

Law Kin Ying (administratrix of the estate of Lo Hon Man, deceased) and others v Lim Hong Hock
[2015] SGHCR 14

Case Number : Suit No 513 of 2009 (Registrar's Appeal No 1 of 2011)
Decision Date : 10 July 2015
Tribunal/Court : High Court
Coram : AR James Elisha Lee
Counsel Name(s) : Teo Weng Kie, Charlene Chee and Shahira Anuar (Tan Kok Quan Partnership) for the plaintiffs; Anthony Wee and Pak Waltan (United Legal Alliance LLC) for the defendant
Parties : Law Kin Ying (administratrix of the estate of Lo Hon Man, deceased) and others
— Lim Hong Hock

Damages - Assessment

10 July 2015

Judgment reserved.

AR James Elisha Lee:

Introduction

1 This is a personal injuries and dependency claim arising from a road traffic accident which had occurred on 3 January 2008. The suit against the Defendant was commenced on 12 June 2009. Parties proceeded for trial from 15 to 19 March 2010 on the issue of liability. The Defendant subsequently agreed to bear substantial liability and interlocutory judgement was entered by consent on 19 April 2010 in the Plaintiffs' favour at 95%. The Notice of Appointment for Assessment of Damages was filed on 7 January 2014. For the present hearing, the Plaintiffs called a total of 4 factual witnesses, including the 2nd Plaintiff ("Mdm Law") and the 3rd Plaintiff ("Michael") and 3 expert witnesses, while the Defendant called 1 factual witness and 1 expert witness. The hearing took place over a period of 22 days.

Background facts

2 On 3 January 2008, at about 10.15pm, Mdm Law was driving the Deceased's car, with Michael as front passenger, along the PIE towards the direction of Tuas. An engine problem developed and Mdm Law stopped the car along the road shoulder somewhere after the Eng Neo exit. Mdm Law then contacted the deceased to inform him of the problem. The deceased arrived at the scene shortly thereafter in a taxi. The taxi had stopped in front of the deceased's car. As the deceased was walking towards the front of his car, a prime mover driven by the Defendant collided onto the rear of the car at high speed. The impact caused the car to surge forward and hit the deceased, resulting in him being flung towards a nearby tree and hitting his head against the railings. The incident was witnessed by Mdm Law and Michael who were standing along the side of the road near the railings at the material time. The deceased was sent to the hospital at around 11pm. He succumbed to his injuries and passed away on 4 January 2008 at 12.08pm.

3 The deceased was 47 years of age at the time of the accident. He left behind a wife, Mdm Law, and 3 children, Michael, Lo Yuk Ting Sally ("Sally"), and Lo Yuck Ching Tracy ("Tracy"). The

family had migrated to Singapore from Hong Kong in the year 2003 and subsequently became permanent residents. Michael had performed National Service as well.

4 The deceased was born in Guangdong China to a family of rice and vegetable farmers. He was the fourth of 6 children and grew up in a small house in a rural village. He moved to Hong Kong subsequently and met Mdm Law in 1984. They got married in 1989. Mdm Law stopped work after the birth of Michael and became fully dependent on the deceased for financial support.

5 The deceased was a self-made man. He started off as a clothes hawker in the clothing retail line before moving on to the business of trading in cooking oil where he made his fortune. He started the cooking oil trading business sometime after his marriage where he formed the company Ko Sing Trading Pte Ltd with a friend. In or around 1990, the deceased started his own company Wing Hing Trading Ltd ("WHTL"), also in the cooking oil trading business. About 2 years later, he formed another company, Wing Hing Trading development Ltd ("WHTDL") with his 2 younger brothers. WHTDL flourished and by 1996/1997 was reportedly able to generate a turnover of HK\$1 billion and millions of dollars in profit. In or around 1997, WHTDL diversified its business into property. The diversification did not yield immediate result and the deceased and his brothers quarrelled. WHTDL was eventually wound up in late 2000. The deceased decided to come to Singapore to explore opportunities in 2002. The family joined him subsequently in 2003.

6 The various heads of claim which the Plaintiffs now seek to recover against the Defendant are as follows:

Claims by the Estate of the Deceased		
Pain and suffering of the Deceased		\$2,000
Estate duty paid to IRAS		\$116,281.50
Force-sale of shares		\$442, 667.87 / \$98,408.69
Bank charges / penalty		\$5,650
Dependency		
Mdm Law	Pre-trial	\$851,866.40
	Post-trial (the Deceased's working years)	\$1,044,463.35
	Post-trial (the Deceased's retirement years)	\$176,400.00
Michael		\$250,350.60
Sally		\$633,475.65 / \$457,675.65
Tracy		\$458,829.10
Personal claims		
Mdm Law	PTSD & Depression	\$40,000

	Future medical expenses	\$39,000
	Future transport expenses	\$2,340
Michael	PTSD & Depression	\$25,000
	Future medical expenses	\$6,000
	Future transport expenses	\$390

7 The following claims have been agreed by parties:

Claims by the Estate of the Deceased		
	Hospitalization expenses	\$2,827.28
	Funeral expenses	\$21,935.80
	Legal costs of obtaining letters of administration in Singapore	\$22,061.31
	Ancillary oath fees	\$390.00
	Survey fees for inspecting vehicle	\$200.00
	Damaged golf bag and clubs	\$2,000.00
	Bereavement	\$10,000.00
	Notice of death	\$421.40
	Costs of obtaining probate in Hong Kong	\$7,806.78
	Excess for damage to vehicle	\$2,500.00
Special damages		
Mdm Law	Pre-trial medical expenses	\$19,353.37
	Pre-trial transport expenses	\$1,477.50
Michael	Pre-trial medical expenses	\$7,069.30.60
	Pre-trial transport expenses	\$390.00

8 As the major head of claim is dependency, I will proceed to deal with that claim first before dealing with the other claims.

