Lai Wai Keong Eugene *v* Loo Wei Yen
[2012] SGHCR 8

Case Number : Suit No 727 of 2009/B

Decision Date : 29 June 2012

Tribunal/Court : High Court

Coram : Terence Tan Zhong Wei AR

Counsel Name(s) : Anthony Wee and Pak Waltan (United Legal Alliance LLC) for the plaintiff; Toh Kok Seng and Desmond Tan (Lee & Lee) for the defendant.

Parties : Lai Wai Keong Eugene — Loo Wei Yen

Damages – Assessment

29 June 2012 Judgment reserved.

Terence Tan Zhong Wei AR:

1 This is an assessment of damages arising from a collision between Lai Wai Keong Eugene's ("the plaintiff") motorcycle and Loo Wei Yen's ("the defendant") car. The result, *inter alia*, was that the plaintiff sustained severe injuries which caused him to be paralysed from his upper chest downwards. The plaintiff sued the defendant for his injuries and subsequently obtained interlocutory judgment against the defendant, with the defendant agreeing to pay 90% of the damages to be assessed. Having considered the evidence and closing submissions of both parties, I now set out my judgment.

The factual matrix

2 Before the accident, the plaintiff worked as a senior logistics executive ("SLE") at DHL Supply Chain Singapore Pte Ltd ("DHL"), a "value added logistics provider", earning a monthly salary of $3,469.00.

3 After the accident on 12 April 2007, the plaintiff suffered from, *inter alia*, multiple fractures and complete spinal cord injury at T4 level. The specialist medical report dated 29 June 2007 from Dr William Chan of Tan Tock Seng Hospital ("TTSH") further noted that the plaintiff "has paralysis and loss of sensation from the chest downward, as well as neurogenic bladder and bowel", and that "his condition is permanent". Post-operation, the plaintiff's recovery was also complicated by pneumonia requiring intravenous antibiotics, and pressure sores at the sacral area.

4 The abovementioned facts and events were not disputed. Moreover, parties were also able to agree on most of the items claimed with respect to special damages. The remaining items were also not seriously contested. The main source of disagreement between parties centred on general damages, in particular loss of future earnings and future medical expenses. It is therefore appropriate for me to begin by assessing these two heads of the plaintiff's claim.

General damages: Loss of future earnings

The plaintiff's case

5 The plaintiff submitted that the adoption of the conventional approach, whereby the court

adopts a fixed multiplicand after "distilling" the figure from the objective evidence is both unfair and unrealistic as it does not take into account promotional prospects which will usually lead to increments in salary. The plaintiff contended that there was cogent and sufficient evidence based on the figures produced by the plaintiff's expert ("Foong's report"), Mr Foong Daw Ching ("Mr Foong"), for the court not to adopt the conventional approach in this particular case. The plaintiff argued that the final figure payable to the plaintiff should take into account a discount of 10% for vicissitudes of life, based on *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587 ("*Shaw Linda Gillian*") and Great Britain: Government's Actuary Department, *Actuarial Tables with explanatory notes for use in Personal Injury and Fatal Accident Cases* (6th Edition, 2007) (London: TSO, 6th Ed: 2007) ("UK Ogden's Tables"). Hence, the final figure should be $1,823,034.60.

6 Alternatively, if the court is to adopt the conventional approach in assessing the plaintiff's loss of future income, the plaintiff would invite the court "to work backwards instead to the figure of $1,823,034.60 and then assess whether the multiplier needed to achieve this figure is fair. If it is, then the multiplier should be used". In this regard, the plaintiff proposed that a multiplier of 21 years be used.

The defendant's case

7 The defendant argued that Foong's report is inherently flawed and does not take into account the relevant legal principles. Moreover, the UK Ogden's Tables are not relevant in Singapore given the many differences between the two countries.

8 The defendant did not dispute that the plaintiff is entitled to loss of future earnings. However, it was submitted that the plaintiff would be able to return to some form of salary-generating work in the near future. In this regard, the defendant submitted that a multiplier of 13 years would be more than fair and reasonable given the plaintiff's age at the time of assessment, *ie*, 39 years old. The defendant proposed that the 13 year multiplier be split into the three periods of one year, 10 years, and 2 years, each with a different multiplicand being applied to take into account any promotions and/or increased perks which the plaintiff would have been entitled to if he had not been injured by the defendant. The final figure for loss of future earnings would therefore be $636,000.00.

The court's assessment

The law

9 It is trite that the purpose of damages in personal injuries and death cases is to compensate a plaintiff (the victim) for the losses that he or she has suffered as a result of the accident. In arriving at the amount of damages to be awarded, the court will try to restore the plaintiff as far as possible to the position that he or she would have been in if the accident had not occurred or if he or she had not sustained the injuries – the principle of *restitution in integrum*: Julian Chin et al, *Assessment of Damages: Personal Injuries and Fatal Accidents* (Singapore: LexisNexis, 2nd Ed: 2005) ("*Assessment of Damages*") at p 3.

