IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHCR 22

Suit No 239 of 2022

Between

(1) Fauzi bin Noh

… *Claimants*

And

(1) Zulkepli bin Husain

… *Defendant*

And

(1) MSIG Insurance (Singapore) Pte Ltd

… *Intervener*

GROUNDS OF DECISION

[Damages — Measure of damages — Personal injuries cases]

Fauzi bin Noh
v
Zulkepli bin Husain (MSIG Insurance (Singapore) Pte Ltd, intervener)

[2025] SGHCR 22

General Division of the High Court – Suit No 239 of 2022
Assistant Registrar Nicholas Lai

15-17 January 2024, 24 June 2024, 13 September 2024, 19 June 2025

14 July 2025

Assistant Registrar Nicholas Lai: **Judgment reserved.**

Introduction

1 The present suit arises from a collision between a motorcycle and a motor lorry on 1 February 2018. The rider of the motorcycle was one Mr Fauzi bin Noh (the "Plaintiff") while the lorry was driven by Mr Zulkepli bin Husain (the "Defendant"). The Defendant was, at the time of the collision, driving the lorry in the course of his employment for his employer, Sembcorp Industries Ltd ("Sembcorp"). By consent, interlocutory judgment was entered for the Plaintiff against the Defendant for 85% of the damages to be assessed, with interest and costs reserved to the assessment of damages stage.[1]

[1] Interlocutory Judgment (DC/JUD 2017/2021) dated 16 August 2021.

2 It subsequently transpired that because the Defendant had breached the terms of the motor insurance policy (as he drove the lorry without a valid license), the lorry's insurer, MSIG Insurance (Singapore) Pte Ltd ("Intervener") took the position that the said policy was repudiated. However, for reasons only known to the Intervener and the Defendant, the Intervener still took an interest in the outcome of this matter and applied to intervene in the present suit. On 27 July 2022, their application to intervene was allowed.

Background to the dispute

3 On 1 February 2018, at about 11.10 am, the Plaintiff was riding his motorcycle along Jurong Island Highway towards Tembusu Avenue. At the same time, the Defendant was driving his lorry in the opposite direction. Both men were headed to the same junction at Sakra Road ("the Junction"), albeit travelling in opposite directions.

4 As the traffic light was in the Plaintiff's favour, the Plaintiff proceeded to ride straight into the Junction. At the same time, the Defendant turned right into the Junction. This resulted in the Plaintiff colliding into the left side of the Defendant's lorry at the Junction.

5 Following the collision, the Plaintiff was rendered unconscious and was conveyed by an ambulance to the National University Hospital ("NUH").

6 Based on the information provided by the Traffic Police[2], the Defendant was charged in the State Court on three criminal charges:

[2] Bundle of Documents dated 10 January 2024 ("BD"), at pages 97 to 112.

a. 1st Charge: Dangerous driving, an offence punishable under s 64(1) of the Road Traffic Act, Cap. 276 ("RTA"), for failing to give way to the Plaintiff who had the right of way, when the Defendant decided to make the right turn into the Junction.

b. 2nd Charge: For driving without a valid license, an offence punishable under s 131(2) of the RTA, as the Defendant did not hold a Class 3 license that was required to drive the lorry.

c. 3rd Charge: For driving the lorry without a policy of insurance, punishable under s 3(2) and 3(3) of the Motor Vehicle (Third-party Risks & Compensation) Act, Cap. 189.

7 The Defendant pleaded guilty to the first two charges and consented for the 3rd Charge to be taken into consideration for sentencing. He was convicted of the two charges and sentenced to global sentence of $4,600 fine (i/d 19 days' imprisonment). He was also disqualified from holding or obtaining all classes of driving licenses for a period of 18 months starting from 24 September 2018.

8 On 16 August 2021, interlocutory judgment on liability was entered, by consent, by the Learned Deputy Registrar Dorothy Ling Feng Mei, against the Defendant "for 85% of the damages to be assessed" and extracted on 29 September 2021.

The parties' case

9 The Plaintiff's heads of claim are as follows:

a. Pain and suffering and loss of amenities;

b. Future medical expenses;

c. Loss of future earnings;

d. Loss of earning capacity;

e. Medical leave wages paid by the Plaintiff's employer;

f. Pre-trial loss of earnings;

g. Medical expenses; and

h. Transport expenses.

10 Notably, the Plaintiff, in its closing written submissions, made no distinction whether the heads of claim were general or special damages. The distinction is however important. In *British Transport Commission v Gourley* [1956] AC 185 at 206 (which was cited by the Court of Appeal in *Yap Boon Fong Yvonne v Wong Kok Mun Alvin and another and another appeal* [2019] 1 SLR 230), the House of Lords explained that:

> In an action for personal injuries the damages are always divided into two main parts. First, there is what is referred to as *special damage, which has to be specially pleaded and proved*. This consists of out-of-pocket expenses and *loss of earnings incurred down to the date of trial*, and is generally capable of substantially exact calculation. Secondly, there is general damage which the law implies and is not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future.
>
> [emphasis added]

11 Based on the distinction drawn above, I find that the heads of claim at

[9(a)] to [9(d)] would fall under the category of *general* damages. The heads of claim at [9(e)] to [9(h)] would fall under *special* damages since this category of damages consists of out-of-pocket expenses and *is generally capable of substantially exact calculation*.

12 The net sum of the Plaintiff's claim in damages is $536,755.89, less RM 73,479. At 85% liability, the net sum is reduced to $456,242.51, less RM 62,457.15.[3]

13 At the hearing, it became clear to me that the Defendant was keen to adopt whatever position the Intervener's counsel took. Prior to the start of hearing, when I asked the Defendant if he wished to submit any documents, he said no. At the end of the hearing, the Defendant similarly said that he did not wish to put in any written submissions and explicitly confirmed that he was happy to adopt whatever position the Intervener took.[4]

14 The Intervener objected to having to pay anything for the Plaintiff's loss of future earnings and the wages the Plaintiff had received from his employer while on medical leave. Save for these two heads of claim, the Intervener took the position that it was liable for the remaining heads of claim albeit for an amount lesser than what the Plaintiff had sought for. In total, the net sum the Intervener submitted that the Defendant was only liable for was $204,158.88 and RM 27,500. At 85% liability, the net sum would be reduced to $163,327.10 and RM 22,000.

Preliminary issue on causation

[3] Plaintiff's written submissions dated 2 September 2024.

[4] Oral Closing Submissions hearing on 13 September 2024.

15 Following the Court of Appeal's ("CA") decision in *Crapper Ian Anthony v Salmizan bin Abdullah* [2024] 1 SLR 768 (which was released on 28 June 2024), wherein the CA held that "an interlocutory judgment can be entered by consent on issues that do not wholly establish liability" and it is thus "for the parties to agree on what had been resolved with *res judicata* effect and what had not", I had, at the Oral Closing Submissions hearing on 13 September 2024 pointed out the parties that it was not clear from the interlocutory judgment whether parties intended to reserve the right to dispute the issue of causation at the assessment of damages stage. I then asked the Intervener's counsel whether he intended to challenge causation.

16 The Intervener's counsel confirmed that he did not wish to challenge causation. In doing so, he implicitly accepted that the injuries suffered by the Plaintiff were caused by the Defendant's acts. The Defendant himself also did not challenge causation. Having sat through the four-day trial, and gone through the Intervener's written closing submissions, it was clear to me that that the Intervener did not dispute causation.