Dependency

9 The legal basis for a dependency claim is found in sections 20(1) and (2) of the Civil Law Act (Cap 43):

Right of action for wrongful act causing death

20. (1) If death is caused by any wrongful act, neglect or default which is such as would (if death has not ensued) have entitled the person injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured.

(2) Subject to section 21(2), every such action shall be for the benefit of the dependants of the person (referred to in this section and in sections 21 and 22 as the deceased) whose death has been so caused.

10 The definition of a "dependant" is set out in section 20(8), and includes the wife and any children. Under sections 22(1) and (1A), it is provided:

Assessment of damages

22. (1) In every action brought under section 20, the court may award such damages as are proportioned to the losses resulting from the death to the dependants respectively....

(1A) In assessing the damages under subsection (1), the court shall take into account any moneys or other benefits which the deceased would be likely to have given to the dependants by way of maintenance, gift, bequest or devise or which the dependants would likely to have received by way of succession from the deceased had the deceased lived beyond the date of the wrongful death.

11 The objective of calculating loss of dependency is to make an assessment of the value of the reasonable expectation of pecuniary benefit from the continuance of the life : *Gul Chandiram Mahtani v Chain Singh* [1999] 1 SLR(R) 154 at [17]. This is done by way of the multiplier-multiplicand approach. The multiplicand may be determined using either of 2 methods: (a) by adding the value of the benefits received by the dependants from the deceased ("traditional method"); or (b) by deducting a percentage from the deceased's income which forms the deceased's personal expenditure ("the percentage deduction method"). The balance is then assumed to be for the benefit of the dependants : *Hanson Ingrid Christina and others v Tan Puey Tze and another appeal* [2008] 1 SLR(R) 409 at [26].

Method 1 - Traditional Method

12 The Plaintiffs' expert Mr Sharma stated in his report that he had adopted the traditional method in determining the multiplicand as the deceased was not a salaried employee and that his income was derived mainly from the rental proceeds and capital appreciation of his properties. He has done so by summing up the expenses of the entire family (the deceased being the sole breadwinner) and deducting a portion (20%) which would have been attributable to the deceased. This is followed by a calculation of the specific loss suffered by each dependant as a result of the deceased's demise. Mr Sharma did not consider the deceased's income as he was instructed that the supporting documents relating to the deceased's income were incomplete.

13 In *Hanson Ingrid's* case, Justice Prakash had held that in assessing dependency the court will need to first ascertain the losses, and then consider whether the deceased would have been able to meet those expenses. She said at [27],

The manner in which a court assesses dependency under the traditional method is similar to how

the Family Court assesses maintenance. In both cases, the court will take into account the claimant's needs and *consider whether the deceased or respondent is able to meet those needs*. The maintenance sum is thus a good starting point in assessing dependency and saves the court dealing with the dependency claim valuable time by negating the need for a thorough examination of each head of claim.

[emphasis]

14 She further held at [40],

In assessing dependency, there is no need to show that the dependant was receiving pecuniary benefit at the time of the death; a purely prospective loss is sufficient: *McGregor on Damages* ([30]*supra*) at para 36-029. A mere speculative possibility of receipt is, however, insufficient: *Franklin v The South Eastern Railway Company* (1858) 3 H & N 211 at 214. The task for the court is thus to sort out the genuine pecuniary losses from the speculative losses and then *to determine whether the deceased would have been able to meet those expenses*.

[emphasis]

15 This has been affirmed and applied in the recent case of *Rockwills Trustee Pte Ltd v Wong Meng Hang* [2015] SGHC 138 where Justice Choo held at [17]:

In assessing the dependency claim of Ms Quek and the children, I have found that the composite maintenance order of \$9,000 constitutes a good starting point to work from. This is because the manner in which a court assesses dependency under the traditional method is similar to how the court assesses maintenance in matrimonial proceedings – in both cases, taking into account the claimant's needs and whether the deceased was able to meet those needs (*Hanson Ingird Christina and others v Tan Puey Tze and another appeal* [2008] 1 SLR(R) 409 ("Hanson") at [27]). I then consider whether the pecuniary support which the dependent would have received from the deceased, but for his death, exceeds the composite maintenance order.

16 Mr Sharma's approach of assessing the dependency claims based on expenses alone raises the issue of whether sufficient consideration has been given to the question of whether the deceased would have been able to meet those expenses. This is significant as on the evidence, since dissolving WHTDL and coming to Singapore in 2002, the deceased's income appears to have been confined to rental from the properties he owned in Hong Kong. According to Mr Sharma, from calculations based on documentary records available, the family's known expenses had exceeded the deceased's estimated income in 2008. He then postulated that the deceased could have funded his expenditure in the short term by using his personal savings and investment in shares in addition to his rental income. Given the incomplete picture on the deceased's income since coming to Singapore in 2002, it is difficult to draw any conclusions whether the deceased would have been able to continue to meet the family's expenses had he lived.

17 The Plaintiffs have argued that the deceased had a track record of being able to generate substantial income. He was a poor farmer's son who had managed to grow an asset base of zero to nearly S\$7 million by the age of 47 (when he died). He had started and run 2 highly successful companies WHTL and WHTDL in Hong Kong. His foray into shares and property investment had also been largely successful. There would, as such, be no reason to suppose that he would not be able to generate income beyond rental and shares investment had he lived.

