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DISTRICT JUDGE GEORGINA LUM  
20 March 2025

**IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE**

**[2025] SGDC 77**

District Court Originating Claim No 1518 of 2023

Between

Ja’afar Bin Abdul Samad

*... Claimant*

And

Lim Zhen Xiang

*... Defendant*

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**JUDGMENT**

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[Tort — Motor Accidents]

[Damages — Assessment — Causation — weight to be accorded to expert opinion from an accident investigator on the causation of personal injuries]  
[Damages — Measure of damages — Personal Injuries cases]

## TABLE OF CONTENTS

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<b>BACKGROUND .....</b>	<b>1</b>
<b>PARTIES' CASES .....</b>	<b>2</b>
<b>GENERAL DAMAGES FOR PAIN AND SUFFERING AND LOSS OF AMENITIES .....</b>	<b>3</b>
RIGHT SHOULDER INJURIES .....	3
<i>The shoulder injuries diagnosed or identified.....</i>	4
<i>The circumstances of and level of impact caused by the Accident.....</i>	10
<i>Were the Claimant's shoulder injuries caused by the Accident? .....</i>	16
<i>The appropriate quantum.....</i>	24
NECK AND UPPER BACK STRAIN .....	27
VERTIGO .....	30
<b>LOSS OF EARNING CAPACITY .....</b>	<b>33</b>
<b>SPECIAL DAMAGES .....</b>	<b>36</b>
FUTURE MEDICAL EXPENSES .....	36
MEDICAL EXPENSES .....	39
TRANSPORT EXPENSES .....	41
PRE-TRIAL LOSS OF EARNINGS .....	42
<i>Pre-trial loss of earnings as a technical officer with SMRT.....</i>	43
<i>Pre-trial loss of earnings as a grab driver.....</i>	46
<b>CONCLUSION.....</b>	<b>50</b>

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**Ja'afar Bin Abdul Samad**  
v  
**Lim Zhen Xiang**

[2025] SGDC 77

District Court Originating Claim No 1518 of 2023  
District Judge Georgina Lum  
12 June, 26 July, 24 September 2024

20 March 2025 Judgment reserved.

## **District Judge Georgina Lum:**

## Background

1 The present dispute arises out of an accident that occurred on 19 January  
2022 between the Claimant’s vehicle no. SLS 6555J (“the Claimant’s Vehicle”)  
and the Defendant’s vehicle no. SMA 3447R (“the Defendant’s Vehicle”) at the  
junction of Yishun Avenue 5 (“the Accident”)<sup>1</sup>.

2 On the first day of trial, parties informed the Court that:

(a) the Defendant is conceding that he bears “full responsibility” for the Accident<sup>2</sup>; and

<sup>1</sup> Statement of Claim filed herein (“SOC”) at [2] and Defence filed herein (“Defence”) at [2]

<sup>2</sup> Notes of Evidence (“NE”), 12 June 2024, 1/10-15

(b) It has been agreed between parties that the Defendant would pay the Claimant the sums of S\$972.88 and S\$420 for his costs of repairs and loss of use respectively<sup>3</sup>.

3 As such, the only issues before me relate to the causation and quantum of damages (if any) which should be awarded with respect to the Claimant's personal injury claim.

### **Parties' cases**

4 It is the Claimant's case<sup>4</sup> that:

- (a) He is entitled to general damages for pain and suffering and loss of amenities amounting to the aggregate sum of S\$32,000;
- (b) He is entitled to an award for loss of earning capacity amounting to the sum of S\$15,000;
- (c) He is entitled to an award of S\$28,000 for future medical expenses and treatments; and
- (d) He is entitled to special damages including pre-trial loss of earnings, medical and transport expenses.

5 The Defendant disputes the extent of loss and damage sought by the Claimant from this Court and it is Defendant's case that the Claimant's current medical issues are not attributable to the minor Accident<sup>5</sup>.

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<sup>3</sup> NE, 12 June 2024, 3/18-25 and 20/18-21/22

<sup>4</sup> Claimant's Closing Submissions ("CCS") at [8] and Plaintiff's Affidavit of Evidence in Chief at [23] to [42]

<sup>5</sup> Defendant's Closing Submissions ("DCS") at [3]

### **General Damages for pain and suffering and loss of amenities**

6 The Claimant seeks damages for pain and suffering caused by the following:

- (a) Right shoulder injuries;
- (b) Neck and upper back strain; and
- (c) Vertigo.

7 For each of the abovementioned head of damages, I will consider whether causation has been established, assess the extent of injuries sustained (if any) and thereafter determine the appropriate sums to award the Claimant for pain and suffering (if any).

#### ***Right shoulder injuries***

8 With respect to this head of damage, it is the Claimant's case<sup>6</sup> that he has suffered the following injuries at his right shoulder:

- (a) Right shoulder contusion/acute muscle injury;
- (b) Possible tiny fragment at the inferior aspect of lateral end of right clavicle suggestive of an avulsion fracture involving the conoid tubercle and likely coracoclavicular ligament injury;
- (c) Intrasubstance insertional tear of posterior or supraspinatus tendon measuring approximately 2x2 mm with proximal delamination of 11 mm and low grade distal anterior supraspinatus tendinosis;

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<sup>6</sup> Pages 1 and 2 of Table Annex to CCS

- (d) Rotator cuff muscle/tendon injury;
- (e) Tenderness over the right subacromial region;
- (f) Tiny bone fragment seen in the lateral 3<sup>rd</sup> of the right clavicle, suggestive of an avulsion fracture involving the conoid tubercle and likely coracoclavicular ligament injury; and
- (g) Right clavicular avulsion fracture.

*The shoulder injuries diagnosed or identified*

9 In support of his arguments that the injuries above were caused by the Accident, the Claimant relies on<sup>7</sup>:

- (a) the medical reports issued on behalf of Ng Teng Fong General Hospital<sup>8</sup> (“NTFH”) and the medical report issued by Dr Haresh Singaraju (“Dr Singaraju”) of National University Polyclinics (Choa Chu Kang-CCK) (“the Polyclinic”); and
- (b) the evidence of Dr Singaraju and Dr Han Fu Cai, an orthopaedic specialist who was formerly from NTFH as expert witnesses.

10 The day after the Accident, the Claimant had visited Dr Singaraju at the Polyclinic on 20 January 2022 and it appears that relatively minor injuries were noted by Dr Singaraju at this medical consultation.

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<sup>7</sup> Pages 1 and 2 of Table Annex to CCS

<sup>8</sup> Claimant’s Bundle of Documents (“CBD”) at 30-35

<sup>9</sup> CBD at 36-37

11 Dr Singaraju issued a report dated 20 February 2024<sup>10</sup>. Save for a diagnosis made with respect to vertigo and injuries noted at the Claimant's shoulder, neck and back, Dr Singaraju had observed no other issues with the Claimant and specifically highlighted that during the examination carried out on 20 January 2022 that:

- (a) the Claimant was comfortable, had a normal gait, had a full Glasgow Coma Scale of 15/15 and was also found to have a normal heart rate and blood pressure;
- (b) the Claimant did not complain of pain to his chest, abdomen, pelvis and limbs; and
- (c) Chest and pelvic compression and abdominal examination did not reveal any pain.

12 The salient points in Dr Singaraju's report dated 20 February 2024<sup>11</sup> relating to the Claimant's claim for pain and suffering arising from his shoulder injuries are as follows:

- (a) The Claimant had complained of *inter alia* pain over his right shoulder;
- (b) On examination of his shoulder region on 20 January 2022, Dr Singaraju had noted that:
  - (i) the Claimant's motor power and sensation were intact across all four limbs and he had no dysmetria;

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<sup>10</sup> CBD 36 and 37

<sup>11</sup> CBD 36 and 37

- (ii) there was tenderness over the right subacromial region; and
- (iii) the range of motion of the Claimant's right shoulder was limited due to pain;

(c) the X-Ray of the Claimant's shoulder reported a tiny bony fragment seen in the lateral 3<sup>rd</sup> of the right clavicle, *suggestive* of an avulsion fracture involving the conoid tubercle and likely coracoclavicular ligament injury;

(d) it was his diagnosis that the Claimant suffered from a right clavicular avulsion fracture;

(e) the Claimant was treated with medication, referred to a nurse for application of a shoulder sling and granted medical leave from 20 to 28 January 2022; and

(f) the Claimant was referred for further orthopaedic treatment.