10 With respect to the assessment of the loss of future earnings, the Court of Appeal in *Lee Wei Kong (by his litigation representative Lee Swee Chit) v Ng Siok Tong* [2012] 2 SLR 85 held at [29] that:

> Ordinarily, an award for LFE is granted where the plaintiff is in employment at the time of trial, but because of his injuries, is unable to earn as much as what he earned prior to the accident. The difference in earnings would form the basis of the multiplicand.

11 The Singapore position on the assessment of loss of future earnings is elaborated in greater detail in *Assessment of Damages* at pp 30-31 as follows:

> Loss of future earnings compensate [*sic*] the plaintiff for any reduction in his earnings as a result of the disability suffered. The rationale for awarding this loss is premised on adequate compensation for a plaintiff who loses future earnings because of the accident.
>
> In this regard, the method of assessment is this: the difference between his pre-accident income and his present income is assessed and calculated on an annual basis, and *after making the necessary deductions for income tax*, the multiplicand is derived. The number of years for which the plaintiff would suffer this reduction in earnings is assessed as a round figure, thus giving the **multiplier**. Multiplying the multiplier with the **multiplicand**, assessed as his annual loss per year, will therefore give the total sum for the loss of future earnings.
>
> This whole sum is intended to represent the total loss of the plaintiff's future earnings as a result of his accident. In *assessing the multiplier, the court will take into account the plaintiff's age at the time of assessment and the prevailing retirement age. Taking into account the normal contingencies of life (that is, retiring at around 60 years of age, and with a life expectancy of around 70) and acceleration of payment in a lump sum, a multiplier of 16 years used to be regarded as the maximum.*
>
> [emphasis in bold in original; emphasis added in italics]

12 The conventional approach of assessing loss of future earnings is also endorsed in Gary Chan Kok Yew and Lee Pey Woan, *The Law of Torts in Singapore* (Singapore: Academy Publishing, 2011) ("*The Law of Torts*") at 20.052 as follows:

> Loss of future earnings is assessed from the date of the trial to the end of the plaintiff's prospective working life. The amount claimable is the produce of the multiplicand (in dollars) and multiplier (in years or months). The multiplicand is based on the amount of earnings which the plaintiff would have earned if the tort had not occurred. The court would attempt to make a fair and reasonable assessment of the amount taking into account the plaintiff's promotion prospects. To determine the multiplier, the court will normally examine the remaining period of the working life of the plaintiff (based on the age of the plaintiff at the time of accident and the normal retirement age) and discount for contingencies as well as the advance payment to the plaintiff.

13 The issue of whether the conventional approach or actuarial tables should be adopted in order to assess the loss of future earnings have been considered by the Singapore courts in *Lai Wee Lian v Singapore Bus Service (1978) Ltd* [1983-1984] SLR(R) 388 ("*Lai Wee Lian*") and *Tay Cheng Yan v Tock Hua Bin and another* [1992] 1 SLR(R) 779 ("*Tay Cheng Yan*"). In *Lai Wee Lian*, an appeal to the Privy Council from a decision of the Singapore Court of Appeal, Lord Fraser of Tullybelton held at [27] that:

> ***While their Lordships are of opinion [sic] that there is nothing contrary to law in the use of the [actuarial] tables, or of any other accurate aid to calculation, it is apparent that there is a possibility (and more than the possibility) of confusion if the [actuarial] tables are used without their significance being fully appreciated.*** They enable the loss to be calculated more accurately than is possible by the direct application of a multiplier, and for that reason they may reasonably be preferred to the English system, provided that care is taken to avoid confusion between the two systems. Some judges may prefer to use the [actuarial] tables on the

ground that a more accurate result can be obtained by using them than by direct application of a multiplier. ***But, if confusion is to be avoided, it seems desirable that a uniform practice should be followed by all courts in the same area.***

[emphasis in bold italics added]

14 In *Tay Cheng Yan*, the Court of Appeal specifically agreed with Lord Fraser in *Lai Wee Lian*, observing at [16] that:

… ***in the interests of uniformity and clarity of legal practice in Singapore, it is desirable that the direct application method be employed when calculating damages.*** We agree respectfully with Lord Fraser in *Lai Wee Lian v Singapore Bus Service (1978) Ltd* … that there "is nothing contrary to law or improper" about the use of annuity tables. At the same time, we are of the opinion that ***within the Singapore context the use of the direct application method should be preferred in view of the comprehensive familiarity of our courts and practitioners with the method.***

[emphasis in bold italics added]

15 Before me, the plaintiff argued strongly that even though it is widely thought that the conventional approach is the only way in which loss of future earnings should be assessed, this misconception is nothing more than a myth because the court is really "only bound by one, and only one, principle – the simple concept of *restitution in integrum*" and that "the way in which this goal is reached is ***unfettered*** " [emphasis added in bold italics].

