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

[2025] SGHC 172

Suit No 239 of 2022 (Registrar's Appeal No 130 of 2025)

Between

Fauzi bin Noh

… *Plaintiff*

And

Zulkepli bin Husain

… *Defendant*

And

MSIG Insurance (Singapore) Pte Ltd

… *Intervener*

GROUNDS OF DECISION

[Damages — Measure of damages — Personal injuries cases — Pre-trial loss of earnings]

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

[2025] SGHC 172

General Division of the High Court — Suit No 239 of 2022 (Registrar's Appeal No 130 of 2025)
Audrey Lim J
5 August 2025

28 August 2025

Audrey Lim J:

1 Suit 239 of 2022 is a claim by Mr Fauzi bin Noh (the "Plaintiff") against Mr Zulkepli bin Husain (the "Defendant") arising from a collision between the lorry that the Defendant was driving and the motorcycle of which the Plaintiff was the rider. The collision occurred on 1 February 2018.

2 On 16 August 2021, consent interlocutory judgment was entered in favour of the Plaintiff against the Defendant for 85% of the damages to be assessed. On 27 July 2022, MSIG Insurance (Singapore) Pte Ltd (the "Intervener"), the lorry's insurer, was granted permission to intervene in the proceedings.

3 The hearing of the assessment of damages before the Assistant Registrar (the "AR") began on 15 January 2024 and concluded on 13 September 2024. At the hearing, the Defendant indicated that he did not wish to put in any written submissions and confirmed that he would adopt whatever position the Intervener took. The AR rendered the written grounds for his decision on 14 July 2025 – see *Fauzi bin Noh v Zulkepli bin Husain (MSIG Insurance (Singapore) Pte Ltd, intervener)* [2025] SGHCR 22 (the "GD").

4 RA 130/2025 ("RA 130") is the Plaintiff's appeal against the AR's decision pertaining only to one aspect of his claim – the assessment on the award of pre-trial loss of earnings ("pre-trial LOE") for the period following the termination of the Plaintiff's employment (as a result of the accident) and the commencement of the assessment of damages hearing.

5 I allowed the appeal, and I now give my reasons for so doing.

Background

6 The Plaintiff is a Malaysian citizen. He was born in May 1968. Prior to the accident, he worked in the micro-piling industry in Singapore. He began working for Drill Gems Engineering Pte Ltd ("Drill Gems") in March 2015, and continued until his employment was terminated on 21 February 2019 because of the injuries he suffered during the accident which constrained his ability to perform his work. His last drawn monthly salary with Drill Gems was $3,500.[1]

[1] GD at [80]–[81] and [103]; Mr Venkataswamy Vimal's Affidavit of Evidence-in-Chief dated 24 March 2022 ("Vimal's AEIC") at [7]–[8].

7 The Plaintiff was about 50 years old at the time of the accident and 56 years old at the time of the assessment of damages by the AR.[2]

The AR's decision

8 The AR assessed and awarded pre-trial LOE on two periods.

9 The AR assessed the first period from 1 February 2018 to 21 February 2019 (the "1st Period") and awarded the Plaintiff 85% of the sum of $39,064.52.

10 The AR assessed the second period from May 2019 to January 2024 (the "2nd Period") and awarded the Plaintiff 85% of the net sum of $115,500 minus RM66,619.

(a) The AR computed the amount of $115,500 as comprising $1,750 x 66 months. The AR used the figure of $1,750, being half of the Plaintiff's last drawn monthly salary with Drill Gems (*ie*, $3,500).[3]

(b) From the sum of $115,500, the AR then deducted RM66,619 being the total amount that the Plaintiff earned during the 2nd Period, when he took on various jobs in Malaysia after his employment with Drill Gems was terminated.[4]

(c) In pegging the Plaintiff's pre-trial LOE for the 2nd Period to $1,750 per month, the AR found that the Plaintiff should have attempted to find a job in Singapore to properly mitigate his loss; that he did not provide any medical evidence to state that he was unable to physically

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2 GD at [79].

