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DEPUTY REGISTRAR
NG TEE TZE ALLEN
15 October 2026

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGDC 317

DC/OCS 482/2022
DC/AD 478/2023

Between

Sambasivam s/o Kunju

… *Claimant(s)*

And

Tan Boon Huat

… *Defendant(s)*

JUDGMENT

[Tort] — [Negligence] — [Whether causation reserved in a consent interlocutory judgment]
[Evidence] — [Admissibility of evidence] — [Hearsay]
[Damages] — [Measure of damages] — [Personal injuries cases]
[Damages] — [Proof of actual damage] — [Reasonableness of remedial step]
[Damages] — [Mitigation] — [Tort]
[Civil Procedure] — [Pleadings] — [Defence]

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Sambasivam s/o Kunju
v
Tan Boon Huat

[2026] SGDC 317

DC/OCS 482/2022
DC/AD 478/2023
Deputy Registrar Ng Tee Tze Allen
24 May, 24 July 2024, 19 August 2026, 15 September 2026

15 October 2026 Judgment reserved.

Deputy Registrar Ng Tee Tze Allen:

1 This action concerns an accident that took place on 25 December 2019. The Claimant was riding his bicycle along Yio Chu Kang Road when the Defendant's taxi collided into him. On 18 May 2023, the parties consented to an interlocutory judgment (the "Consent IJ") on the following terms:

> BY CONSENT, it is this day adjudged that Interlocutory Judgment at 100% liability be entered against the Defendant in favour of the Plaintiff, with damages to be assessed, interest thereon and cost.

2 Although these underlying facts are not unique, the subsequent assessment of damages has given rise to several interesting issues of law and evidence:

(a) The first concerns the effect of a consent interlocutory judgment entered at "100% liability": in particular, whether causation remained

open for determination and, correspondingly, what matters concerning the Claimant's pleaded injuries remained to be proved at the assessment stage.

(b) The second concerns the admissibility and permissible use of medical reports where their makers were ultimately not called to give evidence. This, in turn, raises the question of how the nature, severity and consequences of the Claimant's injuries should be assessed in the absence of admissible expert opinion.

(c) Finally, the claim for medical expenses raises an issue concerning the application of the Modified *Stewart* Framework which was recently adopted by the Appellate Division in *Lee Cheng Mui v Lee Say Yng* [2026] SGHC(A) 13. Namely, whether a challenge to the means by which medical treatment was obtained falls to be considered as part of the claimant's proof of damage or the defendant's case on mitigation.

3 I will set out the procedural history which gave rise to these issues before turning to the issues that arise for determination.

Procedural history

Matters leading up to the Assessment of Damages hearing

4 On 23 December 2022, the Claimant commenced this action by filing HC/OC 482/2022 in the High Court. The action was transferred to the District Court and fixed for Court Dispute Resolution hearings. At this point, both parties were represented.

5 The parties did not highlight anything of note about these Court Dispute Resolution hearings. It is thus sufficient to note that the Court Dispute

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Resolution hearings proceeded up till 18 May 2023 when the Consent IJ was entered.

6 The action then proceeded to Assessment Case Conferences with the Claimant filing his List of Documents on 31 August 2023, his Affidavit of Evidence in Chief ("AEIC") on 12 October 2023, and the Notice of Appointment for Assessment of Damages on 14 November 2023.

7 Thereafter, the parties proceeded to Assessment of Damages Court Dispute Resolution Case Conferences. As the parties were unable to settle, a half-day assessment of damages hearing was fixed before me on 24 May 2024.

The proposed expert witnesses

8 The Defendant's cross-examination of the Claimant did not conclude on 24 May 2024. It continued on 24 July 2024 with the Claimant completing his evidence on this latter date.

9 Thereafter, attention turned to the medical experts. Numerous case conferences followed, which I do not intend to detail. Instead, it is probably sufficient for present purposes to note the following:

(a) the Claimant informed, through an Other Hearing Related Request ("OHRR") of 25 September 2024, that he intended to call Dr Dominic Chen and Dr Neo Ghim Hoe to give oral evidence to clarify their reports; and

(b) the Defendant's counsel, through their letter of 27 September 2024, informed the court that the Defendant intended to cross-examine Dr Dominic Chen but objected to the Claimant calling Dr Neo on the basis that this was inconsistent with an earlier order.

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10 Accordingly, I called for submissions on the point. On 8 November 2024, I gave the Claimant permission to call Dr Neo Ghim Hoe as an additional witness and gave directions for the parties to estimate the time required for the doctors' evidence and their mutually available dates.

11 A further documents-only case conference was fixed on 20 December 2024 to fix the next substantive assessment of damages hearing. However, more time was needed to obtain Dr Dominic Chen's available dates. This remained the position as of 31 January 2025. In the course of the case conferences, the Defendant informed the court that Dr Neo Ghim Hoe had declined to attend the assessment of damages.

The Claimant became self-represented

12 On 14 February 2025, the Claimant's counsel informed that the solicitor having conduct of the matter, Mr A Rajandran, was hospitalised. This, amongst other things, led to the Claimant's then-counsel applying on 10 June 2025 to discharge themselves. The application was granted on 8 July 2025.

13 At the case conference on 4 August 2025, the parties informed that they were in further settlement negotiations due to the above developments. Time was accordingly given for them to do so and for the Claimant to engage new counsel. Case conferences were fixed to monitor.

14 Eventually, at the case conference of 10 November 2025, the parties informed that they were unable to settle. The Claimant also informed that while he initially sought to engage new counsel, he eventually chose to represent himself due to financial constraints.

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The eventual decision not to call the expert witnesses

15 As regards expert witnesses, the parties also informed at the case conference of 10 November 2025 as follows:

(a) the Claimant also informed that he no longer required Dr Neo Ghim Hoe or Dr Dominic Chen to give oral evidence;

(b) the Defendant's counsel informed that: (i) Dr Neo Ghim Hoe would need to be subpoenaed, and (ii) Dr Dominic Chen had requested that the Defendant write to him with their questions which he would answer in writing. The Defendant's counsel informed that while they were agreeable to writing to Dr Dominic Chen, they could not confirm that the Defendant would dispense with his cross-examination.

16 Timelines were accordingly given on the above basis.

17 However, Dr Dominic Chen's report took more time than expected. This resulted in several extensions of time to which the Claimant consented. Eventually, on 27 April 2026, the Defendant's counsel filed a further OHRR to inform that they had received Dr Dominic Chen's further report and that the parties were attempting a further round of settlement negotiations.

18 On 11 May 2026, the Defendant filed an OHRR to inform that the parties had not settled and that a further assessment of damages hearing was required for the examination of Dr Dominic Chen and Dr Neo Ghim Hoe. Further hearings were accordingly fixed on 3 and 31 July 2026 to take the doctors' evidence.

19 On 22 May 2026, the Defendant filed a further OHRR stating, *inter alia*, that both parties did not intend to call the expert witnesses:

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> The Claimant has informed us that he will not be calling the doctors as expert witnesses. Our clients will also not be calling the doctors. As such, we seek the Court's directions for the filing of submissions and, if necessary, reply submissions.

The parties' position on the medical reports

20 Accordingly, the hearings of 3 and 31 July 2026 were vacated. In their place, I convened another case conference on 3 June 2026. At that case conference, I asked whether the parties intended for the doctors' evidence simply to take the form of the medical reports which the Claimant ultimately sought to rely upon (collectively, the "Medical Reports"). The Defendant's counsel informed that the Defendant was not waiving his right to cross-examination. Accordingly, I raised my concern as to whether I could have regard to the Medical Reports and asked that the parties consider how they wished to proceed. A further case conference was fixed on 18 June 2026.

21 Ahead of the 18 June 2026 case conference, the Defendant's counsel filed an OHRR to inform that the Defendant "[did] not consent to the Court having regard to the medical reports if the makers of the reports are not present in Court to give evidence." Although the Claimant was absent at the 18 June 2026 case conference, he subsequently wrote in to confirm that he "will not be calling the Doctors who are the expert witnesses to the court".

22 Accordingly, I directed that written submissions be filed by 10 August 2026 and fixed a further hearing on 19 August 2026 for oral submissions.

The Defendant sought to vary the Consent IJ

23 On 4 August 2026, the Defendant filed an OHRR to request permission to apply to vary the terms of the Consent IJ to include the words in bold:

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> BY CONSENT, it is this day adjudged that Interlocutory Judgment at 100% liability be entered against the Defendant in favour of the Plaintiff, with **the issue of causation to be reserved, and** damages to be assessed, interest thereon and cost.

24 I declined to give permission for the application and directed the parties to address the matter at the hearing of 19 August 2026.

The hearing on 19 August 2026

25 On 19 August 2026, I heard the parties' oral submissions. I will set out my views on these submissions in the later part of my decision. It is sufficient to note for now two housekeeping issues:

(a) As the Claimant did not agree to the variation of the Consent IJ, I declined to vary it and asked if the Defendant intended to set it aside. The Defendant did not. Instead, he submitted that causation *had already been* reserved under the current Consent IJ.

(b) While the Defendant took the position that the Medical Reports were *prima facie* admissible, he submitted that I should either disregard them or accord very little weight to them. He also submitted in the alternative that the opinions of Dr Chen Haobin and Dr Neo Ghim Hoe should be accorded more weight than those of Dr Koh Shao Hui and Dr Dominic Chen. The Claimant disagreed.

26 After hearing the parties, I reserved judgment but directed further written submissions on matters which had not been adequately addressed. The Defendant filed further submissions on 26 August 2026; the Claimant did not.

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27 As the Defendant's position on the Medical Reports remained unclear, on 27 August 2026 I directed him to clarify whether his position was that I should disregard all of the Medical Reports or only some of them.

28 On 11 September 2026, the Defendant's solicitors filed an OHRR in response. Contrary to his earlier position that the Medical Reports were *prima facie* admissible notwithstanding the doctors' absence, the Defendant now submitted that the Medical Reports were hearsay and that none of the exceptions to the hearsay rule applied. The Defendant maintained his alternative submissions on the weight to be accorded to the various Medical Reports.

29 On 15 September 2026, the Claimant wrote to the court disagreeing with the Defendant's position. He submitted that the doctors' absence did not, by itself, require all the Medical Reports to be disregarded.

Issues

30 In light of the foregoing, two preliminary issues arise for determination:

(a) first, whether causation was reserved under the Consent IJ; and

(b) second, whether I should have regard to the Medical Reports placed before me.

31 The parties also disagreed on the damages to be awarded (if any) under the following heads:

(a) Pain and suffering;

(b) Pre-trial loss of earnings and loss of future earnings;

(c) Medical expenses;

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(d) Transportation costs;

(e) Costs to repair the Claimant's bicycle; and

(f) Future expenses.

32 In this regard, the Claimant did not quantify any of the above in his closing submissions. Instead, at the hearing of 19 August 2026, he informed that he would adopt the position set out in the Joint Opening Statement. Accordingly, I proceed on that basis.

33 I address the preliminary issues first, followed by the disputed heads of damage.

Preliminary issues

Whether causation was reserved under the Consent IJ

34 The first preliminary issue is whether causation was reserved under the Consent IJ. The Claimant took the position that it was not. However, the Defendant took the position that it was for two main reasons:

(a) He relied on *Lee Sim Leng v SMRT Buses Ltd* [2025] SGHC 11 ("*Lee Sim Leng*") to submit that it is presumed that causation was reserved; and

(b) He submitted that the conduct of the parties in this case showed that causation was disputed.

35 I do not agree with the Defendant's submissions.

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36 First, *Lee Sim Leng* is distinguishable. *Lee Sim Leng* concerned a consent interlocutory judgment, which was entered on 8 May 2019 (the "2019 IJ"):

> 1. Interlocutory Judgment is entered for the Plaintiff against the Defendant who will bear 100% of the damages to be assessed;

37 The High Court held that the 2019 IJ reserved causation for determination at the assessment stage for two reasons:

> (a) First, at [17], the High Court found that the words "will bear 100% of the damages to be assessed" gave rise to some uncertainty as to what the parties intended to reserve for determination at the assessment of damages stage. In particular, the use of the word "damages" left it unclear whether the parties intended merely to resolve responsibility for the accident, or liability for all the Plaintiff's alleged damage.
>
> (b) Second, at [18], the High Court noted that there was an entrenched practice of the personal injury bar in 2019 to reserve all issues of causation to the assessment of damages stage. Accordingly, as the High Court held at [19], "at the time the Consent Judgment was entered into between parties on 8 May 2019, parties had likely entered into it with the assumption that issues of causation could be reserved to the AD stage."