16 I agree with the plaintiff that the principle of *restitution in integrum* underlies the assessment of damages for personal injuries and death. But with respect, I cannot agree that the approach adopted by the court to achieve *restitution in integrum* is "unfettered". It is clear from *Tay Cheng Yan*, a case which the plaintiff had himself relied upon, that the Court of Appeal, while agreeing that there is nothing wrong in law or in principle with the use of actuarial tables, had made a policy decision to prefer the use of the direct application method, *ie*, the conventional approach, taking into account the "interests of uniformity and clarity of legal practice in Singapore" and "the comprehensive familiarity of our courts and practitioners" with the conventional approach. I therefore find that there is no reason for the court not to adopt the conventional approach in assessing the loss of future income of the plaintiff in this case.

17 In the circumstances, I do not propose to examine Foong's report given that it essentially sets out a present value table to take into account interest earned on payment upfront with respect to the plaintiff's claim for loss of future earnings. I also note that the figures Foong used as the plaintiff's annual earnings until retirement, before he took into account the present value, assumes that the plaintiff would be in the position of an assistant logistics manager ("AM") from 2019 to 2022, a logistics manager ("manager") from 2027 to 2030, and a senior logistics manager ("SM") from 2035 to 2037. As [20] to [22] below demonstrates, the evidence does not support Foong's assumptions.

18 As to the plaintiff's reliance on the UK Ogden's Tables in support of his position that a discount of 10% for vicissitudes of life should be applied, I should only say that even the plaintiff himself "[did] not deny that the percentages of discount set out in the [UK] Ogden's Table[s] *reflect the economic, socio and political environment in the United Kingdom*, which *may not be relevant in the Singapore context*" [emphasis added], and hence the "use of the actuarial statistics contained therein *must … be approached with some caution*" [emphasis added].

19 Finally, I also note that the defendant appears to support the possibility of applying split multiplicands in this case so as to take into account the plaintiff's promotional prospects which are likely to have led to increments in his salary. This addresses the plaintiff's argument in his written submissions that "the adoption of a *fixed* multiplicand in the conventional sense is unfair and unrealistic as it does not take into account promotional prospects …" [emphasis added]. The issue then is what the appropriate multiplicand and multiplier should be, to which I now turn.

The appropriate multiplicand and multiplier to be applied

20 As pointed out above, the plaintiff was working as a SLE at DHL, earning a monthly salary of $3,469.00, just before the accident occurred. I am of the view that adopting a fixed multiplicand based on the plaintiff's salary which he was earning before the accident would be unfair and unrealistic given that the objective evidence from Chia Kay Chye ("Chia"), a SM at DHL and the plaintiff's immediate superior, was that the plaintiff was one of the better performers in comparison to his peers and had a 90% chance of being promoted to the rank of an AM in the next two to three years:

Q : As compared to the rest of his peers, how would you rate the Plaintiff?

A : One of the better performers.

Q : How many peers (senior executive position) does he have?

A : Close to 10.

Q : ***Ranking position among the 10?***

A : ***Top 3.***

…

Q : Is it possible to say ***in percentage terms what is Plaintiff's chance of being promoted to assistant manager?***

A : Based on his year on year assessment, it is about ***90%.***

Q : How long did it take for you to be promoted from logistics executive to 5 assistant manager ("AM")?

A : 3 years. ***But range is from 2 to 3 years.***

[emphasis in bold italics added]

21 I note, however, that Chia was more reticent as to the plaintiff's chances of being further promoted from an AM to a manager:

Q : ***In your AEIC, you stated that it is not possible for you to comment on whether Plaintiff would eventually become a manager. Jump from AM to manager is not certain.***

A : ***Yes.***

…

Q : Promotion of AM to manager, you said you are not certain. Based on Plaintiff's performance based on the years he has worked under you, is it more or less likely that Plaintiff would be promoted to manager?

A : ***More likely*** because for operations in customers' premises, like where the Plaintiff worked, they are more stringent.

[emphasis in bold italics added]

There was *no evidence* from Chia on any progression past the rank of manager. In his written submissions, the plaintiff also submits that a comparison with the number of years it took Chia to progress through the ranks would "clearly remove all doubts that the plaintiff would able [*sic*] to reach his aspiration [of being a SM, one rank above manager]". While Chia's progression may be indicative of the *average* number of years one may have to work in order to be promoted to the next position, Chia's own evidence was that it was very difficult to compare the plaintiff's performance to his own:

Q : ***In your view, how is Plaintiff's performance compared to your own when you were at that age?***

A : ***It is a different kind of assessment. Very hard to compare.*** But in terms of job knowledge of his service part, he is quite well versed compared to colleagues on the same level.

[emphasis in bold italics added]

22 In the circumstances, I am prepared to accept that the plaintiff would have been promoted to an AM within two to three years. However, further promotions beyond that rank would be less certain and would likely be dependent on the level of the plaintiff's performance and whether there is an opening for the plaintiff to perform that specific role, as Chia pointed out during cross-examination.

