Ho Yiu v Lim Peng Seng
[2004] SGHC 218

Case Number	: Suit 1604/2001, RA 38/2004, 40/2004
Decision Date	: 27 September 2004
Tribunal/Court	: High Court
Coram	: Judith Prakash J
Counsel Name(s)	: Ramasamy Chettiar (ACIES Law Corporation) for plaintiff; Balu Rao (B Rao and K S Rajah) and Kwok-Chern Yew Tee (Lawrence Chua and Partners) for defendant
Parties	: Ho Yiu — Lim Peng Seng

Damages – Assessment – Plaintiff injured in accident caused by defendant – Damages assessed by assistant registrar – Whether awards for loss of earnings and future medical expenses should be varied

27 September 2004 *Judgment reserved.*

Judith Prakash J:

Introduction

1 On 7 November 2000, Mr Ho Yiu's life changed forever. A successful art director for a design house, he was then a young man with a bright future. He earned $6,000 a month and was looking forward to a well-deserved increment at the end of the month. Instead, because of the injuries he received that day in a traffic accident caused by the defendant, when the end of the month arrived, Mr Ho was jobless and in pain. Three years after the accident, when the damages sustained by Mr Ho were being assessed in this action commenced by him, he was still jobless and, in some respects, his physical situation had deteriorated. It was clear by then that little further improvement could be expected. Mr Ho was no longer capable of functioning as an art director and his quality of life had permanently changed for the worse.

2 In the course of the assessment proceedings, the parties were able to agree that Mr Ho, the plaintiff, should receive the following:

(a)	pre-trial medical expenses	$60,411.66
(b)	pre-trial transport expenses	$4,575
(c)	pain and suffering	$75,000

They were not able to agree on Mr Ho's claims in respect of loss of earnings (both pre-trial and post-trial), his future medical expenses and his future transport expenses. They are still at odds on these points. The defendant has appealed against the awards made in respect of Mr Ho's loss of earnings, while Mr Ho, in addition to appealing against those awards as well, has asked for an additional sum to be awarded to him in respect of his future medical expenses.

The plaintiff's background and career

3 Mr Ho was born in July 1970. From the time he was in secondary school, he did freelance work as a graphic designer and illustrator. In 1991, after completing national service, he worked with several graphic design firms as a designer. In 1992, Mr Ho took up a course in product design at the

Temasek Polytechnic and he obtained his diploma in this subject in 1995. He then went to Curtin University in Western Australia where he pursued the Bachelor of Applied Science (Interior Design) course for one year before transferring to the University of Technology, Sydney, to become a full time student in the Master of Design course. In February 1998, after completing 12 out of the 13 units of this course, Mr Ho gave up his studies because he had obtained an art director's job with a publication company in Singapore.

4 In May 1999, Mr Ho changed jobs. He joined Grace Communications Pte Ltd ("GCPL") as an art director. His initial salary was $3,000 a month but on completion of his probation in November 1999, his gross salary was increased to $6,000 per month. He also received $300 a month as transport allowance. He was the only art director at GCPL and was the head of the graphics department, leading a team of designers. After he joined GCPL, it diversified from being a design house to doing multi-media work. Mr Ho had considerable computer experience and knowledge, and he was instrumental in the shift from pure paper-based work to multi-media productions. During the time he was with GCPL, Mr Ho worked on projects commissioned by the Ministry of Information and the Arts, the Singapore Kindness Movement, the Ministry of Health, the Ministry of Defence, the Ministry of Education and the Singapore Police Force, among other clients. Apart from producing annual reports and conference publications, he also produced multi-media shows and multi-media commemorative CD-ROMs.

5 Before 1999, the gross annual revenue of GCPL was $1.9m. According to Mr Alfred Yeo Chai Phuan, the managing director and owner of GCPL, the gross revenue of the company increased to $4.3m for the period between May 1999 and April 2000. Mr Yeo testified that a significant portion of the increase was attributable to Mr Ho's efforts. Mr Yeo also stated that Mr Ho was due for an increment in November 2000 and his salary would have been increased to $8,000 had it not been for the accident. Unfortunately, the injuries sustained by Mr Ho resulted in disabilities that made him unfit to work as an art director and Mr Yeo had no alternative but to terminate Mr Ho's employment.

