [13]). In addition, the Judge also had regard to the fact that there were injuries to the brain itself, which had become "soft and sunken" as a result, according to the same report (see the GD at [15]). In these circumstances we do not think that $40,000 is inappropriate, looking purely at the Guidelines.

35 Mdm Lua does not submit that the award of $30,000 for Mr Yeo's facial injuries is unjustifiable in and of itself. She does, however, criticise it as an award for overlapping injuries, and we therefore deal with that at the second stage of the analysis below.

(3) Bodily injuries

36 We come now to Mr Yeo's bodily injuries, for which he was awarded a total sum of $126,000. Mdm Lua accepts that "[i]n respect of these injuries, based on the Guidelines, the [Judge's] awards are within the range and we cannot persuade the appellate Court that it is manifestly excessive under the component approach". But she submits that this award is extremely high in the light of the relevant precedents. We shall therefore also consider this at the second stage of the analysis below.

(4) Conclusion on stage one

37 To conclude the first stage of the analysis, the component method, properly applied, in our view, yields an aggregate award of $266,000, comprising $70,000 for Mr Yeo's brain injury, $40,000 for his skull injuries, $30,000 for his facial injuries and $126,000 for his bodily injuries. We turn now to consider whether this amount should be adjusted because it compensates for overlapping injuries or because it is out of line with similar cases.

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Stage two: Considering the aggregate award

(1) Overlapping injuries

38 Mdm Lua contends that the award of $30,000 for Mr Yeo's facial and eye injuries is "manifestly high without any regard for overlapping". We accept this submission. Although the injuries to Mr Yeo's skull and face were multiple, they were all located in broadly the same region of his body. In so far as an award of damages should compensate Mr Yeo for the pain he actually suffered, it seems artificial to render an award that suggests that each of those injuries contributed to Mr Yeo's pain, suffering and loss of amenity in a special and distinct way. Furthermore, in so far as they have resulted in permanent disability of any kind, that has already been taken into account under Mr Yeo's award for brain damage as well as his award for the loss of his sense of taste and smell, both of which were separately rendered. In our judgment, therefore, there is some degree of overlapping that the Judge, with respect, failed to take into account.

(2) Precedents

39 Next, Mdm Lua submits that the total award of $326,000 for pain, suffering and loss of amenity, as well as the individual components of $200,000 for head injuries and $126,000 for bodily injuries, are significantly excessive compared to awards rendered in past cases. We agree. In many of these cases, the claimant was not only younger than Mr Yeo (and therefore had a longer time of suffering ahead to endure) but also suffered more serious brain injuries than he did, and yet received significantly less than $326,000 in compensation. We consider the following cases to be instructive precedents.

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40 In the High Court decision of *Ramesh s/o Ayakanno (suing by the committee of the person and the estate, Ramiah Naragatha Vally) v Chua Gim Hock* [2008] SGHC 33 ("*Ramesh s/o Ayakanno*"), the claimant was 26 years old at the time of the accident. As a result of the accident, he was declared mentally disabled. He was unable to move and talk, and required life-long medication for epileptic seizures. The accident caused injury to both sides of his brain and had to be treated with bilateral craniectomies. In addition, his liver was damaged, his left iliac bone was fractured, and he sustained disc protrusions at different levels of the dorsal spine. His lower limb had also contracted and required tendo-Achilles lengthening. For pain, suffering and loss of amenity arising from all of these head and bodily injuries, the AR awarded $170,000 in damages, and, on appeal to the High Court, Kan Ting Chiu J increased the award to $185,000.

41 In the Court of Appeal decision of *Lee Wei Kong (by his litigation representative Lee Swee Chit) v Ng Siok Tong* [2012] 2 SLR 85 ("*Lee Wei Kong*"), the claimant was 18 years old at the time of the accident and his remaining life expectancy was approximately 53 years. Four years after the accident, he had recovered exceptionally and had returned to his studies. But his speech remained impaired with dysphasia and dysarthria, he had acquired a left lateral squint, he had developed increased impulsivity and gave into occasional temper outburst, and he had lost some sphincteric control resulting in urinary and bowel urgency. His injuries after the accident included fractures of the cheekbone and the left temporal bone, a large haematoma with severe mass effect which caused a midline shift of the brain, and fracture of the sixth cervical vertebra. For pain, suffering and loss of amenity arising from all these injuries, the AR awarded $285,000 in damages, but this was reduced to $160,000 by the High Court. The latter figure was affirmed by this Court after it considered the

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relevant precedents. Pertinently, the court said (at [16]) that "[t]here has not been any case where, for pain and suffering, an award close to $285,000 had been made". In this connection, we should point out that Mr Yeo has similarly not cited *any case* where an award close to $326,000 has been made for pain, suffering and loss of amenity.

42 In the High Court decision of *Tan Juay Mui (by his* [sic] *next friend Chew Chwee Kim) v Sher Kuan Hock and another (Liberty Insurance Pte Ltd, co-defendant; Liberty Insurance Pte Ltd and another, third parties)* [2012] 3 SLR 496 ("*Tan Juay Mui*"), the claimant was almost 48 years old at the time of the accident. As a result of the accident, she experienced post-traumatic personality changes and suffered from delusions. Her memory and intellect also deteriorated: on an IQ test she scored "Extremely Low" for non-verbal problem solving skills and verbal reasoning, and "Low Average" to "Average" for working memory. She lost the ability to manage herself and her affairs. Physically, she sustained multiple haemorrhagic contusions in her brain although there were no skull fractures. But complications at surgery left her with impaired vision and paralysis of her left side. She also developed diabetes, which was found to have been caused or exacerbated by the accident and not to be too remote a head of loss. Her left leg below her knee was also amputated to save her life. The AR awarded her $230,000 for pain, suffering and loss of amenity, comprising $170,000 for her head injuries and $60,000 for her leg injury. This award was upheld on appeal by Judith Prakash J (as she then was) in the High Court.