23 With respect to the multiplier to be adopted, I took into account the fact that plaintiff was 39 years old when the assessment hearing began and also that the minimum retirement age is 62 as stipulated in s 4(1) of the Retirement and Re-employment Act (Cap 274A, 2000 Rev Ed), even though there are plans to eventually raise the retirement age to 67. I also found the following cases instructive for the determination of the multiplier in this case:

(a) *Murugasu Euan v Singapore Airlines Ltd* [2004] 3 SLR(R) 463 ("*Murugasu Euan*") – a multiplier of 12 was used for a plaintiff consultant Ear Nose and Throat (ENT) surgeon aged 40 at the time of the assessment.

(b) *Shaw Linda Gillian*– a multiplier of 16 was used for an Australian national who was a physiotherapist. Award was not varied on appeal in the High Court and the Court of Appeal.

(c) *Lee Wei Kong (by his litigation representative Lee Swee Chit) v Ng Siok Tong* [2012] 2 SLR 85 – a multiplier of 20 was used for a 22 year old claimant who was about to commence his second and final year at a junior college before the accident.

Taking into account the facts of this case and the applicable case law, I find that the appropriate multiplier to be applied in this case is 13.

24 As pointed out above at [21] to [23], I am also of the view that this is an appropriate case for the multiplier of 13 to be split, with a different multiplicand applied to each multiplier period, especially considering the evidence of Chia on the promotion prospects of the plaintiff. It is trite that such an alternative approach can be applied in the appropriate circumstances, as the cases of *Ho Yiu v Lim Peng Seng* [2004] SGHC 218 ("*Ho Yiu*") and *Balanalagirisamy Gowri Rajeswari and another (administrators of the estate of Radhakrishnan Hari Babu, deceased) v Wong Si Wah* [2009] 1 SLR(R) 819 illustrate.

25 In arriving at the appropriate multiplicand to be applied to each multiplier period, I also note that there are to be deductions for income tax. In the absence of any submissions by the defendant as to what amount to be deducted should be, I accepted the plaintiff's submission in his reply submissions that a 2.5% income tax deduction should be adopted, which was based on an average of the income tax deduction in *Ho Yiu* (3%) and *Toh Wai Sie and another v Rajendran s/o G Selamuthu* [2012] SGHC 33 (2%).

26 I also agree with the defendant that there should be a further deduction in the form of the projected income which the plaintiff can reasonably be expected to earn as he should be able to resume some form of paid work in the future. The evidence of Mr Hong Yun, an occupational therapist at TTSH, was that the plaintiff is able to perform many day to day tasks, such as personal grooming, bathing, dressing and transferring himself from the bed to his wheelchair or vice versa with minimal or no assistance:

Q : FIM score is used to indicate the functional independence of a patient?

A : Yes.

Q : The higher the FIM score the better and vice versa?

A : Yes.

Q : 3 BA 603 – indicator which tells us what the score means. Patient's 14 total score is 111. What is the maximum FIM score? 1

A : 127.

Q : A score of 127 would indicate someone who can do almost everything 18 himself?

A : Yes.

Q : Patient is able to do: eating, grooming, bathing and dressing – upper on 22 his own based on the scores?

A : Yes.

Dr Adela Tow ("Dr Tow"), a senior consultant at the Department of Rehabilitation Medicine at TTSH, also gave evidence that she agrees with Mr Hong Yun that the plaintiff would be able to carry out sedentary work such as tele-marketing or data-entry which may be performed from home, *after his medical complications*, *ie, bed sores, are healed*:

Q : Yesterday, Hong Yun gave evidence that he was of the view that the Plaintiff would be able to return to some sort of work, specifically sedentary work like computer or desk based and

data-entry which he can perform from home. Do you agree with his assessment?

A : ***Yes. Plaintiff would be capable of such sedentary jobs provided provisions are made for him*** , ie he needs to take frequent breaks, cannot concentrate for long, he has bed sores which do not allow him to sit up, he has bowel and urinal problems which requires special arrangements for toileting. If he works outside of home, he may require a caregiver to help him over uneven terrain.

…

Q : ***Suggest that jobs like data entry which he can do from home and take as many breaks as he wants are possible?***

A : ***Yes. These are possible.***

Ct : Dr, when you say "these are possible", do you mean possible when his medical complications are completely healed or right now?

A : ***When his medical complications are healed.***

Ct : Do you think this will happen anytime soon, ie for his complications to heal?

A : ***Not in the next few years. His sores have taken three years and they have still not healed.***

Q : Despite hospital's recommendation, Plaintiff has not gotten a special mattress though he has said he would get one soon. Do you agree that one of the reasons why his bed sores have taken so long to heal is because he is not using one?

A : That could be a contributing factor.

Q : Assuming that he gets the special mattress and continues to go for treatment, the bed sores problem could be resolved?