General Damages

Pain and suffering and loss of amenities

17 The Plaintiff sought damages for pain and suffering caused by six injuries sustained by the Plaintiff as a result of the collision. The quantum of damage for each injury sought by the Plaintiff, and how much the Intervener was willing to pay for are reflected in the table below:

	Item	**Plaintiff's submission (S$)**	**Intervener's submission (S$)**

1.	Right eye medial orbital wall fracture ("Orbital Fracture")	$7,000	$6,000
2.	C3 vertebra teardrop fracture ("C3 Fracture")	$15,000	$10,000
3.	Right clavicle closed fracture ("Clavicle Fracture")	$12,000	$12,000
4.	Left right finger proximal phalanx fracture ("Finger Fracture")	$3,500	$2,000
5.	Open left distal tibia / fibular fracture ("Left leg Fractures")	$25,000	$20,000
6.	Right talus closed fracture ("Right ankle Fracture")	$20,000	$6,000
	Total:	**$82,500**	**$56,000**

Orbital Fracture

18 Based on the medical report dated 10 May 2022[5] by Dr David Justin Hernstadt, the Resident Physician from the NUH Ophthalmology clinic, it states that the Plaintiff's injuries "consisted of an isolated right medial wall fracture with herniation of retro-orbital at and resultant mild enophthalmos of 2mm, but without any muscle entrapment" and that the Plaintiff did not suffer any loss of vision. At the time of the hearing, it was undisputed that the fracture had united and, in an assessment conducted on 10 May 2021 by Dr Teo Pock Chin (PW3) ("Dr Teo") of Century Orthopaedic Specialist Clinic (who was engaged by the Plaintiff's counsel to examine the Plaintiff), Dr Teo did not record any concerns with regards to the Plaintiff's right eye.

19 Under the Guidelines for the Assessment of General Damages in

[5] BD, page 115.

Personal Injury Cases (Academy Publishing, 2010) (the "AD Guidelines"), the Plaintiff's counsel submitted that this injury fell under "Minor eye injuries" which reads:[6]

> Such cases include being struck in the eye, exposure to fumes including smoke or being splashed by liquids, causing initial pain and some temporary interference with vision. However, there is no risk of impairment of vision on a long-term basis.

20 The range for such an injury, based on the AD Guidelines, was $4,000 to $7,000. The Plaintiff's counsel argued that because a fracture was sustained, an award on the higher end of the range was appropriate. He therefore sought for $7,000.

21 The Intervener's counsel, on the other hand, referred to six past case precedents where the Plaintiffs in those cases also suffered an orbital fracture and were awarded damages ranging from $3,000 to $16,000. I note however, that that three of those cases cited awarded damages that were centred within the range of $6,000 to $7,500.

22 I am of the view that the Plaintiff's counsel's reference to "Minor eye injuries" under the AD Guidelines was not quite accurate. In particular, the tenor of the section seemed to relate to some trauma inflicted onto a person's eyes as opposed to the area around the eye, i.e. the orbital bone. This was because any "exposure to fumes including smoke or being splashed by liquid" would clearly not affect that bone around the eye. Further, a fracture of the orbital bone would also not definitely cause interference with vision in the same way fumes had entered the eye or if trauma was directly applied to the eye.

23 In my view, an orbital fracture is more akin to a fracture to a portion of

[6] Chapter 1(D)(g)(i) of the AD Guidelines.

the face. The AD Guidelines stipulates various facial factures such as the facial bone, the upper jaw and the zygoma (cheek bone). In my view, an orbital fracture is similar to a fracture of the zygoma since both bones are located close to each other. However, because the zygoma is more prominent, and larger, as compared to the orbital bone, I was prepared to accept that a fracture of the orbital bone would be at the lower end of the range for an award for a fractured zygoma. The AD Guidelines state that this range was between $6,000 to $10,000. Having considered that three of the six case precedents coalesced around the $6,000 to $7,500 range, coupled with the fact that the fracture had since united, and did not cause the Plaintiff problems with his vision, I assess that $7,000 in damages is fair for the Orbital Fracture.

C3 Fracture

24 The AD Guidelines categorises back injuries as severe, moderate and minor. Minor back injuries include strains, sprains, disc prolapses, etc. Where there is a fracture of the lumbar vertebrae, as in the present case, the back injury is considered minimally *moderate* wherein the applicable range is between $15,000 to $25,000. The said guidelines also state "generally, damages for fracture of one vertebra starts at about $15,000, discounting for overlap for two or more such fractures".

25 Based on the medical report dated 1 November 2018[7], the Plaintiff suffered a C3 vertebra teardrop fracture. The C3 vertebra is located at the back of the Plaintiff's neck. His condition was treated conservatively, i.e. the Plaintiff had to wear a cervical collar for 3 months. On 28 March 2018, the Plaintiff's neck was examined, and it was noted that he was "symptom free".[8]

[7] BD, page 83.

[8] BD, page 84.

26 When the Plaintiff was examined by Dr Teo on 10 May 2021, the fracture was observed to have united, and the Plaintiff had a full range of neck movement. It bears mentioning that the Plaintiff did not complain to Dr Teo that he was still experiencing discomfort or pain in his neck during his examination.

27 The Intervener' counsel submitted that the Plaintiff should only be awarded $10,000 in damages, $5,000 below the starting point of the range. He argued that because the injury was "only a teardrop fracture, which was treated conservatively and became symptom free in less than 2 months", a figure lower than $15,000 was warranted.

28 With respect, I disagree. Although the Plaintiff was found to be "symptom free" on 28 March 2018, the report did not go so far as to say that the fracture had united at the time of examination. It also did not say that the Plaintiff had recovered so much so that he possessed a full range of movement of his neck. A fracture of a vertebra is a serious injury, which is why the guidelines distinguish a fracture from a mere sprain or strain. I was therefore unable to see why anything less than the starting point of the range was warranted. That said, having considered that the Plaintiff was "symptom-free" some two months after the collision, I was of the view that the damage to be awarded should fall within the lower end of this range. As such, I assess that $15,000 in damages is fair for the C3 Fracture.

Clavicle Fracture

29 The AD Guidelines stipulate that the range of quantum for damages for a fracture to the clavicle is between $8,000 to $17,000. The factors to be considered are (a) extent of fracture, i.e. whether complicated or simple fracture, (b) whether any complications arose during the recovery period, and (c) whether the victim suffered significant permanent disabilities resulting from the injury.

30 I find that the fracture suffered by the Plaintiff to his right clavicle, although located close to the end of his clavicle, was ultimately not a complicated one. This was because the Plaintiff had suffered only one single fracture as opposed to multiple fractures, and treatment for the said fracture was uneventful. It was undisputed that when he examined by Dr Teo on 10 May 2021, the fracture had united.

31 The Plaintiff complained of (a) pain when carrying heavy loads, and (b) that his range of movement of his right arm was limited, to three doctors who had examined him; Dr Teo, Dr C W Chang (IW1) ("Dr Chang") (who examined the Plaintiff at the request of the Intervener on 8 November 2022) and Dr Gavin O'Neill (PW5) ("Dr O'Neill") (who examined the Plaintiff at the request of the Plaintiff's counsel on 21 November 2023, and who was also the same doctor who had operated on the Plaintiff's shoulder when he was admitted into NUH on 1 February 2018).

32 Dr O'Neill was of the view that it was the clavicle hook implant, that was attached to the Plaintiff's right clavicle, so as to allow the bones to join back (which has yet to be removed), that was causing the Plaintiff discomfort when carrying heavy loads. Dr O'Neill explained as follows:[9]

> PW5: So it doesn't give rigid fixation like most normal plates. It's rigidly fixed on a good part of the clavicle, and then it's just a---a hook that's slid underneath the---the---the top of the shoulder called the acromion, and it's not fixed rigidly. **So---so it's potensh---it moves a little bit. And so whenever that hook moves, it can cause irritation to the bone and pain and discomfort.** Some people have it much, much more severe than this. Some people don't have any. But most people have some degree of pain and discomfort from it. **And so it's because**

[9] Notes of Evidence ("NE"), 25 June 2024, page 54, lines 2 to 11.