6 Between the accident and the assessment hearing, Mr Ho was not employed. His evidence was that he was no longer able to function as an art director, the only occupation for which he had been adequately trained. Between late June 2001 and early January 2002, he had applied for many jobs that were outside the design industry but had not been successful in getting employment. After January 2002, when his daughter was born, he and his wife decided that he should stay home and look after the baby, and that his wife should seek employment since she had a better chance of being hired.

The plaintiff's medical condition

7 The injuries that Mr Ho sustained as a result of the accident were:

(a) fractured nasal septum, for which he underwent surgery;

(b) soft tissue injury to the cervical spine;

(c) contusion to the upper left abdomen and left costal margin (seat belt injury);

(d) laceration of the left leg;

(e) right periorbital contusion and subconjunctival haemorrhages;

(f) closed head injury with post-concussion headaches, post-traumatic stress disorder and

visual impairment in the form of unco-ordinated eye movements and double vision.

8 Mr Ho's position was that as a result of the injuries he had been severely disabled. First, since the accident, he had had daily headaches. In addition, the pain in and around his eyes would be severely exacerbated if he attempted to get by without using prismatic spectacles. He also continued to have pain in his jaw muscles.

9 Second, Mr Ho had double vision, despite using prism lenses, caused by a residual fusional range deficit. After the accident, the fusion mechanisms in his brain did not operate in the normal way to fuse the images recorded by each eye. The prism lenses prescribed by the specialist helped reduce the double vision but did not eliminate it. Doctors called by Mr Ho testified that he had sustained brain damage that led to the deficit, although an expert called by the defendant disagreed with this diagnosis. Mr Ho testified that his double vision was in all directions and the prism lenses corrected mainly the primary or straight gaze. He also suffered from impaired judgment of depth and distances and impaired perception of subtle shades of colour. There was also evidence that the angle of his squint was worsening. All this made it impossible for him to continue as an art or creative director.

10 Mr Ho also suffered from post-traumatic stress disorder. He was anxious, depressed and easily irritated. He was receiving treatment from a psychiatrist for this condition.

11 Finally, Mr Ho experienced pain in his neck and stiffness of the neck. These conditions radiated to his spine and lower back and the range of motion of his neck was restricted.

The appeal

Loss of pre-trial earnings

12 The plaintiff's position at the assessment was that if it had not been for the accident, his monthly salary would have been increased to $8,000 in November 2000, to $10,000 in November 2001 and to $12,000 in November 2002. Mr Alfred Yeo gave evidence in support of these projections. The assistant registrar did not accept these figures. She did not consider Mr Yeo a reliable witness. He had given evidence on two occasions, and on the second occasion, he had given the plaintiff much more credit for the growth of GCPL's business than he had done previously. She also found it difficult to accept that the plaintiff was responsible for the rapid expansion of the business. This was because, first, he had been given the bonus of a normal employee in 2000, second, his employment had been terminated less than a month after the accident, and third, no other employment had been offered to him as one might have expected had he been such a key and valued employee. There was also evidence that GCPL continued to flourish after the plaintiff left it. The assistant registrar noted that the plaintiff's expert witnesses paid their designers much less than what the plaintiff had been paid. She also relied on one of the defendant's expert witnesses, one Mr Ian Richard Barnes, who considered that the plaintiff should be paid $4,000 to $5,000 a month on the basis of his quality of work. The assistant registrar also found guidance from the median and mean salaries of creative directors that were published in the Report on Wages in Singapore 2002, and the fluctuating nature of the economy and the labour market. On that basis, she assessed that if it had not been for the accident, the plaintiff would have earned an average of $6,500 per month plus Central Provident Fund ("CPF") contributions from 1 December 2000 up to the date of the hearing.