13 In a NTFH report dated 11 March 2022<sup>12</sup>, with respect to the Claimant's shoulder region, the hospital's records reflected that:

- (a) The Claimant complained of pain in his neck, upper back, right shoulder and arm on 24 January 2022;
- (b) The Claimant was diagnosed with a right shoulder contusion/acute muscle injury;

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<sup>12</sup> CBD 30-31

- (c) On examination on 24 January 2022, it was noted that: (i) the Claimant had restricted neck movement due to muscle spasm with right trapezius spasm, painful restriction of right shoulder movement; and (ii) the strength of the Claimant's rotator cuff was limited by pain;
- (d) The X-Ray carried out at the Polyclinic on 20 January 2022 showed a possible tiny fragment in the right clavicle "suggestive of an avulsion fracture";
- (e) On 24 January 2022, the Claimant was prescribed with medication, was advised to attend physiotherapy and granted medical leave from 20 January 2022 to 27 February 2022; and
- (f) When the Claimant was seen again on 28 February 2022:
  - (i) he had reported an improvement with his symptoms but reported persistent painful limitation of right shoulder abduction and weakness of his rotator cuff; and
  - (ii) was advised to have an MRI of his shoulder but had opted to continue with conservative treatment.

14 On 18 April 2022, the Claimant's solicitors sent a letter to NTFH<sup>13</sup> noting that the report dated 11 March 2022 had observed that there was "evidence of fracture/dislocation" and sought clarification from NTFH as to why their diagnosis was limited to that of a "right shoulder contusion/acute muscle injury".

15 NTFH responded on 29 April 2022<sup>14</sup> stating that:

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<sup>13</sup> CBD 32

<sup>14</sup> CBD 33

- (a) While the X-ray conducted at the Polyclinic was “suggestive of an avulsion fracture”, their diagnosis was one of “right shoulder contusion/acute muscle injury” because in their view “the avulsion fracture likely does not account for (the) patient’s shoulder pain”;
- (b) An MRI carried out on 21 April 2022 showed that the Claimant had an intrasubstance insertional tear of the posterior supraspinatus tendon measuring 2x2mm with proximal delamination of 11mm and low grade distal anterior supraspinatus tendinosis; and
- (c) The diagnosis for the Claimant was now of a rotator cuff muscle/tendon injury.

16 In its final report dated 24 May 2023<sup>15</sup>, NTFH gave an update of the status of the Claimant. In this report, Dr Han Fucai (who is the expert witness from NTFH called by the Claimant for trial) (“Dr Han”) stated *inter alia* that:

- (a) Since the Claimant’s first visit at NTFH’s department of orthopaedic surgery shoulder clinic on 24 January 2022: (i) he has had persistent shoulder pain due to partial supraspinatus tendon and partial subscapularis tendon tears confirmed on MRI scan; and (ii) has been prescribed medication and referred to physiotherapy;
- (b) At the Claimant’s last clinical review on 8 May 2023, the Claimant had reduced range of motion in his right shoulder;
- (c) It is recommended that a total of 5% be awarded to the Claimant for permanent disability of his right shoulder symptomatic rotator cuff tears under the “guide to the Assessment of Traumatic Injuries and

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<sup>15</sup> CBD 34 and 35

Occupational Diseases for Workmen's Compensation" ("The Workmen's Compensation Guide");

(d) The Claimant can still continue with his occupation as a Grab/Taxi driver as well as technical officer in SMRT but he gets pain over the shoulder on heavier load, overhead and strenuous upper limb activities; and

(e) At that material time, the Claimant would be continuing with physiotherapy and analgesia.

17 In addition to his treating physicians, the Claimant was also examined by the Defendant's medical expert, Dr W.C. Chang ("Dr Chang"), on 22 August 2023.

18 In Dr Chang's medical report dated 20 December 2023<sup>16</sup>, it was stated that:

(a) The Claimant was not on any specific treatment and was not on any follow-up since 2023;

(b) During the examination of the Claimant's right shoulder, it was noted that:

(i) There was no deformity, swelling, effusion or muscle wasting around the shoulder girdle;

(ii) The Claimant's shoulder movements were restricted with pain on abduction, flexion and internal rotation;

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<sup>16</sup> Defendant's Bundle of Documents ("DBD") 3 to 9

- (iii) Abduction and flexion were weak at grade 4/5 (normal grade 5/5) on account of pain; and
- (iv) Sensation was normal.

(c) As at August 2023, the Claimant had chronic discomfort and some stiffness of the right shoulder with pain whenever he strains it which may not settle in view of the fact that more than 19 months had passed since the Accident;

(d) The X-ray of his shoulder on 22 August 2023 showed no bony abnormality of the right clavicle, indicating there was no fracture initially or it had healed;

(e) In his view, as a result of the Accident, the Claimant had suffered a minor strain to his neck and right shoulder; and

(f) The small tears noted in the MRI conducted on 21 April 2022 were most likely degenerative in origin with the shoulder strain precipitating symptoms.

*The circumstances of and level of impact caused by the Accident*

19 As a preliminary point on this issue, I note that the Defendant relies on the views of Mr Hunter, the managing director of Hunter Technical Services, to establish not just the likely impact and/or circumstances surrounding the Accident but also the “possibility of bodily injuries to the Claimant”<sup>17</sup>.

20 For the avoidance of doubt, I accept that Mr Hunter as an accident investigator is qualified to assist in insurance investigations on accidents and

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<sup>17</sup> DBA 83 at [2]

that he does have considerable experience in investigations conducted into circumstances surrounding motor vehicle accidents<sup>18</sup>.

21 However, his curriculum vitae<sup>19</sup> does not record any medical training or qualification enabling him to comment substantively on the consequential effect of accidents on the personal injuries of a claimant. Mr Hunter has further accepted on the stand that:

- (a) He is not in a position to challenge a medical diagnosis made by doctors as the issuance of a diagnosis is the province of a doctor<sup>20</sup>;
- (b) He is not medically trained<sup>21</sup>; and
- (c) He is only commenting on the mechanics of the Accident but not on the injuries in question<sup>22</sup>.

22 As such, while I do note Mr Hunter's observations on the likely mechanics and impact of the actual Accident, I am not of the view that substantive weight can be placed on his opinions on the injuries which could be consequently caused by the Accident. His opinion on the likely impact and/or mechanics of the Accident does assist the Court to the extent that it forms a basis and factual context for the medical professionals to opine on the causation of a claimant's personal injuries and for the Court to reach its decision. However, in my view, it is for the medical professionals who treated the Claimant to inform the Court on their views with respect to whether the personal

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<sup>18</sup> DBA 87-96

<sup>19</sup> DBA 87 -96

<sup>20</sup> NE, 26 July 2024, 31/14-10

<sup>21</sup> NE, 26 July 2024, 33/12-14

<sup>22</sup> NE, 26 July 2024, 34/3-13

injuries purportedly suffered by the Claimant were caused by the Accident and not Mr Hunter.

23 On this basis, I now turn to consider Mr Hunter's opinions on the impact and likely circumstances of the Accident along with other contemporaneous evidence before turning to the opinions of the medical experts on whether the Accident could have caused the injuries before this Court in the next section.

24 It is Mr Hunter's opinion that:

- (a) It is clear that there has been some minor slight off-center contact between the Defendant's Vehicle front bumper and the Claimant's Vehicle's rear bumper<sup>23</sup>;
- (b) The contact was so light that it would not have caused the Claimant's Vehicle to surge forward or the Claimant to have been forced forward in his seat<sup>24</sup>;
- (c) The alleged level of dynamic movement asserted by the Claimant is simply not possible given the nature of the collision and the very low speed minor rear contact in the Accident<sup>25</sup>;
- (d) It is possible that as a result of the initial minor contact that the Claimant's head would have moved back and come into contact with his seat's head rest but in that event, the Claimant would have been

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<sup>23</sup> DBA at 107 and 108

<sup>24</sup> DBA 107

<sup>25</sup> DBA 109

restrained by his seat belt making it impossible for his face and head to hit the steering wheel as suggested by the Claimant<sup>26</sup>; and

(e) In his view, the seat belt would not have had to restrain the Claimant due to the minor nature of the rear contact in the Accident<sup>27</sup>.