> **of the---the---the pattern and the specific type of plate there are issues.**
>
> [Emphasis in **bold**]

33 Dr Chang agreed that removing the clavicle implant will "possibly" help alleviate the pain the Plaintiff was experiencing in his right shoulder:[10]

> Court: Sure. And I just want highlight this point because in pa---same paragraph, you said that he has recovered with slight restriction and slight pain with internal rotation of the shoulder. Right? That---this is at paragraph---
>
> IW1: Yes.
>
> Court: ---7.3.1.
>
> IW1: Yes.
>
> Court: Alright. So he did actually tell you that there was side---slight pain during the internal rotation. Would---
>
> IW1: He did tell me---
>
> Court: Yes.
>
> IW1: ---and also it---it was demonstrable. I---it---when I checked it, it did cause pain.
>
> Court: I see. **Would removal of the implant help to alleviate this pain?**
>
> IW1: **Possible**. Let's say if you're going to remove it now, okay, it may benefit him, or worst-case scenario, no change. But then the implant is out of the way, then we don't have to discuss anymore. Yah.
>
> [Emphasis in **bold**]

34 Hence, while the Plaintiff did not suffer from any complications during the recovery period and did not experience significant permanent disabilities, the Plaintiff did have to put up with pain and discomfort even after the fracture had united for at least 5 years after the collision took place. Further, I observed

[10] NE, 17 January 2024, page 10.

that the Plaintiff now has an 11 to 12 cm hyperpigmented operative scar on his right shoulder. I therefore assess that $11,000 in damages is fair for the Clavicle Fracture.

Finger Fracture

35 The AD Guidelines state that the range for a "fracture of one finger (generally)" is in the region of $2,000. The Plaintiff's counsel sought for $3,500 because (a) there is a 3 to 4 cm hypopigmented operative scar on the dorsal aspect of the Plaintiff's left ring finger, (b) the Plaintiff suffers from a slight reduction in the range of movements of the proximal interphalangeal joint, and (c) the implants are still *in-situ* and have yet to be removed, which could lead to complications in the future.

36 The third point can be easily dealt with. There was no evidence from any of the doctors who had examined the Plaintiff, that the non-removal of the implants will lead to complications in the future. In fact, Dr O'Neill testified that most implants used (which include the one used on the Plaintiff's finger) are biocompatible and can remain in the body until a person dies. Accordingly, I place no weight on the third point raised.

37 Compared to fractures that can be managed conservatively, i.e. by immobilising the finger for a period of time, the injury suffered by the Plaintiff was, in my view, more serious, considering that it had to be operated on, and that implants had to be fixed into the bone to ensure that the fractured portion could unite back. This led to a scarring and a reduction in movement. Accordingly, I assess that $3,000 in damages is fair for the Finger Fracture.

Left Leg Fractures

38 The Plaintiff's left distal tibia and fibula were fractured, albeit at different parts. The AD Guidelines differentiate "severe leg injuries" between (a) very severe, (b) serious and/or multiple fractures, (c) serious injuries to joints or ligaments, and (d) moderate injuries which include open and/or compound fractures.

39 I find that the Plaintiff's Left Leg Fracture fell under the "moderate injuries which include open and/or compound fractures", wherein the range is between $15,000 to $25,000. The AD Guidelines state that within this range:

> "an award in the higher range is appropriate where there is a likely risk of degenerative changes in the future requiring further surgery as a result of damage to the articular surfaces of the tibia and/or fibula, malunion of fractures, muscle wasting, restricted movement and unsightly scars which cannot be removed completely by cosmetic surgery".

40 Dr O'Neill examined the Plaintiff on 21 November 2023. In his report dated 22 November 2023[11], Dr O'Neill found that the Plaintiff had "radiographic signs of osteoarthritis within the left ankle joint". Although the Plaintiff walked with a normal gait, he could only squat to 90 degrees, which shows that he suffered from a reduced range of motion which limits his ability to squat fully. Dr O'Neill estimated that there is a 20% chance that the osteoarthritis will progress to a stage where the Plaintiff may need surgical intervention.[12]

41 Dr Chang also found that the Plaintiff was suffering from osteoarthritis in his left ankle. Dr Chang's medical report stated that there was a "narrowing

[11] BD, page 176.

[12] BD, Page 176.

and some irregularity of the lateral and posterior part of the ankle joint consistent with early post-traumatic arthritis", that the Plaintiff had "wasting of the [left] thigh and leg muscles", and that there is a "possibility [that] the arthritis in the [left] ankle may worsen in 5 to 8 years' time" [which] he may require fusion to settle the pain".[13] At the hearing, Dr Chang explained that because the fracture of the Plaintiff's left tibia was "a very low fracture [i.e. closer to the ankle]…which involves the articular surface of the ankle joint", it predisposes the Plaintiff's left ankle to arthritis.[14]

42 From the above, it was clear that both Dr Chang and Dr O'Neill were equivocal in their view that osteoarthritis to the Plaintiff's left ankle had already set in. It was undisputed that this medical condition is a degenerative one which will only worsen with time. The Plaintiff will continue to experience pain and a reduced range of movement in his left ankle. At some point when the Plaintiff can no longer bear with the pain, both doctors were of the view that he will have to go for a fusion surgery to his left ankle, so as to surgically strengthen his ankle. Besides the usual risk of surgery, a fusion surgery to the Plaintiff's ankle would mean that the Plaintiff will experience a further reduction of movement post-operation.

43 Bearing in mind that (a) there were two fractures to his left leg, one on the left tabia and another of his left fibula, (b) that even after four years, the Plaintiff was still unable the regain the strength he once had (in light of Dr Chang's observation that there was a wasting of muscle on his left lower limb), and (c) that the Plaintiff will experience osteoarthritis to his left ankle in the coming years because of the fractures, I am of the view that the quantum of

[13] BD, page 199.

[14] NE, 17 January 2024, page 16, lines 6 to 12.

damages should be between the moderate to high range. I therefore assess that $22,000 in damages is fair for the Left Leg Fracture.

Right Ankle Fracture

44 The Plaintiff suffered a right talus (or right ankle) closed fracture. The AD Guidelines distinguishes ankle injuries using four categories – minor, moderate, severe and very severe. In my view, the Plaintiff's injury fell into the *moderate* category which would range from $10,000 to $20,000.

45 Although the fracture has since unionised, was not complicated or one which required a long and extensive period of treatment (which would fall under the severe category), I accept Dr O'Neill's evidence that because of the fracture, the Plaintiff has developed subtalar osteoarthritis to his right subtalar joint (which is the area just under the talus), and there is a 20% chance that the osteoarthritis will progress to a stage where he may need surgical intervention.[15]

46 At the hearing, when Dr Chang was asked whether it was likely if the Plaintiff would suffer from osteoarthritis to his right ankle because of the talus fracture. He disagreed and explained that because the fracture had unionised and had a full range of motion, it would be *rare* for the Plaintiff to suffer from osteoarthritis in his right ankle. His testimony on this issue is reproduced below:[16]

> Court: I see. Okay. Would you be able to comment on whether or not he would suffer from osteoarthritis---
>
> Witness: Okay.
>
> Court: ---in the right ankle?

[15] BD, page 176.

[16] NE, 17 January 2024, page 24.

