IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 66

Suit No 82 of 2015

Between

Armstrong Carol Ann
(Executrix of the Estate of Traynor Peter, deceased and on behalf of the dependents of Traynor Peter, deceased)

… *Plaintiff*

And

(1) Quest Laboratories Pte Ltd
(2) Tan Hong Wui

… *Defendants*

JUDGMENT

[Tort] — [Negligence] — [Breach of duty]
[Tort] — [Negligence] — [Causation]
[Tort] — [Negligence] — [Damages]

Armstrong, Carol Ann (executrix of the estate of Peter Traynor, deceased and on behalf of the dependents of Peter Traynor, deceased) v Quest Laboratories Pte Ltd and another

[2018] SGHC 66

High Court — Suit No 82 of 2015
Choo Han Teck J
16 – 19, 23 – 25 January 2018; 8 March 2018

21 March 2018 Judgment reserved.

Choo Han Teck J:

1 On 14 September 2009, Dr Christopher Huang removed a piece of skin from a mole on the back of his patient Peter Traynor, then aged 47. The specimen was sent to Quest Laboratories Pte Ltd, the first defendant in this action. A pathology report was signed by Dr Tan Hong Wui ("Dr Tan"), the second defendant two days later and the specimen was diagnosed as 'Ulcerated intradermal naevus'. The relevant portion of the report stated that the "naevus cells exhibit benign polarity and are devoid of junctional activity, atypia or mitotic activity" and concluded that, "There is no malignancy".

2 Two years later, Peter Traynor found his right armpit to be swollen. He saw an oncologist, Dr Ang Peng Tiam ("Dr Ang") on 13 January 2012. Dr Ang asked that the specimen taken from Peter Traynor's mole in 2009 be reviewed

by another pathologist. The report dated 30 January 2012 carried the diagnosis 'Malignant melanoma with ulceration'. Peter Traynor died on 6 December 2013 because the cells from that mole were not benign. They were cancerous and had spread throughout his body, resulting in his death. He died aged 49, leaving his widow Carol Ann Armstrong, aged 48, and two daughters aged 12 and 10, respectively, when their father died. This action was brought by Peter Traynor's widow on behalf of his dependants.

3 The defendants concede that a fresh examination of a deeper cut of the specimen confirmed that the cells were malignant. That raises the obvious question, why then did Dr Tan report that "there was no malignancy" in the specimen? This is an obvious and important question because, in the absence of a credible explanation, reporting a cell specimen as non-malignant when it was, must be negligence at law.

4 Quest Laboratories' counsel, Mr Lek Siang Pheng, left the explanation to be led through Dr Tan's counsel Miss Kang Yixian. Dr Tan's explanation, and his defence, was that the initial examination showed no definitive signs of malignancy, and that some features which suggested malignancy could be attributed to the ulceration on the surface. He testified that there was no significant signs of atypia or mitotic activity which would have indicated the cancerous nature of the specimen.

5 Two expert dermatologists gave evidence before me. Dr Nigel Kirkham testified on behalf of the plaintiff and Dr Joyce Lee testified on behalf of the defendants as did two expert oncologists, Prof William McCarthy and Prof John Chia for the respective parties. They take opposite positions as to whether the specimen examined by Dr Tan in September 2009 indicated malignancy. There

is no dispute as to what features a malignant melanoma, (the proper description of the cells on Peter Traynor's mole) would exhibit, but there are some disagreement between the experts as to the extent of the specimen exhibited those features. It turns out that what they did agree was just as important. Their joint statement shows the following to be clear from the slide that Dr Tan examined in September 2009:

(a) Ulceration was clearly present.

(b) Ulceration was extensive with only a small amount of residual epidermis present at the edge of the extensive ulcer.

(c) Some of the cells appeared to be maturing towards the base of the lesion.

(d) Some mild atypia was present.

(e) It was difficult to assess whether there were expansile nests of cells present.

(f) The lesion showed increased cellularity.

(g) Spindle cells were present.

(h) Epithelioid cells were present.

(i) Naevoid cells of the kind to be expected to be seen in a benign banal melanocytic naevus were not present.

(j) The tumour extended into the recticular dermis, Clark's level 4.

(k) Pagetoid spread could not be found in the small amount of residual epidermis at the edge of the specimen.

(l) No mitoses were seen.

(m) The 2 Arperio digital scans prepared were of good quality and adequate to be used in evidence.