38 Having resolved the interpretation of the 2019 IJ at [17]–[19], the High Court observed, by way of *obiter dicta* at [20], that "there is benefit" in creating a rebuttable presumption that parties intended causation to remain in issue when entering a consent interlocutory judgment:

> 20 … the court should be sensitive to the context in which an interlocutory judgment had been entered into as well as its terms, there is **benefit in creating a presumptive assumption**

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> **that parties would have intended for causation, for the purposes of determining liability, to remain an issue when entering into consent interlocutory judgments.** Such a presumption would only apply for consent interlocutory judgments entered pre-Salmizan (CA). Additionally, **this presumption can readily be displaced if the context and/or terms of the interlocutory judgment suggests otherwise.** Put another way, if there is any ambiguity, arising from the terms and circumstances, on whether parties intended to reserve the issue of causation to be subsequently disputed, such ambiguity would be resolved in favour of causation, for the purposes of determining liability, remaining an open issue for dispute.
>
> (emphasis mine)

39 I return to the facts of the present case. As noted earlier, I am of the view that *Lee Sim Leng* is distinguishable. I would further add that even if the presumption proposed in *Lee Sim Leng* applied, it was displaced by the terms and context of the Consent IJ in the present case. I explain.

40 First, unlike *Lee Sim Leng,* the parties in this case did not simply agree that the Defendant would "bear 100% of the damages to be assessed". Instead, the parties in this case had agreed to "Interlocutory Judgment at 100% liability be entered against the Defendant". The Consent IJ reads:

> BY CONSENT, it is this day adjudged that Interlocutory Judgment at **100% liability be entered against the Defendant** in favour of the Plaintiff, with damages to be assessed, interest thereon and cost.
>
> (emphasis mine)

41 Unlike *Lee Sim Leng*, on the plain reading of the Consent IJ, the parties had intended to fully resolve the Defendant's "liability" in negligence. This would include causation of the injuries pleaded in the Statement of Claim.

42 Second, unlike the 2019 IJ in *Lee Sim Leng*, it is difficult to accept that the Consent IJ in this case was entered pursuant to an "entrenched practice" of

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the personal injury bar to reserve all issues of causation to the assessment of damages stage. The Consent IJ was entered on 18 May 2023. This is more than a month after the High Court had delivered *Salmizan bin Abdullah v Crapper Ian Anthony* [2024] 5 SLR 257 ("*Salmizan (HC)*") on 30 March 2023. Critically, in *Salmizan (HC)* the High Court had examined the aforesaid "entrenched practice" and held that it was incorrect. This is summarised in *Salmizan* (*HC)* at [146]. In particular, the High Court stated:

> …
>
> (c) **The claimant needs to establish causation in this sense because causation and damage are necessary elements to make out liability in the tort of negligence**, so that an interlocutory judgment on liability can be entered. However, if the claimant manages to establish causation only in respect of, say, injury A, when he claims to have additionally suffered injuries B and C, his cause of action is limited to injury A. As such, the claimant would only be able to claim damages for injury A. It follows that the defendant would not be able to challenge causation at the AD Stage in respect of injuries B and C because it is not necessary for him to do so: the claimant has not even established liability with respect to those other injuries. As a matter of principle, the type of the alleged damage (ie, whether they are personal injury or property damage) should not affect the analysis so long as the damage all emanate from the same breach of duty so as to constitute one cause of action.
>
> (d) … **the interlocutory judgment, whether by consent or not, determines finally the defendant's liability in respect to the claimant's cause of action in the tort of negligence.** This necessarily means **that the interlocutory judgment has determined that the defendant is liable for all of the damage that the claimant is claiming for, leaving the extent of such damage and the resulting quantum of damages** to be determined at the AD Stage. **The defendant is not able to challenge the liability that has been established pursuant to the interlocutory judgment**. …
>
> (emphasis mine)

43 In this case, neither party identified any reason to think that they were unaware of *Salmizan (HC)* when they agreed to the Consent IJ. To the contrary, the Defendant's counsel submitted at the hearing of 19 August 2026 that, at the

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time the Consent IJ was entered, the law was in flux because *Salmizan (HC)* was under appeal. In my judgment, this submission does not assist the Defendant. Rather, it indicated that the Defendant was aware of *Salmizan (HC)*. Further, until the Court of Appeal's subsequent decision, the prevailing legal position was that established by *Salmizan (HC)*, namely that the previously entrenched practice of reserving causation to the assessment of damages stage was impermissible. It was against this legal backdrop that the Consent IJ was entered.

44 For completeness, I do not think that the subsequent Court of Appeal's decision in *Crapper Ian Anthony v Salmizan bin Abdullah* [2024] 1 SLR 768 ("*Salmizan CA*") changes the analysis. *Salmizan CA* was delivered on 28 June 2024. This is more than a year after the Consent IJ was entered and would not have affected how the parties drafted the Consent IJ. Further, and in any event, although the Court of Appeal held that causation could be reserved in consent interlocutory judgments, it stressed the importance of accurate, precise and clear drafting. In particular, the Court of Appeal stated at [51] that a consent interlocutory judgment on liability would by definition establish liability fully:

> 51 At this juncture, it is apposite to underscore the importance of ensuring accuracy, precision, and clarity in drafting such a consent interlocutory judgment. For one, **a clear distinction should be drawn between an interlocutory judgment on issues and an interlocutory judgment on liability. Where it is the latter, then it would, by definition, mean that such an interlocutory judgment would have established liability fully reserving only issues relating to the assessment of damages**; where it is the former, then it is important to expressly define the particular issues that the interlocutory judgment had resolved.
>
> (emphasis mine)

45 In this case, the Consent IJ was expressly framed as an interlocutory judgment at "100% liability". Applying *Salmizan CA*, the Consent IJ established

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liability fully. Nothing in its terms suggested that causation had been reserved. It is, after all, trite law that causation is a necessary element to establish liability in the tort of negligence: *Tan Woo Thian v PricewaterhouseCoopers Advisory Services Pte Ltd* [2021] 1 SLR 1166 at [6]-[8] and [11].

46 I turn to the Defendant's second submission that "it is clear in this case from the conduct of the parties … that causation was obviously disputed". In support, the Defendant relied on:

(a) the Joint Opening Statement and his counsel's cross-examination of the Claimant, in both of which, he disputed causation; and

(b) the Claimant's counsel's failure to object to the above.

47 I accept the Defendant's submission that consent judgments should be interpreted in accordance with the principles of contractual interpretation: *Seiko Epson Corp v Sepoms Technology Pte Ltd and another* [2008] 1 SLR(R) 269 at [25]-[26]. In this regard, the Court of Appeal has stressed that "it remains an open question whether evidence of subsequent conduct may be admitted for the purposes of contractual interpretation": *Lim Siau Hing @ Lim Kim Hoe and another v Compass Consulting Pte Ltd* [2023] SGCA 39 at [96].

48 I thus proceed on the assumption that subsequent conduct can be considered. However, even on that basis, I am not persuaded that the subsequent conduct relied upon by the Defendant proved that the parties intended to reserve causation when they entered the Consent IJ:

(a) At most, the Defendant's subsequent challenge to causation revealed the Defendant's unilateral understanding of the consent

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interlocutory judgment. It does not establish that the Claimant shared that same understanding when the consent interlocutory judgment was entered.

(b) Further, there is reason to be cautious when considering the Defendant's position. As the Court of Appeal observed in *Simpson Marine (SEA) Pte Ltd v Jiacipto Jiaravanon* [2019] 1 SLR 696 at [78], subsequent conduct "can, with the benefit of hindsight, be shaped to suit a party's position". In the present case, the Defendant's submissions are arguably circular and self-serving. After all, he relies on his own subsequent challenges to causation as evidence that the parties had intended, when entering the Consent IJ, to reserve that very issue.

(c) Next, the Claimant's counsel's failure to object does not, without more, show that the Claimant had agreed that causation was reserved. Silence is inherently equivocal. It may reflect, for instance, oversight or a strategic choice not to interrupt, rather than agreement that causation had been reserved. Without further evidence, the silence does not establish that the parties had agreed to reserve causation.

49 For these reasons, I find that the parties did not reserve causation for determination in the Consent IJ. As such, the Defendant is liable for the pleaded damage caused by the accident under the Consent IJ and cannot challenge the same. What he can challenge, however, is the extent and consequences of those injuries, including the evidence raised in support.

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Whether I should have regard to the Medical Reports

The parties' position

50 This brings me to the second preliminary issue on whether I should have regard to the Medical Reports even though the doctors who wrote them were not called to give evidence. The Claimant took the position that I could and should have regard to all of them. The Medical Reports comprised:

(a) six reports which were included in the Agreed Bundle of Documents:

(i) the Inpatient Discharge Summary from Sengkang General Hospital dated 11 January 2020;[1]

(ii) the Medical Report by Dr Chen Haobin, an Associate Consultant from the Department of Orthopaedic Surgery at Sengkang General Hospital dated 21 August 2020;[2]

(iii) the Specialist Medical Report by Dr Neo Ghim Hoe, an Associate Consultant from the Department of Orthopaedic Surgery at Sengkang General Hospital dated 5 January 2023;[3]

(iv) the Medical Report by Dr Koh Shao Hui, an Acupuncturist at Sengkang General Hospital dated 27 March 2023;[4]

---

1 Agreed Bundle of Documents ("ABD") at 167.

2 ABD168.

3 ABD169-170.

4 ABD171.

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(v) the Medical Report by Dr Dominic Chen, a Consultant from the Department of General Medicine at Sengkang Hospital dated 31 March 2023;[5] and

(vi) the Clarification Report by Dr Dominic Chen dated 21 June 2023;[6] as well as

(b) a Further Clarification Report by Dr Dominic Chen dated 7 April 2026 which the Claimant annexed to his written submissions titled "Closing Oral Submissions".

51 The Defendant's position evolved over time. As noted at [25] above, in his initial Written Submissions, he submitted that "*Prima facie*, the Medical Reports are admissible as evidence in the present proceedings despite the doctors' absence",[7] but that I should place zero or little weight on them.[8] He further submitted, in the alternative, that more weight should be placed on the opinions of Dr Chen Haobin and Dr Neo Ghim Hoe than those of Dr Koh Shao Hui or Dr Dominic Chen.[9]

52 However, as noted at [27]-[28], the Defendant subsequently changed his position on admissibility. In his OHRR of 11 September 2026, he submitted that the Medical Reports were hearsay and that none of the hearsay exceptions applied. The Defendant maintained his alternative position as to the weight to be accorded to the Medical Reports.

---

5 ABD172.

6 ABD175.

7 Defendant's Written Submissions dated 11 August 2026 ("DWS") at [12].

8 DWS at [17].

9 DWS at [47]-[49].

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My decision

53 In my judgment, the Medical Reports, save for the Inpatient Discharge Summary from Sengkang General Hospital dated 11 January 2020, are inadmissible. I explain.

54 The starting point is that the Evidence Act 1893 ("EA") adopts an inclusionary scheme wherein any fact deemed to be legally relevant by the EA can be given in evidence: *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447 at [96].

55 In the context of hearsay evidence, two provisions warrant consideration. The first is s 32(1)(b), which concerns statements made in the ordinary course of a trade, business, profession or other occupation. The second is s 32(1)(k), which concerns statements which the parties agree may be given in evidence. The relevant parts of these provisions are set out below:

> **Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant**
>
> 32.—(1) Subject to subsections (2) and (3), statements of relevant facts made by a person (whether orally, in a document or otherwise), are themselves relevant facts in the following cases:
>
> (a) …
>
> **or is made in course of trade, business, profession or other occupation;**
>
> (b) when the statement was made by a person in the ordinary course of a trade, business, profession or other occupation and in particular when it consists of —
>
> …
>
> (iv) a document constituting, or forming part of, the records (whether past or present) of a trade, business, profession or other occupation that are recorded, owned or kept by any person, body or organisation carrying out the trade, business, profession or other occupation,

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> and includes a statement made in a document that is, or forms part of, a record compiled by a person acting in the ordinary course of a trade, business, profession or other occupation based on information supplied by other persons;
>
> …
>
> **or by agreement.**
>
> (k) when the parties to the proceedings agree that for the purpose of those proceedings the statement may be given in evidence.