> Witness: Because this was an simple, undisplaced fracture that just did not require any surgery other than a bit of cast immobilising and joined up nicely, when I examined the claimant in the fu---have full range of motion of the ankle, and it looks normal to me, the whole thing. So I felt that it has joined up, and that was end of story, okay? To get osteoarthritis from this thing would be very, very rare, because there was no displacement of the bone, and it's joined up in anatomical position. There's no avascular necrosis. So the chances to get arthritis was basically very low---I mean, getting arthritis, very low. Okay, so when I saw him, he---he's---he didn't have any great complaint about this part. His main complaint was still the left side where his major surgery was, okay?

47 I preferred Dr O'Neill evidence, specifically his finding that the Plaintiff had, at the time when Dr O'Neill on 21 November 2023, already developed subtalar osteoarthritis to his right subtalar joint. This was because he had examined the Plaintiff one year after Dr Chang did. What Dr Chang said was a "rare" occurrence had in fact occurred to the Plaintiff's right ankle.

48 In my view, notwithstanding the fact that the Ankle Fracture was treated conservatively and had healed relatively uneventfully, it has led to the Plaintiff suffering osteoarthritis. I am of the view that the quantum of damages should be in the middle of the moderate range. I therefore assess that $15,000 in damages is fair for the Right Ankle Fracture.

49 Adding the figures up for each head of injury, I assess the damage to be as follows:

	Item	**Plaintiff's submission (S$)**	**Intervener's submission (S$)**	**Court's Finding**

1.	Right eye medial orbital wall fracture ("Orbital Fracture")	$7,000	$6,000	$7,000
2.	C3 vertebra teardrop fracture ("C3 Fracture")	$15,000	$10,000	$15,000
3.	Right clavicle closed fracture ("Clavicle Fracture")	$12,000	$12,000	$11,000
4.	Left right finger proximal phalanx fracture ("Finger Fracture")	$3,500	$2,000	$3,000
5.	Open left distal tibia / fibular fracture ("Left leg Fractures")	$25,000	$20,000	$22,000
6.	Right talus closed fracture ("Right ankle Fracture")	$20,000	$6,000	$15,000
	Total:	**$82,500**	**$56,000**	**$73,000**

Inflation

50 The Plaintiff submitted that this Court ought to have regard for inflation, bearing in mind that the AD Guidelines were published 2010 and the range of awards as stipulated in the said guidelines were based on the cost of living in 2010. To account for inflation, the Plaintiff cited the case of *Poongothai Kuppusamy v Huationg Contractor Pte Ltd & Other* [2023] SGHC 215 ("*Poongothai Kuppusamy*"), where Kwek Mean Luck J relied on the Goods & Services Inflation Calculator on the Monetary Authority of Singapore's website (the "MAS Inflation Calculator") to determine the appropriate uplift to account for inflationary pressures, and suggests that the said calculator be used to calculate the appropriate uplift caused by inflation.

51 The Intervener objected to this for two reasons. First, the Intervener submitted that the Court may consider inflation *only* if the impact of the increase in the value of money over time is substantial. Second, it argued that the MAS

Inflation Calculator ought not to be used because the purpose of the calculator was to reflect the price changes for (a) prices of goods and services, and (b) wages – and not for pain and suffering.

52 In respect of the Intervener's first point, contrary to his assertion, I find that the value of money has substantially decreased over time, from 2010 to 2024. Based on the figures provided by the MAS, a basket of goods under the "Overall" category (which takes into account the costs of housing and utilities, education, food, transportation, etc.) that costs $1 in 2010 would cost $1.33 in 2024. Over the last 14 years, the percentage change is 33.16%. Put another way, $1 in 2024 can buy 33.16% less in 2010.

53 In fact, in the preface of the AD Guidelines penned by the then-Chief District Judge Tan Siong Thye, he alluded to the fact that the working committee in-charge of formulating the range of damages had considered the latest case authorities and adjusted the older cases for inflation. The following excerpt is worth reproducing:

> This publication complements our earlier publication, ie *Assessment of Damages: Personal Injuries and Fatal Accidents* (LexisNexis and Subordinate Courts, Singapore, 2005) which highlights personal injury cases heard in Singapore from 1995–2005. To keep the ranges of awards current, **the working committee considered the latest case authorities in the field and adjusted the older cases for inflation**.
>
> [emphasis in **bold**]

54 From the above, it was clear that the need to account for inflation when calculating the quantum of damages to be awarded was not a new or novel idea. The older cases referred to by the working committee were adjusted for inflation when the AD Guidelines were drawn up. 15 years on, there was no reason why inflation ought not to be taken into account.

55 In *Noor Azlin bte Abdul Rahman and another v Changi General Hospital Pte Ltd* [2022] 1 SLR 689, the CA affirmed that where dated precedents are "to be relied upon, significant allowances for inflation and the corresponding decreases in the value of money will have to made" (at [136]). This supports the Plaintiff's position that the costs of inflation ought to be applied to the figures stipulated in the AD Guidelines considering that the said guidelines were published in 2010.

56 In respect of the Intervener's second point, it was not at all clear to me why it said that the MAS Inflation Calculator was an unreliable tool to calculate inflation. Just because the MAS Inflation Calculator did not have a category specific to "pain and suffering" did not make it an unreliable or inappropriate tool. Afterall, how much a victim ought to be compensated for in respect of pain and suffering has always been the task of the Courts to determine and not MAS.

57 Further, if the Intervener was of the view that the MAS Inflation Calculator was an unreliable or inappropriate tool to calculate inflation in Singapore, then it bore the burden of stating exactly *why*, considering that the General Division of the High Court, in *Poongothai Kuppusamy* had used the MAS Inflation Calculator, this was so. It would be helpful if suggestions were made for alternative methods or means to calculate inflation more reliably. Unfortunately, the Intervener did neither. Accordingly, I accept that the MAS Inflation Calculator would be a helpful and reliable tool for estimating the uplift that should be awarded to the Plaintiff, in light of the inflationary pressure over the years.

58 In the present case, I award $73,000 in damages for pain and suffering experienced by the Plaintiff. According to the MAS Inflation Calculator, in order to account for inflation and derive the present-day value of an award in

2010, there should a percentage increase of approximately 33.16% in its value (based on the MAS Inflation Calculator's latest inflation numbers from the "Overall" category, as of the date of this judgment, up to 2024). Thus, I adjust the figures for the claim for pain and suffering from $73,000 to $97,200 (after rounding the figure down to the nearest hundred).

Future Medical Expenses

59 The Plaintiff's claim for future medical expenses is particularised as follows:

	Item	**Claim amount**

1.	Removal of the right clavicle implant	RM15,000
2.	One years' worth of pain medication	RM1,800 (RM150 per month)
3.	Physiotherapy	RM2,400 (RM120 for 20 sessions)
4.	Consultation to observe avascular necrosis	RM5,400 (10% discount from RM6,000 for early receipt)
5.	Right ankle fusion surgery	RM18,750 (20% discount for early receipt, 5% discount to take into account appreciable risk principle)
6.	Left ankle surgery	RM18,750 (20% discount for early receipt, 5% discount to take into account appreciable risk principle)
	Total:	**RM 62,100**[17]

Removal of the right clavicle implant

60 The Intervener contended that the Defendant should not be liable for the removal of the right clavicle implant for three reasons, all of which were based purely on Dr Chang's medical opinion. First, based on Dr Chang's report, the Plaintiff's limited range of movement due to the implants was inconsequential functionally. Second, Dr Chang had doubts that the shoulder pains the Plaintiff had been experiencing was because of the implants. Third, Dr Chang's opinion was that there was no need to remove the implants since the Plaintiff was, at the time of examination working as a car mechanic and was managing without any significant problems.