3 GD at [120].

4 GD at [113] and [120].

withstand travelling in and out of Singapore to find a job; and that he was unable to adequately justify that he was medically too weak to take on "less strenuous" jobs.[5]

11 In his assessment of the claim for loss of future earnings, the AR found that but for the accident, the Plaintiff would have been employed by Drill Gems up to the age of 60 years. Accordingly, for loss of future earnings, the AR computed the relevant period as February 2024 to around 9 May 2028. The AR awarded the Plaintiff a sum of $147,000 (accepting the Plaintiff's proposed multiplier of 3.5 years (or 42 months) x $3,500 as the multiplicand), with deductions for his estimated monthly salary from his gas cylinder distribution business in Malaysia (which he had started at around the time of the assessment of damages hearing) totalling RM84,100.[6]

Plaintiff's appeal in RA 130

12 In RA 130, the Plaintiff appealed against the AR's decision pertaining to the 2nd Period. He argued as follows:[7]

(a) The AR should not have used the figure of $1,750 per month in calculating the Plaintiff's pre-trial LOE for the 2nd Period, but should have used the figure of $3,500 (being the Plaintiff's last drawn monthly salary). The Plaintiff had taken reasonable steps to mitigate his loss, and the AR had erred in accepting the Intervener's argument that there was a lack of effort on the Plaintiff's part to find a job in Singapore which would have made a significant difference to his income.

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5 GD at [116]–[117].

6 GD at [81]–[82], [85] and [124].

7 Plaintiff's Written Submissions for RA 130 dated 30 July 2025 ("PWS") at [10].

(b) Even after the AR had pegged the award pertaining to the 2nd Period to 50% of the Plaintiff's last drawn monthly salary, the AR should not have further deducted the sum of RM66,619 from that award.

13 The Plaintiff submitted that he had taken reasonable steps to mitigate the loss resulting from the Defendant's tort, and that the Defendant had failed to discharge the onus of showing otherwise.[8] The Plaintiff had taken on various jobs in Malaysia from March 2019 to January 2024 such as by being a storekeeper, hawker, babysitter and general worker, and earned a total of RM66,619.

14 The Defendant did not file any submissions in RA 130 and aligned his case with the Intervener's. The Plaintiff did not object to this.[9]

15 In support of the AR's decision, the Intervener argued that the Plaintiff did not make any attempt to find employment in Singapore after the termination of his employment with Drill Gems. The Plaintiff had claimed that, during the 2nd Period, he was still recovering from his injuries and was thus unable to travel to and from Singapore (as he resided in Malaysia) but did not produce any medical evidence to substantiate this claim.[10] Moreover, part of the 2nd Period coincided with the COVID-19 pandemic, when Malaysia imposed movement control orders ("**MCO**") to prevent residents from entering Singapore from 18 March 2020 until around 25 October 2021. Hence, even if the accident had not occurred, the Plaintiff would have been prevented from

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8 PWS at [16].

9 PWS at [16]; Minute Sheet dated 5 August 2025 ("5/8/25 Minute Sheet").

10 Intervener's Written Submissions for RA 130 dated 28 July 2025 ("IWS") at [16(b)]; GD at [116].

entering Singapore to work for Drill Gems and could not have been able to earn as much as his last drawn monthly salary of $3,500.[11]

16 The Plaintiff argued that although he did not attempt to find employment in Singapore after the termination of his employment with Drill Gems, the Intervener's argument that the COVID-19 pandemic would have prevented the Plaintiff from returning to Singapore supports that it would have been virtually impossible for him to have sought employment in Singapore during the period when the MCO was in force.[12]

My decision

17 I start by clarifying the AR's computation of the pre-trial LOE pertaining to the 2nd Period, as follows:

(a) The 2nd Period should begin from March (and not May) 2019, as the 1st Period ended in February 2019. This was consistent with the Plaintiff's claim for pre-trial LOE for the 2nd Period starting from March 2019.[13] Before me, the parties accepted this.[14]

(b) The multiplier (from March 2019 to January 2024) should have been 59 months, and not 66 months (or 5.5 years) as computed by the

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11 IWS at [18]; Intervener's Closing Submissions in AD 1/2024 dated 5 September 2024 at [84].