25 I accept Mr Hunter's views on the impact and circumstances of the Accident as they are in line with the contemporaneous photographs which show no obvious damage to both vehicles<sup>28</sup>, the low repair costs agreed to between parties and the fact that the back-seat passenger in the Claimant's vehicle had not been injured<sup>29</sup>.

26 In contrast, while the Claimant asserted at trial that his Vehicle was hit with sufficient force to be pushed forward in the collision, in support of his version of events, he has not:

(a) adduced any expert evidence on the impact or surrounding circumstances of the Accident;

(b) produced the video footage referred to in the Singapore Accident Statement he had filed on the day of the Accident<sup>30</sup>; and

(c) called the passenger who was seated in the back seat of the Claimant's Vehicle at the material time of the Accident to corroborate his version of events.

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<sup>26</sup> DBA 109

<sup>27</sup> DBA 110

<sup>28</sup> DBA 12-31 and 42-82

<sup>29</sup> CBD 16

<sup>30</sup> CBD 3

27 Further to the above, while both parties had been vague on the details surrounding the Accident in their Affidavit of Evidence in Chief, the Defendant's version of events is more likely to have occurred. I elaborate below.

28 In the Singapore Police Force Report that the Claimant filed on the date of the Accident, he clearly stated that just before the Accident<sup>31</sup>, he "came to a stop at the traffic light **at the stop line** as it was red" just before the Defendant's Vehicle had hit him in the rear (emphasis added).

29 It was the Defendant's evidence that:

(a) His car was stationary before the Accident and he had accidentally released the brake of his car causing it to roll forward into the Claimant's Vehicle because he had dozed off<sup>32</sup>; and

(b) After the Accident, because it was a minor collision, the "two vehicles were actually together" and he had to reverse his vehicle in order to take the picture exhibited in the Defendant's Singapore Accident Statement<sup>33</sup> (which was filed on the same day as the Accident) and in his Affidavit of Evidence in Chief<sup>34</sup>.

30 I am of the view that the Claimant's Vehicle did not move forward after the Accident and accept the Defendant's version of events for the following reasons:

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<sup>31</sup> CBD 15-17

<sup>32</sup> Defendant's Affidavit of Evidence in Chief at [2] and NE, 26 July 2024, 23/8-32

<sup>33</sup> BA 195-222

<sup>34</sup> BA 204

(a) The Accident occurred somewhere between 4.15am<sup>35</sup> and 430am<sup>36</sup> and it is therefore believable that the Defendant had dozed off when he was at the traffic light.

(b) The Defendant's version of events above was not challenged during cross-examination and the authenticity of the photographs he had taken are also not in dispute.

(c) The abovementioned picture taken right after the Accident<sup>37</sup> shows that the Claimant's Vehicle was still situated at or just before the stop line at the traffic light which on the Claimant's own evidence was where he had stopped his vehicle before the Accident had occurred thereby indicating that his vehicle had not surged forward as he had claimed.



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<sup>35</sup> Claimant's Affidavit of Evidence in Chief at [4]

<sup>36</sup> Defendant's Affidavit of Evidence in Chief at [2]

<sup>37</sup> BA 204

31 In the circumstances, I find that on a balance of probabilities, the Accident was one of low impact which was insufficient to move the Claimant's Vehicle forward and accept Mr Hunter's views above.

32 Having said that, it remains clear even on Mr Hunter's evidence that there was still impact that had occurred during the Accident (albeit one with low or minimal force) which was experienced by the Claimant and it is on this basis that I now turn to review the opinions of the medical experts on causation of the injuries before me.

*Were the Claimant's shoulder injuries caused by the Accident?*

33 It is the Claimant's position<sup>38</sup> that the causation of injuries should be based on the views of the medical experts and that it is not "open to the Defence to argue that the accident did not cause any injuries to the Claimant" in view of the medical expert evidence available and the credibility of the Claimant's evidence.

34 It is the Defendant's submissions<sup>39</sup> that the Claimant has failed to prove that he has suffered any injury as a result of the Accident because *inter alia* the Accident was minor, the Claimant has pre-existing degenerative issues with his shoulder and the Claimant's evidence with respect to what had occurred during the Accident is unreliable.

35 I address each of these points in turn below.

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<sup>38</sup> CCS at [9] to [19]

<sup>39</sup> DCS at [8] to [23]

36 Both Dr Singaraju<sup>40</sup> and Dr Han accept<sup>41</sup> that when the Claimant attended at the clinic and provides a history to his symptoms: (a) the objective of the clinic would be to correlate the symptoms with the history and provide the patient treatment for his symptoms; and (b) there is no verification of the history provided and “whatever (the patient) says...is taken a lot at face value based on the consistency of his reporting” or based on “self-reporting” from the patient.

37 However, Dr Han had also made clear on the stand<sup>42</sup> that “rotator cuff tear(s) can occur in even low impact injuries, as easy as just with light weight with some stress to it, so it doesn’t necessarily have to be a high impact injury that causes the tear” and that “there needs to be some force transmission, but it need not be a high velocity or a high impact transmission”.

38 When showed pictures of the minimal damage caused to both vehicles, Dr Han stated that since he is not a car mechanic, he is not able “ascertain how bad the damage is but from the picture” but repeated that “there need not be a high-impact injury or force transmission for a rotator cuff tear to happen. (The Claimant) could well be just holding on to the steering wheel, and with (an) eccentric contraction of the shoulder, or a---sort of---a force forward from the outstretched arm, these could cause injury to the rotator cuff tear as well”<sup>43</sup>.

39 When presented with Mr Hunter’s views that it was not possible for the Claimant to have sustained any serious injury in the Accident, Dr Han: (a) rightly accepted that he would defer to Mr Hunter on the question of impact and

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<sup>40</sup> NE, 12 June 2024, 50/15-52/32

<sup>41</sup> NE, 26 July 2024, 6/8-7/3

<sup>42</sup> NE, 26 July 2024, 7/9-20

<sup>43</sup> NE, 26 July 2024, 8/11-26

transmission of force; and (b) stated that in his view “there (has) been some force, possibly, that led to the tear of the tendon” (Emphasis added).

40 It appears therefore that when presented with the available evidence on the low impact at which the Accident had occurred that it is Dr Han’s position that it is possible for a rotator cuff tear to occur in a low impact accident like the present one. I note however that he did not state that a rotator cuff tear was likely to have occurred.

41 Dr Singaraju’s views differs slightly from Dr Han in this regard.

42 When showed pictures of the minimal damage caused to the vehicles after the Accident<sup>44</sup>, it was Dr Singaraju’s evidence that:

- (a) A certain amount of force would have been required to (the Claimant’s Vehicle) in order for such complaints of injury to have occurred<sup>45</sup>;
- (b) He is “unsure whether such an accident could have resulted in an injury of such a manner” as “various questions” would need to be asked including “the position in which the patient was in (inside) his vehicle when this accident took place”<sup>46</sup>; and
- (c) He does not expect any significant injuries to occur though there was a possibility that fractures can still occur depending on the

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<sup>44</sup> DBA 12-26

<sup>45</sup> NE, 12 June 2024, 56/19-27

<sup>46</sup> NE, 12 June 2024, 57/25-31

Claimant's hand posture or his upper limb postures when he was holding the steering wheel<sup>47</sup>.

43 It appears therefore that both the Claimant's treating medical doctors hold the same view that it was possible for the Claimant's injuries to have occurred as a result of the Accident depending on the posture of the Claimant or position of the Claimant's hands at the time of the Accident. However, there is no evidence before this Court that either of the Claimant's doctors had inquired into how the Claimant sat, positioned his hands in relation to the steering wheel and/or was positioned in his seat during the Accident before arriving at their diagnosis or during the course of treatment. I further note that neither of the Claimant's treating doctors had opined that it was likely that a rotator cuff tear had occurred as a result of the Accident when shown evidence of the minimal damage that had occurred during the minor Accident and that Dr Singaraju (unlike Dr Han) was further of the view that he did not expect significant injuries to occur as a result of the Accident.