56 I start with s 32(1)(b). In this regard, I accept the Defendant's submissions that medical reports made for the purpose of litigation do not fall within s 32(1)(b). As explained in Jeffrey Pinsler, *Evidence and the Litigation Process* (LexisNexis Singapore, 7th Ed) at para 6.006A:

> 6.006A The rationale for the exception to the hearsay rule in s 32(1)(b) is that statements in the course of "a trade, business, profession or other occupation" are assumed to be reliable because of their official, legal and/or professional nature. The underlying commitment involved in such communications tends to imbue them with a degree of veracity, although this may not always be the situation … **Statements and documents which are specifically prepared for the purpose of litigation (as opposed to being spontaneously generated in the usual and ordinary course of a trade, business, profession or other occupation) are certainly not admissible under s 32(1)(b).** …
>
> (emphasis mine)

57 Save for the Inpatient Discharge Summary, the Medical Reports were prepared for the purposes of the Claimant's claim and/or the assessment of damages. In particular, many of them were addressed to solicitors. The Inpatient Discharge Summary is different. It was prepared and printed on 11 January 2020, the very day on which the Claimant was discharged from hospital. Further, the words "This is not a medical report. For Patient's Personal Reference Only" are printed at the foot of the document. I am therefore satisfied that the Inpatient Discharge Summary was generated in the ordinary course of

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the Claimant's medical treatment rather than for the purposes of litigation and falls within s 32(1)(b).

58 I turn to s 32(1)(k). I am not satisfied that the parties had agreed that the Medical Reports could be given in evidence despite the doctors' absence:

(a) First, I do not think that the words used by the Defendant –i.e., that the Medical Reports were "*prima facie* … admissible"—amounted to an agreement. It was expressed as a legal submission as to admissibility rather than consent to the reports being admitted. Further, the Defendant simultaneously maintained that **no** weight should be placed on the Medical Reports because the doctors had not been called and their opinions could not be tested. Taken as a whole, I am not satisfied that there was any real agreement of the kind contemplated by s 32(1)(k).

(b) Second, whatever the effect of that initial submission, in his OHRR of 11 September 2026, the Defendant submitted that the Medical Reports were hearsay and that none of the exceptions applied. That was his final position.

(c) Separately, I am also satisfied that the Claimant does not suffer any procedural prejudice from the Defendant's change in position. The Defendant's initial submission was made only after I had raised my concerns as to their admissibility and after the Claimant had elected not to call the doctors as witnesses. The Claimant therefore could not have relied on the Defendant's initial submission in deciding whether to call the doctors.

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59 For these reasons, I hold that the Medical Reports are inadmissible save for the Inpatient Discharge Summary from Sengkang General Hospital.

60 I make two further points.

61 First, I have some sympathy for the Claimant's argument that this is not a case where the Defendant had no opportunity to seek clarification of, or test, the doctors' opinions. I also do not accept the Defendant's submission that the doctors' absence was wholly attributable to the Claimant. There is no property in a witness and, subject to matters such as privilege, an expert may be subpoenaed by the opposing party: *Rahimah Bte Mohd Salim v Public Prosecutor* [2016] 5 SLR 1259 at [40]. In this case, the Claimant did not object when the Defendant contemplated calling Dr Neo and Dr Dominic Chen. Further, the Defendant had even obtained written clarification from Dr Dominic Chen as to his opinions before ultimately electing not to call either doctor. Quite clearly, the Defendant's decision not to call either doctor was his own.

62 The above, however, does not relieve the Claimant of his burden of proving his claim and ensuring that the evidence he wanted to rely on is before the court. I had expressly highlighted my concerns as to whether the Medical Reports could be relied upon if their makers were not called. The Claimant was therefore aware of the risk that the opinions contained in them might be held inadmissible. Nevertheless, he chose not to call the doctors. As such, the Claimant suffers no unfair prejudice from my conclusion on admissibility.

63 Second, the inadmissibility of the bulk of the Medical Reports does not automatically mean that the Claimant would not be able to establish his case in damages. The extent and consequences of his injuries are matters to be determined on the totality of the admissible evidence.

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64 I turn to the main issues of this assessment of damages bearing these matters in mind.

Pain and suffering

65 In his Statement of Claim, the Claimant pleaded at [6] that he suffered injuries for which he sought in the Joint Opening Statement a global sum of S$140,000. The pleaded injuries are as follows:

(a) a Chance fracture of the L1 lumbar vertebra. In this regard, the Claimant also claimed to have suffered a 16 cm surgical scar on his back as well as an alleged phobia of the road for which he made no independent submission. Instead, in his Joint Opening Statement, he simply referred to his L1 fracture;

(b) a displaced fracture of the coccyx;

(c) erectile dysfunction; and

(d) chronic back pain and aches.

66 I set out my views below.

Back injuries: The L1 lumbar vertebra and coccyx fractures

67 I start with the L1 lumbar vertebra and coccyx fractures.

68 In determining the severity of the Claimant's injuries, I am assisted by the Guidelines for Personal Injuries (Academy Publishing, 2010) (the "Guidelines"). The Guidelines identify three levels of "severe" back injury, attracting ranges of S$60,000 to S$100,000, S$30,000 to S$60,000 and S$25,000 to S$30,000 respectively. The Claimant's submission on quantum

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(which is upwards of S$75,000) placed his L1 fracture within the most severe category of back injuries. By contrast, the Defendant's submission on quantum for the L1 fracture (i.e., S$15,000) placed the Claimant's injury in one of the "moderate" back-injury categories which attract a range of S$15,000 to S$25,000. The descriptions of the severity of injuries as well as the proposed ranges are set out below:

(a) Severe back injuries that attract a range of S$60,000 to S$100,000 are described as follows:

> Partial or no paralysis involved but the person suffers from very unusual and serious consequences, eg, impotence or double incontinence as a result of the lumbar injury. An award in the higher range is appropriate where the unusual disabilities affect the person's daily life and/or affect the person's sexual capability and causes great inconvenience (as in cases of double incontinence).

(b) Severe back injuries that attract a range of S$30,000 to S$60,000 are described as follows:

> Although cases in this category do not feature paralysis, they have special features, eg, severe neurological deficits, impaired bladder and bowel function (not complete incontinence), severe sexual difficulties, *eg*, difficulty adopting certain positions due to the back pain and unsightly scarring. There is a risk of further degenerative changes triggered by the injury with the possibility of future surgery to fuse the lumbar spine.

(c) Severe back injuries that attract a range of S$25,000 to S$30,000 are described as follows:

> Permanent and continuing severe back pain and discomfort such that the person is unable to sit or stand for prolonged periods. There is restricted movement of the lumbar spine, decreased sexual function, reduced flexibility and significant neurological deficits though to a lesser severity than in (a)(ii).

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(d) Moderate back injuries that attract a range of S$15,000 to S$25,000 are described as follows:

> Compression fractures of the lumbar spine which also includes crush fracture of the lumbar vertebrae with substantial risk of osteoarthritis in the future. There are significant disabilities such as constant back pain and discomfort with some impairment of sexual function. The person is unlikely to be able to return to his job at the pre-trauma capacity especially if it is a labour-intensive job.

As to how the scale is to be applied, the Guidelines further state:

> damages *for fracture of one vertebra starts at about $15,000, discounting for overlap for two or more such fractures*.

69 I turn to consider the severity of the Claimant's L1 and coccyx fractures with these categories in mind.

L1 lumbar vertebra fracture

70 I start with the L1 fracture. In this regard, it was undisputed that the Claimant sustained a Chance fracture of the L1 lumbar vertebra for which he underwent surgery involving posterior stabilisation and instrumentation from T11 to L2 with titanium implants.

71 However, its severity and long-term impact were disputed:

(a) In his AEIC, the Claimant described his condition as follows:

> 29. Since the said accident, I continue to suffer extreme pain, especially during the first year since the accident, in the area of my posterior and back. The area surrounding the coccyx (tail bone) remains numb to-date.

(b) The Defendant disagreed that the Claimant's L1 fracture was severe and that it caused him to continue suffering severe pain. He

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relied, in particular, on inconsistencies in the Claimant's account of pain, the Claimant's substantial recovery and the Claimant's evidence in cross-examination that his pain had reduced to 1-2 out of 10.[10]

72 I prefer the Defendant's position for the following reasons.

73 The Claimant's evidence when cross-examined was that while he suffered extreme pain immediately after the surgery, the pain subsided over time, and by the hearing on 24 May 2024, his pain was at a level of 1-2 on a scale of 10. On the Claimant's own evidence:

(a) After the accident on 25 December 2019, the Claimant was admitted into hospital where he underwent surgery for the L1 fracture. He was discharged on 11 January 2020.[11] When cross-examined, the Claimant testified that he suffered extreme pain and sleeplessness after the surgery and this continued after his discharge on 11 January 2020.[12] On a scale of 10, the Claimant assessed the pain during the first year at 10 out of 10.[13]

(b) After his discharge, the Claimant did not accept any further prescribed painkillers because he was concerned about possible side effects and he considered himself to have a high pain threshold from his

10 DWS at [56]-[62].

11 ABD167.

12 Notes of Evidence (24 May 2024) p.19D-E.

13 Notes of Evidence (24 May 2024) p.20B.

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military career.[14] Instead, he managed his pain with Panadol and Indian herbs.[15]

(c) The Claimant accepted that the pain subsided. By September 2020, it had reduced from 10 to about 8,[16] and by the hearing of 24 May 2024, his pain was at a level of 1-2:[17]

> A: No, first year was 10. Second year it came down. Now pain is 1-2. I am talking about L1.

74 I make the following observations on this evidence:

(a) First, the Claimant's AEIC [29] was clearly imprecise. Read literally, it meant that the Claimant continued to suffer extreme pain at the time he executed his AEIC. However, his oral evidence was that the pain had progressively subsided and that by the time of the assessment hearing, his residual L1 pain was only 1–2 out of 10.

(b) Second, I have some reservations as to whether the pain remained as intense, or for as long, as the Claimant alleged. Although I have considered his explanations (as summarised in the preceding paragraph), the fact remains that the Claimant accepted in cross-examination that no pain medication was prescribed after his discharge. There is also no evidence as to the effects of the Indian herbs and Panadol which the Claimant claimed to have taken. As such, I am unable to rely on this testimony to find that the Claimant's pain remained as severe and persistent as alleged.

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14 Notes of Evidence (24 May 2024) p.47D-E.

15 Notes of Evidence (24 May 2024) p.15D-16E; p.47D-E.

16 Notes of Evidence (24 July 2024) p.56C.

17 Notes of Evidence (24 May 2024) p.20B.

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(c) Be that as it may, I need not determine the precise trajectory of the pain or assign a pain score to each stage of his recovery. The material question is the severity and continuing consequences of the L1 injury.

(d) In this regard, I accept that the Claimant suffered significant pain following surgery and continues to experience some residual pain. In particular, I note that the Claimant's evidence that his residual L1 pain had reduced to 1–2 out of 10 undercuts his own case as to the severity of the injury and the corresponding award. In my view, this lends credibility to that part of his evidence. I therefore accept his evidence that he currently suffers residual L1 pain of 1–2 out of 10.

75 Given these matters, I did not find the authorities which the Claimant relied on helpful. The Claimant relied on three case summaries in support. From a review of those summaries, those cases involved materially more serious injuries:

Practitioners' Library Assessment of Damages: Personal Injuries and Fatal Accidents (LexisNexis, 3rd Ed, 2017) ("*Practitioners' Library*")

(a) *Zakaria bin Putra Ali v Low Keng Huat Construction Co (S) Pte Ltd* [1993] SGHC 277 concerned a Chance fracture of L3 together with fractures of the transverse processes of L1 to L3: *Practitioners' Library* at p.568-569.

(b) *Kuan Kian Seng v Wong Choon Keh* [1995] SGHC 43 involved a burst fracture of L1 together with penile impotence and bladder and bowel dysfunction: *Practitioners' Library* at p.676-677.