43 In *Yin Xiao Lian v Ang Hoo Kim* Suit No 758 of 2002 (4 July 2003) (High Court, Singapore) ("*Yin Xiao Lian*"), the claimant was 36 years old at the time of the accident. As a result of the accident, he became mentally unsound and unable to handle his own affairs, having to depend on others for essential

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daily tasks. He lost interest in sex, periodically suffered incontinence and developed slurred speech and slight incoordination on the right side. The accident caused severe brain trauma, and fractured his right humerus, right radius and ulna, right tibia and transverse process of the first thoracic vertebra. Surgery left scars on his neck, right arm, right leg, left iliac crest and right lower abdomen. The AR awarded him $95,000 for his brain injury and $56,500 for his bodily fractures and scars, amounting to a total of $151,500 for pain, suffering and loss of amenity. The overall award, which included loss of future earnings and cost of future medical care, was $359,188.26 and RMB98,527.07, and this award was varied slightly by the High Court to $420,000, but by consent.

44 Finally, in *AOD, a minor suing by the litigation representative v AOE* [2014] SGHCR 21 ("*AOD*"), which is cited by Mdm Lua, the claimant was nine years old at the time of the accident, and had a remaining life expectancy of 27 years. The accident left him a quadriplegic who required constant care. He had the motor skills of a six month old and the sensory, thinking and language skills of a 12-month-old baby. After the accident he had several haemorrhagic contusions with acute subarachnoid haemorrhage with intraventricular involvements as well as subdural bleeding. He also had cerebral edema, early hydrocephalus and abrasions over the left forehead and temple. For his pain, suffering and loss of amenity, the AR awarded $190,000 in damages. On appeal, the claimant did not challenge this part of the AR's decision: see the High Court decision of *AOD (a minor suing by his litigation representative) v AOE* [2016] 1 SLR 217 at [12]–[13] *per* George Wei J.

45 Evidently, none of these precedents is on all fours with the present case. As with any comparison with previous cases in the field of compensation for personal injury, it is inevitable that "some aspects are more severe while other aspects are less severe", in the words of Chao JA in *Lee Wei Kong* at [16]. The

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precedents that are perhaps closer to the present case are *Yin Xiao Lian* and *Lee Wei Kong*, in which awards of $151,000 and $160,000, respectively, were awarded for pain, suffering and loss of amenity. Like the claimant in *Yin Xiao Lian*, Mr Yeo suffered multiple fractures across his body in addition to his head injury. But unlike the claimant in that case who was left unhinged and unable to manage his own affairs, Mr Yeo is able still to live independently and to gain employment. In this respect he is quite like the claimant in *Lee Wei Kong*, who within a few years after the accident regained the ability to take care of himself. Like that claimant, Mr Yeo also suffered very serious injuries to his skull, although Mr Yeo had more serious bodily injuries.

46 The common thread running through *Ramesh s/o Ayakanno*, *Tan Juay Mui* and *AOD*, in which awards of $185,000, $230,000 and $190,000, respectively, were awarded for pain, suffering and loss of amenity, appears to be that the claimants were very significantly incapacitated. Mr Ramesh was paralysed, Mdm Tan lost her ability to manage herself, and nine-year-old AOD was left a quadriplegic. The physical injuries they sustained to their heads and bodies were by no means trivial, although they appear less serious than those which Mr Yeo sustained. However, Mr Yeo has largely recovered from those injuries, albeit that he "continues to suffer from pains in his leg and his back" (see the GD at [42]). Those victims also had a longer remaining life expectancy during which they would have had to suffer the consequences of their disability, and that must have been taken into account in their awards as well. Mdm Tan's case also appears to be quite different from the present case because she lost a leg, and that was a permanent loss which had to be accounted for.

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(3) Conclusion on stage two

47 Considered against these precedents, the Judge's figure of $326,000 is, in our judgment, manifestly excessive. The figure of $266,000, which we arrived at after applying the first stage of the analysis, is also manifestly excessive, albeit less so. Precedents aside, part of the problem with these figures, as we have suggested at [38] above, is that there is a degree of overlapping in respect of Mr Yeo's head and facial injuries. Neither figure provides a fair reflection, in our view, of the totality of Mr Yeo's injuries.

48 To arrive at a proper view of the totality of a claimant's injuries, it is important for the court to pay attention to *all aspects* of a claimant's injuries which are relevant to an award for pain, suffering and loss of amenity. As this Court observed in *Tan Kok Lam (next friend to Teng Eng) v Hong Choon Peng* [2001] 1 SLR(R) 786 ("*Tan Kok Lam*"), while courts regularly award a single sum for this purpose, pain, suffering and loss of amenity are different concepts, and "neither one is subsumed under the other" (at [25] *per* Chao Hick Tin JA). Where pain and suffering is concerned, the court is concerned with both physical and psychological pain (see the High Court decision of *Au Yeong Wing Loong v Chew Hai Ban and another* [1993] 2 SLR(R) 290 at [11] *per* KS Rajah JC), and both pain the claimant has already endured and what he or she will have to endure in the future (see the decision of this Court in *TV Media Pte Ltd v De Cruz Andrea Heidi and another appeal* [2004] 3 SLR(R) 543 at [166] *per* Yong Pung How CJ). And where loss of amenity is concerned, the court is concerned with whether the injury in issue has left the claimant any "residual disability" (*Tan Kok Lam* at [25]). The need to pay attention to each of these distinct concepts in order to arrive at a fair award was recognised in the English Court of Appeal decision of *Heil v Rankin and another* [2001] QB 272 ("*Heil*") at [39] *per* Lord Woolf MR in these terms:

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> In determining what is the correct level of damages for PSLA [*ie*, pain, suffering and loss of amenities], it is not usual for the court to attribute differing sums for different aspects of the injury. The court's approach involves trying to find the global sum which most accurately in monetary terms reflects or can be regarded as reflecting a fair, reasonable and just figure for the injuries which have been inflicted and the consequences which they will have in PSLA. A sophisticated analytical approach distinguishing between pain and suffering and loss of amenity is not usually required. We will not ourselves seek to draw any such distinctions in what we have to say hereafter. We do, however accept [counsel's submission] that to *consider the individual strands of PSLA can provide a check as to the adequacy of the whole*. There can also be special circumstances in a particular case which makes separation necessary. [emphasis added]

49 In the present case, we accept Mr Yeo's point, which was emphasised during oral argument, that he did suffer a multitude of extremely serious injuries to his skull, face and body in the immediate aftermath of the accident. It is significant to us that this factor was present in this case to a greater degree than in *all* the precedents discussed above. Accordingly, the pain and suffering which he experienced after the accident cannot be understated. However, the long-term effect of Mr Yeo's injuries is also much less severe than what the claimants in all the precedents discussed above had to sustain over what would have been a longer period of time. It seems to us, therefore, that his pain and suffering and his loss of amenity in the long term are relatively less serious. Taking all the circumstances into account, therefore, we consider that Mr Yeo's award for pain, suffering and loss of amenity should be reduced from $326,000 (or $266,000, on our analysis) to $200,000. This figure, in our view, appropriately reflects the totality of Mr Yeo's injuries.

Issue 2: Loss of earning capacity

50 Next, Mdm Lua submits that the Judge should not have awarded Mr Yeo $5,000 for loss of earning capacity because Mr Yeo "has not adduced any

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evidence to show that he will be at risk of losing his current employment". In our judgment, this argument is misconceived. The question is not whether he is at risk of losing his current, post-accident employment, but whether he has been prevented from competing in the market for his *pre-accident job*. And there is no doubt on the evidence that he has. The Judge found, and Mdm Lua does not contest the finding, that Mr Yeo could no longer work as a carpenter after the accident, and now has to work as a cleaner, for which he is paid less (see the GD at [34]). We therefore reject Mdm Lua's submission.

Issue 3: Loss of future earnings

51 To calculate loss of future earnings, the court multiplies the difference between what the claimant was earning before the accident and what he is capable of earning after the accident by the number of months that the claimant was expected before the accident to have remained in work. Often, a discount is applied to the multiplier to take into account the putative investment risk associated with the accelerated receipt of future income as a lump sum, as well as contingencies such as mortality and other considerations affecting life expectancy (see the decision of this Court in *Quek Yen Fei Kenneth (by his litigation representative Pang Choy Chun) v Yeo Chye Huat and another appeal* [2017] 2 SLR 229 ("*Kenneth Quek*") at [57]). In the present case, the Judge adopted a multiplier of 60 (the number of months in five years) and a multiplicand of $1,200, and arrived at an award of $72,000.

52 Mdm Lua submits that both the multiplier and the multiplicand that the Judge adopted are excessive. For the reasons set out below, we reject her submission.

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The multiplier

53 Mdm Lua contends that the Judge's choice of five years, based on a finding that Mr Yeo would likely work until he was 70, is wrong "in light of" *Kenneth Quek*, "where the statutory retirement age of 67 set out in the Retirement and Re-employment Act (Cap 274A) was accepted". We disagree and consider that this argument is based on a misreading of *Kenneth Quek*. In that case, this Court made it clear that the statutory minimum retirement age is but "one factor" in the analysis, and that "[o]wing to such factors as the *particular characteristics* of the claimant and the nature of the work concerned, he may be expected to retire *before*, *at or after* the statutory retirement age" [emphasis added] (at [92]). Here, the Judge was entitled to find that Mr Yeo would have worked until he was 70 on account of his being "resilient" and "committed to … independence", which was "borne out by his will to live alone", and by the fact that even the experts were impressed by his tenacity (see the GD at [34] and [35]). Mdm Lua has raised no submission to contradict this evidence.

54 Next, Mdm Lua argues that the Judge's choice of the multiplier is also in error because it "failed to factor in a discount of the expected remaining working years in order to take into account both future contingencies and advance receipt". Mdm Lua suggests, on the hypothesis (which we have rejected) that Mr Yeo would work only until he was 67, that a 40% discount should be applied, having regard to two cases in which a similar discount was applied where the remaining working life expectancy was, like Mr Yeo's, relatively short.

55 We respectfully disagree. The first point to be made is that the two cases cited by Mdm Lua may be distinguished. The first case is the High Court

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decision of *Goh Eng Hong v Management Corporation of Textile Centre and another* [2003] 1 SLR(R) 209 ("*Goh Eng Hong*"). The claimant had a remaining working life expectancy of six years. The AR applied a multiplier of five years in calculating her loss of earnings. On appeal, the High Court reduced the multiplier to three years. But that was because the plaintiff had a pre-existing eye condition which was "not connected to the accident" (at [41]) and would likely have required her to stop work earlier than expected. Here, Mr Yeo has no pre-existing condition; nor does *Goh Eng Hong* stand for the general proposition that a 40% or 50% discount is appropriate where the claimant's remaining working life expectancy is short. The second case is the High Court decision of *Ong Tean Hoe v Hong Kong Industrial Company Private Limited* [2001] SGHC 303 ("*Ong Tean Hoe*"), where the plaintiff's remaining working life expectancy was eight years, but the multiplier applied by the AR, and affirmed on appeal to the High Court, was four years. However, no explanation for this is given in the case.