44 On the issue of pre-existing degeneration in the Claimant's right shoulder, Dr Han:

(a) agreed that most patients in their 50s who are employed to work as technical officers (like the Claimant) would have some form of degeneration<sup>48</sup>;

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<sup>47</sup> NE, 12 June 2024, 25/1-11

<sup>48</sup> NE, 26 July 2024, 9/12-18

- (b) took the position during cross-examination<sup>49</sup> that he is not able to ascertain totally that the rotator cuff tears were due to degeneration; but
- (c) ultimately clarified during re-examination<sup>50</sup> that “it will be difficult to ascertain whether (the Claimant’s rotator cuff injury was) pre-existing” as the doctors “can only check whether he was previous scan that show he already has a tear” and “it will not be easy for us to determine whether it’s pre-existing”.

45 On this issue, Mr Singaraju had taken the position that<sup>51</sup>: (a) he was unable to comment as to whether the Claimant had issues with respect to his shoulders that pre-existed; and (b) he was unable to comment on whether the issues captured by the X-Ray he had taken at the Claimant’s visit to the Polyclinic could be due to pre-existing issues and are not a result of the Accident. He accepted<sup>52</sup> that ultimately, he had only provided symptomatic treatment and referred the Claimant for further evaluation at an orthopaedic outpatient clinic.

46 In the circumstances, I am of the view that the Claimant has not discharged his burden of proof in proving that the Accident has caused his rotator cuff injuries because:

- (a) Both the Claimant’s doctors are of the view that it is possible for the Accident to have caused the Claimant’s rotator cuff tear but are

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<sup>49</sup> NE, 26 July 2024, 12/15-26

<sup>50</sup> NE, 26 July 2024, 13/10-21

<sup>51</sup> NE, 12 June 2024, 24-56/27

<sup>52</sup> NE, 12 June 2024, 56/28-57/3

either not in a position to and/or have not expressed the view that it is likely that the Claimant's rotator cuff tear was caused by the Accident;

(b) Dr Han has agreed that there "would be" some form of degeneration in the Claimant's shoulder given his age and occupation; and

(c) Dr Han has conceded that he could not ascertain if the Claimant's rotator cuff injury was pre-existing.

47 In contrast, it is the clear and consistent evidence of the Defendant's expert witness, Dr Chang, in his report dated 20 December 2023 (as stated above) and on the stand that:

(a) The Claimant had suffered a minor strain to his neck and right shoulder which precipitated the symptoms in the right shoulder<sup>53</sup>; and

(b) The small tear noted in the MRI conducted on 21 April 2022 by NTFH was most likely degenerative with a shoulder strain precipitating symptoms<sup>54</sup>

48 Though Dr Chang had accepted that it cannot be excluded that the rotator cuff tears were a result of the Accident<sup>55</sup>, he did not accept that the tears were caused by the Accident and had clarified and maintained on the stand that he had arrived at his view that the tears were likely to be degenerative because the tears were very small (with one measuring 2 by 2mm) and if it was due to

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<sup>53</sup> NE, 26 July 2024, 39/7-13

<sup>54</sup> NE, 26 July 2024, 39/14-40/13

<sup>55</sup> NE, 26 July 2024, 41/13-16

the Accident, in his view, it would be much bigger<sup>56</sup>. He further opined on the stand that in his view, “a small (tear) like this, also, eventually will heal”<sup>57</sup>.

49 In the circumstances, on a balance of probabilities and a review of the evidence above, I am inclined to accept Dr Chang’s view that:

- (a) The rotator cuff tears were most likely degenerative in nature; and
- (b) The Claimant had suffered from a minor shoulder strain precipitating symptoms from the rotator cuff tears.

50 For completeness, I would state that I have considered the following three points below but remain of the view that a minor shoulder strain precipitating symptoms from the rotator cuff tears had occurred as a result of the Accident.

(a) At trial, Dr Han had disagreed with Dr Chang’s diagnosis of a minor shoulder strain<sup>58</sup> and took the view that the “tear is likely to be traumatic in origin as (the Claimant) did not have any symptoms prior to the accident” and that a mild strain would not have resulted in pain and restriction in range of motion being noted by Dr Chang approximately 19 months after the injury. I note his views but do not accept them for the following reasons:

- (i) By Dr Han’s own evidence stated above: (i) he had taken at face value the Claimant’s assertion that there were no

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<sup>56</sup> NE, 26 July 2024, 40/14-41/15 and 43/7-19

<sup>57</sup> NE, 26 July 2024, 43/7-19

<sup>58</sup> NE, 26 July 2024, 10/1-23

symptoms before the Accident; and (ii) he could only opine that it was possible for the Accident to have caused the tears but did not know if the Claimant's hands or posture were in a position so as to state that it was likely that the Accident had caused the rotator cuff tears.

(ii) The comments on Dr Chang's diagnosis above were expressed before Dr Han had unequivocally accepted<sup>59</sup> that it was "difficult (for him) to ascertain whether (the Claimant's rotator cuff injury was) pre-existing".

(iii) During his cross-examination, Dr Han did not appear to note that Dr Chang had also opined in his report dated 20 December 2023<sup>60</sup> that the minor strain had precipitated symptoms from the rotator cuff tears which explained the continuing symptoms noted and highlighted during the re-examination by Dr Chang in 2023.

(b) I further note that the Defendant has primarily submitted there were no injuries caused by the Accident but I am unable to accept this position taken on the basis that the Defendant's own medical expert had opined that the Claimant had suffered a minor shoulder strain that had precipitated the symptoms in his shoulder and did not opine that no injuries were caused by the Accident.

(c) Lastly, I also accept that there was some arguable evasiveness on the part of the Claimant as raised by the Defendant in his closing

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<sup>59</sup> NE, 26 July 2024, 13/10-21

<sup>60</sup> DBD 3-9

submissions<sup>61</sup> with the Claimant refusing to *inter alia* accept on the stand<sup>62</sup> that the Accident was minor notwithstanding the documentary evidence available to the contrary. However, I would not go as far as to say that the Claimant was an unreliable witness whose testimony on the Accident and his injuries should be disregarded. I further do not think that the credibility of the Claimant substantively impacts the findings above as his subjective views on his injuries are also secondary to the primary diagnosis and views of the medical experts expressed above which I refer to and rely on.

#### *The appropriate quantum*

51 Moving on to the appropriate quantum of damages to be awarded, in support of their submissions, both solicitors have referred to the applicable section on shoulder injuries found within Charlene Chee *et al*, *Guidelines for the Assessment of General Damages in Personal Injury Cases* (Academy Publishing, 2010) (“the Guidelines”) at pages 32-33<sup>63</sup>.

52 In the period from 24 January 2022 to 28 July 2022, receipts were issued for regular consultations and treatment at NTFH<sup>64</sup>. Thereafter, there is a gap in consultations for almost a year with the last receipt for medical treatment being issued for a visit at NTFH on 8 May 2023<sup>65</sup>. It is Dr Han’s evidence at trial<sup>66</sup> that

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<sup>61</sup> DCS at [16]

<sup>62</sup> NE, 12 June 2024, 14/4-12 and 21/23-25

<sup>63</sup> Claimant’s Bundle of Authorities (“CBOA”) at 34 to 35

<sup>64</sup> CBD 41 to 62

<sup>65</sup> CBD 63 and 64

<sup>66</sup> Notes of Evidence (“NE”)

the Claimant was then given an open date appointment, which is to be reviewed when required.

53 In my view, the Claimant's contemporaneous receipts read together with the medical reports above indicate that as at 2023, the Claimant has some persistent "pain over the shoulder on heavier load, overhead and strenuous upper limb activities" remaining but that the other issues with his rotator cuff injuries had largely resolved within 7 months by the middle or third quarter of 2022 as:

- (a) the Claimant's last physiotherapy appointment was on 9 May 2022<sup>67</sup>;
- (b) the Claimant no longer had regular medical consultation since July 2022; and
- (c) the Claimant was given an open date appointment in May 2023 and did not have to return for further follow-ups at NTFH unless "required".