[17] The amount claimed is in Malaysian Ringgit because the Plaintiff has, after the collision, moved back to Malaysia and have been living there since.

61 I find that Dr Chang's opinion does not address the root problem – whether the removal of the clavicle implant would (a) increase the range of movement of the Plaintiff's shoulder joint, and (b) reduce or eliminate the pain the Plaintiff experiences when lifting heavy objects. Just because the Plaintiff has lived with the pain did not mean he should be precluded from attempting to reduce or eliminate the pain he continues to suffer. As such, I did not see how the first and third points could meaningfully advance the Intervener's case. Insofar as Dr Chang's second point was concerned, Dr Chang had failed to explain where the pain would have come from if not for the implant in the Plaintiff's right shoulder.

62 I prefer Dr O'Neill's evidence in this regard. In his oral testimony, Dr O'Neill explained[18] that clavicle hook implant "sits just on top of the humerus", 3 to 4 mm away from where the "supraspinatus tendon, which is the tendon that is a primary mover of the shoulder in certain directions", is located. Because of the presence of the hook implant, there was "less space to move", i.e. therefore the Plaintiff experiences a limited range of movement, which can cause "a little of irritation of that tendon from time to time".

63 Dr O'Neill further explained that when the Plaintiff lifts heavy weight, the shoulder is pulled downwards and the "hook can cause irritation on the underside of the acromion (tendon)" as the "hook pushes hard, up against the bone". As such, he took the view that the "intermittent pain he [the Plaintiff] is experiencing when lifting heavy objects will improve after the plate is removed", and that the Plaintiff would "benefit from the removal of the metal plate from his right clavicle".[19]

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[18] NE, 25 June 2024, page 55, lines 1 to 32.

[19] BD, page 176.

64 I find that Dr O'Neill was able to provide a clear, cogent and logical explanation of what exactly caused the pain the Plaintiff felt in his right shoulder and why he was of the opinion that the removal of the hook implant would increase the range of the Plaintiff's right shoulder, and reduce the pain the Plaintiff would experience when lifting heavy weights. Dr Chang, with respect, did not quite articulate his reasons which such a degree of granularity. I therefore find Dr O'Neill's evidence on this issue very much more persuasive.

65 I note that both Dr Teo and Dr O'Neill had opined that RM15,000 was a reasonable cost to be incurred for the removal of the hook implant. There was not reason to doubt this figure considering that Dr Teo practices in Malaysia and is well aware of the applicable rates. I therefore find that Defendant liable for this amount.

Pain medication and physiotherapy

66 While the Plaintiff did complain about pain at his right clavicle, as well as his lower limbs, there was no evidence to suggest that the pain he was experiencing was so unbearable to the point that he had to rely on pain killers. There was also no evidence to show that the Plaintiff had been on painkillers or had been undergoing physiotherapy just prior to, or at the time, he was examined by Dr Teo on 10 May 2021. Accordingly, I find that pain medication and physiotherapy to be unnecessary and dismiss this claim.

Consultation to observe avascular necrosis

67 This claim is based on Dr Teo's opinion that because of the talus fracture in the Plaintiff's right foot, he *has a higher risk of avascular necrosis in the next*

few years.[20] At the point of examination, Dr Teo did not observe that avascular necrosis had set in. All Dr Teo said was that there was a risk that this condition may develop in light of the fracture.

68 In Dr Chang's affidavit dated 18 August 2023[21], Dr Chang opined that when he examined the Plaintiff's right talus fracture, he found "no complication of avascular necrosis".

69 At the hearing, Dr Chang explained[22] that such a condition was indeed a possible complication for a talus fracture. As blood vessels in the bone are needed to keep the bone alive, when the bone is fractured, the blood supply to one fragment of the bone is disrupted, which would lead to the bone "dying". However, when he examined the Plaintiff "more than 4 years" after the fracture, he found that this complication did not arise in the Plaintiff's case. Further, because the fracture has unionised, there was no risk of this particular complication happening.

70 I accept Dr Chang's evidence on this. All Dr Teo had opined in his medical report was that there was a *risk* that the Plaintiff might suffer from avascular necrosis. Dr Chang has examined the Plaintiff and this risk did not materialise. In addition, when the Plaintiff was examined by Dr O'Neill, Dr O'Neill also did not find that this complication had materialised in the Plaintiff's right talus. Accordingly, this claim is dismissed.

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[20] BD, page 96.

[21] Bundle of Affidivit-in-chief, page 106.

[22] NE, 17 January 2024, page 23, lines 19 to 32.

Right and left ankle fusion surgery

71 All three doctors opined that it is likely that the Plaintiff will suffer from osteoarthritis in his left ankle to the point that ankle fusion surgery will be required sometime in the future.

72 As for the Plaintiff's right ankle, Dr O'Neill found signs that subtalar osteoarthritis has developed because of the right talus fracture. At the hearing, he explained that based on the x-rays, "there is some wear and tear, some arthritis within that joint."[23] Dr O'Neill opined that there is an "approximately 20% chance that the osteoarthritis will progress to a stage where he [the Plaintiff] may need surgical intervention".[24]

73 In my view, there is an appreciable risk that the Plaintiff's osteoarthritis in both his ankles will become more severe to the point that he will require fusion surgery to be done to both joints. While the Plaintiff can slow the onset of severe osteoarthritis, he cannot stop it because osteoarthritis is a degenerative disease which will only become worse over time.

74 I accept Dr Teo's evidence that the cost of fusion surgery for one ankle in Malaysia is approximately RM25,000. This is, in any case, lower than Dr O'Neill estimated cost of $15,000 if the surgery is done in Singapore.

75 In *Lua Bee Kiang (administrator of the estate of Chew Kong Seng, deceased) v Yeo Chee Siong* [2019] 1 SLR 145, the CA set out the framework in assessing damages for future loss as follows:

> In our judgment, in assessing damages for future loss – such as cost of nursing care – arising from the possible future onset

[23] NE, 25 June 2024, page 49, lines 29 to 32.

[24] BD, page 176.

> 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 *alec*. 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.

76 Having found that there is an appreciable risk that the Plaintiff would require ankle fusion surgery for both ankles, I accept the Plaintiff's submission that a 25% discount be applied for surgeries to both angles. Accordingly, I award RM18,750 for future fusion surgery for each of his two ankles (total RM37,500).

77 In summary, I award a total of RM52,500 to the Plaintiff for future medical expenses.

Loss of future earnings & Loss of earning capacity

78 In *Mykytowych, Pamela Jane v VIP Hotel* [2016] 4 SLR 829 ("*Mykytowych*"), the CA held (at [140]) that an award of loss of future earnings is "a form of special damages awarded for real assessable loss proved by evidence (see *Fairley v John Thompson (Design and Contracting Division) Ltd* [1973] 2 Lloyd's Rep 40 at 42)". When assessing damages for loss of future earnings, the CA explained that:

> … the court should award a global sum after taking into account all the factors which are relevant to the particular case at hand, eg, the plaintiff's age, his skills, the nature of his disability, whether he is capable of undertaking only one type of work or whether he is capable of undertaking other types of work as well …

79 At the time of the assessment, the Plaintiff was 56 years old (born on 9 May 1968). The age of retirement in Malaysia is 60 years old. As he was claiming for the loss of future earnings from February 2024 onwards, this left him with less than 4 years of employment before he reached retirement age.