13 Both parties were dissatisfied with this assessment. The defendant's position was that during the period before the trial, the plaintiff would not have earned anything more than what he had earned at the time of the accident. In his written submissions, counsel put this figure at $5,400 per month, but in the course of the submissions, he realised that this figure was based on a

misinterpretation of the evidence and that the plaintiff had actually earned $6,000 a month at the time of the accident. In any case, he submitted that the plaintiff's earnings would not have increased beyond that figure because:

(a) between December 2000 and the end of 2003, there had been an economic downturn and, as Mr Yeo himself had agreed, this had affected the advertising industry;

(b) the plaintiff's employer, GCPL, had stopped giving increments during this period and a wage freeze was in place from July 2002. In fact, by the middle of 2003, the company had closed down;

(c) there was no evidence to suggest that the plaintiff's monthly income would have gone up from $6,000 to $6,500, as at $6,000 the plaintiff's salary was beyond the norm, as shown by the evidence of the plaintiff's own witnesses who had paid their creative personnel between $2,300 and $4,200 per month.

Counsel also attacked Mr Yeo's credibility on the basis that he had been much more effusive about the plaintiff's contribution to GCPL the second time he came to the stand than he had been the first time.

14 The assistant registrar accepted that the plaintiff had been in charge of the design department in GCPL and that he had contributed to its overall growth. She also noted that he was well regarded by his clients. She had found it hard to accept, however, that he was mainly responsible for the very rapid expansion of the business as his employment had been terminated soon after the accident, he had not been offered an alternative job, the bonus given to him was the standard bonus and, even after the plaintiff left, GCPL had continued to flourish for some time. She considered that Mr Yeo had exaggerated the plaintiff's contribution to GCPL.

15 Whilst I consider that the plaintiff's projections of his earnings during the pre-trial period were somewhat exaggerated, I also consider that the assistant registrar underestimated what he would have earned had he continued to work for GCPL during that period, because she did not take into account that he would not have been in the general job market but would have occupied a specific position in GCPL. There is no reason to believe that Mr Ho would not have continued to work with GCPL until it closed down in 2003, since his work was appreciated by his employer. The uncontroverted evidence was that Mr Ho was a valuable person in the company because he had the expertise to enhance the scope of the design work produced by including the multi-media portfolio as well as continuing to develop the existing print-based portfolio. Mr Ho started at a salary of $3,000 per month while he was on probation and this was doubled at the end of six months when he had proved his worth. His employment with the company coincided with a surge in its growth and that surge must have owed something to his efforts, though perhaps not as much as he wanted the court to believe. When he joined GCPL there were only ten designers working there. By the time of the accident, there were 30 designers led by Mr Ho.

16 When Mr Ho was injured, he was up for another increment and there is little doubt that he would have received it. The replacements that Mr Yeo recruited to take over the plaintiff's work after the accident were paid $6,000 per month and $10,000 a month respectively. This showed that Mr Yeo was willing to pay up to $10,000 a month for someone to do the same work that the plaintiff had done. On the other hand, Mr Yeo was a hard-headed businessman, as shown by his immediate termination of the plaintiff's employment. He was not in business to give work to persons who could not perform. Bearing in mind his hard-headedness and giving a conservative estimate, I consider that the plaintiff would have obtained an increment of at least $1,500 in November 2000 when things were

still looking rosy and a further increment of another $1,000 in November 2001 (by which time the economic position would probably have deteriorated somewhat) had it not been for the accident. His wages would have been frozen in July 2002 at $8,500 per month. He would then have lost his job when GCPL went into voluntary liquidation on 1 July 2003.