A : Definitely it would reduce the risk of the sores there but there are other contributing factors there. It does not heal the sores but it prevents it from perpetuating.

Q : We need to be specific here…

A : Hard to say how long it will take for sores to heal.

…

Q : ***Would it be fair to say that a special mattress would reduce the risk of the sores worsening and will aid recovery?***

A : ***It will aid recovery (together with other factors) but does not cause recovery.***

[emphasis added]

27 However, I cannot agree with the defendant's assertion that "a period of one year should be sufficient for the recovery of the bed-sores and ulcers if the Plaintiff follows the medical advice and

uses the special mattress and hospital bed". As made clear in Dr Tow's evidence above, although the use of the special mattress and hospital bed will aid recovery and reduce the risk of the sores occurring, they do not heal the sores as there are other factors contributing to the occurrence of the sores. Moreover, her expert opinion was also that it is unlikely that the plaintiff's medical complications would be resolved in *the next few years*. In light of this evidence, I am of the view that any deductions for the projected income which the plaintiff can reasonably be expected to earn as he resumes some form of paid work should only begin to apply from the *sixth year* (of the 13 year multiplier) onwards so as to allow the plaintiff adequate time to recover from his medical complications.

28 The defendant also submitted a report from the Ministry of Manpower on wages in 2010, which provide that a data-entry clerk may earn anything from $983 to $1,600 per month. A tele-marketer may earn anything from $1,633 to $1,956. Given that Dr Tow's evidence was that the plaintiff will need special arrangements, such as for toileting and the taking of frequent breaks, which necessarily means that it would be unlikely that the plaintiff would be able complete as many pieces of work as compared to a typical data-entry clerk or tele-marketer, I am of the view that a figure of $600 as the plaintiff's projected monthly income should be adopted from the sixth year onwards.

29 In the circumstances, I hold that the appropriate multiplicand to be applied to each multiplier period should be as follows, resulting in the total amount of $880,262.93 for the plaintiff's loss of future earnings:

Years	**Multiplicand** **(Yearly income x number of years) – income tax**	**Remarks**
Years 1 and 2	($58,137.15 x 2) – 2.5% = $113,367.44	Income per year of SLE: $58,137.15
Years 3 to 10	($70,469.70 x 8) – 2.5% - ($600 x 12 x 5) = $513,663.66	· Income per year of AM: $70,469.70 · Projected yearly income after resuming work (6th to 10th year): $600 x 12 months x 5 years = $36,000
Years 11 to 13	($93,959.60 x 3) – 2.5% - ($600 x 12 x 3) = $253,231.83	· Income per year of manager: $93,959.60 · Projected yearly income after resuming work (11th to 13th year): $600 x 12 months x 3 years = $21,600
Total:	**$880,262.93**	

30 The different multiplicands applied to each multiplier period takes into account the possibilities of the plaintiff being promoted, first from SLE to AM, and then from AM to manager. As observed [21] above, I am prepared to accept that the plaintiff would have been promoted to an AM within two to three years (the table assumes that the plaintiff will be promoted to AM in two years). However, given that further promotions beyond AM would be less certain and would likely be dependent on several other factors such as the plaintiff's sustained good performance and whether there are any openings in DHL for the plaintiff to be further promoted beyond AM etc., I am of the view that it is fair in the circumstances for the plaintiff to only receive loss of future earnings based on the position of manager in years 11 to 13.

General damages: Future medical expenses

31 It is not disputed that future medical expenses will be incurred by the plaintiff and that the plaintiff is expected to live up to about 70 years of age (taking into account the fact that the average life expectancy of a normal male Singaporean is 79 years of age and that the plaintiff is expected to suffer a reduced life expectancy of 10%), which means that he has about 30 years of life left.

32 The parties, however, are in dispute as to the appropriate multiplier and multiplicand to be applied in this case.

The appropriate multiplier to be applied

33 As pointed out by the learned authors of *Assessment of Damages* at p 38:

> The multiplier [for future expenses] is determined according to circumstances prevailing at the date of the trial. **In relation to future medical expenses, the average life expectancy, rather than the retirement age, would be the measure of the period of the loss**: *Ang Leng Hock v Leo Ee Ah* [2004] 2 SLR 361; *Ho Yiu v Lim Peng Seng* [2004] SGHC 218.
>
> [emphasis in bold added]

34 The plaintiff asserted that a discount of one-quarter for the multiplier is fair instead of one-third because "the Defendant was given an opportunity to remove all the uncertainties by way of an order for provisional damages with respect to future medical expenses". Given that this "invitation" from the plaintiff was rejected by the defendant, "it does not now lie in the mouth of the Defendant to argue that any uncertainties should be resolved in her favour". Therefore, the appropriate multiplier to be applied should be 22 years.