80 It was clear from the testimony of the Mr Venkataswamy Vimal (PW2) ("Mr Vimal"), who was the Plaintiff's superior and also the director of Drill Gems Engineering Pte. Ltd ("Drill Gems") (the company which the Plaintiff was working for at the time of the collision), that he greatly valued the Plaintiff's skill and expertise in micro-piling. Mr Vimal explained that the Plaintiff had worked for him for almost 20 years in the micro-piling industry and had followed him from his previous company to Drill Gems, a company Mr Vimal had set-up in 2015. Pertinently, Mr Vimal testified that but for the injuries sustained by the Plaintiff, he would have continued to hire the Plaintiff for as long as he could.

81 As the Plaintiff will only have less than 4 years to work with Drill Gems, the Plaintiff submits that the appropriate multiplicand ought to be 3.5 years, i.e. 42 months, which was to be multiplied by his last drawn monthly salary of $3,500 ($147,000). As the Plaintiff had just started a gas cylinder distribution business and draws a monthly salary of RM600, the Plaintiff submitted that a sum of RM69,100 should be deducted from the $147,000. This RM69,100 was made up of:

a. RM600 x 11 months (from February 2024 to December 2024); and

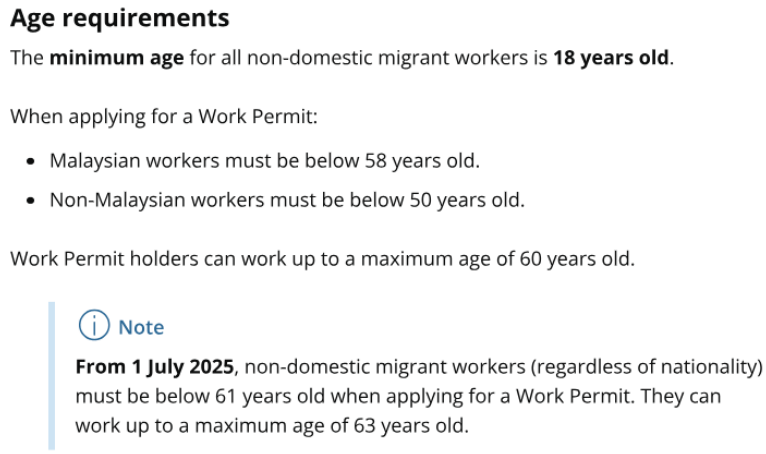
b. RM2,500 x 25 months (from January 2025 to February 2027). The increase in salary was premised on the business doing well.

82 On the assumption that I agree with the Plaintiff that his retirement age is 60 years old, which would also mean his the Plaintiff would reach retirement age on 9 May 2028, it was unclear why the Plaintiff has proffered no deduction from March 2027 to May 2028.

83 In any case, the Intervener objected that the loss of future earnings should be calculated up to the Plaintiff reaching 60 years old. The Intervener's counsel submitted that because work permits for the construction sector in Singapore are only granted by the Ministry of Manpower ("MOM") to Malaysians up to 58 years old ("Rule"), the Plaintiff will not be able to work for Drill Gems the moment he turns 58 years old (on 9 May 2026). As such, the appropriate multiplicand ought to be 2.5 years.

84 With respect, the Intervener's interpretation of the Rule is misplaced. All that the Rule says is that when applying for a work permit, Malaysian workers must be below 58 years old. On MOM's website, it further states that work permit holders can work up to a maximum of age of 60 years old. The following extract from MOM's website is self-explanatory:[25]

[25] Accessible at https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/sector-specific-rules/construction-sector-requirements



Age requirements

The **minimum age** for all non-domestic migrant workers is **18 years old**.

When applying for a Work Permit:

- Malaysian workers must be below 58 years old.
- Non-Malaysian workers must be below 50 years old.

Work Permit holders can work up to a maximum age of 60 years old.

Note

From 1 July 2025, non-domestic migrant workers (regardless of nationality) must be below 61 years old when applying for a Work Permit. They can work up to a maximum age of 63 years old.

85 What this means is that as long as the Plaintiff's work permit is applied for before he reaches 58 years old, he may work in Singapore, in the construction sector, up to 60 years old, as long as his work permit remains valid and is not cancelled. I therefore find that but for the Defendant's negligent act, the Plaintiff would have been employed by Drill Gems up to the age of 60 years old. As such, I accept the Plaintiff's proposed multiplicand of 3.5 years (42 months). I further accept the deduction as proposed by the Plaintiff but extend it to cover 42 months. As such, the deduction, that totals **RM84,100**, will constitute:

a. RM600 x 11 months (from February 2024 to December 2024); and

b. RM2,500 x 31 months.

86 For completeness, I wish to touch on one point which the Intervener made. The Intervener submitted that the Plaintiff did not make any attempts to secure alternative employment in once he had the opportunity to do so. While it was unclear from their submissions what exactly they were driving at when raising this point, I presumed that the point the Intervener was trying to make

was that should the Plaintiff have found work in Singapore, the deduction will ostensibly be more since what he would earn would be in Singapore dollars.

87 The Intervener's submission is, with respect, neither here not there. As the Plaintiff had spent the last 20 years working in the micro-piling industry and can no longer work in the said industry because of his injuries, it was difficult to ascertain whether his skills may be applicable to another industry. Further, it was unclear whether the eventual job he potentially would have had secured would see him being paid a monthly salary of more than RM2,500 (which constitutes the bulk of the deduction). In my view, the fact that the Plaintiff had actually attempted to find employment in spite of the effects of the injuries that still lingered, showed that the Claimant had made reasonable efforts to mitigate the loss. As such, I was not prepared to make an adverse finding against the Plaintiff in relation to this point.

88 **In summary, I assess the loss of future earnings to be $147,000 less RM 84,100.**

Loss of earning capacity

89 In *Mykytowych*, the CA explained the distinction between loss of earning capacity and loss of future earnings at [140], and held that they are distinct awards meant to compensate different kinds of loss:

> …these two types of awards are meant to compensate for different kinds of loss. An award for loss of future earning capacity is given as part of general damages in order to compensate a plaintiff for the weakening of his competitive position in the open labour market (see Smith v Manchester Corporation [1974] 17 KIR 1 ("Smith") at 8), whereas an award for loss of future earnings is a form of special damages awarded for real assessable loss proved by evidence (see Fairley v John Thompson (Design and Contracting Division) Ltd [1973] 2 Lloyd's Rep 40 at 42). Whether the court will: (a) grant both

> types of awards; (b) grant an award for loss of future earning capacity while refusing to grant an award for loss of future earnings; or (c) vice versa is dependent on and determined by the evidence before the court (see Chai Kang Wei at [21]).

90 The CA further elaborated (at [141]) that that when assessing the appropriate quantum of damages to award for the loss of earning capacity, the court "must take a 'rough and ready' approach…and calculate the loss of earning capacity 'in the round' … ultimately arriving at a figure that it considers reasonable in the particular circumstances to compensate the particular plaintiff for the disadvantage which he faces in the open employment market due to his disabilities…"

91 In *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587, the CA rejected the argument (at [23]) that where a substantial award was made for loss of future earnings, only a nominal award for loss of earning capacity should be given.

92 In the present case, I find that it was clear from the medical evidence that the Plaintiff would not be able to return to his pre-accident vocation of a supervisor in the micro-piling industry. This was for two reasons.

93 First, the surface of the ground where micro-piling works are typically carried out is usually *swampy and uneven*. Mr Vimal explained that the piling works are usually done over soil, and water is pumped into the bored hole to clean it. The water is then pumped out of the hole before cement is poured in.[26] When the water is pumped in and out of the hole, it will soften the soil surrounding the hole making it soft and highly uneven. As the Plaintiff's ankles are already weak, the softness/unevenness of the ground makes it virtually

[26] NE, 16 January 2024, page 27, lines 13 and 18.

impossible for the Plaintiff to support himself without experiencing any pain. Any return to this job was made more difficult considering that he was expected to carry heavy loads (such as cement packs) over such a surface.