54 In this context, the Claimant submits that the sum of S\$25,000<sup>68</sup> is appropriate for all the injuries cumulatively listed at [8] above and refers to the pages 32 to 34 of the Guidelines<sup>69</sup> for support. However, I do not think this cumulative approach and the quantum submitted is appropriate given that:

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<sup>67</sup> CBD 59

<sup>68</sup> Claimant's Opening Statement ("COS")

<sup>69</sup> Claimant's Bundle of Authorities ("CBOA") at pages 34-36

- (a) The right shoulder contusion/acute muscle injury and suggestion of an avulsion fracture formed part of the initial diagnosis given by Dr Singaraju before he referred the Claimant to NTFH for follow-up;
- (b) After further examination and scans, it was NTFH's view that the Claimant's symptoms are not caused by the avulsion fracture and the appropriate diagnosis was one for rotator cuff injuries instead;
- (c) It was further confirmed by Dr Han on the stand that at NTFH, the Claimant was diagnosed and treated for a rotator cuff strain injury with underlying rotator cuff tears<sup>70</sup>;
- (d) At all material times, the Claimant was only treated conservatively with a sling followed by medication and physiotherapy with continuous and regular treatment and consultation ending in or around July 2022;
- (e) I have found that the Claimant has not proven that his rotator cuff injuries are a result of the Accident and accept Dr Chang's diagnosis that the Accident caused a minor shoulder strain precipitating symptoms from the pre-existing rotator cuff injuries;
- (f) The remaining symptom that the Claimant persistently suffers from appears to be pain experienced upon carrying out certain more strenuous activities; and
- (g) Dr Han has accepted<sup>71</sup> at trial that based on the examination results recorded in the report issued by Dr Chang on 20 December 2023,

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<sup>70</sup> NE, 26 July 2024, 7/4-8

<sup>71</sup> NE, 26 July 2024, 11/10-16

there was an improvement in the Claimant's condition between the time Dr Han saw the Claimant in May 2023 and when he was examined by Dr Chang on 22 August 2023.

55 The Defendant submits that the appropriate award is S\$1,500 in the event the Court accepts that the Claimant suffered from a minor strain injury to the shoulder. These submissions do not appear to take into account Dr Chang's views that the strain also precipitated symptoms from the pre-existing rotator cuff injuries and I am of the opinion that an uplift from the quantum submitted is appropriate to reflect this.

56 Bearing in mind *inter alia* the nature and length of treatment administered on the Claimant, the residual symptoms of pain precipitated by the shoulder strain and the medical opinions expressed above, I am of the view that the Claimant's shoulder injuries fall somewhere between the minor and moderate range of shoulder injuries contemplated in the applicable section on shoulder injuries found in the Guidelines<sup>72</sup> and find that an appropriate sum to be awarded to the Claimant for the minor shoulder strain precipitating symptoms in his pre-existing rotator cuff injuries is S\$4000.

### ***Neck and upper back strain***

57 In the report dated 20 February 2024<sup>73</sup>, Dr Singaraju made the following observations relevant to the Claimant's claim that he had suffered a neck and upper back strain as a result of the Accident:

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<sup>72</sup> CBOA 34-36

<sup>73</sup> CBD 36 and 37

- (a) On 20 January 2022 when the Claimant visited the Polyclinic, he had complained of *inter alia* pain over his neck and upper back;
- (b) On examination, it was noted that:
  - (i) The Claimant had no spinal tenderness but had tenderness over the paraspinal regions of the cervical and thoracic spine; and
  - (ii) There were no spinal bruises and no step deformity found;
- (c) The X-Ray of the Claimant's cervical and thoracic spine did not reveal any acute fractures or dislocation;
- (d) On 20 January 2022, the Claimant was diagnosed with neck and upper back strain; and
- (e) The Claimant was treated with medication and medical leave from 20 to 28 January 2022.

58 In a NTFH report dated 11 March 2022<sup>74</sup>, with respect to the Claimant's injuries, the hospital's records recorded that:

- (a) The Claimant complained of pain in his neck, upper back, right shoulder and arm on 24 January 2022;
- (b) No diagnosis of a neck or back injury was made;

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<sup>74</sup> CBD 30-31

- (c) During the examination conducted on 24 January 2022, it was noted that the Claimant had restricted neck movement due to muscle spasm;
- (d) The X-Ray carried out at the Polyclinic on 20 January 2022 showed degenerative changes in the Claimant's cervical and thoracic spine; and
- (e) When the Claimant was seen on 28 February 2022, he reported improvement in symptoms and persistent issues only with his right shoulder.

59 For completeness, while there appeared to be some reference to dislocation and a fracture being located at the neck region of the Claimant in the report dated 11 March 2022, in a further clarification report issued on 29 April 2022<sup>75</sup>, NTFH confirmed that there was a typographical error and that the X-Rays of the Claimant's cervical and thoracic spine had not revealed any fractures or dislocation of the spine.

60 From the reports above, it appears that by 24 January 2022, NTFH did not take the view that the Claimant had existing neck or back injuries necessitating a diagnosis of the same and that by 28 February 2022, the Claimant no longer had continuing issues of pain with his neck or back which he considered necessary to report.

61 In Dr Chang's medical report dated 20 December 2023<sup>76</sup>:

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<sup>75</sup> CBD 32

<sup>76</sup> Defendant's Bundle of Documents ("DBD") 3 to 9

- (a) It was Dr Chang's views that the Claimant had suffered a minor neck strain from the Accident and that the Claimant's neck strain had since settled; and
- (b) it was noted during the physical examination of the Claimant's cervical spine on 22 August 2023 that there were no deformity, localised pain or tenderness, no paravertebral muscle spasm, full movements at the cervical spine and no neurological deficits with normal power and sensation.

62 The Claimant submits that an award of S\$4,000<sup>77</sup> is appropriate for his neck strain and relies on page 24 of the Guidelines as support<sup>78</sup>.

63 I am however of the view that the appropriate award is below S\$2000 given the fact that the Guidelines have noted that an award of "S\$2,000 or less" should be given for strains, sprains, disc prolapses, soft tissue injuries with full recover within about two years as the minor neck and back strain caused by the Accident appears to have resolved by in or around 28 February 2022.

64 In this regard, I accept the Defendant's submission<sup>79</sup> that the award of S\$1,500 for the Claimant's neck/back strain is appropriate.

### ***Vertigo***

65 For this head of damage, it is the Claimant's case that as a result of the Accident, he suffered from "vertigo which could be concussion related or benign paroxysmal positional vertigo". In support of this claim, the Claimant

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<sup>77</sup> COS

<sup>78</sup> CBOA at page 33

<sup>79</sup> DCS at [29]

refers to the observations made by Dr Singaraju in his report dated 20 February 2024<sup>80</sup>.

66 In his report dated 20 February 2024<sup>81</sup>, Dr Singaraju made the following observations which are relevant to the Claimant's claim that he had suffered from vertigo as a result of the Accident:

- (a) On 20 January 2022, when he visited the Polyclinic, the Claimant had mentioned that his head hit the steering wheel during the Accident but did not complain of pain over his head;
- (b) The Claimant did not report any loss of consciousness but complained of intermittent vertigo since the head injury especially with head movement to the right side;
- (c) On examination, it was noted that:
  - (i) The Claimant's Glasgow Coma Scale was full at 15/15;
  - (ii) The Claimant had no cephalohematoma, facial swelling or facial bruise;
  - (iii) The Claimant's extraocular movements were full and he had no nystagmus;
  - (iv) The Claimant's pupils were equal and reactive to light; and
  - (v) The Claimant had no facial droop and his tongue was central;

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<sup>80</sup> CBD 36 and 37

<sup>81</sup> CBD 36 and 37

- (d) The head impulse and test of skew tests carried out on the Claimant were unremarkable;
- (e) The Claimant was diagnosed with vertigo “which could be concussion related or benign paroxysmal positional vertigo”; and
- (f) The Claimant was treated with medication and medical leave from 20 to 28 January 2022.

67 Save for the observations above recorded by Dr Singaraju on Claimant’s visit to the Polyclinic on 20 January 2022, there is no other medical record referring to or mentioning any head injuries or vertigo suffered by the Claimant by NTFH or otherwise.