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Personal Injury: Quantum, Cases and Materials Singapore Edition (LexisNexis, 2014) ("*Personal Injury*")

(c) *Sweh Kok Wai v Siew Meng Wai* (Suit No 1764 of 1989) involved a compression fracture of L1, penile impotence, spinal injury and bladder dysfunction: *Personal Injury* at p.395.

By contrast, the Claimant sustained a single Chance fracture of L1 without these additional serious complications, and his condition improved substantially.

76 For the aforesaid reasons, I place the Claimant's injury at the lower end of the S$15,000 to S$25,000 range. The injury does not exhibit the features of the severe categories, such as permanent and continuing severe pain, significant neurological deficit, impaired bladder or bowel function, or complete impotence. Further, while the Claimant underwent surgery and continues to experience some residual pain, his own evidence was that the L1 pain had reduced to 1–2 out of 10. Accordingly, I accept the Defendant's submission that S$15,000 is the appropriate starting point for the L1 fracture, consistent with the Guidelines (see [68(d)] above).

77 I turn to the surgical scar. The Guidelines provide a range of S$1,500 to S$3,000 for a single or minor scar, with endnote 128 recording an award of S$2,000 for a 15 cm incisional scar. In this regard, I adopt the lowest end of the scale of S$1,500 as a reference point for the following reasons:

(a) First, I reject the Defendant's submission that no award should be made because there was no evidence of the scar. The Claimant pleaded that he suffered a "16cm long scar on his back where he was

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operated on".[18] For the reasons at [34]–[49] above, the Defendant cannot contest the existence of the pleaded scar or his liability for it at the assessment of damages stage. In any event, it is undisputed that the Claimant underwent the surgery in question because of the accident.

(b) What remains for determination is the extent of that scar and the appropriate quantum of damages. In this regard, I accept the Defendant's submission that there is no evidence to prove its size or appearance. As the Claimant bears the burden of establishing the extent of his injury, I therefore adopt the lowest end of the applicable range and use S$1,500 as the appropriate reference point.

Coccyx fracture

78 I turn to the coccyx fracture. It is common ground that the Claimant sustained a displaced fracture of his coccyx. However, the parties disagreed as to its severity:

(a) The Claimant's position was that the coccyx fracture caused continuing chronic pain which was likely permanent. He proposed an award of S$10,000 based on the summary of *Lim Kit Yap v Ng Chuan Kai* DC Suit No 7617/1998 in the *Practitioners' Library* at p.593.[19]

(b) The Defendant disputed the alleged severity and permanence of that pain. He submitted that S$8,000 should be awarded, relying on *Loh Chia Mei v Koh Kok Han* [2009] SGHC 181.[20]

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18 Statement of Claim at [6(e)].

19 Joint Opening Statement at p.2.

20 DWS at [32].

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79 I am satisfied that the coccyx fracture caused the Claimant to experience continuing pain. However, I do not think that the pain can be characterised as "severe chronic pain". It also appeared that the coccyx fracture was less severe than the L1 fracture. I explain.

80 I start with the nature and treatment of the coccyx fracture. Unlike the L1 fracture, it did not require extensive surgery and was managed conservatively. Although the possible surgical removal of the displaced coccyx fragment was discussed, the Claimant ultimately did not proceed with surgery.[21]

81 As for its severity, the parties proceeded on the common basis that the coccyx fracture was less severe than the L1 fracture. This is reflected in the substantially lower quantum proposed by both parties for the coccyx fracture as compared with the L1 fracture. Indeed, the less invasive treatment of the coccyx fracture is consistent with this position. However, that does not mean that the coccyx fracture resulted in no immediate or residual pain:

> (a) First, it was undisputed that the coccyx fracture caused the Claimant some pain after the accident. What was disputed was its severity, persistence and whether there was a medical explanation for it. In cross-examination, the Defendant proceeded on the basis that the Claimant had raised complaints of pain and numbness in February 2020. The Defendant's challenge was that the MRI did not disclose a neurological explanation for the reported symptoms and that the Claimant had been reassured that he could return to full physical activity:[22]

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21 Notes of Evidence (24 July 2024) p.75E to 76A.

22 Notes of Evidence (24 May 2024) p.13A; see also Notes of Evidence (24 May 2024) p.9E-10C

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> Q: Your ED and numbness and pain. Raised in Feb 2020. But medical reports said that the MRI did not show neurological reasons.
>
> You were reassured by the doctors that you could return to full physical activity. See [2] of AB169.
>
> A: I read that here.

(b) Further, while the Defendant questioned both the Claimant's evidence that he had informed his doctors of continuing pain at subsequent appointments and his explanation for the intervals before formal rehabilitation commenced,[23] the following chronology was not disputed: (i) the Claimant was referred by the orthopaedic surgeon to Dr Dominic Chen for rehabilitation following the review on 25 November 2020,[24] (ii) thereafter, he first saw Dr Chen on 21 April 2021,[25] and (iii) he commenced rehabilitation thereafter.[26] In particular, he commenced acupuncture on 25 June 2021 and physiotherapy on 16 September 2021 (see [84]-[85] and the Annexes referred thereto below).

82 In this regard, I do not think that the supposed delay in commencing formal rehabilitation proved that the Claimant did not suffer continuing back pain (whether for the L1 or the coccyx):

(a) It is not the case that he received no treatment for pain before April 2021. After his surgery, he received analgesia and basic physiotherapy whilst hospitalised.

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23 Notes of Evidence (24 May 2024) p.23E-25A; p.32C-33B

24 Notes of Evidence (24 May 2024) p.34D -35C.

25 Notes of Evidence (24 May 2024) p.35B-E

26 Notes of Evidence (24 May 2024) p.29E, 35D-36A; Notes of Evidence (24 July 2024) p.66D.

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(b) As for the period after his discharge, my reservations at [74(b)] apply to the Claimant's evidence that he managed the pain with Panadol and herbal remedies.

(c) Be that as it may, I am prepared to accept the Claimant's testimony that he continued to complain of coccyx pain after his discharge. As noted at [81(a)], the Defendant's cross-examination proceeded on the basis that complaints of pain and numbness had been raised in February 2020. What the Defendant disputed was the severity and persistence of those symptoms as well as the existence of a medical explanation for them.

(d) Finally, I am also not persuaded by the Defendant's submission as to the alleged delay of the Claimant's rehabilitation. Instead, I am prepared to accept the Claimant's explanation that the timing of formal rehabilitation was substantially affected by the hospital's referral and appointment process given that it is broadly consistent with the undisputed chronology set out at [81(b)] above.

83 I turn to the treatments that the Claimant received: namely, the acupuncture and physiotherapy sessions he attended.

84 I start with acupuncture. In this regard, the invoices tendered showed that the Claimant attended acupuncture about once a month, although there were periods where there were two months between sessions. In my judgment, this is consistent with the Claimant's evidence that he sought treatment because of the coccyx pain, and that the acupuncture provided some measure of relief. A list of the acupuncture invoices is annexed as **Annex 1**.

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85 As for the physiotherapy, the invoices show that the sessions initially took place about once a month. They later occurred once every two months, and at times, once every three months. A list of the physiotherapy invoices is annexed as **Annex 2**.

(a) I am satisfied, from the chronology, the descriptions in the invoices and the Claimant's evidence concerning the purpose of the sessions, that the physiotherapy was undertaken for the back symptoms which he attributed to the accident. The invoices show that the Claimant attended sessions recorded as, *inter alia*, physiotherapy reviews and therapeutic exercises over an extended period. These sessions followed the accident and rehabilitation referral.

(b) I reject the Defendant's submission that the physiotherapy sessions were unrelated to the pain the Claimant suffered simply because the Claimant stated that they were for "flexibility". The Claimant is not medically trained and it is unclear whether his explanation accurately captured the therapeutic objective of the treatment. As such, his use of the word "flexibility", without more, is insufficient to prove that the physiotherapy was unrelated to his back pain.

(c) In my judgment, the Claimant's continued attendance is consistent with some residual pain or functional limitation. I nevertheless see some force in the Defendant's point that the decreasing frequency of these physiotherapy sessions provides some support for the conclusion that the Claimant's condition was improving.[27]

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27 Notes of Evidence (24 July 2024) p.67D-68C.

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86 As to his present condition, the Claimant's evidence was that he continued to experience pain when sitting, with prolonged walking causing stiffness. He assessed his pain while sitting at 1–2 out of 10 and while standing at 0–1, although exertion increased his discomfort.[28] I accept this evidence. As with his evidence concerning the L1 fracture, the relatively modest pain scores were contrary to his own case that he continued to suffer severe chronic back pain. In my view, this lends credibility to this part of his account.

87 I therefore accept that the Claimant continues to experience some coccyx pain, particularly with prolonged sitting, but decline to find that the pain remains severe. I note also that the S$10,000 figure relied upon by the Claimant arose from a settlement, whereas the S$8,000 figure relied upon by the Defendant was an adjudicated award. In the circumstances, I adopt the Defendant's submission of S$8,000 as a reference point.

The phobia

88 I turn to the phobia that the Claimant claimed he suffered "whenever on the road". The Claimant does not seek a separate award for the same. Instead, in the Joint Opening Statement, he referred to the L1 fracture. I am unable to find that the "phobia" which the Claimant suffered was sufficiently severe to justify an uplift in damages. Critically, the Claimant's own oral evidence was that, following a psychological evaluation, he was told that no treatment was necessary.[29] I am thus unable to find that the phobia warrants any uplift beyond the award for his physical injuries.

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28 Notes of Evidence (24 May 2024) p.24B-D.

29 Notes of Evidence (24 July 2024) p.10D.

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Award for back injuries

89 For these reasons, my starting points are S$15,000 for the L1 fracture, S$1,500 for the surgical scar and S$8,000 as a reference point for the coccyx fracture. That said, I do not think it is appropriate to simply add these figures to arrive at a total amount. Two points need to be considered in particular:

(a) First, when assessing damages for multiple injuries, the court should consider whether the aggregate of the individual awards fairly reflects the claimant's overall pain and suffering, making an appropriate adjustment where there is overlap in the pain or disabilities arising from those injuries: *Lua Bee Kiang v Yeo Chee Siong* [2019] 1 SLR 145 at [15]–[23]. In this case, while the L1 and coccyx fractures are anatomically distinct injuries, they both concern the Claimant's back. There is also overlap in the pain and discomfort arising from them, particularly in their continuing consequences.

(b) Second, the Guidelines and the comparable awards relied upon by the parties are relatively dated. Accordingly, I take into account the change in purchasing power since the publication of the Guidelines and the older awards bearing in mind inflation based on the MAS calculator: *Poongothai Kuppusamy v Huationg Contractor Pte Ltd and another* [2023] SGHC 215 at [54]-[57].

90 Taking these matters in the round, I award the Claimant a composite sum of S$30,000, having regard to his overall condition and the consequences of his injuries.

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Erectile dysfunction

91 I turn to the Claimant's claim for erectile dysfunction. The parties' positions are as follows:

(a) The Claimant referred me to the summaries of two cases in *Personal Injury*. These were *Lim Wah Heng v Lee Yang Peng* Suit No 2319/1996 and *Ng Hock Chye v Singapore Shuttle Bus (Pte) Ltd* Suit No. 442/1989 where S$35,000 and S$40,000 were awarded respectively for penile impotence.[30]

(b) The Defendant submitted that no further award should be made because:[31]

(i) the medical evidence showed that there was no neurological basis for the erectile dysfunction and the diagnosis of erectile dysfunction rested on the Claimant's subjective account;

(ii) causation as to erectile dysfunction was challenged—in particular, the Defendant submitted that the Claimant took no action to remedy this issue until more than 2 years later on 16 March 2022; and

(iii) the impairment of sexual function had already been taken into account in assessing the L1 fracture.

92 I start with the issue of whether the Claimant suffered erectile dysfunction. For the reasons at [34]-[49] above, the Defendant cannot reopen

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30 Joint Opening Statement at p.3.