56 To the extent that *Ong Tean Hoe* may be read as endorsing the general proposition that a 40% or 50% discount is appropriate where the claimant's remaining working life expectancy is short, it is inconsistent with *Kenneth Quek* and should not be followed. In *Kenneth Quek*, this Court held that a low or even zero discount rate may be appropriate where the remaining working life or remaining life expectancy is very short. This was explained in the following terms at [64]:

> We are also of the view that there is merit in adopting higher discount rates in cases of longer expected periods of future loss, and that there is (correspondingly) nothing wrong in principle with having negative discount rates. The discount rate is the rate of return (net of contingencies) that the claimant is expected to realise on his investment of his lump-sum award across the period of future loss. A claimant who receives a lump-sum award in respect of a long expected period of future loss is well placed to ride out the short-term volatility of higher-

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> yield investments and to avail himself of increases in interest rates in the future. *Conversely, a low or even zero discount rate may justifiably be adopted if the remaining working life or remaining life expectancy of the claimant is very short, such that there is less scope for investment in riskier assets or for drastic changes in the prevailing interest rates* (see *Eugene Lai* ([53] *supra*) at [34] and [38]). This was, in fact, the approach adopted in *Toh Wai Sie v Ranjendran s/o G Selamuthu* [2012] SGHC 33 ("*Toh Wai Sie*") at [37], and more clearly by the Hong Kong Court of First Instance in *Chan Pak Ting v Chan Chi Kuen (No 2)* [2013] 2 HKLRD 1 ("*Chan Pak Ting*"), where Bharwaney J formulated a tiered framework of discount rates that varied with the length of the expected period of future loss. Each tier reflected the investment choices of a different class of claimant-investors, as driven by its specific needs and goals. The discount rates adopted were as follows:
>
> > (a) 2.5% per annum for periods of future loss exceeding ten years;
> >
> > (b) 1% per annum for periods of future loss from five to ten years; and
> >
> > (c) -0.5% per annum for periods of future loss of less than five years, on the authority of the decision of the Privy Council in *Simon v Helmot* [2012] Med LR 394 (in an appeal from Guernsey) because the rates of inflation exceeded the rates of return on investments suitable for claimant-investors with such short investment horizons.
>
> [emphasis in original omitted; emphasis added in italics]

57 The idea is that where a claimant's remaining working life expectancy is short, the putative investment risk upon which the discount to the applicable multiplier would be based is likely to be non-existent or even negative. Hence, there can be no reason for a general proposition that a discount as large as 40% or 50% should as a matter of course be applied where the remaining working life expectancy is short.

58 Mdm Lua's final argument in relation to the multiplier adopted by the Judge is that it fails to take into account the fact that Mr Yeo's pre-accident job was a blue-collar occupation involving manual labour, and that that would have

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shortened his remaining working life expectancy. There appears to be some basis in the cases for this argument. In the High Court decision of *Neo Kim Seng v Clough Petrosea Pte Ltd* [1996] 2 SLR(R) 413 ("*Neo Kim Seng*"), which is cited by Mdm Lua, the plaintiff was a ship's mechanic, and Judith Prakash J (as she then was) decided on a multiplier of six, instead of nine or ten which the plaintiff had urged, on the basis that "even without the accident the plaintiff would have had a shorter working life than the length that could have been anticipated for a white collar worker in view of the physical demands made on a ship's mechanic by the nature of his job" (at [15]).

59 In our judgment, whether the multiplier should be discounted by virtue of the claimant's occupation must be decided *on the facts of the particular case*. Prakash J in *Neo Kim Seng* was not drawing a distinction between white and blue collar workers in general and suggesting that the latter should usually be deemed to have a shorter remaining working life expectancy. Instead, she made specific reference to the claimant's job as a ship's mechanic and compared it to the usual demands of a white collar job. This is consistent with this Court's *dictum* in *Kenneth Quek* at [92] that the court must consider the "nature of the work concerned" together with the "particular characteristics of the claimant". Each claimant should be treated as an individual in his own right and should have his circumstances analysed with care, with recourse being had to generalisations only in the absence of evidence as far as possible.

60 In the present case, Mr Yeo worked as a carpenter before the accident. That may sensibly be said to be quite different to being, for example, a construction worker or a coal miner. Furthermore, the Judge found that Mr Yeo was exceptionally resilient and committed to being independent. On the facts of this case, therefore, we see no reason why the multiplier of 60 should be

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discounted on account of the nature of his pre-accident job or any of the other reasons raised by Mdm Lua.

The multiplicand

61 Finally, Mdm Lua argues that the Judge should not have used a multiplicand of $1,200 (being the difference between Mr Yeo's salary of about $2,200 as a carpenter and his salary of about $1,000 as a cleaner now), and should instead have used a multiplicand of $500. Mdm Lua suggests that this is because Mr Yeo would have had to reduce the scope of his work as he approached retirement, and so his earnings would have been correspondingly reduced. We disagree. This suggestion appears to be founded on speculation, and in any event, the evidence on Mr Yeo's character which the Judge accepted rather suggests that he would have worked as he had normally worked until he really had to stop.

62 For these reasons, we are of the view that the Judge's award of $72,000 for Mr Yeo's loss of future earnings should be upheld.

Issue 4: Cost of future nursing care

63 To calculate cost of future nursing care, the court usually multiplies the monthly cost of the nursing care the claimant needs by the number of months for which the claimant is expected to require such care. This is similar to the method for calculating loss of future earnings outlined above. Here, the Judge applied a multiplier of 24 (the number of months in two years), corresponding to the last two years of Mr Yeo's life during which he may need full-time nursing care, and a multiplicand of $3,200, corresponding to the monthly cost of being put in Lee Ah Mooi nursing home as a patient suffering from dementia, and arrived at a total sum of $76,800.