18 The argument would, however, have to be juxtaposed against the evidence that since coming

to Singapore in 2002 till the time of demise, a period of nearly 6 years, the deceased has not, or has not managed to start any business or generate any other form of income besides rental from his Hong Kong properties. Aside from shares and property investment, the deceased's success had come mainly from the cooking oil trading business in Hong Kong. There is no evidence adduced on the prospect of him replicating that success or even business model here in Singapore. It would be speculative, as such, to assume that because of his track record of success in Hong Kong, he would be able to generate income beyond income from his existing assets which would be sufficient to meet the family's expenses.

19 It is probable in this case that the deceased would have no difficulty meeting the dependants' expenses based on income generated from his existing assets, be it rental, dividends or capital appreciation. These assets and the corresponding income generated would, however, have been inherited by the dependants. There is as such an issue whether they had suffered any loss.

20 In *Hanson Ingrid's* case, Justice Prakash held at [30] to [32] that:

30 Alexander and Elliot are the sole beneficiaries of Sandy Eu's will. The defendant has therefore raised the issue as to whether the court can take into account income derived from assets and capital (besides earned income) when assessing dependency. In this respect, the defendant relies on the following passage in *McGregor on Damages* (Sweet & Maxwell, 17th Ed, 2003), which states at para 36-112:

[Where] the deceased's sole property consist of unearned income out of which he supported the dependent, and the whole estate from which he derived his income passes to the dependent, it is strongly arguable that the dependant's claim fails on the ground that there is no pecuniary loss. All that the dependant could lose was the support from that income, and since the death he has the income himself.

31 This proposition, taken by itself, is unobjectionable. The aim of a dependency award is to compensate for *loss* which the dependent has incurred as a result of the death. Where no loss can be proved, the dependency claim cannot be sustained: *Auty v National Coal Board* [1985] 1 WLR 784. Thus, in *Pym v The Great Northern Railway Company* (1863) 4 B & S 396, the deceased left a widow and nine children, the whole family being dependent on substantial income from settled property. On the deceased's death, the eldest son became entitled to the property, though some provision was made under the settlement for the widow and younger children. It was not disputed that as the eldest son had inherited the property, he had not suffered any pecuniary loss.

32 It is, however, also important to understand that where there is clearly established a loss from one source, the fact that it may be made good from another by using a benefit received from the estate is beside the point: *Wood v Bentall Simplex Ltd* [1992] PIQR P332 ("*Bentall Simplex*"). In a case where the deceased's income is in part derived from labour and in part from capital, the court has to ascertain how much loss has arisen because the deceased is no longer alive and able to work, and how much income was derived solely from capital which the dependants have inherited. To the extent that the dependants were maintained with income from capital, they could not be said to have suffered a loss. Thus, in *Bentall Simplex* itself, the dependant widow and sons had enjoyed income derived in part from the deceased husband's labour on the farm and in part from capital. The defendant unsuccessfully contended that the dependants had suffered no loss of dependency because their enjoyment of the income had not ceased on the death of the deceased. It was found that since the sums which the widow and sons were receiving before the death could have been largely attributable to the deceased's work on the farm rather than

from a return on the capital invested, a loss of dependency had been shown.

21 There is no evidence that at the time of his demise, the deceased had any other source of income besides those derived from his assets. This income would have continued to accrue after the deceased's death. The Plaintiffs would not, as such, have suffered any loss.

22 The Plaintiffs have cited the case of *Tan Harry v Teo Chee Yeow Aloysius* [2004] 1 SLR(R) 513 at [97] to support their contention that a deduction for inheritance is never made where the parents pre-decease the children:

The question therefore was whether the common law excluded assets like (d) to (g) from deduction. The AR was concerned that if inherited assets were to be deducted from a dependency claim, dependants of a deceased with deep pockets would always be deprived of their dependency claim. However, I was of the view that he had not distinguished between dependants who were older and those who were younger than the deceased. In the latter situation, no deduction should be made because the dependants would in any event ultimately inherit the assets, although at a later time.

23 The case involved a claim for dependency by the aged parents of the deceased and the issue was whether certain assets inherited by the claimants should be deducted. The court held that it should as they would never have received the assets but for the untimely death of the deceased in that case. It should be pointed out that Justice Woo was dealing specifically with the issue of whether any deduction should be made for inheritance in a dependency claim. The comment that in a situation where the dependants were younger than the deceased, no deduction should be made for assets which the dependants would ultimately inherit should therefore be understood in that context. The issue of whether a deduction should be made is different from that of ascertaining whether there is in fact any loss of dependency. This is clear from Justice Woo's subsequent comments at [98] to [100] :

98 The case for dependants who are aged parents is not necessarily the same as that for younger dependants. Hence, Dr Myint Soe relied, *inter alia*, on para 1255 of *McGregor on Damages* (13th Ed, 1972). That passage is reiterated in its 14th Edition, 1980, at para 1347 and it states:

1347 Cases will also arise where, but for the death, the dependants would probably never have received the estate: this will be so, for instance, in the case of a claim by aged parents who would otherwise in all probability have predeceased their children. In such a case the proper course will be to deduct something approaching the whole amount of the estate received by the parents; the value of the acceleration is irrelevant here. And intermediate cases can readily be imagined.