12 PWS at [19]–[20].

13 Plaintiff's Affidavit of Evidence-in-Chief dated 10 October 2022 ("P's AEIC") at [15].

14 5/8/25 Minute Sheet.

AR (which was erroneous even based on the AR's computation starting from May 2019).[15] Before me, the parties accepted this.[16]

18 It is trite law that the aggrieved party must take reasonable steps to mitigate the loss consequent on the defaulting party's breach and cannot recover damages for any loss which it could have avoided but failed to avoid due to its own unreasonable action or inaction (*The "Asia Star"* [2010] 2 SLR 1154 ("*The Asia Star*") at [24]). Notably, the principle of mitigation requires the court to determine whether the mitigation measures taken by the aggrieved party were *reasonable*, and not whether the aggrieved party took the *best possible* measures to reduce its loss. Whilst the requisite standard of reasonableness is said to be an objective one, it clearly takes into account the subjective circumstances of the aggrieved party. The burden of proving that the aggrieved party had failed to fulfil its duty to mitigate falls on the defaulting party (*The Asia Star* at [24], [31] and [44]).

19 I agreed with the Plaintiff's counsel ("Mr Koh") that the Plaintiff had taken reasonable steps to mitigate his loss, and that the Intervener and Defendant had failed to prove that the Plaintiff had failed to fulfil his duty to mitigate.

20 The Plaintiff had taken on various jobs in Malaysia after the accident, and I agreed with Mr Koh that this was not a case in which the Plaintiff had "just sat down and folded his arms waiting for his compensation or [was] trying to maximise the compensation due to him".[17]

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15 GD at [113] and [120].

16 5/8/25 Minute Sheet.

17 PWS at [15] and [22]–[23].

21 Indeed, the AR recognised (in relation to his award for loss of future earnings for the period from February 2024 until the Plaintiff turned 60 years old – the "3rd Period") that the Plaintiff had attempted to find employment in Malaysia "in spite of the effects of the injuries that still lingered" and that this showed that he "had made reasonable efforts to mitigate the loss".[18] The AR's award was made in light of his findings that the Plaintiff had spent the last 20 years working in the micro-piling industry; that he could no longer work in that industry because of his injuries; and that it was difficult to ascertain whether his skills could be applicable in another industry.[19]

22 The AR stated that his finding that the Plaintiff should have attempted to find a job in Singapore to properly mitigate his *pre-trial* LOE was not inconsistent with his findings at [21] above, as the latter pertained to his assessment of loss of *future* earnings.[20] I disagree. The AR's factual findings (at [21] above) pertaining to the 3rd Period (for assessing loss of future earnings) were equally applicable to the 2nd Period (for assessing pre-trial LOE). In my view, the AR's findings would have been *more* relevant to the period closer to the aftermath of the accident, *ie*, the 2nd Period, as the Plaintiff would have been recovering from the accident during this period. As the AR recognised, the effects of the Plaintiff's injuries still lingered even in the 3rd Period.

23 In light of the AR's finding that the Plaintiff had reasonably mitigated his loss for the 3rd Period by attempting to find employment in Malaysia,[21] I found that the Plaintiff had likewise taken reasonable steps to mitigate his loss

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18 GD at [87].