31 DWS at [36]-[43]; Hearing on 19 August 2026.

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the issue of whether the accident caused the Claimant to suffer erectile dysfunction. In any event, I accept the Claimant's evidence that his sexual function had deteriorated because of the accident:

(a) The Claimant's account is supported by his evidence that he complained of erectile dysfunction relatively soon after the accident. Further, the Defendant's cross-examination proceeded on the basis that this complaint was made in February 2020, about two months after the accident.[32]

(b) The Claimant's account is also supported by the fact that he was subsequently prescribed Sildenafil and purchased the medication. The Claimant's evidence is that although Dr Dominic Chen offered to prescribe medication when the Claimant first saw him in April 2021, he initially declined because he was concerned about possible side effects and wished to try other forms of treatment.[33] The first documented purchase of Sildenafil was on 16 March 2022.[34] I do not consider the intervening delay fatal to his account. His explanation—that his immediate priority after the accident was to recover from his pain and physical injuries, and that he was initially reluctant to take Sildenafil because of possible side effects—is not inherently implausible.

(c) Although the complaint is necessarily subjective, I am of the view that there is insufficient basis to reject this part of his evidence.

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32 Notes of Evidence (24 May 2024) p.13A.

33 Notes of Evidence (24 May 2024) p.39B-40D.

34 ABD66.

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93 This brings me to the Defendant's submission that there is no neurological basis for erectile dysfunction. This submission rested on Dr Neo Ghim Hoe's medical report in which he opined that the Claimant had "achieved full recovery with regards to the L1 fracture"[35] and "does not require any further treatment from the Orthopaedic Surgery side".[36] He also opined that:[37]

> Mr Sambasivam subsequently raised issues of erectile dysfunction with persistent numbness & pain around the coccyx region during follow up visit on 19th February 2020. A magnetic resonance imaging (MRI) of the lumbar spine was performed on 13th November 2020 in view of the persistent symptoms which did not show any neurological involvement over the affected region to explain his symptoms.

94 In this regard, my acceptance of the Defendant's own submission that the doctors' opinions (including Dr Neo Ghim Hoe's) are hearsay and inadmissible is sufficient to dispose of this submission. However, even if the opinions in Dr Neo's report were admissible, they would not assist the Defendant.

(a) Critically, the absence of "neurological involvement over the affected region" does not mean that the Claimant did not suffer from erectile dysfunction. Dr Neo did not express that opinion.

(b) Instead, Dr Neo referred to erectile dysfunction as one of the Claimant's reported symptoms and stated that the Claimant's "symptoms of erectile dysfunction, constipation and coccydynia may persist to varying severity for which he is still undergoing treatment". He also stated that "[o]ne cannot conclude if there are any permanent

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35 ABD170.

36 ABD170.

37 ABD169.

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disabilities that arises or will arise from the index accident", and that "[t]he expected duration & costs will be better addressed by the relevant departments".

(c) Thus, even taken at its highest, Dr Neo's opinion would have established only that the MRI did not disclose neurological involvement explaining the reported symptoms. It would not have established that the Claimant did not suffer erectile dysfunction.

(d) Finally, Dr Neo's medical report recorded that the conclusion of orthopaedic follow-up was followed by a referral to Dr Dominic Chen for rehabilitation.[38] Read in context, therefore, Dr Neo's statements indicate that the end of orthopaedic follow-up marked a transfer of care to rehabilitation, and not the end of treatment.

95 That said, I accept the Defendant's submission that no further award for pain and suffering should be made for the erectile dysfunction.

(a) The Guidelines' moderate back-injury category expressly accounts for "some impairment of sexual function", and the award at [90] already takes that impairment into account. This is to be contrasted with the "penile impotence" referred to in the Claimant's authorities where distinct awards in damages were made (see [91(a)] above).

(b) In this case, the Claimant's own description of his condition is consistent with an impairment of sexual function rather than complete impotence. His evidence was that his sexual function was at "50%" after the accident, and it improved to about "80%" with Sildenafil. Further,

[38] ABD169.

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by the time of oral submissions, his condition had improved sufficiently for him to withdraw his claim for future Sildenafil expenses (see [173] below).

96 Accordingly, I decline to make a separate award for erectile dysfunction.

Chronic back pain

97 I turn finally to the Claimant's separate claim of S$13,000 for chronic back pain. I have found that he continues to suffer residual back pain (see [73]-[76] and [79]-[86] above). For completeness, I am not persuaded by the Defendant's reliance on Dr Neo's medical report for the reasons at [93]-[94] above.

98 That said, the continuing pain has already been taken into account in the award for those back injuries. The Guidelines expressly contemplate "constant back pain and discomfort" when assessing the severity of back injuries.

99 Finally, I am not assisted by the case which the Claimant relied on – *Low Boon Cheong James v Chua Soon Fatt @ Wong Soon Fatt* (MC Suit No 18097 of 2010) as summarised in the *Practitioners' Library* at p.659. From the summary, the injury suffered by the plaintiff was "chronic back pain (left L4/5 radiculopathy and probable discogenic low back pain)". And for that injury, he was awarded a global sum of S$13,000 for "[p]ain and suffering for body and internal organs injury". That is quite different from making an additional award of S$13,000 for chronic back pain on top of the award already made for the Claimant's L1 and coccyx fractures.

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Conclusion on pain and suffering

100 In the circumstances, I award the Claimant S$30,000 for pain and suffering arising from the L1 lumbar vertebra fracture, the surgical scar and the coccyx fracture. This takes into account the residual pain and erectile dysfunction. I have also considered the phobia but do not consider that it warrants any uplift in damages.

Pre-trial loss of earnings and loss of future earnings

101 I turn to the next main head of claim being the Claimant's alleged pre-trial loss of earnings and loss of future earnings. The Defendant submitted that the Claimant should get neither. I agree. These are my reasons.

Pre-trial loss of earnings

102 I start with the general principles that govern pre-trial loss of earnings. In *Yap Boon Fong Yvonne v Wong Kok Mun Alvin and another* [2019] 1 SLR 230 ("*Yap Boon Fong*"), the Court of Appeal explained that:

> (a) Pre-trial loss of earnings is a form of special damages: see *Yap Boon Fong* at [41].
>
> (b) In determining whether a claimant has proved pre-trial loss of earnings, the "courts do not and will not rigidly or invariably demand the same type or amount of evidence in every claim for lost earnings, but will consider all the circumstances of each case in determining whether the evidence that is available satisfies the court that the loss can be proved on a balance of probabilities": *Yap Boon Fong* at [44].

103 In the present case, the Claimant claimed S$240,000 for pre-trial loss of earnings. This is computed over four years at a rate of S$5,000 per month for

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the period of 1 January 2020 to 31 December 2023. He justified his S$5,000 figure by reference to:

(a) his last drawn salary in the Singapore Armed Forces ("SAF") in 1994;[39] and

(b) his estimated earnings of S$5,000 per month for his business Don't Worry Be Happy Auto Grooming and Don't Worry Be Happy Auto Service Centre as reflected in his IRAS Year of Assessment 2008.[40]

104 I am not satisfied that either provides a reliable basis for finding that the Claimant would have earned S$5,000 per month but for the accident. His SAF salary is of little assistance because the Claimant did not intend to return to comparable salaried employment. On his evidence, he would have resumed business but for the accident.[41]

105 As for the Claimant's previous businesses, I accept that pre-trial loss of earnings can be claimed by business owners such as the Claimant. To quantify this loss, one would need to determine the difference between the income the Claimant would have derived from his business but for the accident and the income he actually derived during that period: *Yap Boon Fong* at [60]-[66].

106 However, the Claimant has not proved that he would have earned S$5,000 per month but for the accident. The only evidence he adduced of the earnings of two of his past businesses (i.e., Don't Worry Be Happy Auto Grooming and Don't Worry Be Happy Auto Service Centre) concerned YA

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39 Claimant's AEIC at [40(b)].

40 Notes of Evidence (24 July 2024) p.26A-B; Claimant's AEIC at [40(c)].

41 Claimant's AEIC at [40(e)].

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2008. This is a single year more than a decade before the accident. Without evidence explaining why that figure remained a reasonable measure of his likely earnings from 2020 onwards, I am not satisfied that it provides a sufficient basis for adopting S$5,000 per month.

107 More fundamentally, the Claimant has not proved that he would have started a business but for the accident. His claim rested on the bare assertion that he was "planning to resume business" and "would have resumed business, but was unable to do so by reason of the injuries and/or disabilities suffered as a result of the accident."[42] However, he identified no concrete plan or step taken towards doing so. I am also unpersuaded by the Claimant's reasons for his inactivity:

(a) On his own evidence, the last of his substantive legal proceedings ended by 2016 or 2017 and he stopped writing to the Official Assignee by 2018.[43] I accept that his bankruptcy might nevertheless have prevented him from starting a business. But if so, he could not have started one regardless of the accident until his discharge from bankruptcy on 12 October 2021.[44]

(b) As for the period after the discharge, I appreciate that the Claimant might have wanted to focus on his recovery and that this might have continued past October 2021. However, he had still not resumed any business or identified any concrete step towards doing so by the assessment hearing in 2024 and I did not find his reasons for his inactivity persuasive.

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42 Claimant's AEIC at [40(e)].

43 Notes of Evidence (24 July 2024) p.40C-E.

44 Claimant's AEIC at [40(d)].

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(c) The Claimant's evidence is that he is unable to bend to evaluate cars, or to lift heavy objects.[45] However, he did not explain how these physical limitations prevented him from starting the business he was interested in. In particular, he did not explain why personally undertaking these physical tasks was essential to the business he intended to start, why other non-physical roles were unavailable to him, and why engaging others to perform those physical tasks would have rendered the business unviable.

108 Accordingly, the Claimant has not proved that he suffered any pre-trial loss of earnings, and I make no award under this head.

Loss of future earnings

109 An award for loss of future earnings is a form of special damages awarded for real assessable loss proved by evidence: *Mykytowych, Pamela Jane v V.I.P Hotel* [2016] 4 SLR 829 ("*Mykytowych*") at [140]. It compensates a plaintiff "for the difference between the post-accident and pre-accident income or rate of income": *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587 at [20].

110 In the Joint Opening Statement, the Claimant claimed S$239,040 for loss of future earnings, calculated at S$2,000 per month from 1 January 2024 to 1 May 2033 using a multiplier of 9.96. I decline to make any such award. First, the Claimant's case was not that he intended to return to salaried employment but that he intended to resume business. However, he has not proved that, but for the accident, he would probably have operated a business: see [104]-[108] above.

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[45] Notes of Evidence (24 May 2024) p.48C-E.

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111 Second, there is no basis for the Claimant's S$2,000 monthly figure. The Joint Opening Statement stated that this figure was reached "[a]fter deduction of expenses and tax as well as mitigation". But it did not identify the starting figure from which these deductions were made. Further, even assuming the S$2,000 was derived from deducting S$3,000 from the asserted monthly earnings of S$5,000, that S$5,000 figure has not been proved for the reasons above. Nor was there any explanation given for the S$3,000 deduction.

112 I turn to loss of earning capacity. Loss of earning capacity is distinct from loss of future earnings. It is awarded as general damages to compensate a claimant for the weakening of his competitive position in the open labour market as a result of his injuries: *Mykytowych* at [140].

113 The fact that the Claimant was unemployed at the time of the assessment does not, by itself, preclude such an award. However, there is also no basis to make such an award:

(a) Although the relevant row in the Joint Opening Statement referred to "loss of earning capacity", the Claimant did not advance a separate basis for such an award. And in this regard, his multiplicand-and-multiplier calculation is an inappropriate method for assessing loss of earning capacity: *Mykytowych* at [141].

(b) There is also insufficient evidence from which a global award could reasonably be assessed. While the Claimant claimed to suffer physical limitations, he has not shown how these limitations placed him at a disadvantage in the work or business activities reasonably open to him: see [107(c)] above.

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Other special damages

114 The Claimant has also sought in his Joint Opening Statement:

(a) S$55,055.98 for medical expenses;

(b) S$900 for transport; and

(c) S$500 to replace his bicycle.

115 I consider each in turn.

Medical expenses

The parties' respective cases

116 The Claimant claimed S$55,055.98 for medical expenses incurred for his treatment, rehabilitation, and medication.[46]

117 The Defendant did not dispute that the Claimant was entitled to claim medical expenses or that the Claimant had incurred S$55,055.98. However, the Defendant raised two objections:[47]

(a) First, the Claimant should not be allowed to claim any medical expenses after December 2020 (i.e., a year after the accident) because the subsequent treatment was unnecessary. In particular, the Defendant submitted that the Claimant had not established that he continued to suffer the injuries for which he had obtained treatment.[48]

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46 Joint Opening Statement at p.6.