17 I have considered the other evidence in the case. The Report on Wages in Singapore 2001 shows that in June that year, the average monthly income of a creative director (advertising) was $8,000, the median income was $7,251, those in the first quartile earned $5,150 and those in the third quartile earned $12,000. This means that in 2001, 50% of all creative directors earned less than $7,251 whilst 75% of all creative directors earned less than $12,000. The same report for 2002 shows average income of $7,821 per month, median income of $6,000, $4,850 for those in the first quartile and $12,290 for those in the third quartile. Considering the plaintiff's position in GCPL and the fact that Mr Yeo was prepared to pay his replacement up to $10,000 a month, the estimates of the plaintiff's lost income at $7,500 a month in June 2001 and $8,500 a month in June 2002 are well within the outside borders provided by the relevant Reports on Wages. The assistant registrar was influenced by the evidence of the plaintiff's experts that they had paid their designers between $2,300 a month and $4,200 a month. However, there was no evidence that those employees had been more than simply designers. The plaintiff had led a team of between ten and 30 persons and had developed the multi-media portfolio of the company. Secondly, he had interacted with clients and had received commendations from them on his work. As far as the evidence of the defendant's witness, Mr Barnes, was concerned, first of all, his estimation was based on his evaluation of the plaintiff's talent, and secondly, as the plaintiff pointed out, Mr Barnes was new to the Singapore market and did not himself work as an art director, being a copywriter. I consider his evidence of little assistance.

18 I would therefore vary the award for pre-trial earnings to $7,500 per month from November 2000 to October 2001, and to $8,500 per month from November 2001 up to end June 2003 when the company went into liquidation. For the period from July 2003 to end January 2004, since the plaintiff would have taken some time to find another job and the economic environment last year was not favourable, I would estimate his loss of income at an average of $4,850 per month, *ie*, in line with the lowest tier of creative directors in 2002. Going on previous practice, he would have received one month's bonus in 2001 but in view of the wage freeze and subsequent collapse of GCPL, I doubt that any bonus would have been received in 2002 and 2003. I will deal with the issue of mitigation later.

Loss of future earnings

19 The assistant registrar applied a multiplier of 14 years in respect of the plaintiff's loss of future earnings. She assessed his likely earnings, if not for the accident, at an average monthly salary of $7,300 for the first ten years and $9,000 for the next four years. The plaintiff appealed against both the multiplier and the multiplicand whilst the defendant appealed against the multiplicand.

20 In relation to the multiplier, the plaintiff submitted that as he was 33 at the time of the assessment and had a remaining working life of at least another 29 years (on the basis that he would retire at 62), the appropriate multiplier ought to be 15 years, not 14 years. Counsel cited *Chang Ah Lek v Lim Ah Koon* [1999] 1 SLR 82, where the Court of Appeal upheld a multiplier of 16 years in respect of a plaintiff ironmonger who was 31 years old at the time of assessment. The defendant did not address this point. Considering that the plaintiff was a creative person working in the private sector and in an industry where there is no fixed retirement age, I agree that 15 years is a more appropriate multiplier than 14 years and I vary the award below to this extent.

21 The plaintiff also submitted that there was no reason why the multiplier should be divided into periods of ten years and four years respectively. He argued that it should either be split up into two

equal periods or into three periods of five years each as, being 33 at the time of the hearing, he would reach his prime in the next seven to 15 years. As for quantum, he submitted that his likely average earnings should be taken as $9,500 per month for the first five years, $10,500 per month for the second five years and $12,000 per month for the last period of five years as these figures were well within the statistics for the third quartile.