68 At trial, Dr Singaraju clarified the contents of his medical report and it was his evidence<sup>82</sup> on the stand that: (a) vertigo is a subjective complaint which is very hard to verify through any kind of objective examination; (b) with respect to the Claimant, there were no clinical evidence on physical examination that could identify the cause of the nystagmus in an objective manner; and (c) he could not find any major signs of head injury and nystagmus but had gone on to state in his report that it was his “impression” that there was a “possible concussion injury”.

69 In view of the contemporaneous medical documentation and the evidence and clarification given by Dr Singaraju at trial above, I am not satisfied that the Claimant has discharged his burden in proving on a balance of probabilities that the Accident had caused a head injury and/or vertigo.

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<sup>82</sup> NE, 12 June 2024, 53/7-15

70 As such, I decline to award the Claimant damages for this head of damage.

### **Loss of Earning Capacity**

71 It is trite law that an award for loss of earning capacity is generally given only if there is a substantial or real risk that a claimant could lose his or her present job at some time before the estimated end of his or her working life and that the claimant will, because of the injuries, be at a disadvantage in the open employment market<sup>83</sup>.

72 In the present case, it is the Claimant's evidence<sup>84</sup> that at the time of the Accident, he was working a full-time job as a technical officer with SMRT Trains Ltd ("SMRT") on permanent night shift and as a private hirer driver using the Grab app during the day.

73 It is the Claimant's submission that he is entitled to an award of loss of capacity because<sup>85</sup>: (a) Dr Han had opined in a medical report dated 24 May 2023<sup>86</sup> that under the Workmen's Compensation Guide, a total of 5% would be awarded to the Claimant for permanent disability of his right shoulder symptomatic rotator cuff tears; and (b) in his view, there is a real possibility that he may be downgraded from or unable to continue with his current technical position in SMRT; and (c) his right shoulder injuries adversely affects his performance at both his jobs and should he lose any of these jobs, he would be in a disadvantaged position when he seeks a similar replacement job.

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<sup>83</sup> See CBOA pages 37-40

<sup>84</sup> Claimant's Affidavit of Evidence in Chief at [32] to [36]

<sup>85</sup> CCS at [28] to [32]

<sup>86</sup> CBD 34 and 35

74 I am not inclined to make an award for loss of earning capacity for the following reasons.

75 Firstly, the Claimant has accepted on the stand that he has suffered no loss of earning capacity or ability to work<sup>87</sup>.

Q I put it to you that you have suffered no loss of earning capacity or ability to work. Do you agree or disagree?

A Yes.

Q Is that a agree or disagree?

A Agreed.

76 Secondly, there is also no evidence tendered by the Claimant showing that he is at a real risk of losing his job as a technical worker or grab driver or that his performance at work has been affected.

77 On this issue, save for the personal concerns expressed by the Claimant that he may potentially be downgraded or lose his job, there are no particulars, documents and/or witness testimony (from the Claimant's employer or otherwise) placed before this court proving that the Claimant's performance has been affected in any way, that he was or is at risk of losing his job and/or that he would be disadvantaged if he had to look for alternative employment.

78 In fact, it was the Claimant's evidence on the stand that after the Accident:

(a) He has continued working both his jobs with no complaints from SMRT<sup>88</sup>; and

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<sup>87</sup> Ne, 12 June 2024, 35/11-15

<sup>88</sup> NE, 12 June 2024, 34/17-30

(b) He has been given pay raises and bonuses by SMRT as usual<sup>89</sup>;

79 Thirdly, all the doctors before this Court have taken the view that the Claimant can still continue working as a technical officer in SMRT and a grab driver with the limited caveat that he may suffer pain when engaging with certain strenuous activities. None of the doctors have however expressly opined or provided any particulars as to whether this pain would adversely affect the Claimant's performance, prevent him from properly performing his job as a technical officer or a grab driver and/or put him at a disadvantage with respect to any future employment.

(a) It is the view of the Claimant's treating doctors at NTFH in the report dated 24 May 2023<sup>90</sup> that:

(i) Under the Workmen's Compensation Guide, a total of 5% would be awarded to the Claimant for permanent disability of his right shoulder symptomatic rotator cuff tears; but

(ii) The Claimant can still continue with his occupation as a Grab/Taxi driver as well as technical officer in SMRT though he gets pain over the shoulder on heavier load, overhead and strenuous upper limb activities.

(b) It is Dr Chang's view in his report<sup>91</sup> that the Claimant was managing with his jobs, though he may have some shoulder pain with overhead and strenuous upper limb work.

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<sup>89</sup> NE, 12 June 2024, 34/31-35/1

<sup>90</sup> CBD 34 and 35

<sup>91</sup> DBD 3 to 9

80 In the circumstances, I am not satisfied that the Claimant is entitled to an award for loss of earning capacity.

### **Special Damages**

#### ***Future Medical Expenses***

81 In NTFH's final report dated 24 May 2023<sup>92</sup>, it was Dr Han's view that the Claimant's "potential future estimated medical expenses" (at B1 rate in a Singapore public hospital) are as follows:

- (a) Hospitalisation and operation (right shoulder arthroscopic rotator cuff repair) fees estimated at S\$25,000; and
- (b) Clinical follow-up, medications/analgesia and physiotherapy fees estimated at S\$3000.

82 In Dr Chang's view<sup>93</sup>, the Claimant could consider arthroscopic surgery to the right shoulder for subacromial decompression with possible repair of the minute tear of the supraspinatus tendon. He further estimated that:

- (a) The estimated cost of surgery would be \$14,000 (at B1 government restructured hospital rate) inclusive of 6 months post-operative care including medications, such as analgesics; and
- (b) The Claimant may also require 10 sessions of outpatient physiotherapy to rehabilitate the shoulder at the cost of about \$76.60 per session in a government hospital facility, if not subsidised

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<sup>92</sup> CBD 34 and 35

<sup>93</sup> DBD at 3 to 9

83 The Claimant submits<sup>94</sup> that the rates used in Dr Han's report are more accurate and should be preferred over Dr Chang's figures as Dr Han was *inter alia* "the consultant treating the Claimant" at that time.

84 The Defendant takes the position that the Claimant should not be granted the sums he seeks for future medical expenses. In support of this, the Defendant submits<sup>95</sup> that the Claimant has not proven on a balance of probabilities that the future medical expenses for surgery he seeks from this Court will be incurred as:

- (a) Dr Han's report did not state that "the Claimant on a balance of probabilities required the surgery recommended" and only provided estimates of "potential" future medical expenses;
- (b) The recommendation for surgery was made by Dr Han more than a year ago with Dr Han not being aware that the Claimant had returned to work;
- (c) The Claimant's condition had improved by 22 August 2023 when he saw Dr Chang; and
- (d) The Claimant has not actively sought any further treatment since 8 May 2023 and should therefore be considered largely symptom free.

85 It is not disputable that the burden is on the Claimant to prove that future medical expenses will be incurred and are necessary in the future before he is entitled to an award.

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<sup>94</sup> CCS at [33] to [36]

<sup>95</sup> DCS at [35] to [38]

86 In the present case, I am unfortunately unable to find that the Claimant has discharged this burden of proof.

87 Firstly, Dr Han's medical report dated 24 May 2023: (a) merely states that NTFH is "continuing (the Claimant) with physiotherapy and analgesia for now" before proceeding to provide an estimate for "potential future estimated medical expenses"; and (b) does not contain any express recommendation that the surgery be carried out on the Claimant and/or contain any opinion on the likelihood of such surgery being necessary for the Claimant in the future.

88 Secondly, it is the Claimant's own evidence in his Affidavit of Evidence in Chief<sup>96</sup> that he was "informed by (his NTFH) doctor that (he) may require an operation to (his) right shoulder to improve (his) condition" and there is no indication that he was informed or advised that surgery will or is likely to be necessary in the future.

89 Thirdly, it was also Dr Chang's views that the Claimant "could consider" surgery but it was not his view that such surgery would be necessary or is likely to be necessary in the future.

90 Lastly, it appears that from the contemporaneous documentation and evidence before this Court that the Claimant's condition is improving.