47 DWS at [102]-[110]; Defendant's second set of Written Submissions dated 17 August 2026 ("DWS2") generally; Defendant's third set of Written Submissions dated 26 August 2026 ("DWS3") at [8]-[17].

48 DWS at [102]-[103].

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(b) Second, the Claimant should not recover the additional expenses attributable to his choice of an unsubsidised Class A1 ward instead of a subsidised Class B2 ward. The Defendant submitted that damages should be reduced to account for both the lower charges of a Class B2 ward and the subsidies which would have applied to the medical treatment received. On this basis, the Defendant submitted that the Claimant should be awarded only S$17,063.36:[49]

Description	**Quantum**
Claimant's claim for medical expenses up to 18 December 2023 (as per the JOS)	$55,055.98
(Less) Sengkang General Hospital Invoices after December 2020	(-) $7,233.16
(Less) Cost savings that Claimant would have enjoyed had he opted for a Class B2 ward	(-) $3,691.04
(Less) 65% subsidy on the Claimant's hospital bill which he would have been eligible to receive had he opted for a Class B2 ward	(-) $27,068.42
TOTAL	**$17,063.36**

118 My views are as follows.

The applicable principles

119 The applicable principles as to consequential loss were recently considered in *Lee Cheng Mui v Lee Say Yng* [2026] SGHC(A) 13 ("*Lee Cheng Mui*"). At [71] and [81], the Appellate Division formulated a "Modified *Stewart* Framework" that distinguished two aspects of reasonableness that may operate as limitations upon compensatory damages:

[49] DWS at [104]; DWS2 generally and in particular at [11]; DWS3 at [11].

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(a) First, as a matter of proof of damage, the claimant bears the burden of proving that the steps taken or proposed were reasonably required to repair the consequences of the defendant's tort (the "**First Stage**");

(b) Second, once that is established, the defendant bears the burden of proving that the claimant failed to avoid or mitigate the cost by adopting some other course which was reasonable for him to take (the "**Second Stage**").

120 As regards the Second Stage, the Appellate Division further held that mitigation must be pleaded and proved by the defendant. The defendant must identify the alternative course that the claimant allegedly failed to take and the consequences that flowed from that failure: *Lee Cheng Mui* at [82]-[86].

121 The modification to the *Stewart* Framework concerns the reasonable cost of the remedial step and whether it fell within the ambit of the First Stage. At [81], the Appellate Division distinguished between the reasonable necessity of the remedial step and the reasonableness of the cost incurred in taking that step. It expressed the provisional view that where a claimant has established that the remedial step was reasonably required, the burden may fall on the defendant to establish that the costs incurred in taking that step were unreasonable. However, as the point did not arise for determination, the Appellate Division left the issue for consideration.

Whether the Claimant should recover medical expenses incurred after December 2020

122 I turn to the Defendant's submission that the Claimant should not recover medical expenses incurred after December 2020 because the subsequent

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treatment was unnecessary.[50] This engages the first aspect of reasonableness under *Lee Cheng Mui*, and the Claimant therefore bears the burden of establishing that the treatment was reasonably required to address the consequences of the accident.

123 I am satisfied that the Claimant has discharged this burden. In my judgment, the treatment and medication received after December 2020 were reasonable responses to his continuing symptoms and were reasonably required to address the consequences of the accident. In particular,

(a) For the reasons at [73]-[74], [79]–[86] and [97] above, I am satisfied that the Claimant continued to experience residual back pain and underwent acupuncture, physiotherapy and therapeutic exercise for those symptoms. This is supported by the evidence concerning his continuing symptoms, his treatment chronology, and the invoices proving his sustained attendance for acupuncture, physiotherapy and therapeutic exercise.

(b) I am similarly satisfied, for the reasons at [92]–[96] above, that the Claimant experienced erectile dysfunction for which Sildenafil was prescribed.

124 I make one further point on the Defendant's proposed cut-off of December 2020. As outlined at [81] above, when the Claimant was discharged from orthopaedic follow-up on 25 November 2020, he was referred to Dr Dominic Chen for further rehabilitation. Viewed against this chronology, the Defendant's proposed cut-off of December 2020 would therefore allow only

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50 DWS at [102]-[103].

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about one month after the referral for that further rehabilitation. I do not accept that this is reasonable.

125 For completeness, this conclusion would be no different even if the opinions expressed in the Medical Reports, and in particular Dr Neo Ghim Hoe's opinion, were admissible for substantially the reasons at [97] read with [93]-[94] above.

Whether the medical expenses should be reduced because the Claimant was admitted to a Class A1 ward

126 I turn to the Defendant's submission that the medical expenses should be reduced because the Claimant was admitted to a Class A1 ward instead of a Class B2 ward. The basis on which the Defendant advanced this submission evolved over the course of his written submissions:

(a) Initially, the Defendant framed his argument in terms of mitigation. Thus, at [104] of his first Written Submissions, he submitted: "Especially bearing in mind the fact that the Claimant was, at the time, an undischarged bankrupt, he has clearly failed to mitigate his own loss." This continued into his second Written Submissions, where he explained at [2] that he sought only to "amend one specific quantification of the Claimant's alleged damages sustained".

(b) In his third Written Submissions, however, the Defendant recast the basis of his objections. Relying on the first aspect of reasonableness under the Modified *Stewart* Framework, he submitted that the Claimant had "not proved that the medical expenses incurred were borne out of medical services which were reasonably required to address his

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injuries"[51] and that there was no indication that a Class A1 ward was "medically necessary".[52]

(1) The Defendant's Class A1 ward objection is a mitigation issue

127 I start with the Defendant's attempt to characterise his objections as an issue which falls within the First Stage of the Modified *Stewart* Framework. According to the Defendant, the Claimant has failed to prove that admission to a Class A1 ward was reasonably required and has therefore failed to establish this aspect of his medical expenses claim.

128 In considering this submission, it is important to identify precisely what the Defendant was, and was not, arguing. The Defendant did not dispute that the Claimant required the surgery and medical treatment that the Claimant received while hospitalised. Rather, the Defendant's case was that the Claimant had to go further and prove that obtaining those medical services through admission to a Class A1 ward was itself reasonably required at this First Stage.

129 I do not agree for the reasons that follow.

130 I start with the Appellate Division's formulation of the Modified *Stewart* Framework. At the First Stage, the inquiry is whether the step taken or proposed by the Claimant was reasonably required to repair the consequences of the harm caused by the defendant's wrong. It is only at the Second Stage that the inquiry shifts to whether the claimant could have avoided or reduced the resulting cost by adopting some other reasonable course. As the analysis turns on the manner

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51 DWS3 at [11].

52 DWS3 at [11].

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in which the Appellate Division formulated the two stages, I reproduce [71] of *Lee Cheng Mui*:

> 71 Adopting the above framework with one modification with respect to the proof of the "reasonable cost of steps" ("Modified *Stewart* Framework") which we discuss further below (at [81]), it is apparent that there are two aspects of reasonableness that serve as limitations on compensatory damages.
>
> (a) The **first aspect** of reasonableness pertains to proof of damage. To recover damages for consequential loss, **the claimant must prove that the steps that the claimant has taken or proposes to take are reasonably required to repair the consequences of the defendant's tort.** Here, the burden of proof, as with all proof of damage, is on the claimant.
>
> (b) The **second aspect** of reasonableness **pertains to mitigation**. Once the claimant proves that the steps taken were reasonable, **the burden is on the defendant to prove that the claimant had failed to avoid or mitigate the cost by adopting some other course which was reasonable for the claimant to take.** The question of mitigation only arises if damages have been proved: *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd* [2008] 2 SLR(R) 623 ("Robertson Quay") at [27]. The burden of establishing the failure to mitigate, which is on the defendant, is ordinarily not one that is easily discharged: *The "Asia Star"* [2010] 2 SLR 1154 ("*The "Asia Star"*") at [24].
>
> (emphasis mine)

131 The Appellate Division's application of the First Stage illustrates this distinction. In *Lee Cheng Mui*, the harm was the claimant-respondent's loss of occupation of a property which he co-owned as a tenant in common with the defendant-appellant (the "**Property**"). To determine whether the claimant-respondent's leasing of an alternative accommodation (the "**Apartment**") was a reasonable response to that loss, the Appellate Division undertook the following analysis:

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(a) The Appellate Division started by comparing the physical characteristics of the Apartment and the Property. It observed that renting a semi-detached home in the vicinity with broadly similar specifications and living conditions was a step reasonably required to address the respondent's loss: *Lee Cheng Mui* at [77]-[78].

(b) As that comparison produced an equivocal answer, the Appellate Division turned to rental value. It compared the rent paid for the Apartment with that of an equivalent property in the vicinity of the Property: *Lee Cheng Mui* at [78]–[80]. As the Appellate Division explained:

> 79. … This is because, **if the Respondent had rented a property which is obviously equivalent (ie, a property in the vicinity of the Property), the Appellant would have to pay as damages the value of the rent incurred**. Therefore, if the Respondent rents another property which was of even lower rental value, the Appellant would have no cause to complain that it was not reasonably required to repair the consequences of her tort.
>
> (emphasis mine)

132 Quite clearly, the Appellate Division was not comparing the attributes of the Apartment and the Property in the abstract. The comparison was necessary because the loss suffered was the deprivation of occupation of the Property, and the question was whether renting the Apartment was reasonably required to address that loss. It was in answering that question that the Appellate Division first compared the physical characteristics of the Property and the Apartment and, when that comparison proved equivocal, their rental values.

133 Returning to the present case, the relevant harm was the injuries caused by the accident and the corresponding remedial step was the medical treatment obtained to address those injuries. In this regard, the Defendant does not dispute

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that the Claimant required the surgery and medical treatment which he received whilst hospitalised. What the Defendant contends is that the Claimant must go further and prove that obtaining that treatment through admission to a Class A1 ward was also reasonably required.

134 However, this contention only has force if substantially the same medical treatment could have been obtained through some other route and at a lower cost (a Second Stage consideration). If the Claimant could only have obtained the required medical treatment in a Class A1 ward, there would be little room for the Defendant's objection.

135 This is exemplified by the Defendant's case. After criticising the Claimant's reasons for choosing a Class A1 ward, the Defendant submitted that there was no evidence that the main benefit of a Class A1 ward "offered more than a Class B2 ward in terms of the care which the Claimant required".[53] He then adduced material to show that there was no distinction in the quality of medical care across ward classes.[54] Finally, he concluded that the Claimant was "not paying for better care and better doctors" but was "simply paying for better amenities", and as such "the cost of a Class A1 ward cannot be said to be a reasonably required cost".[55] Critically, the Defendant did not contend that the Claimant would have acted unreasonably had the required treatment been available only through admission to Class A1.

136 Quite clearly, therefore, the Defendant's case is that substantially the same required medical treatment could have been obtained through another

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53 DWS3 at [14].

54 DWS3 at [15]-[16].

55 DWS3 at [17].

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course — admission to Class B2 — at lower cost. However, that is the very inquiry contemplated by the Second Stage.

137 This interpretation is supported by the passage from *McGregor on Damages* (Sweet & Maxwell, 21st Ed, 2021) ("*McGregor*") which the Appellate Division cited with approval at [72] of *Lee Cheng Mui.* Using the example of a replacement car, *McGregor* explained:

> …
>
> 52-006 … The position, as summarised by the Court of Appeal in *Pattni v First Leicester Buses Ltd* is that the burden is, **first, on the claimant to prove the need for a replacement car. If that is proved, then the claimant may recover as damages the cost of hiring the replacement car**, and that would include if the claimant hires the replacement on credit terms. **However, if the defendant can show that the cost incurred was more than reasonable, by showing that the credit hire charge was higher than the basic hire rate would have been, damages will be reduced to that extent**—unless the claimant can, in turn, show that, through impecuniosity, they had no alternative to credit hire.
>
> (emphasis mine)

138 The analogy to this case is a close one. Just as the claimant in the replacement-vehicle example bears the burden of establishing the need for a replacement vehicle, the Claimant here bears the burden of establishing the need for the hospitalisation and medical treatment received. On *McGregor*'s analysis, if that is proved, it is for the Defendant to show that the cost incurred was more than reasonable. Here, the Defendant seeks to do so by contending that the same treatment could have been obtained through a Class B2 ward.