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64 Mdm Lua raises two contentions against this award. First, she argues that the Judge should not even have awarded Mr Yeo the cost of future nursing care because the possibility of such a cost being incurred had not been established on a balance of probabilities. This argument raises a question of principle as to the proper approach to assessing damages for future losses in the form of cost of nursing care. Second, Mdm Lua argues that even if the Judge was right to award damages in this context, the multiplicand she applied had no evidential basis. We shall address each contention in turn. For reasons which will be apparent, we disagree with both, but we consider that the award should be discounted to reflect the fact that Mr Yeo's being institutionalised in the future as a result of developing dementia is less than certain.

Assessing damages for future loss

Applicable principles

65 Proof on a balance of probabilities is a standard of proof that is applied in civil cases generally to discern whether a past event happened. Such proof is necessary for the court to determine "whether [the plaintiff's] case is more probably true than untrue": see Jeffrey Pinsler SC, *Evidence and the Litigation Process* (LexisNexis, 6th Ed, 2017) at para 12.092. In the absence of an exhaustive historical record, the notion that an event was more likely than not to have happened is an epistemic proxy for whether it did in fact happen. By contrast, "there is no provable truth with regard to the future", as Vinodh Coomaraswamy J observed in the High Court decision of *Poh Fu Tek and others v Lee Shung Guan and others* [2018] 4 SLR 425 at [42] in the context of assessing the credibility of cash flow projections for the purpose of valuing a company. It is not possible by human means to know what the future holds. Therefore, it would be unfair to fault a party for being unable to establish an

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assumption about a future event as true on the balance of probabilities. Instead, the question in that context is whether that assumption is reasonable, and if it is, an appropriate discount may be applied to take into account the risk that the event may not happen (at [42]).

66 Propositions to this effect have been endorsed in decisions of the highest authority in cases involving negligence claims. In the House of Lords decision of *Mallett v McMonagle, a minor by Hugh Joseph McMonagle, his father and guardian ad litem, and Another* [1970] AC 166 ("*Mallett*"), the claimant's husband was killed as a result of the defendants' negligence, and as her husband's administratrix the claimant sued the defendants claiming damages. Before the trial, the company that employed the husband had ceased business, but there was evidence that had he lived, he would have been offered work elsewhere. The English Court of Appeal held the amount that the jury had determined to be excessive and ordered a new trial. The House of Lords dismissed the claimant's appeal on the basis that the court below was entitled to consider that the jury had made unreasonable assumptions of the husband's employment prospects. Notably, it was not said that any of those prospects had to be proved on a balance of probabilities.

67 Instead, in assessing damages which depend on what will happen in the future or what would have happened in the future but for the defendant's negligence, "the court must make an estimate as to what are the chance that a particular thing will or would have happened and reflect those chances, whether they are more or less than even, in the amount of damages which it awards" (at 176F–G *per* Lord Diplock). Significantly, Lord Morris of Borth-y-Gest located this approach within the broader, central principle of giving the claimant fair compensation, which we have discussed at [9] above. His Lordship put it this way (at 173F–G):

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> In cases such as that now being considered it is inevitable that in assessing damages there must be elements of estimate and to some extent of conjecture. All the chances and the changes of the future must be assessed. They must be weighed not only with sympathy but with fairness for the interests of all concerned and at all times with a sense of proportion.

To similar effect was Lord Pearce's *dictum* that the proper figure must be assessed by "striking a fair balance" between "both the possibilities for good and for bad" on the evidence (at 174D). Lord Wilberforce concurred with Lord Pearce's judgment (at 174G), and Lord Reid, with that of Lord Morris (at 172A).

68 Next, in the House of Lords decision of *Davies (AP) (suing as widow and administratrix of the estate of Kenneth Stanley Davies, decd) v Taylor* [1974] AC 207 ("*Davies*"), the claimant was imminently to be divorced from her husband at the time he was killed as a result of the defendant's negligence. The claimant alleged that there was a chance that had her husband lived, they might have reconciled, and hence she should recover for loss of dependency. The trial judge rejected this claim on the basis that the claimant had failed to prove on a balance of probabilities that reconciliation would have happened, and the English Court of Appeal dismissed her appeal. The House of Lords held that all she had to show was that there was an appreciable chance of reconciliation, and if she could do that, she would recover for the loss of dependency, and damages would be set at the amount of the dependency multiplied by that chance expressed as a percentage. On the facts, however, it was found that there was no appreciable chance, and so her claim failed. Lord Reid explained the principles this way (at 212H–213E):

> When the question is whether a certain thing is or is not true–whether a certain event did or did not happen–then the court must decide one way or the other. There is no question of chance or probability. Either it did or it did not happen. But the standard of civil proof is a balance of probabilities. If the

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> evidence shows a balance [of probabilities] in favour of it having happened then it is proved that it did in fact happen.
>
> But here we are not and could not be seeking a decision either that the wife would or that she would not have returned to her husband. *You can prove that a past event happened, but you cannot prove that a future event will happen and I do not think that the law is so foolish as to suppose that you can. All that you can do is to evaluate the chance*. Sometimes it is virtually 100 per cent.: sometimes virtually nil. But often it is somewhere in between. And if it is somewhere in between I do not see much difference between a probability of 51 per cent. and a probability of 49 per cent.
>
> …
>
> If the balance of probability were the proper test what is to happen in the two cases which I have supposed of a 60 per cent. and a 40 per cent. probability. The 40 per cent. case will get nothing but what about the 60 per cent. case. Is it to get a full award on the basis that it has been proved that the wife would have returned to the husband? That would be the logical result. I can see no ground at all for saying that the 40 per cent. case fails together but the 60 per cent. case gets 100 per cent. But it would be almost absurd to say that the 40 per cent. case gets nothing while the 60 per cent. case award is scaled down to that proportion of what the award would have been if the spouses had been living together. That would be applying two different rules to the two cases. *So I reject the balance of probability test in this case*.
>
> [emphasis added]