99 However, plaintiffs' counsel sought to rely on the next paragraph which states:

1348 Of course, where the deceased's sole property consists of unearned income out of which he supported the dependant, and the whole estate from which he derived this income passes to the dependant, the dependant's claim fails as there is no pecuniary loss. All that the dependant could lose was the support from that income, and since the death he has the income himself. This has been clear since the early case of *Pym v. Great Northern Ry.*, but that decision is sometimes wrongly taken as establishing the far wider, and erroneous, principle that money received from the deceased's estate must be deducted.

100 In my view, the last clause of para 1348 of *McGregor* does not contradict or subvert para 1347. *What I believe it means is that not every asset or sum received from the deceased's estate must be deducted.*

[emphasis]

24 Justice Woo's comment at [100] clearly acknowledges the principle that where the dependant's benefit was derived solely from existing assets, there would have been no dependency loss incurred since the assets would have passed on to the dependant.

25 On the available evidence, I am of the view it would be too speculative to assume that the deceased will be able to generate income beyond those derived from his existing assets which will enable him to continue to meet the dependants' expenses had he lived on. The evidence shows that his income since coming to Singapore has been derived solely from these assets. Upon his death, these assets and the corresponding income generated would have passed on to the dependants and there would effectively have been no loss of dependency suffered by them. I am therefore unable to agree with Mr Sharma's first method of calculating the quantum for dependency loss based solely on the existing expenditure pattern of the dependants.

26 The Defendant has argued that since the Plaintiffs had effectively suffered no loss, no award should be made for dependency. The Defendant's expert Mr Tee had opined that on the evidence, the deceased appeared to have entered into retirement mode after coming to Singapore. This appear to me, however to be unlikely. The deceased was only 47 years of age at the time of his demise. He was the sole breadwinner of the family. He left behind his wife and 3 children, aged 19 (Michael), 17 (Sally) and 13 (Tracy) respectively. Michael, who was serving National Service ("NS") at that time, would have been expected to embark on his university studies upon completion of his NS. From the evidence, it is also probable that the deceased would have to support Sally financially for the rest of his life given her intellectual disabilities. Tracy too would be expected to progress to university within the next 5 to 6 years. Given the deceased's existing and foreseeable financial obligations at the time of his death, it would be relatively improbable that the deceased had decided to retire and live off his savings and assets.

27 It is clear from the evidence that since coming to Singapore, the deceased had taken steps to grow and develop his assets. Besides his residence at Amaryllis Ville, he had purchased the 2 Park Infinia properties, both of which had since appreciated in value substantially. He had also invested in shares to the tune of more than \$5 million. Based on valuations in 2012, it would appear that the investment had been profitable. One possible approach for determining dependency loss in this case would, therefore, be to quantify the deceased's skills and experience in managing and developing his assets.

Method 2 - Cape Distribution Ltd v O'Loughlin

28 In this regard, Mr Sharma had adopted a 2nd method of calculation, with a view to verifying the calculations using the traditional method, based on the approach adopted in the case of *Cape Distribution Ltd v O'Loughlin* [2001] EWCA Civ 178. In that case, the deceased did not earn a fixed salary, but managed a portfolio of properties which gained him income with which he supported the dependants. The court awarded the dependency claim based on the cost of replacing the deceased's skills as a property manager.

29 The difficulty with applying this method of calculation to the present case stems from the challenge of assessing the value of the deceased's skills in managing and developing his assets. This

in turn affects the ability to ascertain the replacement cost for the deceased's skills and experience. Mr Sharma had opined that the deceased's experience can be compared with the experience and competence of a property and asset manager with 10 to 15 years' experience. He had based his opinion on the fact that the deceased had more than 20 years' working experience, part of which was spent starting the cooking oil trading business with his brothers and managing the assets that he owned prior to his demise.

30 The Defendant pointed out, however, that the deceased's financial history does not support Mr Sharma's assessment. In particular, of the properties the deceased owned in Hong Kong, only one had gained in value. The timing of the acquisition of the properties by WHTDL was also poor as it tied up the company's liquidity during the period of the Asian Financial Crisis in 1998. The Defendant submitted that this was probably what led to a sharp decline in the profitability of the company, which in turn led to conflict between the deceased and his brothers and the eventual dissolution of the company. The deceased's investment pattern, both in property and shares, was such that he would acquire the assets and hold on to them to generate passive income rather than liquidating them at appropriate opportunities and acquiring more or better investments. Accordingly, the Defendant submitted that the deceased was more like a novice or amateur comparable, at best, only with a property and asset manager of 3 to 5 years of experience.

31 On the evidence available, I am not convinced by Mr Sharma's assessment that the deceased experience and competence is comparable to that of a professional property and asset manager with 10 to 15 years of experience. I am also doubtful whether the salary of a professional property and asset manager is an appropriate benchmark for calculating replacement cost in the present case. The size of the deceased's portfolio of assets raises the question whether it would require full-time attention. The replacement cost for the deceased should more appropriately be assessed based on the cost of the services of a property and asset manager required to manage a portfolio similar in size and scope to that of the deceased's at the time of his demise. This would require amongst others, information concerning the time and effort required in the management of such a portfolio. Such information is, unfortunately, unavailable before me; neither can it be distilled from the evidence adduced. The annual salary of a full-time property and asset manager would not, as such, be an appropriate reference point or benchmark unless it can be shown that the deceased's portfolio would require the total devotion in time, skill and effort of a full-time property and asset manager. The Defendant's counter proposal of calculation based on the salary of a property and asset manager of 3 to 5 years would be inappropriate for the same reason. On the evidence before me, it would be impossible, without venturing into the domain of speculation, to quantify the value of the deceased's skills in managing and developing his assets.