94 Second, even if I leave aside the pain the Plaintiff experiences in his right shoulder when carrying heavy loads, the practical reality of his pre-accident job was that it was very much physical in nature, one that requires him to carry bags of cements weighing 50kg, mixing it on site and to insert steel cages into the bored hole. Further, Mr Vimal testified that every micro-piling team would usually constitute four workers who invariably have to work fast, and for long hours, because they can only work until a certain time of the day, in light of the noise the piling works would generate.[27] Mr Vimal also clarified that the Plaintiff's role as a supervisor was not merely to direct workers under him to do work while he "rests under the shade". As a supervisor, the Plaintiff was expected to do everything a worker does and was also expected to stand in for workers who are on medical leave. From the medical reports, it was clear that the Plaintiff's post-accident physical state simply did not allow him to resume such a manual, physically intensive, and laborious job.

95 What the above means is that the Plaintiff can no longer work in the pre-accident role he had in the micro-piling industry. Considering that he had spent the last 20 years in this role, he has built up considerable skill, expertise and experience, all of which he can no longer utilise. This, however, must be balanced against the Plaintiff having only 4 years left to work till his retirement which means he will not in fact lose out much. All things considered, I find that the Plaintiff should be compensated for the loss of his earning capacity, although I am mindful that some reduction from the figure proposed by the Plaintiff's

[27] NE, 16 January 2024, page 37, lines 9 to 11.

counsel was justified. **I assess the loss of earning capacity to be $15,000 and award the Plaintiff this sum.**

Special Damages

Medical expenses

96 In a non-recourse loan entered between Drill Gems and the Plaintiff on 2 July 2019[28], it states that Drill Gems had paid $55,030.22 for the medical expenses incurred by the Plaintiff. In *Minichit Bunhom v Jazali bin Kastari & Anor* [2018] 1 SLR 1037 ("*Minichit*") , the Court of Appeal held that medical expenses paid on behalf of the victim by the victim's employer can be recovered from the tortfeasor, regardless of whether such payments were made under an obligation or otherwise, provided that adequate safeguards are put in place to prevent double recovery. The follow excerpt is worth reproducing:

> … In this sense, there was a closer and more direct nexus between the tort and the payment of medical expenses than between the tort and wages and its equivalent. This, in our view, justified allowing the recovery of medical expenses by a victim-employee against a third party tortfeasor even if they had been paid by the employer, regardless of whether such payments were made under an obligation or otherwise, provided adequate safeguards have been put in place to prevent double recovery.

97 Accordingly, I find the Defendant liable for the medical expenses Drill Gems had paid on behalf of the Plaintiff amounting to $55,030.22 and award this sum to the Plaintiff on the basis that the Plaintiff is to pay this said sum to Drill Gems, subject to the apportioned liability of 85%.

98 Before leaving this point, I wish to address two submissions made by the Intervener. First, the Intervener took issue with having to pay for a bottle of

[28] BD, page 113.

olive oil which was purchased by the Plaintiff from NUH that costs $4.25. At the hearing, the Intervener's counsel cross-examined the Plaintiff on the need for the said bottle of olive oil to which the Plaintiff testified that it was advised by the NUH doctor that he should get it so as to reduce the scarring caused by the injuries. I accept the Plaintiff's explanation on this and reject the Intervener's submission that the Defendant ought not to be liable for the costs of the bottle of olive oil.

99 Second, the Intervener, in its Closing Submissions at [69], took issue with exactly how much medical expenses were incurred. In the Intervener's view, the total amount that had to paid to cover the Plaintiff's medical expenses amounted to only $54,988.13. This was less than what Drill Gems had allegedly paid. If this was indeed the case, the Intervener's counsel should have raised this issue with either the Plaintiff or Mr Vimal when cross-examining them. The Intervener's counsel, for reasons known only to himself, failed to do so. As such, I find that this issue was raised belatedly and dismiss the Intervener's assertion that there were discrepancies in the medical expenses Drill Gems paid.

100 The Plaintiff also claimed for medical expenses incurred out of his own pocket for his follow-up appointment at NUH on 1 April 2022 and 14 June 2022, as well as an x-ray ordered by Dr O'Neill on 21 November 2023 amounting to a total of $387.76. I allow this claim.

101 In total, I award $55,417.98 in medical expenses to the Plaintiff, and order that the Plaintiff pays $55,030.22 to Drill Gems, subject to the apportioned liability of 85%.

Pre-trial loss of earnings

102 The assessment on the Plaintiff's pre-trial loss of earnings can be divided

into two parts. First, when he was still under the employ of Drill Gems, i.e. from 1 February 2018 to 21 February 2019, and second, after he was terminated from Drill Gems to the commencement of the hearing, i.e. from March 2019 to January 2024.

1 February 2018 to 21 February 2019

103 The Plaintiff was on hospitalisation leave from 1 February 2018 to 5 January 2019. Drill Gems terminated his employment on 21 February 2019. From 1 February 2018 to 21 February 2019, Drill Gems continued to pay the Plaintiff his monthly salary of $3,500, which amounted to a sum of $44,692.30.

104 In the same non-recourse loan agreement dated 8 July 2019[29] referred to above, it was agreed that if the Plaintiff manages to obtain damages for the wages paid by Drill Gems, the Plaintiff will pay such damages to Drill Gems, subject to the apportioned liability for the accident. The Plaintiff now claims for $44,692.30 in pre-trial loss of earnings for the period from 1 February 2018 to 21 February 2019.

105 The Intervener objected to this and raised two arguments for my consideration. First, because Drill Gems was obligated by law to continue paying the Plaintiff his monthly salary, the Plaintiff should not be allowed to claim for these wages notwithstanding the fact that the non-recourse loan covered this amount. Second, because the Plaintiff had suffered no loss (since he continued to receive his monthly salary throughout his entire hospitalisation leave period), he should not be allowed to claim for his salary for that period since damages are ultimately compensatory in nature.

[29] BD, page 113.

106 The Intervener made reference to the case of *Ong Jin Choon v Lim Hin Hock* [1988] 1 SLR(R) 559 where the High Court accepted that if the plaintiff had received the salaries as of right under his contract of service with the company (assuming there were such contracts), he would not be entitled to recover any loss of earnings from the defendants "as no loss [would have] been suffered" (at [8]). On the other hand, if the payments had been made on an *ex gratia* basis, such payments would not be taken into account in assessing his loss of earnings (at [9]).

107 In *Lim Kiat Boon v Lim Seu Kong* [1980] 2 MLJ 39 ("*Lim Kiat Boon*"), the victim-employee suffered injuries as a result of the defendant's negligence. During the ensuing six months of incapacity, the plaintiff's employer settled the plaintiff's hospital bills and paid his salary and commissions even though he was unfit for work. The defendant argued that the medical expenses, salary, and commissions paid for by the plaintiff's employer should be deducted from the plaintiff's claim against the defendant.

108 Despite laying down the general proposition that statutorily or contractually obligated payments by an employer to a victim-employee ought not to be recoverable by the latter against the tortfeasor, the court found that all three payments by the employer to the plaintiff – the medical expenses, the salary, and the commissions – had been gratuitously paid by the "sympathetic employer", with an expectation that the payments should be refunded if the plaintiff succeeded in his claim against the defendant. The Court held that the plaintiff could recover these payments from the defendant, albeit on the condition that he should thereafter pay them over to his employer.