19 GD at [87].

20 GD at [118].

21 GD at [81], [85] and [87].

for the 2nd Period by obtaining employment in Malaysia. Notably, his actual earnings from February to December 2024 (being the earlier part of the 3rd Period and immediately after the 2nd Period) of RM600 per month were considerably lower than the monthly earnings from some of the jobs that he had during the 2nd Period.[22]

24 I deal next with the AR's finding (and the Intervener's argument) that the Plaintiff did not adduce medical evidence demonstrating that he was physically unable to travel in and out of Singapore. On this basis, the AR had rejected the Plaintiff's assertion that he did not attempt to find a job in Singapore because 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.[23] However, the AR had accepted that the Plaintiff continued to suffer from his injuries after his hospitalisation leave ended. In particular, the AR accepted the following evidence:

(a) The Plaintiff had to put up with pain and discomfort even after the clavicle fracture had united, for at least five years after the accident.[24] This would have included a substantial part of the 2nd Period.

(b) The Plaintiff suffered from osteoarthritis in his left ankle. He would continue to experience pain and a reduced range of movement in his left ankle until he underwent surgical intervention, and even after the surgical intervention, he would experience a further reduction of movement post-operation.[25]

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22 P's AEIC at [11] and [15].

23 GD at [115]–[116].

24 GD at [34].

25 GD at [41]–[42].

(c) Even after four years post-accident, the Plaintiff was still unable to regain the strength he once had, as evidenced by a wasting of muscle on the Plaintiff's left thigh and leg muscles.[26]

(d) Although the Plaintiff's right ankle fracture had unionised, he continued to suffer from osteoarthritis in his right ankle.[27]

25 Indeed, Mr Vimal (Drill Gem's general manager) had attested that when the Plaintiff met him in February 2019 (at the end of the 1st Period) to discuss his future at Drill Gems, he had observed that the Plaintiff was physically challenged as his movements were severely constrained.[28] Mr Vimal had observed that the Plaintiff came to Drill Gems' office with his daughter and was holding on to his daughter for support; and that the Plaintiff faced discomfort in moving and walking.[29]

26 Hence, although the Plaintiff did not provide medical evidence to categorically demonstrate that he was unable to physically withstand traveling in and out of Singapore, the Plaintiff's claim (that he could not travel to and from Singapore because of his injuries) was supported by the objective undisputed medical evidence above and by Mr Vimal's observations of him. This thus supported the Plaintiff's assertion that the steps he took to mitigate his losses (*ie*, by finding and obtaining jobs in his hometown) were reasonable. In this regard, I reiterate that the AR, in determining that the Plaintiff had made reasonable efforts to mitigate his loss (in relation to loss of future earnings) by

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26 GD at [43].

27 GD at [45]–[48].

28 Vimal's AEIC at [7].

29 Transcript for AD 1/2024 dated 16 January 2024 ("16/1/24 Transcript") at p 30.

attempting to find work in Malaysia, had also taken into account his injuries, which *still lingered even during the 3rd Period*.

27 Finally, I deal with the Intervener's argument that, even if the accident had not occurred, the Plaintiff would not have been able to earn his last drawn monthly salary (of $3,500) during the 2nd Period, because he would have been unable to travel into Singapore to work during the period when the MCO was in force.[30] I was of the view that this argument did not assist the Intervener or the Defendant in supporting a reduction in the multiplicand for the pre-trial LOE pertaining to the 2nd Period.

28 There was no evidence to show that the MCO would have impacted the Plaintiff adversely if the accident had not occurred.

29 Mr Vimal attested that he had worked with the Plaintiff in another company since 2013, and that Drill Gems offered the Plaintiff a job as a site supervisor (in March 2015) shortly after Drill Gems started operations in 2014.[31] Mr Vimal attested that Drill Gems recognised the Plaintiff's work attitude and experience in micro-piling works; that the Plaintiff was a dedicated and hardworking employee; and that Drill Gems valued his experience and productivity.[32] Mr Vimal further attested that had the accident not happened, Drill Gems would have *certainly retained the Plaintiff as their employee for a long time until he turned 60 years old* (which was the then-maximum age beyond which the Plaintiff's work pass could no longer be renewed).[33] Mr

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30 IWS at [18].