35 With respect, I cannot agree with the plaintiff. At the hearing before me, the plaintiff applied to amend his Statement of Claim to claim for provisional damages with respect to future medical expenses. I held that the plaintiff should take out a formal application to amend if he was indeed so minded to include a claim for provisional damages at such a late stage in the proceedings. The plaintiff elected not to take out the formal application. I fail to see how the plaintiff's own decision not to take out a formal application to amend to include a claim for provisional damages, regardless of whether the defendant was agreeable to such a claim, is relevant in determining the appropriate multiplier to be applied.

36 The Court of Appeal's decision in *TV Media Pte Ltd v De Cruz Andrea Heidi and another appeal* [2004] 3 SLR(R) 543 ("*TV Media*"), a case cited by both parties, is instructive on the appropriate multiplier to be applied in the present case. In *TV Media*, the trial judge had provided for a multiplier of 34 years in relation to the respondent's medical expenses, which was two-thirds of the expected remaining 51 years of life. The court surveyed the relevant case authorities and lowered the multiplier to 17 years (see [183] to [185]):

> 183 The appellants challenged [the trial judge's award] and asked that a multiplier of 18 years be awarded. They referred us to several High Court cases in which similar multipliers were given. The first of these is a case which we have referred to earlier in this judgment, ***Lim Yee Ming v Ubin Lagoon Resort Pte Ltd*** **([175] supra). The judge provided for a multiplier of 15 years for the 26-year-old plaintiff. In the second case, Ng Song Leng v Soh Kim Seng Engineering & Trading Pte Ltd [1997] SGHC 289, the judge awarded the 29-year-old**

plaintiff a multiplier of 17 years. In yet another case, Teo Seng Kiat v Goh Hwa Teck [2003] 1 SLR(R) 333, the judge determined that a multiplier of 18 years was appropriate for the plaintiff, who was 28 years old at the time of the accident. We also had regard to the case of Chen Qingrui v Phua Geok Leng ([176] supra), wherein the female plaintiff aged 18 years was awarded a multiplier of 18 years for nursing care.

1 8 4 **We have not come across a case where a multiplier as high as 34 has been awarded, and Andrea was not able to cite us even one instance of such a case**. She attempted to argue that this present case presents a unique factual matrix, thus justifying the award of a particularly high multiplier. We are not in the least convinced by this argument since the injuries suffered by the plaintiffs in the cases mentioned above are, at the very least, comparable to Andrea's.

185 Considering that Andrea was 27 years old when her liver failed, and that the plaintiffs in the cases we have just detailed were also in the same age range, we think that a multiplier of 17 years is more appropriate and order accordingly.

[emphasis in bold added]

In the present case, given that the plaintiff is expected to live for about 30 years, I agree with the defendant that a multiplier of 15 years for future medical expenses would be fair, reasonable, and in line with the case law.

The appropriate multiplicand to be applied

37 In relation to the appropriate multiplicand to be applied, the evidence of Dr Tow and Dr David Lye ("Dr Lye"), a specialist for infectious diseases at TTSH, are especially relevant. An important point to note is that Dr Tow had confirmed at the hearing before me that she would defer to Dr Lye's opinion with respect to future medical treatment of infections suffered by the plaintiff.

Dr Lye's evidence

38 I will first deal with the Dr Lye's evidence. Dr Lye gave very clear evidence that the plaintiff has osteomyelitis to his sacral bone and that this infection is likely to be life-long, meaning that it can only be suppressed and not cured. Although the infection can be suppressed with antibiotics so that the plaintiff can enjoy a better quality of life, the infection is still expected to flare up once every three years on average based on Dr Lye's expert opinion. When the infection flares up, more aggressive and hence more costly treatment would be necessary. In this regard, Dr Lye produced a letter dated 3 February 2012 from the Business Office of TTSH, which estimated that the plaintiff is likely to incur $32,445.00 for purely out-patient treatment and $35,901.00 for both in-patient and out-patient treatment. Finally, Dr Lye also opined that the plaintiff faces a very high risk of developing a type of infection which is very resistant to oral antibiotic treatment and which may require costly in-patient treatment.

39 I accept Dr Lye's evidence and allow the plaintiff the sum of $36,000 ($35,901.00 rounded up to the nearest thousand dollars) every three years for 15 years in respect of his future medical expenses on the treatment of his infections, making a total of $180,000.00.

Dr Tow's evidence

40 In Dr Tow's report dated 13 October 2010, she estimated that the plaintiff would be expected

to incur between $500,000.00 to $600,000.00 in medical expenses for the remainder of his life. However, plaintiff's counsel detected an error with Dr Tow's calculation in respect of subsidised costs for in-patient treatment. I then directed Dr Tow to file a supplementary affidavit of evidence in chief ("supplementary AEIC") setting out the correct calculations. In her supplementary AEIC, Dr Tow corrected the calculation error and estimated that the plaintiff would be expected to incur between $574,000.00 to $732,000.00 in medical expenses for the remainder of his life. It is important to note that Dr Tow adopted a period of 32 years as the estimated remaining lifespan of the plaintiff in her supplementary AEIC.