22 The defendant did not quarrel with the way that the period of 14 years was divided. His dispute was with the multiplicands for each of those periods. He submitted that neither the figure of $7,300 per month for the first ten years nor that of $9,000 for the next four years could be supported because of the depressed economic conditions. Apart from repeating his arguments on the quality of the plaintiff's evidence on quantum, he argued that the wages statistics showed that there was a downward trend in respect of the earnings of a creative director. In 2001, the median gross wage of a creative director was $7,251. In 2002, it went down to $6,000. The sums of $7,300 and $9,300 did not feature. If the assistant registrar had based her assessment on the higher end of $12,290 on the third quartile in Table 4 in the Report on Wages in Singapore 2002, which represented the most highly paid creative directors in the industry, that basis would have been erroneous as there was no evidence to show that the plaintiff ranked among the best. Further, in adopting $7,300, it would appear that the assistant registrar had relied on the mean monthly gross wage of $7,821 for 2002 rather than the median gross wage of $6,000 monthly. Since the mean wage was the average wage of the respondents in the survey, the figure would have been distorted if there had been a single respondent with an extremely high or low salary. The defendant submitted that the median wage was a more reliable figure, since it represented the middle line with half the respondents earning less than that amount whilst the other half earned more than that amount. Further, he submitted that the wage statistics showed that the wages of creative directors did not rise with seniority. The 2002 report showed that the highest earning directors were in the 35 to 39 years age group, whilst those aged 40 to 44 years earned almost 20% less and those aged 45 to 49 years earned more than the middle group but less than the youngest group. Figures for the two oldest age groups, *ie*, 50 to 54 years and 55 to 59 years, were not available due to the small number of respondents. In view of the above, the defendant submitted that $6,500 would have been a fair multiplicand for the first ten years and $7,300 would have been fair for the next four years.

23 I agree that there is no obvious reason in this case to split the period of the multiplier into ten years and four years. Going by the way that wages are assessed by the Ministry of Manpower, it does make more sense to split it into three equal periods of five years each. Also, Singapore is just coming out of difficult economic times and it would probably not be right to make a projection on one basis for a period that is as long as ten years. As the plaintiff would, with the collapse of GCPL, have had to re-establish his name in the industry and prove himself as the leader of a team, I think it would be fair to award him $6,500 a month for the first five years, $8,500 a month for the next five years (on the basis that he would be able to build a niche for himself similar to that which he had in GCPL) and $8,000 a month for the final five years, bearing in mind that the statistics show that when a creative director is older, his income may be slightly less than when he was younger and more energetic.

Mitigation of damages

24 The assistant registrar held that the plaintiff ought to have found some form of employment from July 2001 onwards. She decided that he could have taken a sales job or a simple clerical job that did not require the extensive use of computers. She recognised that it would be harder for the plaintiff to find employment because of his injuries, and that his salary would be lower than that of someone else who was similarly trained and had equivalent experience because he suffered from headaches, bruxism and myofacial pain dysfunction, and experienced unco-ordinated eye movements

and double vision. He also suffered from depression and post-traumatic syndrome disorder ("PTSD"). Therefore, the plaintiff could not fairly be expected to compete and perform like a member of the workforce who was not constrained by such physical problems. The assistant registrar concluded that, in view of the type of work that the plaintiff was able to undertake and his difficulty in competing in the job market, a reasonable pre-trial monthly salary that he should have earned in mitigation would be $1,500 and, for the post-trial period, a monthly salary of $2,000 for the first ten years and $3,000 for the four years thereafter would be fair. Both parties were dissatisfied with these figures.

25 On the appeal, the plaintiff submitted that he could not have held on to a sales job or a simple clerical job between July 2001 and the date of the hearing in view of the medical treatment he had been undergoing from the time of the accident. The evidence of pre-trial medical expenses adduced by the plaintiff showed that he had been seeing a neurologist, a psychiatrist, an ophthalmologist and a prosthodontist regularly. The evidence had also shown that the plaintiff required continuing treatment for his headaches, his PTSD and depression and his myofacial pain. This had been recognised by the court in its award of damages for future medical expenses. Therefore, and even if the plaintiff could have undertaken work from July 2001 onwards, it would have been difficult for him to hold on to a sales or clerical job when he needed to take frequent "days off" in order to see his doctors. Further, the plaintiff's evidence was that potential employers had reacted adversely when they learnt that he was an accident victim and had disabilities that required treatment. The plaintiff submitted that, at best, before the hearing he would only have been able to find part-time work and would have earned much less than $1,500 a month which was the salary a normal person would have earned from a full-time simple clerical or sales job.