31 Vimal's AEIC at [10]–[11].

32 Vimal's AEIC at [11].

33 Vimal's AEIC at [13].

Vimal also attested that the Plaintiff was an important part of Drill Gems' operations team and that when the Plaintiff left Drill Gems, there was a large void to be filled.[34] Indeed, the AR accepted Mr Vimal's testimony that the Plaintiff's skill and expertise in micro-piling was greatly valued by Drill Gems and that but for his injuries, Drill Gems would have continued to hire him for as long as it could.[35]

30 Notably, the MCO lasted (based on the Intervener's account) for about 20 months, and not the entire 59 months of the 2nd Period. Taken together with Mr Vimal's testimony (at [29] above), there was no evidence to suggest that Drill Gems would have terminated the Plaintiff's employment if he had still been working for them when the MCO was imposed (if the accident had not occurred). Indeed, Mr Vimal attested that it was precisely because the Plaintiff was valued by Drill Gems that *it kept him on its books for as long as it could, in the hope that he could return to work in its operations team*.[36] Mr Vimal reiterated this when he was cross-examined in court – he stated further that Drill Gems did not terminate the Plaintiff's employment much earlier after the accident because it wanted to give him a chance to come back to work if he recovered.[37] Before me, the Intervener's counsel (Mr Tay) conceded that there was no evidence to support the assertion that the Plaintiff would have lost his job in Singapore during the period of the MCO or when there were restrictions on construction work in Singapore during the COVID-19 period.[38]

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34 Vimal's AEIC at [12]–[13].

35 GD at [80].

36 Vimal's AEIC at [14].

37 16/1/24 Transcript at pp 13–14.

38 5/8/25 Minute Sheet.

31 On the contrary, that there were border restrictions (during the COVID-19 pandemic) during part of the 2nd Period would support the Plaintiff's case that it would have been very difficult for the Plaintiff to find another job in Singapore – something which he would not have had to attempt but for the accident which led to his inability to perform his job at Drill Gems.[39] In other words, if the Intervener accepted that the MCO would have prevented the Plaintiff from entering Singapore to work, the Intervener could not then argue that the Plaintiff should have mitigated his loss by attempting to find a job in Singapore. Notably, the Plaintiff had attested that, if not for the accident, he would have remained in Singapore during the period of the MCO (as he would have been prevented from returning to Malaysia) whilst continuing his employment with Drill Gems.[40] Hence, the Intervener's argument that the Plaintiff would not have been able to travel into Singapore to work when the MCO was in force did not assist the Intervener. But for the accident, the Plaintiff could have stayed on in Singapore (during the period of the MCO) to work.

32 As for the period after the MCO ended (commencing end-October 2021), the Plaintiff would have, by this time, not worked in Singapore for more than two and a half years. I did not find it unreasonable for him to remain in Malaysia to work rather than attempt to find another job in Singapore, especially in light of his lingering medical injuries.

33 In sum, I am satisfied that the Plaintiff had taken reasonable steps to mitigate his loss. The multiplicand for the 2nd Period should thus remain at $3,500 and should not be reduced to $1,750.

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39 PWS at [20].

40 Transcript for AD 1/2024 dated 15 January 2024 at pp 32–33.

Conclusion

34 I thus allowed the Plaintiff's appeal in relation to the pre-trial LOE pertaining to the 2nd Period. I found that the pre-trial LOE for the 2nd Period should be $206,500 (comprising $3,500 x 59 months), from which the Plaintiff accepted that the sum of RM66,619 should be deducted.[41] From this, the Plaintiff should be awarded 85% of the net sum, based on the consent interlocutory judgment. I also ordered the Plaintiff's costs of RA 130 to be paid by the Defendant.

Audrey Lim J
Judge of the High Court

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.

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41 5/8/25 Minute Sheet.