32 In the light of the above, I am of the view that there should be no award for dependency in this case.

Claim by the Estate of Lo Hon Man ("the Estate")

Pain and suffering

33 The Estate claims the sum of \$2,000 for the pain and suffering of the deceased. Mdm Law had testified that she could hear the deceased breathing heavily when she went to him at the scene, but did not know if he was conscious. The deceased was conveyed by ambulance to NUH at about 11pm. According to the medical report dated 15 September 2008 by Dr Chou Ning of the National University Hospital, the deceased was noted to have a Glasgow Coma Score of 3 when he was received by the emergency department. This is equivalent to being in a state of deep unconsciousness. The deceased's condition did not improve and he passed away on 4 January 2008 at 12.08pm.

34 There is no evidence that the deceased was conscious immediately after the accident. The collision had caused the deceased to be flung against a nearby tree and hit his head against the railing. The strength of the impact can be inferred from the massive right acute subdural haematoma recorded in Dr Chou's report. It is probable as such that the deceased was rendered unconscious immediately after the accident. This would also be consistent with the deceased's Glasgow Coma Score of 3 when he was received by the hospital. I am therefore unable to accept the unsubstantiated assertion by counsel for the Plaintiffs that the deceased must have felt pain at the moment of impact. In the circumstances, it would not be appropriate to make any award for pain and suffering.

Estate duty paid to IRAS

35 The Estate has claimed the sum of \$116,281.50 for estate duty incurred. The Defendant has countered that the claim is not permissible under section 10(3)(c) of the Civil Law Act (Revised Edition 1999) which states:

Effect of death on certain causes of action

10. (1) Subject to this section, on the death of any person, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of his estate.

....

(3) Where a cause of action survives as specified under subsection (1) for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person —

....

(c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated *without reference to any loss or gain to his estate consequent on his death except that a sum in respect of funeral expenses may be included.*

[emphasis]

36 It is clear that the estate duty incurred was consequent on the deceased's death and hence disallowed under section 10(3)(c) of the Civil Law Act.

Loss arising from the force sale of the Fortis shares and bank penalty charges

37 The claim is for loss incurred as a result of the force sale of shares held in the deceased's name and the corresponding bank charges. The shares were purchased on margin. Shortly after the deceased's demise, Mdm Law was informed that the share margin was insufficient and required a top up. As this took place before the letters of administration were granted, Mdm Law did not have the authority to instruct the agent to top up the margin, resulting in the force sale. Mdm Law also lacked the funds to top up the margin.

38 I am of the view that the loss occasioned by the force sale was not caused directly by the deceased's demise, but rather the inability to top up the margin. The claim fails for reasons of

remoteness as the loss would not have been reasonably foreseeable by the Defendant – see *Rockwills Trust Ltd v Wong Meng Hang* [2015] SGHC 138 at [15].

Claim by Mdm Law

Post-Traumatic Stress Disorder (“PTSD”) and Depression

39 Mdm Law produced a total of 3 medical reports from Dr Lim Yun Chin (“Dr Lim”), a consultant psychiatrist from Raffles Hospital. The material portion of the first report dated 4 November 2008 stated that:

Mdm Law suffered from bereavement which was compounded by emerging distressing symptoms relating to the constant intrusion of vivid memories of the scene of the accident relating to her husband’s agonizing dying moments. Her condition deteriorated to the point that she needed professional help.

During my examination of her mental state in May 2008, she had recurrent and intrusive memories with the gruesome details of the accident and her husband’s dying moments. She couldn’t sleep and felt tense and unable to relax during the day. If she managed some sleep she was often awoken by nightmares of the incident and she had visions of herself, in a frantic but futile effort to avert the event.

She became very anxious and distressed whenever she came across scenes that resembled her husband’s accident and death, such as news reports of death (e.g. bodies of earthquake victims in China) as well as the noises and sights of fast-moving traffic.

Mdm Law also persistently avoided stimuli associated with her trauma, e.g. feeling anxious in a moving vehicle. She also would not allow her son from taking driving lessons. She also panicked when she walked on sidewalks with fast-moving traffic. She displayed a general numbing of responsiveness that was not present before the traumatic event, such as a lack of interest in joining her usual group of friends for outings; feeling detached and estranged from those around her.

She described feeling emotionally numb in response to her environment. But when she pondered her future, she felt afraid and helpless. Mdm Law also experienced difficulty sleeping, irritability and anger at her children and lawyers (describing herself as being ‘out of control’ unlike in the past where she was more measured and positive in her responses). She has difficulty concentrating and remembering. She felt always on edge and “unable to relax” most of the time (resulting in muscle aches and weakness, chest pains, breathing difficulties, daytime fatigue, headaches and dizziness).

Mdm Law’s emotional and psychological difficulties are compounded by stress from the daily challenges of living. Her late husband used to undertake matters relating to the family’s budget, etc and she looked after the domestic chores. Currently, matters relating to her late husband’s estate was thrust upon her. The stress was compounded by the fact that she couldn’t speak or write English.

She had to sell her flat to move into a smaller apartment and the family budget had to be managed more stringently. The stress of being a single mother was a major challenge for her as the children were themselves grieving for their father. She often felt overwhelmed and depressed by the challenges, and experienced recurrent fear and a sense of helplessness at the daunting

task facing her daily.

....

While her symptoms of PTSD have decreased in frequency, they are still clinically significant and cause impairment in her ability to function normally. It is anticipated that she will need medication as well as supportive and cognitive-behaviour therapy for a period of another 12-18 months, on a regular basis.