69 The other members of the court expressed similar views. Lord Morris considered that the question was whether the appellant had lost a "reasonable expectation of a pecuniary benefit and if she had then what was the value of what she had lost" (at 214B). For Viscount Dilhorne, the question was "whether there was a reasonable expectation of a reconciliation, not that a reconciliation was more likely than not" (at 219B). Lord Simon of Glaisdale opined that such an expectation had to be "substantial (i.e. not merely fanciful)" (at 220C–D) and Lord Cross of Chelsea stated that it had to be "substantial or fairly capable of valuation" (at 223C). Lord Simon also qualified that "the damages would, of course, be *scaled down* from those payable to a dependent spouse of a stable

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union, according[ly] *as the possibility became progressively more remote*" [emphasis added] (at 220D).

70 Finally, there is the High Court of Australia decision of *Malec v J C Hutton Pty Ltd* (1990) ALR 545 ("*Malec*") which, like the present case, involves the possible future onset of a medical condition due to the defendant's negligence. The claimant, who had an underlying degenerative back condition, contracted brucellosis, an animal-borne disease, as a result of the negligence of his employer, the defendant. The brucellosis had induced a state of depression. The Full Court in Queensland declined to allow damages for this depression because it was "likely" that the development of symptoms from his deteriorating back condition would have produced a similar neurotic condition even if he had never contracted the brucellosis. The High Court held that the Full Court was wrong to deny all damages for this condition, holding that the condition was the result of the defendant's negligence, and that those damages need simply be reduced to take account of the chance that factors *unconnected* with the defendant's negligence might have brought about the onset of a similar condition (at 550). For the same reason, the same type of discount was applicable to compensation for the care and attention provided by his wife (at 550). The leading judgment of the court was delivered by Deane, Gaudron and McHugh JJ. Approving *Mallett* and *Davies*, they stated the principle as follows (at 548):

> When liability has been established and a common law court has to assess damages, its approach to events that allegedly would have occurred, but cannot now occur, or that allegedly might occur, is different from its approach to events which allegedly have occurred. A common law court determines on the balance of probabilities whether an event has occurred. If the probability of the event having occurred is greater than it not having occurred, the occurrence of the event is treated as certain; if the probability of it having occurred is less than it not having occurred, it is treated as not having occurred. Hence, in

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> respect of events which have or have not occurred, damages are assessed on an all or nothing approach. *But in the case of an event which it is alleged would or would not have occurred, or might or might not yet occur, the approach of the court is different. The future may be predicted and the hypothetical may be conjectured. But questions as to the future or hypothetical effect of physical injury or degeneration are not commonly susceptible of scientific demonstration or proof. If the law is to take account of future or hypothetical events in assessing damages, it can only do so in terms of the degree of probability of those events occurring.* The probability may be very high—99.9 per cent—or very low—0.1 per cent. But unless the chance is so low as to be regarded as speculative—say less than 1 per cent—or so high as to be practically certain—say over 99 per cent—the court will take that chance into account in assessing the damages. Where proof is necessarily unattainable, it would be unfair to treat as certain a prediction which has a 51 per cent probability of occurring, but to ignore altogether a prediction which has a 49 per cent probability of occurring. *Thus, the court assesses the degree of probability that an event would have occurred, or might occur, and adjusts its award of damages to reflect the degree of probability. The adjustment may increase or decrease the amount of damages otherwise to be awarded.* … [emphasis added]

71 The last two sentences in the passage just quoted suggest that the majority in *Malec* contemplated that damages for a future loss should be quantified by first determining an award on the footing that the hypothetical future loss would have been sustained, and then discounting the award by a selected percentage. In a separate opinion, Brennan and Dawson JJ disagreed with this approach, notwithstanding their general agreement with the majority's view that compensation for future loss did not depend on proving that loss on a balance of probabilities. In particular, Brennan and Dawson JJ thought that it was "undesirable for damages to be assessed on the footing of an evaluation expressed as a percentage" because "[d]amages founded on hypothetical evaluations defy precise calculation" (at 546). While they did not proceed to explain how else they would assess damages for a future loss, it seems implicit, given that they considered that the exercise ought to be more qualitative than

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quantitative, that they would have preferred something of a broad-brush approach to quantification.

72 We are in general agreement with these authorities. In our judgment, in assessing damages for future loss – such as cost of nursing care – arising from the possible future onset of a medical condition as a result of the defendant's negligence, the court must first determine whether there is an *appreciable risk* that the claimant will suffer that loss. If there is such a risk of future loss, then the claimant ought to be compensated for it. The court's task will be to evaluate that risk. The court may take as its starting point an award corresponding to the full extent of that loss, and then adjust it to account for the remoteness of the possibility and the chance that factors unconnected with the defendant's negligence might contribute to bringing about the loss. In making this adjustment, however, the court should not be fixated on discerning a precise percentage by which the award should be discounted, because the exercise is inherently imprecise. To this extent, we agree with the minority's view in *Malec*. Instead, the appropriate discount ought to be decided bearing in mind the principle stated by Lord Morris in *Mallett*, namely, that the opposing probabilities must be weighed with sympathy and with fairness for the interests of all concerned and at all times with a sense of proportion. Such an approach would be consonant with the central principle of fair compensation which underlies this area of the law.