26 The defendant on the other hand submitted that the assistant registrar had adopted an unduly low pre-trial salary. He asserted that the plaintiff was very well placed to seek employment as an accounts service manager or executive because:

(a) the plaintiff had had previous experience in managing his own advertising business and knew what clients' needs in terms of servicing would be;

(b) his evidence was that he was an accomplished designer and art director, with accolades from various government departments and organisations he had done work for;

(c) he had a good track record of winning contracts from various ministries and statutory boards and had been able to generate much revenue for his company;

(d) the plaintiff had expertise in multi-media work and, apart from design, he had been trained in communications, management, research and marketing; and

(e) except for one opaque lens in his prism glasses, the plaintiff's appearance was normal.

The assistant registrar herself had found that the plaintiff had the training, ability and experience to be an accounts service executive, particularly in the print, media, design and advertising industries. The median gross monthly wage of an advertising accounts executive was $2,100 in June 2001 and $2,484 in June 2002, and therefore the sum of $1,500 per month allocated by the assistant registrar was much too low. Furthermore, the plaintiff had pursued courses in building science, communication principles, management techniques and design, design decision-making and research methods, and was not limited to taking on sales jobs or simple jobs that did not require the extensive use of computers.

27 The defendant also submitted that the plaintiff was not disabled. According to one of the doctors called, Dr David K L Tay, his intra-cranial headaches had been resolved after prism lenses were prescribed. Whilst the plaintiff continued to have tension-type headaches, these were managed by his doctors. As for his bruxism and myofacial pain dysfunction, these were monitored at four-monthly intervals by Dr Tay, and as he improved, the number of consultations would be reduced accordingly.

28 Having considered the arguments, I see no reason to interfere with the assistant registrar's assessment of what the plaintiff could have earned during the pre-trial period. Whilst I accept that the plaintiff had the qualifications to carry out the job of an accounts service executive, he was handicapped in this by the need to see doctors frequently to deal with the various continuing consequences of his accident. In view of these problems, it would not have been realistic at that time for the plaintiff to obtain such a job. As his psychiatrist testified, however, some of the plaintiff's problems would be resolved or reduced once the legal proceedings have been finalised. I consider therefore that he would be less handicapped in the job market after this assessment is over. Whilst the plaintiff did have abilities that could be exploited to allow him to earn more than $1,500 a month, I think that that figure is a reasonable one for the pre-trial period.

29 Turning to the post-trial period, the assistant registrar held that during the first ten years, the plaintiff could probably earn $2,000 a month, and for the subsequent four years, he would be able to earn $3,000 a month. The plaintiff submitted that these figures were too high. He argued that potential employers would not be willing to risk employing someone with such disabilities as he had. At best he would only be able to take on employment on a part-time basis and therefore the figures estimated by the assistant registrar should be discounted. The plaintiff submitted that for the first five years a sum of $1,500 a month was reasonable, followed by $2,000 monthly for the next five years and $2,500 monthly for the last five years.

30 The defendant, while not disputing that the plaintiff would no longer be able to work as a creative director, naturally submitted that the assistant registrar's figures of $2,000 and $3,000 per month were too low, even taking into account the physical limitations of the plaintiff. This was because Mr Yeo's evidence was that he paid his senior accounts executives $2,500 to $3,000 per month and his accounts managers $4,000 to $5,000 monthly. Secondly, the Report on Wages in Singapore 2002 showed the median gross monthly wage of an accounts executive as $2,484 and that of an advertising and public relations manager as $4,625. Also, the report showed that the income of an advertising and public relations manager increased until he reached the 45–49 year age group, at which stage it peaked at $5,500. Adopting a multiplicand of $2,000 and $3,000 did not take into account the advantage the plaintiff had in switching from design work to accounts servicing work in the same industry. He would be a valuable accounts service executive by reason of his own work experience, training and contacts, and his understanding of clients' expectations and how the industry worked. The assistant registrar had failed to address the fact that the plaintiff, with his abilities and experience, would not be an accounts service executive for long but would have been promoted to accounts service manager. The defendant concluded that the income the plaintiff could have earned post-trial was $2,000 per month for the first two years after the trial and $4,600 per month for the next 12 years.