40 The material portion of the first follow-up report dated 16 November 2010 stated:

The intensity of re-experiencing her trauma, for example, recurrent and intrusive memories, and nightmares of her husband's death has decreased. She is less anxious about news reports or scenes about death, and noises and sights of fast-moving vehicles. There is also less avoidance of stimuli associated with her trauma.

However, she continues to experience a general numbing of responsiveness that was not present before the trauma of losing her husband. She struggles to be interested in and participate in social activities, continues to feel detached and estranged from friends, and has a sense of a foreshortened future – she described a marked deterioration of physical health following her husband's death and worries that a premature death will leave her children as orphans.

In addition, Mdm Law experiences persistent symptoms of increased arousal. She has difficulty falling asleep and early waking from nightmares linked to her anxiety/stress of daily living after her husband's death, and is more easily irritated and angry at her children and others. She reported a marked reduction in concentration and memory in the past 3 years since her husband's death, and now relies on written notes to remind her of daily tasks. She also experiences anxiety-related symptoms such chest pain, choking sensations, tingling sensations in the arms, and painful muscle tension. There were also periods of intense anxiety, coinciding with court proceedings related to her husband's death.

.....

Although the dust has settled somewhat, Mdm Law is perplexed by her persistent low mood, fatigue and loss of energy, diminished interest and pleasure in most activities, feelings of guilt and worthlessness, and a diminished ability to think and concentrate – indicating depression.

...her symptoms of PTSD are still clinically significant, impairing her ability to function normally.

41 In the second follow-up report dated 18 November 2011, Dr Lim maintained his opinion that there were further improvement to Mdm Law's PTSD condition, but continues to suffer from the symptoms indicating depression. He further opined that the symptoms of PTSD and depression are still clinically significant and causing impairment to her ability to function normally.

42 On 4 March 2013, surveillance was conducted by a private investigator on Mdm Law. She was observed to be able to go about her routine, including taking part in volunteer work at an old folks' home. She also did not appear to have any difficulty taking public transport and waiting for a taxi by the roadside alone. The surveillance report was reviewed by Dr Lim, who then issued a further report dated 31 May 2013. In his report, Dr Lim stated that the activities Mdm Law was observed engaging in corresponded with the positive coping activities she had been encouraged to participate in. Although Mdm Law had shown further improvement since 18 November 2011, her symptoms of PTSD,

depression and grief remained clinically significant.

43 During cross-examination, Dr Lim testified that the cornerstone of PTSD symptom, which is the re-experiencing intrusion of memories, nightmares, events, had significantly subsided, although residual avoidance behaviour and hyper-vigilance remained. Dr Lim opined that there was remission of Mdm Law's PTSD symptoms and that her disability has been reduced to mild or moderate. He also opined that her symptoms for depression have become chronic. Her condition of bereavement had remained the same since the accident and this has prevented her depression from going away. Dr Lim had assessed her to be in the moderate condition [\[note: 1\]](#).

44 Mdm Law claims the sum of \$40,000 for PTSD and depression. The Defendant has countered that the quantum should be \$16,200 based on \$10,000 for PTSD and \$8,000 for depression, with a discount of 10% to account for overlap of the 2 conditions.

45 The case of *Pang Koi Fa v Lim Djoe Phing* [1993] 2 SLR(R) 366 was cited as precedent by both parties. In that case, the plaintiff's daughter had died as a result of the negligence of the defendant neurosurgeon. The plaintiff became distraught. She was on the verge of a breakdown and almost committed suicide. She complained of heart palpitations, breathlessness, insomnia, crying episodes, loss of interest in her work and social life. She was preoccupied with memories of her daughter, and preserved her daughter's room at home and her desk at her office – a symptom, known as "mummification", of a severe grief reaction. She underwent a personality change - she stopped cooking for the family, became over-protective of her son and quarrelled frequently with her husband. She had even gone to her doctor's office and abused him, smashing some glass and banging on cupboards although she had ordinarily been a mild lady. She was diagnosed to be suffering from PTSD and pathological grief. The psychiatrist had opined that she had become a psychiatric patient. She was awarded \$30,000 damages.

46 The other case referred to by both parties is *Goh Eng Hong v Management Corporation of Textile Centre* [2003] 1 SLR 209. The plaintiff was injured when the lift she was in fell 19 floors to the bottom of the lift shaft. She suffered severe injuries to her left leg. She was also diagnosed to be suffering from PTSD. Her symptoms included intense fear each time she enters a lift and have startle response when she hears noise produce by appliances. She had insomnia and would experience recurrent, intrusive images of the scene of the accident that disturbed her sleep. She had anxiety and difficulty concentrating. She needed to be accompanied for most part of her daily life and had to avoid items that would remind her of her trauma such as a violent scene from a television show. Her initial award of \$40,000 was reduced to \$30,000 when the court accepted counsel's argument that the condition of the plaintiff in *Pang Koi Fa* was as severe, if not more severe.

47 Counsel for the Defendant referred to a third case, *Chang Mui Hoon v Lim Bee Leng* [2013] SGHCR 17. The plaintiff was the front seat passenger of a car which was involved in a traffic accident. She suffered PTSD and depression as a result. Her main symptoms were that she became fearful whenever she is sitting in a motor vehicle and would experience headaches and giddiness. She had trouble sleeping and became easily irritable. She was awarded a total of \$20,000 for both PTSD and depression - \$12,000 for PTSD and \$10,000 for depression, with a discount of \$2,000 for overlap between the two conditions).