(a) As stated above, in my view, the Claimant's contemporaneous receipts read together with the medical reports indicated that as at 2023, the Claimant has some persistent "pain over the shoulder on heavier load, overhead and strenuous upper limb activities" but his rotator cuff

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<sup>96</sup> Plaintiff's Affidavit of Evidence in Chief at [27]

injuries had largely resolved within 7 months by the middle or third quarter of 2022 as:

- (i) the Claimant's last physiotherapy appointment was on 9 May 2022<sup>97</sup>.
- (ii) the Claimant no longer had regular medical consultation since July 2022; and
- (iii) the Claimant was given an open date appointment in May 2023 and did not have to return for further follow-ups at NTFH unless "required".

(b) It was also accepted by Dr Han<sup>98</sup> at trial that there was an improvement in the Claimant's condition between the time Dr Han saw the Claimant in May 2023 and when he was examined by Dr Chang on 22 August 2023.

91 In the circumstances, I decline to make an award for future medical expenses.

### ***Medical expenses***

92 For medical expenses, the Claimant submits that he has paid the sum of S\$105.28 to the Polyclinic and the sum of S\$906.98 to NTFH.

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<sup>97</sup> CBD 59

<sup>98</sup> NE, 26 July 2024, 11/10-16

93 In support of his claim for medical expenses, the Claimant has made no submissions but has broadly referred to documents contained within the Claimant's Bundle of Documents<sup>99</sup> tendered before the Court at trial.

94 The Defendant submits<sup>100</sup> that the medical expenses payable to the Claimant amount to an aggregate sum of S\$712.23 and has provided a breakdown in table contained within Annex A of the Defendant's Closing Submissions ("Annex A").

95 The quantum stated in the receipts produced by the Claimant are in line with the sums stated in Annex A of the Defendant save that it appears that the Defendant has omitted to include a payment of S\$300 made by the Claimant on 21 April 2022 from his Medisave account to NTFH from the Defendant's calculations<sup>101</sup>.

96 I have included the payment of S\$300 from the Claimant's Medisave account in my calculations of the medical expenses due to the Claimant as the sum of S\$300 is not a subsidy or grant from the government paid to NTFH on behalf of the Claimant but a payment that was made by the Claimant from his personal healthcare savings account managed by the Central Provident Fund Board. In my view, the Claimant is entitled to being compensated for this amount taken from his Medisave account.

97 I further note that in the Claimant may have inadvertently included an additional S\$0.03 in his calculation for payments made to NTFH on 24 January

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<sup>99</sup> COS at page 4

<sup>100</sup> Annex A to DCS

<sup>101</sup> CBD 55 and 56

2022<sup>102</sup> without taking into account the deduction/adjustment of S\$0.03 made by NTFH from the total amount payable of S\$66.43 before receiving a net payment of S\$66.40 from him on the said date.

98 In the circumstances, on the basis of the receipts produced by the Claimant, I award that the Claimant an aggregate total of S\$1012.23 as medical expenses with:

- (a) S\$105.28 being medical expenses he had incurred at the Polyclinic; and
- (b) S\$906.95 being medical expenses he had incurred at NTFH.

### ***Transport Expenses***

99 In his Affidavit of Evidence in Chief<sup>103</sup>, the Claimant has: (a) stated that he has made a total of 12 trips to NTFH and the Polyclinic; and (b) estimated that his transport expenses would amount to S\$30 per return trip. There are no documents and/or basis provided for the Claimant's estimation on transport costs.

100 A perusal of the receipts tendered<sup>104</sup> show that the Claimant had made one trip to the Polyclinic and 12 trips to NTFH.

101 The Defendant relies on search results obtained from a website named [www.taxigator.net](http://www.taxigator.net) ("the Website") to submit<sup>105</sup> that: (a) a round trip between

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<sup>102</sup> CBD 41 and 42

<sup>103</sup> Claimant's Affidavit of Evidence in Chief at [31]

<sup>104</sup> CBD 38-64

<sup>105</sup> DCS at [44] to [47]

the Polyclinic (which is located in Choa Chu Kang) to the Claimant's home address in Choa Chu Kang should be approximately S\$10; and (b) a round trip between NTFH and the Claimant's home address should be approximately S\$25.

102 The basis of calculations produced by the Website was not made available to the Court and I am unable to verify the legitimacy or accuracy of the estimates given or the data relied on by the Website in producing the results tendered before me. As such, the estimates of transport expenses provided by the Defendant stand very much on the same ground as the estimates given by the Claimant in that neither appear to have a firm or verifiable basis.

103 In the circumstances, bearing in mind the quantum submitted by both parties and the distance between the Claimant's home and the two locations he had to visit to receive treatment, I am of the view that it is fair for:

- (a) S\$10 to be awarded for the single return trip made between the Polyclinic and the Claimant's home in Choa Chu Kang; and
- (b) \$27.50 to be awarded for each return trip between the Claimant's home and NTFH.

104 As such, I award the Claimant the aggregate sum of S\$340 for his transport expenses.

#### ***Pre-Trial loss of earnings***

105 From the medical certificates produced<sup>106</sup>, it appears that: (a) the Claimant was granted medical leave by the Polyclinic for 9 days; (b) the

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<sup>106</sup> CBD 40 and 65-69

Claimant was granted medical leave or put on light duty by NTFH for 218 days in the period from 20 January 2022 to 8 May 2023 with the bulk of his medical leave and light duty taking place in the period from 20 January 2022 to 31 August 2022.

106 There are two parts to the Claimant's claim for pre-trial loss of earnings.

- (a) With respect to his job as a technical officer with SMRT, the Claimant submits that he has suffered a loss of income amounting to the sum of S\$4,201.27<sup>107</sup> during his medical leave and when he was placed on light duties.
- (b) With respect to his job as Grab driver, the Claimant submits<sup>108</sup> that he has suffered a loss of income amounting to the sum of S\$33,742.15 during his medical leave of 216 days.

*Pre-trial loss of earnings as a technical officer with SMRT*

107 For this head of damage, it is the Claimant's evidence<sup>109</sup> that he was paid his basic salary during medical leave and when he was placed on light duty but had missed out on overtime and overtime related allowances ("Allowances") that he had typically earned as a technical officer with SMRT during the time period from February to April 2022 with his purported drop in earnings reflected in his pay slips from March to May 2022.

108 On the basis above, it is the Claimant's position that he has lost Allowances amounting to the aggregate sum of S\$4,201. This sum was arrived

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<sup>107</sup> Claimant's Affidavit of Evidence in Chief at [33] to [35]

<sup>108</sup> Claimant's Affidavit of Evidence in Chief at [36] to [40]

<sup>109</sup> Claimant's Affidavit of Evidence in Chief at [33] to [35]

at by deducting the pay he had received from SMRT in the period from March to May 2022 from the higher amount of pay he had received from SMRT from March to May 2021.

109 The Defendant does not appear to dispute that the Claimant has suffered a drop of income during this time period and/or that he is entitled to pre-trial loss of earnings for Allowances lost as a technical officer but has submitted that an alternative method of calculation should be adopted for accuracy<sup>110</sup> and further submits that the higher sum of S\$5,351.36 should be awarded for this head of damage.

110 I accept the Defendant's submissions and elaborate below.

111 As a starting point, the method of calculation proposed by the Claimant is not an accurate representation of the quantum of Allowances he has lost for the following reasons:

- (a) The Claimant's method of calculation is built on the assumption that the overtime opportunities and his basic pay were the same during the two time periods in 2021 and 2022.
- (b) However, his basic salary in March 2021 differs from that in March 2022<sup>111</sup>.
- (c) There is also a noticeable variance in the overtime and allowances earned by the Claimant from month to month<sup>112</sup>.

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<sup>110</sup> DCS at [48], [50] and [52]

<sup>111</sup> Bundle of Affidavits ("BA") at 121 and 136

<sup>112</sup> CBD 71-107

112 In the premises, the Defendant's submissions to premise the calculation of additional allowances lost by the Claimant as the difference between the average quantum of additional allowances he earned before and after the Accident is sensible and fair.