31 The plaintiff himself agreed, while on the stand, that he had the ability to be an accounts service executive and also to be an accounts service manager. However, he said that he did not want to hold such a post as, in view of his training and past position, he would find it very embarrassing to descend from the status of an art director to being an accounts service manager. He also asserted that his medical condition would make it difficult for him to hold the position of an accounts service executive.

32 In my view, although the plaintiff no longer has the visual abilities to function as a creative director, he still has experience, training and abilities that could serve him well in the advertising and design industry. He should be able to do the job of an accounts service executive once he reconciles himself to the loss in status. He would probably be able to do it well enough to be promoted, in due course, to the position of accounts service manager. The plaintiff might not earn as much as others in such positions because of his physical problems but he could definitely do the job. Recognising his limitations, however, I think that in the post-trial period, the salaries that the plaintiff could be expected to earn would be $2,000 a month for the first five years, $3,000 a month for the next five years and $4,000 per month for the final five years. I would therefore vary the award made below accordingly.

Future medical expenses

33 The assistant registrar assessed the plaintiff’s future medical expenses as amounting to $185,400. This figure was arrived at by using various multipliers in conjunction with various multiplicands for various types of treatment. For treatment of his headaches, the plaintiff was awarded $600 a month for 16 years. For treatment of his PTSD, he was awarded $600 a month for eight years, while for his bruxism/myofacial pain, he was awarded $350 a quarter for five years, $350 half-yearly for five years and $350 a year for six years (a total of 16 years). The plaintiff appealed.

34 The plaintiff had no dispute with the multiplicand for the headaches and PTSD. He submitted that the multiplier should be increased to 17 years. The basis of his argument was that the multiplier for future medical treatment was usually two years longer than the multiplier for loss of future earnings. The plaintiff did not produce any case that said that exactly. He relied on the Scottish case of *O’Brien’s Curator Bonis v British Steel plc* 1991 SLT 477, where the Lord President observed that the assessment of an award for future care or future expenditure to be incurred for the remainder of a person’s lifetime should be approached differently from an award for future loss of earnings. In the latter case, there were many variables to be taken into account such as the risk of accident, illness or redundancy and the prospects of promotion. These variables were not present in relation to the assessment of an award for future care. In that situation, life expectancy would be the measure of the period of the loss. The conclusion arrived at in *O’Brien* was that where the life expectancy was 30 years, the award would be 15 years because a capital sum based on a multiplier of 16 years would, assuming an interest rate of 4.5%, be exhausted in 29 years. It is somewhat difficult to apply that reasoning to the present matter since there was no evidence of the plaintiff’s life expectancy nor of the possible interest rates applicable. Whilst the assistant registrar did not explain why she adopted a multiplier of 16 years for those treatments that she considered the plaintiff would require for the rest of his life, the plaintiff has not persuaded me that that figure should be increased simply because the multiplier for loss of earnings has been increased. I will not interfere with it.

35 The plaintiff also submitted that the multiplier for PTSD and depression should be increased from eight years to 17 years. No particular reason was given for this. As the defendant pointed out, the evidence from Dr Douglas Kong, the plaintiff’s psychiatrist, was that he estimated the plaintiff’s recovery time to be between five and ten years. There is no reason to interfere with the multiplier of eight years for Dr Kong’s or similar treatments.

36 As regards myofacial pain, the plaintiff wanted a multiplier of 17 years as well, made up of one period of five years and two periods of six years each. As I am not changing the multiplier of 16 years for the other treatments, there is no reason to make any change to the multiplier for the myofacial pain treatments.

Conclusion

37 For the reasons given above, I allow both appeals in part and vary the orders below to the extent stated above. The assistant registrar worked out the global award in relation to future earnings after making provisions for income tax, CPF contributions and bonuses. Her methods of calculation in relation to these items have not been challenged by either party. They should work out the new global award by taking into account the same factors and working on the same basis. I will see the parties to finalise the order and to decide what costs consequences should follow.

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