48 I am of the view that the same argument can be made here that the condition of the plaintiff in *Pang Koi Fa* was as severe, if not more severe than Mdm Law's condition. I am also of the view that Mdm Law's condition is more severe than that of the plaintiff in *Chang Mui Hoon's* case. I have considered as well the relevant guidelines set out in the *Guidelines for the Assessment of General Damages in Persona Injury Cases* (Academy Publishing, 2010). In the circumstances I award \$20,000

for PTSD and \$10,000 for depression, with a discount of \$2,000 for overlap. The net quantum awarded is therefore **\$28,000**.

Future medical and transport expenses

49 Dr Lim has opined in his report dated 31 May 2013 that Mdm Law would require “ongoing support in the form of counselling and medication for the next 3 to 5 years” at the estimated cost of \$200 to \$300 per monthly consultation. At the hearing, however, Dr Lim testified on 22 January 2014 that Mdm Law would require indefinite treatment and counselling because of the persistent symptoms of unresolved grief and depression after 5 years of receiving treatment. Dr Lim also opined that another reason why Mdm Law’s condition is unlikely to improve is that he foresaw she is going to have increasing problems with Sally [\[note: 21\]](#).

50 Based on Dr Lim’s evidence at the hearing, a multiplier of 13 years was proposed by the Plaintiffs. The Defendant countered that the expenses should be based on no more than 5 years. I note that in his 2 previous reports dated 4 November 2008 and 16 November 2010, Dr Lim had recommended periods of 12-18 months and 24 – 30 months respectively. It is quite clear that those periods do not represent Dr Lim’s view regarding the definite period of treatment Mdm Law required. Rather, they reflect an incremental approach by Dr Lim in terms of prescribing future treatment. I am inclined as such to view the period of 3 to 5 years recommended in Dr Lim’s report dated 31 May 2103 as a continuation in that exercise. Dr Lim’s evidence at the hearing that Mdm Law would require indefinite medication and counselling is therefore not, in my view, inconsistent with his previous opinion on the point. I also accept Dr Lim’s reasons for his view that Mdm Law would require an indefinite period of counselling and medication.

51 The Plaintiffs have not explained the basis for adopting a multiplier of 13 years. I am of the view that a multiplier of 10 would appear to be more reasonable. Applying the multiplicand of \$250, the quantum awarded for Mdm Law’s future medical expenses is **\$30,000** (\$250 x 12 months x 10 years). Using the same multiplier, and the agreed multiplicand of \$15, the quantum awarded for Mdm Law’s future transport expenses is **\$1,800** (\$15 x 12 months x 10 years).

Claim by Michael

PTSD and Depression

52 Michael produced a total of 2 medical reports, a memo and an update on one of the medical reports from psychiatrist Dr Calvin Fones Soon Leng (“Dr Fones”), of Fones Clinic. Dr Fones has been seeing Michael since 13 May 2008. The material portion of the first report dated 10 January 2009 stated that:

1. Kit Ho suffers from PTSD as a direct sequela of the accident on 4 January 2008, during which he witnessed his father being knocked down and subsequently dying. He satisfies DSM-IV criteria for PTSD in that:
 - A. He has been exposed to a traumatic event in which:
 - (1) he witnessed his father being seriously and fatally injured
 - (2) his response at the time, involved intense fear, helplessness, or horror
 - B. The traumatic event has persistently been re-experienced in various ways:

- (1) recurrent and intrusive distressing recollections of the event, including images and thoughts
- (2) recurrent distressing dreams of the event
- (3) acting or feeling as if the traumatic event were recurring and a sense of reliving the experience (flashbacks)
- (4) intense psychological distress at exposure to internal (thoughts) or external cues (e.g. media depictions, traffic situations, conversations) that symbolize or resemble an aspect of the traumatic event

C. Persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness:

- (1) efforts to avoid thoughts, feelings, or conversations associated with the trauma
- (2) efforts to avoid activities, places or people that arouse recollections of the trauma
- (3) diminished interest or participation in significant activities
- (4) feeling of detachment or estrangement from others
- (5) sense of a foreshortened future (e.g. not expecting to have a career, marriage etc)

D. Persistent symptoms of increased arousal:

- (1) irritability or outbursts of anger
- (2) difficulty concentrating
- (3) hypervigilance

E. Duration of the disturbance (symptoms in Criteria B, C and D) has been prevalent for more than 1 month.

F. The disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning.

The specified course of the PTSD is **Chronic**, the duration of symptoms having exceeded 3 months and still persisting till now.

2. As can be anticipated, he experienced symptoms of Acute Stress Disorder in the immediate aftermath, which progressed into PTSD subsequently. While the symptoms have receded over the course of time and with treatment (comprising medication and psychotherapy), they have not fully remitted. While the range of opinions may include the view that his symptoms have improved to the point that they no longer amount to a clinical diagnosis of PTSD, I am of the opinion that they are still present and exist to a sufficient degree as to impair his functioning and hence justifies the continued diagnosis of **Chronic PTSD**.

3. Kit Ho also has Major Depressive Disorder, which developed after the grief reaction he

experienced with his father's death...The severity of depression is mild to moderate at present, but had reached a more severe level when he first presented. He has since responded to a combination of medication and psycho therapeutic treatment...

4. Kit Ho's PTSD and depressive symptoms have become chronic. He has made significant improvements over the last one year when he was undergoing treatment but there are still persistent symptoms which continue to impact his social and occupational functioning. I estimate that he would require another 2 to 3 years of continued treatment at an estimated frequency of about once every 1-2 months of psychotherapy and psychiatric management, including pharmacological treatment...