113 In the Defendant's closing submissions, the Defendant's proposed computation method is as follows:

(a) From the payslips provided by the Claimant, the Defendant first extracted the quantum of the additional allowances earned by the Claimant in each month in the period from July 2021 to May 2022 (excluding the Claimant's basic pay and monthly fixed allowance of \$250 and any other performance bonuses) as follows:

BA	Month	OT / Allowances
126	Jul-21	\$ 2,127.38
127	Aug-21	\$ 2,078.14
128	Sep-21	\$ 2,302.74
129	Oct-21	\$ 2,556.85
130	Nov-21	\$ 2,264.87
132 and 133	Dec-21	\$ 2,330.37 Less interim bonus of \$1,444
134	Jan-22	\$ 2,060.26
135	Feb-22	\$ 1,669.32
136	Mar-22	\$ 715.00
137	Apr-22	\$ 441.75
138	May-22	\$ 805.75

(b) Thereafter, the Defendant calculated that the Claimant earned an average of S\$2245.80 per month in additional allowances during these 7 months prior to the Accident.

(c) From his pay slips from February to May 2022, the Defendant calculated that the Claimant earned additional allowances amounting to an average of S\$907.96 per month after the Accident.

(d) Based on the above, for the period of February to May 2022, it was calculated that the Claimant's: (a) loss of additional allowances amounted to an average amount of S\$1337.84 per month (S\$2245.80 less S\$907.96); and (b) pre-trial loss of earning as a technical officer would amount to the aggregate total of S\$5,351.36 (S\$1,337.84 x 4 months).

114 In light of the fact that the Accident had occurred on 19 January 2022 and the Claimant's evidence that the Allowances he earns are reflected in the payslip issued the month after he earns such allowances<sup>113</sup>, I am of the view that the Defendant's submissions and computation methods for the Claimant's pre-trial loss of earnings as a technical officer at SMRT are fair and accurate therefore award the Claimant the sum of S\$5,351.36 as the pre-trial loss of earnings he has suffered from his job as a technical officer with SMRT.

*Pre-trial loss of earnings as a grab driver*

115 It is the Claimant's evidence at trial that he has worked as a grab driver for 6 years<sup>114</sup>.

116 In support of his claim that he has suffered pre-trial loss of earnings amounting to the aggregate sum of S\$33,742.15 as a Grab driver, the Claimant has based his calculations<sup>115</sup> on:

(a) His evidence that he drives about 6 days a week during the day as he is on permanent night shift with SMRT;

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<sup>113</sup> Claimant's Affidavit of Evidence in Chief at [33]

<sup>114</sup> NE, 12 June 2024, 27/31-32

<sup>115</sup> Claimant's Affidavit of Evidence in Chief at [36] to [41] and CCS at [37]

- (b) His submission that he would therefore have driven for 185 days out of 216 days of medical leave ( $216 \div 7 \times 6$ );
- (c) Grab statements of income that he had earned during a 2 week period between 3 January 2022 and 16 January 2022<sup>116</sup> in support of his claim that he earns an average of S\$275.39 of gross income per day and S\$182.39 of net income per day as a Grab driver; and
- (d) a rough estimate of his expenses at an average of S\$93 per day without any supporting documentation provided.

117 I am unable to accept the Claimant's submissions.

118 Firstly, the supporting documents and evidence relied on by the Claimant is wholly insufficient for the purposes of supporting the claim which he wishes to advance. With 6 years of experience working as a Grab driver, the computation of the Claimant's average income as a Grab driver cannot and should not be based on a mere two weeks of Grab statements from early 2022.

119 Secondly, the purported average daily gross income and daily net income the Claimant claims to earn is inconsistent with and far higher than the annual income that the Claimant has previously declared to the Inland Revenue Authority of Singapore ("IRAS") as a Grab driver.

120 Based on the Claimant's proposed methodology for the calculation of his pre-trial loss of earnings as a Grab driver, the Claimant should have earned a net annual income of S\$57,088.17 on average during each year that he worked as a Grab driver [S\$182.39 x 313 days ( $365 \text{ days} \div 7 \times 6$ )].

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<sup>116</sup> CBD at 108-109

121 However, in 2020, the Claimant declared to IRAS that he had earned only S\$18,000 from his work as a Grab driver for the year 2019<sup>117</sup>.

- (a) At trial, it was his evidence<sup>118</sup> that he had declared S\$18,000 to IRAS after he had purportedly deducted 60% of his gross income for expenses presumably in line with the official fixed expense deduction ratio applicable to private hire car drivers set by IRAS.
- (b) This explanation proffered by the Claimant to justify the low income declared to IRAS does not assist his claim for the following reasons.
  - (i) It is inconsistent with his evidence<sup>119</sup> and present submission that he incurs only an estimated S\$93 per working day as expenses which amounts to 30% of his purported average gross income per day of S\$275.39 and not 60%.
  - (ii) Even if it was accepted that the Claimant had deducted 60% from his gross income as a Grab driver before declaring S\$18,000 as his net income for 2019, the net income he had declared for 2019 remains far below the average annual net income which the Claimant wishes the Court to accept he can earn of S\$57,088.17 per year.

122 In 2021, the Claimant declared to IRAS that he had earned only S\$7,107 from his work as a Grab driver for the year 2020<sup>120</sup>.

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<sup>117</sup> CBD 110

<sup>118</sup> NE, 12 June 2024, 42/4-10

<sup>119</sup> Claimant's Affidavit of Evidence in Chief at [36] to [39]

<sup>120</sup> CBD 111

- (a) It was the Claimant's position at trial that this lower income was purportedly a result of him doing a lot of overtime at work during this period<sup>121</sup>.
- (b) In my view, this explanation does not assist the Claimant in his claim for pre-trial loss of income as a Grab driver as it shows that the Claimant does not regularly drive for 6 out of 7 days a week as he claims and/or that his income as a Grab driver varies greatly depending on his workload at SMRT.

123 In 2022, the Claimant did not declare any income from working as a Grab driver in the year 2021<sup>122</sup>.

- (a) On the stand, the Claimant claims that he did not declare any income as Grab driver in 2021 because he had earned less than S\$20,000 that year<sup>123</sup>.
- (b) I do not think this statement is true as the Claimant had consistently declared income below S\$20,000 for his work as a Grab driver to IRAS for the years 2019 and 2020.
- (c) I further note that even if the Court accepts that the Claimant had earned less than S\$20,000 of net annual income from driving Grab in 2021 and had thus decided not to declare his income to IRAS:
  - (i) his present computation method based on purported daily net earnings of S\$182.39 and a purported net annual income

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<sup>121</sup> NE, 12 June 2021, 42/17-28

<sup>122</sup> CBD 112

<sup>123</sup> NE, 12 June 2024, 41/20-42/3

amounting to S\$57,088.17 cannot stand as the income he had allegedly decided not to declare for the year 2021 falls far below the purported average earnings he seeks to rely on for his claim in pre-trial loss of earnings as a grab driver; and

(ii) his failure to declare the purported income he had earned in 2021 to IRAS and his failure to submit the necessary underlying documents showing the income he had allegedly earned in 2021 to this Court means that I have no proper basis upon which to calculate the average earnings he had made in 2021 as a Grab driver just before the Accident had occurred in January 2022.

124 Lastly, further to my views above, I am also of the opinion that the various inconsistencies and contradictions between the IRAS statements provided by the Claimant for the years 2019 to 2021, his evidence at trial and the computation method he has presented to the Court has resulted in there being no clear, consistent or reliable basis for the Court to properly calculate and/or justify an award for pre-trial loss of earnings as a Grab driver to the Claimant.

125 In the circumstances, I find that the Claimant is not entitled to his claim for pre-trial loss of earnings as a Grab driver.

### **Conclusion**

126 For the reasons stated above, it is ordered that final judgment be entered as follows:

(a) S\$5,500 be awarded to the Claimant as general damages plus interest at the rate of 5.33% from date of originating claim to date of judgment; and

(b) S\$6703.59 be awarded to the Claimant as special damages plus interest at the rate of 2.67% from the date of originating claim to date of judgment.

127 Parties are to file and serve written submissions on the appropriate cost orders to be made (both as to incident and quantum), limited to 5 pages (excluding any schedule of disbursements), within 14 days.

Georgina Lum  
District Judge

Mr Lee Wee Peng Lawrence (Lawrence Lee & Co) for the claimant;  
Ms Lim Hui Ying (Legal Solutions LLC) for the defendant.

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