73 This is representative of how future losses are assessed in personal injury cases generally. That assessment typically involves two sets of predictions to be made at the date of trial or settlement: (a) what would have happened in the future had the injury not been sustained and (b) what is likely to happen in the future now (see *Cane and Goudkamp* at p 118). The assessment of Mr Yeo's need for future nursing care belongs to the latter category, while the assessment

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of his loss of future earnings, for example, belongs to the former. In both instances, the idea is not to establish historical truth, but to determine the reasonable possibility of a future event, which would then enable the court to grant a remedy that is proportionate to the degree of that possibility. This we have explained to be the approach to the claim for cost of future nursing care here. Likewise, in relation to loss of future earnings, it has never been suggested that when determining the appropriate multiplier based on the claimant's remaining working life expectancy, the court must be satisfied, on a balance of probabilities, that but for the accident, the claimant would have worked for a certain number of years. Instead, the reasoning is that it would be reasonable to think that a person like him would have worked X number of years, but that X should be reduced or increased on account of risks arising from the nature of his occupation or his personal characteristics (see the House of Lords decision of *Cookson (Widow and Administratrix of the Estate of Frank Cookson, decd) v Knowles* [1979] AC 556 at 568G–569A *per* Lord Diplock). These risks are conceived as being in the nature of "contingencies including mortality and the effect of other personal and structural considerations", in the words of this Court in *Kenneth Quek* at [57]. Ultimately, as it is stated in *The Law of Damages* (Andrew Tettenborn gen ed) (LexisNexis, 2nd Ed, 2010) at para 29.50, "[t]he normal approach to cases where future events are in issue is to ask whether the probability of a given event is significant, and if it is to evaluate the chances of it occurring and adjust the award accordingly".

74 The High Court decision of *Toh Wai Sie and another v Ranjendran s/o G Selamuthu* [2012] SGHC 33 ("*Toh Wai Sie*") might be regarded as an example of this approach being applied to determine whether cost of nursing care should be awarded. In that case, the defendant challenged the need for such costs to be incurred by the plaintiff. This led Tay Yong Kwang J (as he then was) to

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consider the evidence to determine whether it could reasonably be said that the plaintiff needed to be put in full-time care and, if so, for how long. In the event, he agreed with the AR's assessment that there was such a need, because the experts concurred that such care was a reasonable option for the plaintiff's family to pursue given that the plaintiff's condition required that she receive the constant attention of her caregivers (at [40]).

75 The difference between *Toh Wai Sie* and the present case is that the full-time nursing care in the present case is contemplated to happen sometime down the road and not immediately. However, conceptually, in both cases the point is that such care is contemplated to be required in the *future*, whether in the immediate or distant future. Hence, the approach ought not to be different here: the question should be whether there is an appreciable chance that Mr Yeo would need full-time nursing care in the future, and if it is, the court should grant an award that is proportionate to the probability of that need arising. This, in turn, depends on the likelihood of Mr Yeo's developing dementia, as that is what would require him to be institutionalised. We therefore turn now to consider this issue in the light of the principles explained above.

Assessing the risk

76 The evidence shows that if Mr Yeo develops dementia, it is highly likely that he will need full-time nursing care. And if he does develop this condition, he would require full-time nursing care during the last two to three years of his life. On average, a person aged 70–74 has a 2% risk of developing dementia, and that risk is increased to 5–10% if, like Mr Yeo, the person has sustained traumatic brain injury.

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77 While in absolute terms this is not a huge risk, one of Mdm Lua's expert witnesses, Dr Ho King Hee ("Dr Ho"), testified that it would be "reasonable" to allow for the possibility that Mr Yeo would need to be institutionalised towards the end of his life. He also opined that this need was "related" to the accident caused by Mr Chew. In other words, should it materialise, it would be attributable to the brain injury Mr Yeo sustained as a result of the accident. This opinion is captured in the following exchange between Dr Ho and the Judge:

> Witness: Yah, Your Honour, if I may? You made mention of what I said earlier about him requiring institutionalisation at the end point of his life.
>
> Court: Yes, right.
>
> Witness: *That would be if he gets dementia and if the dementia is severe enough to require institutionalisation.* Many of us at the end point of our lives are going to require, if not institutionalisation, then fairly intensive nursing care. So, the need for this kind of medical support would be present in everyone, but I think because of I think the need to provide some kind of estimation to the Court, I think it is reasonable to allow for 2 to 3 years of nursing care support at the terminal end of his estimated life expectancy.
>
> Court: Are you saying that these 2 to 3 years it's---in your mind, it is due to possible dementia or also due to symptoms of disabilities that's related to this accident? Or is it something general that all of our us in our last years would probably need that sort of care?
>
> Witness: Dementia occupies a special place, I think, in end of life care because the patient loses mental capacity to do many things. Whereas if you have a broken hip, you can still do some things on your own. So I---I think that the main concern in this plaintiff would be the speculative low risk of developing dementia. *I don't think it's a high risk, but it would be reasonable to allow for the possibility of some end of life institutionalisation.*
>
> Court: And that is *related to this accident.*

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> Witness: *Yes*, Your Honour.
>
> [emphasis added]

78 Mdm Lua submits that the Judge erred in awarding Mr Yeo the cost of future nursing care because Mr Yeo failed to prove on a balance of probabilities that that cost would be incurred, given that his risk of developing dementia was only 5–10%. But as we have explained, proof on a balance of probabilities is not the applicable standard. Instead, the question is whether there is an appreciable risk that Mr Yeo will develop dementia towards the end of his life. In our judgment, there is such a risk. Therefore, an award for the cost of future nursing care should, in principle, be made.