5. I would consider Kit Ho's condition overall to be improved but still significantly affected and his social and occupational function impaired. The prognosis is fair for recovery over 3-5 years with the appropriate treatment and psychosocial support.

53 In a memo dated 12 February 2010, Dr Fones indicated that Michael "has made improvements on his mood but still suffers from chronic PTSD".

54 The material portion of the second medical report dated 10 November 2010, states:

He has, with therapy and medication been able to overcome some of his psychological symptoms and maintain social and occupational functioning. He has however never been totally free of the effects of his emotional scars over the years....Socially however he has remained rather isolated since the incident, keeping mostly to himself and not interacting much with friends. This is in stark contrast to his previous outgoing and gregarious self.

Kit Ho's depressive disorder was more severe in the first year following the accident but had improved significantly towards the beginning of September 2009. He continued however, to be more affected by features of PTSD. He continues to fulfil the DSM-IV criteria for PTSD...

Kit Ho will require long-term therapy and treatment for Chronic PTSD. The above-mentioned features of PTSD continue to affect his life significantly. His educational performance and social functioning have been negatively affected.

55 In his update to the said report, dated 18 November 2011, Dr Fones indicated that Michael continues to suffer from Chronic PTSD and Major Depressive Disorder ("MDD") complicated by traumatic grief. He continues to have memories and flashbacks of the accident and occasional nightmares, and still finds it difficult to talk about the accident. Major Depression has become the more prominent psychopathology in recent months.

56 On 30 and 31 January 2013, surveillance was conducted by a private investigator on Michael. He was observed to be able to travel by bus independently, and appeared to be in good spirits when he was with his girlfriend. After parting with her, Michael then proceeded to play video games at an amusement centre. The surveillance report was reviewed by Dr Fones, who then issued a further report dated 26 June 2013. In his report, Dr Fones opined that the surveillance footage is wholly consistent with Michael's clinical presentation, and that he still suffers from chronic PTSD. The material portion of the report states:

Kit Ho's main fears concerns travelling by car. He invariably travels by MRT or bus as validated by the video surveillance. He avoids taking a taxi even if he is late for an appointment. He has an excessive fear driving, which has prevented him from taking driving lessons to obtain a licence.

He still has considerable fears that any car he is travelling in will breakdown on the road. He also fears heavy vehicle which pass by. He relates however, that he is able to move unencumbered as a pedestrian, even near roads/traffic, although the proximity of a lorry would still trigger traumatic memories. He still has problems with sleep, particularly having problems falling asleep. He tends to ruminate about the past and laments his present life circumstances and how much the lives of his family and himself have been so radically transformed by the accident. Although the PTSD has reduced in intensity with time, I am of the opinion that he continues to experience symptoms that affect circumscribed areas of his life.

57 Dr Fones testified on 21 January 2014 that Michael still experiences features that qualify for a diagnosis of PTSD; in particular he experiences chronic PTSD which refers to symptoms having exceeded 3 months following the trauma. He opined that the degree of Michael’s MDD is not severe enough to cause him to be house bound and not interacting with other people in general, although many people with MDD can still interact and form meaningful relationships. Dr Fones opined that Michael’s MDD had improved substantially from a moderately severe degree to much milder. He further opined that it is chronic PTSD that continues to affect Michael more than the MDD, and classified Michael as having moderate chronic PTSD [\[note: 31\]](#).

58 Michael claims the sum of \$25,000 for PTSD and MDD. The Defendant has countered that the quantum should be \$9,900 based on \$7,000 for PTSD and \$4,000 for MDD, with a discount of 10% to account for overlap of the 2 conditions.

59 In the light of Dr Fones latest assessment of Michael’s condition, and having considered the relevant guidelines set out in the *Guidelines for the Assessment of General Damages in Persona Injury Cases* (Academy Publishing, 2010), I award \$8,000 for PTSD and \$4,000 for depression, with a discount of \$2,000 for overlap. The net quantum awarded is therefore **\$10,000**.

Future medical and transport expenses

60 In his report dated 18 November 2011, Dr Fones has stated that Michael would require another 3-5 years of treatment at a frequency of monthly to 2-monthly visits. Based on medical receipts tendered, it appeared, however, that between March 2012 and May 2013, Michael had not consulted with Dr Fones, and that after May 2013, there were no more treatment for either PTSD or MDD sought with Dr Fones. In his report dated 26 June 2013, Dr Fones had also indicated that Michael had discontinued his antidepressant medication since April 2012. In the circumstances, I am of the view that there is no clear evidence that Michael would require continued treatment for either his PTSD or MDD. It would not be appropriate as such to make any award for future medical expenses and transport expenses.

Conclusion

61 The damages to be awarded on a 95% basis to the Plaintiffs is thus as follows:

Personal claims		
Mdm Law	PTSD & Depression	\$28,000
	Future medical expenses	\$30,000
	Future transport expenses	\$1,800
Michael	PTSD & Depression	\$10,000

62 I will award interest at 5.33% per annum from the date of service of the writ to the date of judgment on the damages awarded excluding any interim payment made.

63 Costs to be agreed or taxed. The usual consequential orders will apply.

[\[note: 1\]](#) NE for 22 January 2014 at page 4 line 27 to page 5 line 26 and page 9 lines 27 to 31.

[\[note: 2\]](#) NE for 22 January 2014 at page 6 lines 4 to 10 and page 7 lines 4 to 7.

[\[note: 3\]](#) NE for 21 January 2014 at page 15 line 17 to page 18 line 11.