139 To be clear, I am not saying that cost is irrelevant to the First Stage. In *Lee Cheng Mui*, rental value was considered as a means of determining whether renting the Apartment was reasonably required to address the respondent's loss of occupation. Further, as will be seen at [167]-[171] below, cost is similarly

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relevant in assessing whether the proposed remedial step was reasonably required in relation to the Claimant's damaged bicycle. However, that is different from saying that a claimant must invariably take the additional step of establishing the reasonableness of the cost incurred in undertaking an otherwise reasonably required remedial step.

140 This reading of the majority's reasoning is also supported by Woo Bih Li JAD's dissenting judgment. Although Woo JAD disagreed with the majority as to whether the claimant-respondent had discharged his burden on the facts, he agreed with the majority's elucidation of the governing law: *Lee Cheng Mui* at [108]. He then explained at [109]:

> 109 In my view, there are two common ways in which a claimant may show that the steps he had taken were reasonable and thereby be *prima facie* entitled to claim the consequential losses associated with these steps, subject to the defendant's case on mitigation:
>
> (a) First, the claimant may show, by a comparison of the characteristics of the property which the claimant was wrongly denied possession of ("subject property") and the substitute property, that the substitute property was broadly equivalent to the subject property.
>
> (b) Second, the claimant may show that he is entitled to claim the full rent for leasing the substitute property, though it may not be broadly equivalent to the subject property. This can be done by comparing the market rent payable for the subject property with the rent paid for the substitute property and showing that the latter is not higher than the former.

141 In my view, it is significant that Woo JAD presented the "two common ways" of establishing reasonableness as alternatives. It supports the view that, at the First Stage, cost may be one means of establishing the reasonableness of the remedial step. It is not an additional matter which the claimant must establish before he is "*prima facie* entitled to claim the consequential losses associated with these steps" and before "the defendant's case on mitigation".

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142 This is also consistent with the Appellate Division's tentative view in *Lee Cheng Mui* at [81] that once the claimant is able to demonstrate that the step taken was reasonably required, it is for the defendant to show that the costs incurred or to be incurred for those steps were not or would not be reasonable:

> 81 In *Stewart*, the HCA added a further facet to the first element of proof of loss, namely that the claimant should also prove the reasonable cost of taking the steps which are reasonably required to repair the consequences of the tort. *Stewart* at [27] extended the illustration set out above at [74] to make the point:
>
> > 27 … Thus where a defendant's negligence has rendered a plaintiff's car unusable, the recovered cost of hiring the equivalent vehicle must be the reasonable cost of hiring a vehicle of that kind. …
>
> This point does not arise in the present case, **as the rent that was paid by the Respondent for the Apartment was not contested on the ground that it was not reasonable for that property.** The contest was instead on whether it was **reasonable for the Respondent to rent the Apartment.** Preliminarily, we question whether the further facet is a necessary feature of the claimant's burden to prove loss. **It seems to us that once the claimant is able to demonstrate that the step taken was reasonably required, it is for the defendant to show that the costs incurred or to be incurred for those steps were not or would not be reasonable**. As the issue does not arise here, we leave it for consideration in an appropriate case in the future.
>
> (emphasis mine)

143 In any event, as in *Lee Cheng Mui*, the broader question does not arise for determination in this case. The Defendant was not contending that the medical treatment obtained by the Claimant or the cost of that treatment was unreasonable *per se* (e.g., because the cost was disproportionate to the benefit obtained). Rather, his case was that the costs were unreasonable because the same required medical care could have been obtained cheaper in a Class B2 ward and that the additional cost of Class A1 was attributable only to amenities. That falls within the Second Stage concerning mitigation.

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144 I turn to the Defendant's reliance on *Low Woon Hong v Lim Chun Yong* [2026] SGHC(A) 4 ("*Low Woon Hong AD*"). There, the Appellate Division assessed the claimant's future nursing-home expenses using the cost of a four-bedder rather than a two-bedder because it was not satisfied that a two-bedder provided a level of effective care beyond that which could be achieved in a four-bedder: *Low Woon Hong AD* at [73]–[77].

145 I do not think that *Low Woon Hong AD* assists the Defendant on this characterisation issue. I agree that this decision illustrates the relevance of the reasonableness of the level and cost of care to the assessment of damages. But the Appellate Division did not consider whether the two-bedder/four-bedder issue fell within the First Stage of the Modified *Stewart* Framework. Further, while the Appellate Division disagreed with the High Court's ultimate conclusion that a two-bedder was reasonable, it did not disturb the High Court's analysis of the two-bedder/four-bedder issue as an issue of mitigation: *Lim Chun Yong (Lin Junxiong) v Yap Jeffrey and others* [2024] SGHC 150 at [187]–[191].

146 I therefore do not accept the Defendant's submission that the Claimant bore the burden, as part of the First Stage, of establishing that obtaining his medical treatment while accommodated in a Class A1 ward was reasonably required. The Claimant's burden was to establish that the hospitalisation and medical treatment were reasonably required to address the injuries caused by the accident. This is not contested. The Defendant's contention that the same medical care could instead have been obtained in a Class B2 ward falls within the Second Stage and is properly analysed as an issue of mitigation.

(2) The Defendant did not plead or prove mitigation

147 I turn to the manner in which the Defendant originally put his submission: that the Claimant failed to mitigate his losses by choosing a Class

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A1 ward instead of a Class B2 ward. This submission must fail because it was not properly pleaded or proved by the Defendant. I explain.

148 The law is clear that mitigation must be pleaded and proved. This includes identifying the alleged reasonable course of action which the claimant is said to have failed to take and the consequences said to flow from that failure: *Yip Holdings Pte Ltd v Asia Link Marine Industries Pte Ltd* [2012] 1 SLR 131 at [23]–[24]; *Lee Cheng Mui* at [82]-[86]. In *Lee Cheng Mui,* the failure to plead the reasonable alternative course which the claimant should have taken was regarded as a "significant deficiency": at [85].

149 In the present case, the Claimant had specifically pleaded at [39] of his Statement of Claim the medical expenses incurred. He also annexed at Annex A his Inpatient Discharge Summary which stated that the Claimant was admitted to a Class A1 ward. Annex B continued with a list of invoices. The Defendant responded with a bare denial:

> 9) Paragraphs 13 to 44 of the Statement of Claim are denied and the Claimant is put to strict proof.

The Defendant did not plead that the Claimant had failed to mitigate his medical expenses by choosing a Class A1 ward, still less identify a Class B2 ward as the reasonable alternative course which the Claimant ought to have taken.

150 This failure to give adequate notice carried through to the Joint Opening Statement, where the Defendant stated only that the medical-expenses claim was "subject to proof". The first time that the Defendant identified a Class B2 ward as the alternative course was at the tail end of his cross-examination of the Claimant. By then, the Claimant had filed his AEIC, which addressed the medical expenses and exhibited the invoices, but not the circumstances of his

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admission to Class A1, the availability of Class B2 or the applicable charges. Given how matters had developed, that is unsurprising.

151 In any event, even if the Defendant were permitted to advance his mitigation defence, I am not satisfied that he has proved it. The Defendant adduced no evidence of the applicable Class B2 charges at the material time or the subsidy for which the Claimant would actually have qualified. Nor were the specific figures ultimately relied upon—the alleged cost saving of S$3,691.04 and the 65% subsidy amounting to S$27,068.42—put to the Claimant. Those figures appeared only in the Defendant's written submissions.

152 I am also not convinced that the Defendant's figures are sufficiently supported:

(a) First, there is no evidence of the actual rate of a Class B2 ward at the material time that the Claimant was hospitalised (i.e., from December 2019 to January 2020). The Defendant instead worked backwards from October 2025 rates by assuming that Class B2 charges had increased between 2020 and 2025 at the same percentage rate as Class A1 charges.[56] There is no evidential basis for that assumption.

(b) Second, I am not satisfied that the Claimant would have received a subsidy of 65%. His unemployment and status as an undischarged bankrupt may provide some support for eligibility for a higher subsidy. However, the materials relied upon do not establish the rate for which he would actually have qualified. Critically, I do not read the two Channel News Asia articles which the Defendant relied on[57] as setting

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56 DWS at [107]-[108].

57 DWS at [109]; DWS2 at [9].

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out an exhaustive account of the factors governing eligibility for the relevant subsidies.

(c) Third, I am also not convinced that the 2011 Ministry of Health press release which the Defendant relied upon proved that the subsidies that the Claimant might have enjoyed would have applied to his entire hospital bill.[58] Critically, that press release was made more than eight years before the accident. There is no evidence that the subsidy framework described in the 2011 press release, including the scope of charges to which it applied, remained unchanged when the Claimant was hospitalised in December 2019.

(d) Further, the materials were introduced only in submissions, leaving the Claimant without a fair opportunity to challenge their factual basis.

153 For these reasons, I reject the Defendant's submissions that the Claimant failed to mitigate his losses.

(3) The Defendant's Class A1 ward objection fails even under the First Stage of the Modified *Stewart* Framework

154 Finally, the Defendant's objection would fail even assuming that the Defendant is correct that the Claimant bore the burden under the First Stage of the Modified *Stewart* Framework of proving that obtaining medical treatment in a Class A1 ward was reasonably required. This is because the Defendant failed to properly plead his case.

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[58] DWS2 at [8].

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155 As the Court of Appeal explained in *How Weng Fan and others v Sengkang Town Council and other appeals* [2023] 2 SLR 235 ("*How Weng Fan"*) at [18]–[20], parties are bound by their pleadings and the court is precluded from deciding matters that have not been put into issue by the parties. This is to prevent injustice from being occasioned to the party who, because of the failure of the opposing party to plead, did not have a chance to respond to the claim or defence in question.

156 Returning to the present case, I accept that the Defendant is entitled to put the Claimant to proof of his medical expenses. I accept also that this includes the reasonableness of the Claimant's admission into a Class A1 ward, assuming it is a First Stage issue. However, that does not obviate the need for the Defendant to put the reasonableness of that admission in issue in his Defence. Specific to defences, Form 13 of the Rules of Court 2021 states that the Defendant must state in his defence "any matter":

> (a) Which he or she alleges makes any aspect of the statement of claim unmaintainable;
>
> (b) Which, if not specifically stated, might take the claimant by surprise; or
>
> (c) Which raises issues of fact not arising out of the statement of claim.

157 In this case, and as noted at [149] above, the Claimant had specifically pleaded his medical expenses and annexed his Inpatient Discharge Summary, which stated that he was admitted to a Class A1 ward. Despite this, the Defence merely put the Claimant to strict proof of his medical expenses. It did not specifically identify the *reasonableness* of the Claimant's admission to a Class A1 ward as a matter in dispute. In my view, this was a matter which, if not specifically stated, might take the Claimant by surprise. It should have been pleaded. But it was not.

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158 I note further that the Defendant's objection went further than simply putting the Claimant to strict proof. The Defendant also advanced a positive factual case. In this regard, where a defendant has an affirmative case of his own in answer to the claimant's assertions, he must specifically state it in his defence and cannot simply plead a mere denial: *Gunapathy Muniandy v James Khoo and others* [2001] SGHC 165 at [13.1]–[13.3].

159 However, the factual issues raised by the Defendant were not pleaded. As detailed at [135] above, his ultimate case was that: (a) a Class B2 ward provided substantially the same medical care as a Class A1 ward, (b) the material differences concerned only amenities, and (c) the Claimant should therefore have chosen a Class B2 ward. But, as detailed at [150], these matters were first raised near the end of the Claimant's cross-examination. Further as detailed at [151]-[152], the specific charges, savings and subsidy which the Defendant said applied emerged only in his written submissions.

160 The deficiencies in the Defence prejudiced the Claimant. By the time these matters were raised, the Claimant had prepared his case, including his AEIC, without notice that they were in issue. He therefore had no proper opportunity to adduce evidence on the aforesaid matters. This is precisely the type of prejudice which *How Weng Fan* explains the rules of pleading seek to prevent. The Defendant's belated attempt to recharacterise his Class A1/Class B2 objection as one concerning the Claimant's burden of proving damages did not cure that prejudice.