79 Assuming that full compensation is $76,800, which is what the Judge awarded, how should that be adjusted to take into account the size of the risk? In this regard, we note that Mr Chew's negligence more than doubled Mr Yeo's risk of developing dementia – from 2% to 5–10%. It is also significant to us that Dr Ho, who opined that Mr Yeo's independence and employment demonstrated that he was not highly dependent on others, accepted that Mr Yeo would benefit from a degree of supervision. Dr Ho testified that this might mean that "somebody checks in on his status once a day without necessarily needing to accompany him". After all, Mr Yeo has no immediate family to care for him. He is a divorcee with no children. Family support from time to time comes from only his siblings, nephew and nieces. Apart from that, he lives alone in a rental flat. While these facts may not contribute specifically to Mr Yeo's risk of developing dementia, they suggest that his future need for full-time care is far from fanciful.

80 Therefore, considering the fact that Mr Yeo's risk of developing dementia was significantly increased by Mr Chew's negligence, and

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considering the somewhat precarious nature of Mr Yeo's current living conditions, we are of the view that applying a discount of 40% to the full sum of $76,800 would be sufficient to account for the chance that he may not develop dementia and for the chance that a reason unconnected to the injuries caused by Mr Chew's negligence may contribute in some way to his possible future need for full-time care. As we have explained, the size of the applicable discount cannot and ought not to be discerned with mathematical precision, and must instead be determined on a holistic view of the circumstances of the case with sympathy and a sense of proportion. Here, we are satisfied that a discount of 40% would ensure that Mr Yeo receives fair compensation in this regard.

81 Finally, we should add that the foregoing analysis has nothing to do with the types of case in which the court is asked not to require that the *causation* of a *present* injury by the defendant's negligence be proved on a balance of probabilities, and instead to award damages proportionate to the degree of that causation. This type of argument has been pursued in cases such as the House of Lords decision of *Gregg v Scott* [2005] 2 AC 176 ("*Gregg*"), which involved a claim for damages for inability to recover from an injury as well as for the loss of a chance to recover from that injury, as a result of a negligent misdiagnosis. The claim was denied because it was found that the claimant would not, on a balance of probabilities, have recovered from the injury even if the defendant had not been negligent, and because the loss of a chance of recovery was not considered actionable damage. Also noteworthy is the House of Lords decision of *Hotson v East Berkshire Area Health Authority* [1987] AC 750 ("*Hotson*"), where a similar claim failed because even without the negligent misdiagnosis, nothing could have been done to cure the injury.

82 We say nothing about claims of this nature, except that the present case involves the distinct situation in which damages are being quantified for a future

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loss, which it is not possible to prove will be sustained on a balance of probabilities, and which on the facts would be attributable to an injury proved to have been caused by the defendant's negligence. As the expert evidence shows, should Mr Yeo develop dementia in the future, it would be attributable to his brain injury, which Mr Chew's negligence caused, because the injury has increased Mr Yeo's risk of developing that condition. Likewise, if an injured joint develops arthritis, there is usually no dispute that the arthritis will be attributable to the injury. In sum, there is an important and well-recognised distinction between causation and quantification (see *Gregg* at [67]–[69] *per* Lord Hoffmann; Edwin Peel and James Goudkamp, *Winfield and Jolowicz on Tort* (Sweet & Maxwell, 19th Ed, 2014) at para 7-025). Cases such as *Gregg* and *Hotson* concern the former, while cases such as *Mallett*, *Davies*, *Malec* and present case concern the latter. The analysis advanced in this judgment must therefore be understood in that context.

The multiplicand

83 Mdm Lua's final submission is that the Judge erred in adopting $3,200 as the multiplicand for calculating Mr Yeo's cost of future nursing care. Mdm Lua points out that this figure is based on the monthly rate for Category 3 patients at Lee Ah Mooi nursing home, and that according to a Ministry of Health guideline, Category 3 means patients who are "wheel-chair bound and/or suffering from dementia, needs help in ADL [*ie*, activities of daily living] and supervision most of the time". Mdm Lua then submits that Mr Yeo was classified, without basis, as a Category 3 patient by Mr Then Kim Yuan ("Mr Then"), the administrator of the home who appeared as a witness for him. Mdm Lua says that Mr Then himself admitted at trial that he had no qualifications to make this classification, and that the Judge was therefore wrong to use the figure of $3,200 as the multiplicand.

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84 In our judgment, this submission is misconceived. It is irrelevant whether Mr Yeo is presently correctly characterised as a Category 3 patient or not. That is because Mr Yeo is not claiming that he needs now to be institutionalised. Rather, the Judge was dealing with the possibility that Mr Yeo may in future develop dementia that is so severe that he needs to be institutionalised. On that hypothesis, it was clearly reasonable for the Judge to use the monthly rate of $3,200 for Category 3 patients at the nursing home as an estimate of the cost Mr Yeo would have to incur if he did develop severe dementia because demented patients fall squarely into that category.

85 Accordingly, the Judge correctly arrived at an initial figure of $76,800 for the cost of future nursing care by multiplying $3,200 by 24. However, as we have mentioned, to account for the possibility that Mr Yeo will not develop dementia, it would be appropriate to apply a discount of 40% to that figure. The result is that Mr Yeo should be awarded only $46,080 for cost of future nursing care.

Conclusion

86 For the reasons above, the appeal is allowed to the extent that the award for pain, suffering and loss of amenity is reduced from $326,000 to $200,000, and the award for cost of future nursing care is reduced from $76,800 to $46,080. Accordingly, Mr Yeo's total award is reduced from $576,626 to $419,906. Mr Yeo is to pay Mdm Lua the costs of the appeal fixed at $15,000 inclusive of disbursements. There will be the usual consequential orders.

Andrew Phang Boon Leong
Judge of Appeal

Judith Prakash
Judge of Appeal

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