109 The CA in *Minichit*, took issue with the correctness of the holding in *Lim Kiat Boon* that "gratuitous" payments by a third party to a victim were

recoverable from the tortfeasor, but not "obligated" payments. Despite not expressing a view on how salary or its equivalent (such as bonus) payments are to be treated since *Minichit* was concerned with the deduction of medical expenses, the CA held, albeit *obiter* that (at [80]):

> ,,,as a matter of principle, we did not think that the question of whether a payment was gratuitous or obligated should affect the recoverability of the victim's otherwise legitimate claim from the tortfeasor. It seemed to us that the principal concern in these cases was to ensure that there was no double recovery by the victim. That concern can be adequately addressed by appropriate directions of the court granting the relief. Further, if, as Azmi J noted in *Lim Kiat Boon*, recovery of a gratuitous payment was permissible because the tortfeasor should not "reap the benefit" of that payment, there was no reason why the tortfeasor should be entitled to the benefit of an obligated payment when he was never intended to be the beneficiary of that obligation in the first place. In this regard, to bar recovery on the basis of the distinction drawn in Lim Kiat Boon may unwittingly and unduly benefit a tortfeasor.

110 Following the observations of the CA, whether or not Drill Gems was obligated by law to continue paying the Plaintiff his monthly salary when he was incapacitated and was on hospitalisation leave should not affect the recoverability of the Plaintiff's otherwise legitimate claim against the Defendant. After all, not only was Drill Gems deprived of the Plaintiff's contribution to the company, they also had to continue paying the Plaintiff his salary. There was also no reason why the Defendant should be entitled to benefit from the obligated payment (on the assumption that the need for Drill Gems to pay the Plaintiff was an obligated one).

111 Accordingly, I find that the Defendant ought to be liable for the salary that was paid by Drill Gems to the Plaintiff when he was on hospitalisation leave, from 1 February 2018 to 5 January 2019 (11 months 5 days), which amounts to **$39,064.52**. To prevent double counting, I order that this sum of money be paid to his Drill Gems, subject to the apportioned liability of 85%.

112 For completeness, I did not think that it was appropriate for this Court to order that the Defendant be liable for the salary that Drill Gems had paid the Plaintiff after his hospitalisation leave ended on 5 January 2019 and before his termination on 21 February 2019. Mr Vimal had testified that the Plaintiff did not come back to work (and in fact did no work for the company) for that period even though his absence was not covered by any medical leave. Since Drill Gems seemed fine to continue to keep the Plaintiff under their head count for that period, they should bear the loss and not the Defendant.

May 2019 to January 2024

113 From May 2019 to January 2024 (5.5 years), the Plaintiff submitted that he was gainfully employed for the entire period wherein he took on various jobs in Malaysia such as a storekeeper, a hawker, baby sitter, general worker in a small business providing air conditioning maintenance services, a lorry driver, a mechanic helper, and a business owner of a gas distribution business. In total, he managed to earn RM66,619.

114 The Plaintiff's counsel submitted that he should be compensated as if he had worked for Drill Gems for the full 5.5 years (which would amount to $206,500) less what he actually earned from the jobs he did.

115 The Intervener objected to this. The Intervener took issue with the lack of effort on the part of the Plaintiff to attempt to find a job in Singapore, which would make a significant difference to his income. When asked why did he not look for jobs in Singapore to do, the Plaintiff said that he was still recovering from his injuries and was unable to physically withstand having to travel to and from Singapore as he resided in Malaysia.

116 Having considered the evidence, I agree with the Intervener that the

Plaintiff ought to have attempted to find a job in Singapore in order to properly mitigate his loss. While I can appreciate that he may not be able to find a job that involves manual labour in light of the injuries he suffered, there was no reason why he could not have found other jobs that were sedentary and less labour intensive in nature, such an desk bound job or a security guard position. The Plaintiff also did not provide any medical evidence stating that he was unable to physically withstand travelling in and out of Singapore.

117 The Plaintiff was also, in my view, unable to adequately justify that he was medically too weak to take on less strenuous jobs. Indeed, the jobs he took on in Malaysia, for example as a mechanic helper, a general worker providing air-con maintenance and even a hawker all showed that he was able to perform tasks that required at least some physical exertion.

118 For the avoidance of doubt, I wish to make clear that this finding is not inconsistent with my earlier finding at [87]. There, when assessing loss of future earnings, I found that post-February 2024, it was reasonable for the Plaintiff to remain in Malaysia and not to attempt to find a job a Singapore. In coming to this finding, I was cognizant of the fact that he had, by then, not been in Singapore for almost five years, and was 55 years old. These would significantly lower his chances of finding employment in Singapore. Further, he has since started his gas distribution business and the business seemed to be doing well as he had estimated that his income from January 2025 onwards would be more than four times what he drew from February to December 2024 from the business.

119 Conversely, in May 2019, the Plaintiff would have been considerably younger at 51 years old and would have only stopped working in Singapore for about less than half a year. Further, he did not have a fixed job in Malaysia and

the jobs he took on did not earn him as much money as his gas distribution business. Considering that his employment chances were not diminished, I saw no reason why he could not have attempted to find a job in Singapore so as to mitigate his loss during this period.

120 While I am still of the view that the Defendant ought to be liable for the Plaintiff's pre-trial loss of earnings for the said 5.5 years, I am of the view that it should be pegged at half his monthly salary of $3,500, i.e. $1,750. This would work out to $115,500[30] less RM66,619 (what he actually earned).

121 In total, the pre-trial loss of earnings is assessed to be $154,564.52 less RM66,619, of which $39,064.52 is to be paid to his Drill Gems, subject to the apportioned liability of 85%.

Transport expenses

122 The Plaintiff sought for $837.91 & RM140 for transport expenses. The Intervener objected to this figure citing the lack of documentary evidence. They nevertheless were willing to accept that 27 trips were made to NUH from 1 February 2018 to 16 June 2022, and that a notional figure of $25 for each trip be affixed totalling $675.

123 I agree that documentary evidence needed to substantiate the Plaintiff's transportation expenses is lacking. I find the Intervener's proposal fair and award the Plaintiff $675 in transport expenses.

Conclusion

124 In conclusion, my assessment of the damages is as follows:

[30] 5.5 years x 12 months x $1759.

	Item	Sum awarded
	General Damages	
1.	Pain and suffering and loss of amenities	$97,200
2.	Future medical expenses	RM52,500
3.	Loss of future earnings	$147,000 less RM 84,100
4.	Loss of earning capacity	$15,000
	Special Damages	
5.	Medical expenses	$55,417.98 of which $55,030.22 is to be paid to Drill Gems subject to the apportioned liability of 85%
6.	Pre-trial loss of earnings (including medical leave wages paid by the Drill Gems)	$154,564.52 less RM66,619, of which $39,064.52 is to be paid to his Drill Gems, subject to the apportioned liability of 85%
7.	Transport expenses	$675
	Total	$469,857.50 less RM98,219

125 In total, I award the Plaintiff $469,857.50 less RM98,219, of which $94,094.74 is to be paid to Drill Gems, subject to the apportioned liability of 85%.

126 Taking into account the apportioned liability of 85%, the eventual award to the Plaintiff is $399,378.88 less RM83,486.15, of which $79,980.53 is to be paid to Drill Gems.

127 I will hear parties on costs and interest.

Nicholas Lai
Assistant Registrar

Koh Keh Jang Fendrick and Kym Calista Anstey (Titanium Law Chambers LLC) for the Plaintiff;
the Defendant in person;
Tay Boon Chong Willy (Willy Tay's Chambers) for the Intervener.