41 The defendant argued that Dr Tow had "totally failed to apply her mind to the matter at hand when she gave her initial estimate" and after her error was "caught out", she then came up with the new figures in the supplementary AEIC "which were wholly different from her initial estimates" to justify her previous estimates. Moreover, this was not the first time that Dr Tow was called to court to give evidence as a medical expert. The defendant submitted that the only real risk the plaintiff faces are the infections mentioned by Dr Lye, with the other complications constituting the estimates arrived at by Dr Tow being too remote. Specifically, the expenses listed by Dr Tow which have only 50% or less chance of incurrence should not be awarded as the plaintiff has failed to prove the same on a balance of probabilities. Hence, a multiplicand of $10,000 per year, making a total sum of $150,000 over 15 years, for all future medical expenses is fair and reasonable.

42 I am unable to agree with the defendant on this point. I accept that Dr Tow made an error with respect to the calculations initially. However, the error was cleared up by her in her supplementary AEIC. I also found Dr Tow to be a genuinely helpful expert witness who had done her best in order to assist the court to arrive at a proper assessment.

43 I am also not with the defendant's argument that the expenses listed by Dr Tow which have only 50% or less chance of incurrence should not be awarded as the plaintiff has failed to prove the same on a balance of probabilities. It is clear that the court is entitled to take into account all risks and possibilities when assessing damages for future losses, and to adjust the future losses awarded in accordance with those risks and possibilities.

44 Further, I note that the defendant has not adduced any evidence contrary to the expert opinions of either Dr Tow or Dr Lye. The defendant's own expert witness, Dr Alvin Hong, conceded during cross-examination that he would defer to the opinion of Dr Tow with respect to future medical expenses:

Q : You would agree that in terms of empirical evidence as to how often a particular problem occurs for a paraplegic patient, Dr Adela would be in a better position than you to comment?

A : Yes.

Q : Between your comments and Dr Adela's view as a rehabilitation consultant, overall, if I put it to you that you must defer to her opinion for these costs, you would have to agree?

A : Yes.

45 In light of the above, I accept Dr Tow's estimates of future medical expenses of between $574,000.00 and $732,000.00 as correct. However, because these figures apply to a period of 32 years, they have to be adjusted to apply for a period of 15 years (the multiplier allowed), to obtain future medical expenses of between $269,062.50 and $343,125.00. Taking the average of the two figures of $269,062.50 and $343,125.00, I therefore allow the plaintiff the sum of $306,000.00

($306,093.00 rounded up to the nearest thousand dollars) in respect of his future medical expenses (excluding the future medical expenses for treatment of his infections which is dealt with at [40] above).

Conclusion on future medical expenses

46 The plaintiff is therefore allowed the total sum of $486,000.00 ($180,000.00 + $306,000.00) for his future medical expenses. I reject the plaintiff's arguments for future medical expenses to be allowed for botox treatments. Botox treatments were never prescribed or recommended by Dr Tow or Dr Lye and I am not satisfied that future medical expenses for these treatments would be incurred.

General damages: Other future expenses (excluding future medical expenses)

47 This category of other future expenses, excluding future medical expenses, include continuing costs for transport, purchase of paraplegic equipment, toiletries and maid care. The defendant does not dispute the unit costs of these items. In light of my finding that the appropriate multiplier to be applied to future medical expenses is 15 years, I assess the other future expenses to be as follows:

Item	**Expenses**	**Comments**
Ultra light weight wheelchair	$5,000 x 3 = $15,000	Requires change every 5 years
Bed mattress	$5,000 x 3 = $15,000	Requires change every 5 years
Seat cushion	$650 x 3 = $1,950	Requires change every 5 years
Padded commode chair	$400 x 3 = $1,200	Requires change every 5 years
Electrical bed	$13,000	Parties in agreement as to figure
Customised ramp	$400	Parties in agreement as to figure
Grab bar	$240	Parties in agreement as to figure
Passive-active trainer	$16,000	Parties in agreement as to figure
Motorised wheelchair	$8,000	Parties in agreement as to figure
Maid care	$467.56 x 12 months x 15 years = $84,160.80	Adjusted to apply for 15 years
Toiletries	$93.44 x 12 months x 15 years = $16,819.20	Adjusted to apply for 15 years
Total	**$171,770.00**	

General damages: Pain, suffering and loss of amenities

48 It is not disputed that the plaintiff has suffered serious injuries which ultimately resulted in paraplegia at the T4/T5 level:

(a) Multiple fractures of the thoracic spine;

(b) Fractures of bilateral ribs;

(c) Bilateral pneumothoraxes;

(d) Left haemathorax; and

(e) Complete spinal cord injury from traumatic T4/T5 fracture with cord compression, causing paraplegia from upper chest downwards.

Because of these injuries, the plaintiff has endured various complications and ailments, such as osteomyelitis, skin breakdowns, urinary tract infections, loss of sexual function, low blood pressure and major depressive disorder.