Conclusion

161 For the reasons above, I reject the Defendant's objections to the Claimant's claim for medical expenses:

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(a) As regards the medical expenses incurred after December 2020, I am satisfied that the Claimant has discharged his burden of establishing that the treatment and medication were reasonably required to address the consequences of the accident.

(b) As regards the Class A1 ward, I find that the Defendant's objection is an issue of mitigation, which he failed to plead or prove. Further and in the alternative, even if the Claimant's choice of ward class falls within the First Stage of the Modified *Stewart* Framework, I would not reduce the award for the reasons set out above.

162 As the Defendant raised no other objection to the medical expenses claimed, I award the Claimant S$55,055.98 under this head.

Transportation

163 The Claimant claimed S$900 for transport in the Joint Opening Statement. In support, he referred to his AEIC at [42] and pages 244 to 245 to submit:

$846.00 + $54 (estm) = $900

Paragraph 42 of the Claimant's AEIC explained that he arrived at the $846 figure on the basis of 47 round trips to Sengkang General Hospital from 20 January 2020 to 19 December 2022 at S$18 per round trip. No explanation was given of the additional S$54 sum.

164 The Defendant submitted that the Claimant should be awarded S$109.20 on the basis of S$15.60 per round trip for the period up till December 2020.[59]

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[59] DWS at [113].

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165 I accept that the Claimant should only be awarded S$15.60 per trip. The objective evidence did not support the S$18 figure. To the contrary, the screenshots at pages 244 and 245 of his AEIC estimated the fares to and from Sengkang General Hospital at S$7.88 and S$7.70. This accords with the Defendant's calculations.

166 However, for the reasons at [122]-[125], I reject the submission that the Claimant's claim should be limited up till December 2020. Accordingly, I allow the claim for the 47 trips. On that basis, I award him S$733.20. I decline to award the further S$54 given that no basis has been furnished for the same.

The damaged bicycle

167 In the Joint Opening Statement, the Claimant claimed S$500 to replace his bicycle. In support, he exhibited at pages 246 to 248 of his AEIC a brochure for a "Hercules Roadeo Hank 267T 21 Speed Premium Geared Cycle" which cost S$584.

168 I do not think that the Claimant has proved, under the First Stage of the Modified *Stewart* Framework, that purchasing the Hercules bicycle was reasonably required to address the loss caused by the accident.

169 The compensatory principles governing damages for damaged or destroyed chattel were explained in *Yip Holdings Pte Ltd v Asia Link Marine Industries Pte Ltd* [2012] 1 SLR 131 at [13]:

> 13 In the context of the present case, how this general compensatory principle is to be applied will depend on whether the chattel was damaged or destroyed. In the case of damage to property, the amount by which the value of the chattel is diminished is usually equated with the cost of repair. Alternatively, if the damaged chattel is owned for use, the measure of damages would be the cost of replacement of a similar chattel and loss of use. However, where the chattel has

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> been destroyed or is a constructive total loss in the sense that it would be uneconomic to repair, the *prima facie* measure of damages is the value of the chattel at the time and place of destruction, plus any other consequential losses …

170 In this case, the Defendant did not seriously contest that the Claimant's bicycle was damaged. However, he criticised the evidence adduced in support of the Claimant's quantification. I agree with these criticisms:

(a) First, the Claimant's claim for S$500 to replace the damaged bicycle is supported only by his bare assertion in his AEIC at [41] that his bicycle was "damaged beyond reasonable repair". There is no explanation as to why this was so. In particular, there is no evidence of the likely cost of repair or of the extent of the damage to the bicycle (e.g., photographs of the damaged bicycle).

(b) Second, even assuming that a replacement was required, the Claimant has stated only that the damaged bicycle was a Hercules bicycle. He has adduced no evidence of its model, age, characteristics or value. I am therefore unable to find that the damaged and proposed bicycles have similar specifications or ascertain the value of the Claimant's bicycle before the accident.

(c) I am thus unable to find that purchasing the proposed bicycle is a reasonably required response to the loss suffered.

171 In summary, I accept that the Claimant suffered some loss because his bicycle was damaged. However, he has failed to adduce sufficient evidence from which this loss can be assessed, and no explanation has been given as to why such evidence could not reasonably have been given. As such, I award S$100 in nominal damages: *Biofuel Industries Pte Ltd v V8 Environmental Pte Ltd and another appeal* [2018] 2 SLR 199 at [41]-[44].

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Future expenses

172 For future expenses, the Claimant has sought:

(a) For future transport expenses, S$8,712; and

(b) For future medical expenses for 22 years, S$46,728 comprising:

(i) S$24,288 for acupuncture;

(ii) S$11,880 for physiotherapy; and

(iii) S$10,560 for medical consultations.

173 It should be noted that the Claimant had initially also made a claim of S$1,800 for his erectile dysfunction medication. However, he informed in oral submissions that he was no longer making this claim because his condition had improved. Accordingly, I make no award for the same.

174 I decline to award the remaining future expenses sought. Critically, the Claimant bears the burden of proving, on a balance of probabilities, that he will incur the future expenses claimed. He has not done so.

175 First, given my conclusions on admissibility of the doctors' opinions (see [53]-[64] above), there is no admissible medical opinion before me establishing that any particular treatment is likely to be required in the future.

176 Next, the Claimant's evidence does not fill this evidential gap. In his AEIC, he stated that he currently attends follow-up consultations once every three months, acupuncture once a month and physiotherapy once every two months.[60] However, this is an insufficient basis to award damages for future

[60] Claimant's AEIC at [44].

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medical treatment. Thus, in *Choo Yew Liang Sebastian v Koh Yew Teck* [2024] SGHC 212 ("*Choo Yew Liang*") at [171], the High Court rejected reliance on evidence of a plaintiff's current treatment as the basis for assessing his future medical treatment:

> 171. … First, Dr Chua's evidence was not that the appellant would need to continue receiving the injections at an interval of between six and eight months. **Rather, that was simply a report of the then-current condition of the appellant**. Strictly speaking, Dr Chua did not comment on the treatment that the appellant would require in the future. Put another way, Dr Chua omitted to state that because the appellant had been receiving the injections at intervals of between six and eight months, it was likely that the appellant would need to continue receiving the injections at the same interval, or that it was recommended to maintain the same treatment plan. **As such, Dr Chua's report does not assist the appellant in proving his need for future medical treatment, and merely amounts to a report of what treatments the appellant had been undergoing at that point in time.**
>
> (emphasis mine)

Similarly, here, the Claimant's evidence of his current treatment schedule does not, without more, establish the frequency with which, or duration for which, such treatment will be required in the future.

177 In the circumstances, I find that the Claimant has not established, on a balance of probabilities, that he will require the future medical treatment claimed, much less the frequency, duration and cost of such treatment. I therefore make no award under this head.

178 I turn to the claim for future transport expenses. This claim is contingent on the need for future medical care. Since the Claimant has not proved that he will require future medical care, he has likewise not proved that he will incur future transport expenses for such care. I therefore make no award under this head.

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Conclusion

179 For these reasons, I assess the Claimant's damages at a total of S$85,889.18, comprising:

(a) S$30,000 for pain and suffering;

(b) S$55,055.98 for medical expenses;

(c) S$733.20 for transportation expenses; and

(d) S$100 for the damaged bicycle.

180 I make no award for pre-trial loss of earnings, loss of future earnings, loss of earning capacity or future expenses.

181 The parties are to agree on interest and costs, failing which they are to write in within two weeks of this decision for further directions.

Ng Tee Tze Allen
Deputy Registrar

The Claimant in person;
Anthony Lee Hwee Khiam, Wang Liansheng, and Ng Rui Wen
(Adsan Law LLC) for the Defendant.

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Annex 1: Acupuncture invoices

S/N	Date	Invoice number	Amount	ABD Ref
1	25 Jun 2021	Q221101605H0001	S$87.31	28
2	09 Jul 2021	Q221101605H0003	S$80.78	30
3	06 Aug 2021	Q221101605H0004	S$80.78	34
4	24 Aug 2021	Q221101605H0005	S$80.78	36
5	05 Oct 2021	Q221101605H0008	S$80.78	44
6	25 Oct 2021	Q221101605H0009	S$80.78	48
7	29 Nov 2021	Q221101605H0011	S$80.78	52
8	20 Dec 2021	Q221101605H0013	S$80.78	56
9	17 Jan 2022	Q221101605H0014	S$80.78	60
10	14 Feb 2022	Q221101605H0015	S$80.78	64
11	22 Mar 2022	Q221101605H0016	S$80.78	68
12	06 May 2022	Q221101605H0019	S$80.78	74
13	20 Jun 2022	Q221101605H0021	S$80.78	84
14	18 Jul 2022	Q221101605H0022	S$80.78	86
15	08 Aug 2022	Q221101605H0023	S$80.78	90
16	12 Sep 2022	Q221101605H0024	S$80.78	94
17	17 Oct 2022	Q221101605H0026	S$80.78	96
18	21 Nov 2022	Q221101605H0027	S$80.78	101
19	19 Dec 2022	Q221101605H0028	S$80.78	102
20	16 Jan 2023	Q221101605H0029	S$91.37	110
21	20 Feb 2023	Q221101605H0030	S$91.37	116
22	27 Mar 2023	Q221101605H0031	S$91.37	122
23	24 Apr 2023	Q221101605H0032	S$91.37	128
24	29 May 2023	Q221101605H0033	S$91.37	132
25	10 Jul 2023	Q221101605H0034	S$91.37	134
26	14 Aug 2023	Q221101605H0035	S$91.37	138
27	18 Sep 2023	Q221101605H0036	S$91.37	139
28	23 Oct 2023	Q221101605H0037	S$91.37	145
29	20 Nov 2023	Q221101605H0039	S$91.37	147
30	18 Dec 2023	Q221101605H0041	S$91.37	151
31	22 Jan 2024	Q221101605H0042	S$92.21	157
32	04 Mar 2024	Q221101605H0044	S$92.21	159
33	06 May 2024	Q221101605H0045	S$92.21	165

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Annex 2: Physiotherapy invoices

S/N	Date	Invoice number	Description	Amount	ABD Ref
1	16 Sep 2021	Q220182169F0010	Physiotherapy Assessment and Therapeutic Exercise	S$128.72	40
2	29 Sep 2021	Q220182169F0011	Physiotherapy Review and Musculoskeletal Rehabilitation	S$113.95	42
3	27 Oct 2021	Q220182169F0014	Therapeutic Exercise and Physiotherapy Review	S$107.64	50
4	23 Dec 2021	Q220182169F0016	Therapeutic Exercise and Physiotherapy Review	S$107.64	58
5	25 Jan 2022	Q220182169F0018	Physiotherapy Education and Physiotherapy Review	S$102.50	62
6	29 Mar 2022	Q220182169F0022	Physiotherapy Education and Physiotherapy Review	S$102.50	70
7	23 May 2022	Q220182169F0023	Physiotherapy Review	S$46.54	76
8	29 Jul 2022	Q220182169F0031	Physiotherapy Review	S$46.54	88
9	11 Nov 2022	Q220182169F0035	Physiotherapy Review	S$46.54	100
10	11 Jan 2023	Q220182169F0037	Physiotherapy Review	S$52.70	104
11	30 Jan 2023	Q220182169F0038	Physiotherapy Review	S$52.70	114
12	01 Mar 2023	Q220182169F0041	Physiotherapy Review	S$63.29	118

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13	08 May 2023	Q220182169F0043	Physiotherapy Review	S$52.70	130
14	11 Jul 2023	Q220182169F0050	Therapeutic Exercise and Physiotherapy Review	S$121.82	135
15	07 Aug 2023	Q220182169F0051	Physiotherapy Review	S$52.70	137
16	12 Oct 2023	Q220182169F0053	Therapeutic Exercise	S$69.12	143
17	29 Nov 2023	Q220182169F0055	Physiotherapy Review	S$52.70	149
18	09 Jan 2024	Q220182169F0057	Physiotherapy Review	S$53.19	153
19	08 Mar 2024	Q220182169F0060	Physiotherapy Review	S$53.19	161

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