49 The defendant candidly agreed that the plaintiff's injuries in this case are very similar to, and in fact may even be more serious, as compared to the injuries sustained by the plaintiff in *Cheng Chay Choo (Spinster) v Wong Meng Tuck and Another* [1992] SGHC 133 ("*Cheng Chay Choo*"). In that case, the plaintiff was awarded $120,000 for pain and suffering for the following injuries:

(a) fracture/dislocation of 10th thoracic vertebra with complete paralysis below the waist;

(b) hyperextension injury of the neck with fracture of 6th and 7th vertebra but with no weakness of the upper limbs;

(c) fracture left orbital margin;

(d) fracture 9th and 12th left ribs with haemothorax; and

(e) fracture transverse process of L1.

50 Another relevant case cited by both parties is *Kwok Seng Fatt Jeremy v Choy Chee Hau* [2003] SGHC 308 ("*Kwok Seng Fatt*"). In *Kwok Seng Fatt*, the plaintiff was awarded $202,000 for the following injuries:

(a) fracture dislocation of T7 vertebra resulting in paralysis below T6;

(b) fracture of right clavicle;

(c) fracture of right 2^{nd}, 4^{th} and 5^{th} ribs with right haemopneumthorax;

(d) multiple abrasions;

(e) right brachial plexus injury;

(f) loss of sexual function; and

(g) reactive depression.

The defendant submits that the injuries suffered by the plaintiff in *Kwok Seng Fatt* are more serious than those suffered by the plaintiff in this case as the former also suffered from a right brachial plexus injury which resulted in him losing much of the use of his right hand. I agree that the injuries suffered by the plaintiff in *Kwok Seng Fatt* appear to be of a more serious nature than the plaintiff in this case. However, taking into account that the decision in *Kwok Seng Fatt* came almost 10 years ago and a higher inflation rate today as compared to 2003, I am satisfied that an award of $200,000 to the plaintiff for pain, suffering, and the loss of amenities is fair in the circumstances.

Special damages: Pre-trial loss of earnings

51 Under special damages, the only item which was actually in dispute is the plaintiff's pre-trial loss of earnings. The defendant submitted that some slight deductions should be made to take into account income tax and the usual expenses incidental to earning a salary. Hence, a figure of $144,000.00 for a period of 48 months should be adopted.

52 I agree with the defendant to the extent that deductions should be made for income tax. In the absence of any submissions by the defendant as to what amount to be deducted for income tax should be, I accepted the plaintiff's submission in his reply submissions that a 2.5% income tax deduction should be adopted. I also note that the monthly income earned by the plaintiff before the accident was $3,469.00.

53 Taking into account a 2.5% income tax deduction and the plaintiff's monthly income before the accident, I award a sum of $162,349.20 for the plaintiff's pre-trial loss of earnings (a period of 48 months).

Special damages: other claims

54 As pointed out above at [5], the parties were able to agree on most of the items claimed for special damages. With respect to pre-trial costs of renting alternative accommodation, the plaintiff has indicated that he is willing to abandon this claim. Hence, I exclude this item from the special damages awarded to the plaintiff. As for the plaintiff's claim for the pre-trial costs of purchasing a vehicle, *ie*, a Suzuki Swift, and the modification of that vehicle to suit the plaintiff's needs, the defendant has indicated that she would not be challenging the claim on compassionate grounds. Accordingly, I assessed the costs for this claim as submitted by the plaintiff, *ie*, $45,653.00 for the purchase of the vehicle and $750.00 for the modification of the vehicle.

Conclusion

55 In summary, the Plaintiff succeeded in the following:

(a) Special damages:

(i) Pre-trial medical expenses agreed at $51,934.87

(ii) Pre-trial transport expenses agreed at $2,000.00

(iii) Paraplegic equipment and toiletries agreed at $15,865.03

(iv) Cost of maid/nursing care agreed at $15,275.35

(v) Pre-trial loss of earnings assessed at $162,349.20

(vi) Pre-trial loss of employer's CPF agreed at $24,976.80

(vii) Pre-trial loss of allowances agreed at $6,978.24

(viii) Pre-trial loss to motorcycle agreed at $9,617.00

(ix) Pre-trial cost of purchasing Suzuki Swift assessed at $45,653.00

(x) Pre-trial cost of modifying Suzuki Swift assessed at $750.00

Total: $335,399.49

(b) General damages:

(i) Pain and suffering and loss of amenities assessed at $200,000.00

(ii) Future medical expenses assessed at $486,000.00

(iii) Other Future expenses (not including (ii)) assessed at $171,770.00

(iv) Loss of future earnings assessed at $880,262.93

Total: $1,738,032.93

56 Interest is to be at half of 5.33% on special damages from the date of service of the writ to the date of judgment, and at 5.33% on general damages for pain and suffering from the date of service of the writ to the date of judgment. The usual consequential orders are to apply.

57 I will hear parties on the issue of costs.