6 It is not disputed that Dr Tan examined a deeper section of the same specimen and he reported on 13 February 2012 that the specimen was "ulcerated atypical melanocytic lesion, suggestive of a melanoma". Was Dr Tan's first report that there was no malignancy wrong? We must not judge a doctor more harshly for an error in interpretation, for it is in the nature of interpretations to invite company and diversity; some may agree with the same interpretation that others will vehemently reject. From the expert evidence of both sides, it seems that the features on the slide examined in September 2009 indicate that Peter Traynor's mole was either a "benign naevi" or a cancerous lesion. Benign naevi are known as "Spitz naevus" and are usually seen in children. Peter Traynor was 47 years old at the time. The possibility of a benign naevi must therefore be excluded. The problem here is not just one of interpretation. It occurred just a step behind. The examining pathologist would have been expected to see, and Dr Tan did see, the ulceration. That must surely have prompted him to ask, "What happened to all the epidermis?" Had he asked that question, he would have seen that the portion of the specimen he examined was not sufficiently deep. There were deeper, clearer portions with him at the time and had he then checked, his first report would have stated as his second report did — "suggestive of a melanoma", instead of the opposite, "no malignancy".

7 The defendants rely on Dr Joyce Lee's evidence in support of the argument that what Dr Tan saw on the slide in 2009 was not sufficient to conclude that it was a malignant melanoma, and that not everyone who saw the

features that Dr Tan did in 2009 would have interpreted the lesion as a malignant melanoma. Dr Kirkham, on the other hand, was firmly of the view that the features on the first slide were sufficient to indicate malignancy. Their extreme views may be professionally debated, but what I find to be clear, is that the first specimen did not appear to be a normal healthy cell. A pathologist would be alerted to something amiss and thus investigate further using other slices taken at that time. When that was eventually done in 2012, melanoma was reported. This was recorded in the second report by Dr Tan (see [6]). Furthermore, just a month previously, on 30 January 2012, a pathologist from another laboratory, Dr Fong Chee Meng, diagnosed that same slide as "malignant melanoma with ulceration".

8 Had Peter Traynor's physician received the second report dated 13 February 2012 instead of the first report dated 16 September 2009, he would have explained to Peter Traynor that "suggestive of melanoma" meant that his mole might be cancerous. That would have resulted in a completely different course of action for both physician and patient. At the very least, there was a loss of an early opportunity for treatment. Although the law has intricate ways of determining whether a defendant was negligent, and in spite of the myriad shades of negligence that adorn legal literature, there is no way one can exculpate Dr Tan here; no clever twisting and turning around *Bolam* and *Bolitho* is of any use. The circumstances in this case are straightforward and obvious. One need only bite on the undisputed facts, and if he finds a taste of sourness, then that would be it. If a name must be given to that judicial exercise, one can, perhaps, call it the balsamic test, but we should wean ourselves of the obsession to name everything that appears new, especially when it is just plain, old, common sense. I am of the opinion that Dr Tan was negligent in law in sending

a report indicating a clean bill of health when the circumstances required, at the very least, further examination on his part. The questions that follow from this are more difficult.

9 Did Dr Tan's negligence cause Peter Traynor's death, and even if not, what damages are the dependants entitled to? Miss Kang submitted that even if Dr Tan had been negligent, his report did not cause Peter Traynor's death. She presented a strong argument that by the time Dr Tan examined the specimen in September 2009 the cancer had metastasised, that is, it had already spread throughout Peter Traynor's body, and Dr Tan should not be held accountable for the inevitable consequence of a rampaging cancer that could not, by that time, be stopped. She relied on Prof Chia's evidence in support. The plaintiff called Prof McCarthy in response. Prof McCarthy says that the cancer had not spread beyond the armpits until after 2009. Therefore, he says, surgical removal (known as sentinel node biopsy) of the affected lymph nodes would have arrested the spread of the cancer.

10 Prof McCarthy refers to the undisputed fact that in 2012 when the doctors realised that Peter Traynor's mole was cancerous, they examined the surrounding area where the mole had been (it was removed entirely when they took the specimen for Dr Tan's examination) and found no cancerous cells. His point is that if the primary site was clear after the biopsy in 2009, the cancer had only spread to Peter Traynor's lymph nodes at the right and left armpits and thereafter, rapidly and fatally to the rest of his body.

11 In Prof Chia's opinion, by 2009 the cancer cells had already spread elsewhere and not just to the lymphatic nodes in Peter Traynor's armpits. He thinks that the cancer could have spread microscopically and not just through

the lymphatic system. He explains that the cancer cells can enter the blood system as well, and although most cells get eliminated, the few that are not eliminated, and do not grow, will lie dormant. That was what happened to Peter Traynor. In Prof Chia's opinion, by 2009, Peter Traynor's body was already harbouring dormant melanoma cells in many places, and not just the lymph nodes. In other words, Prof Chia is of the view that by 2009, the prognosis was already bad.

12 Those opposing views led the experts to clash over what is known as 'cancer staging'. That is the classification by oncologists as to how far a cancer has progressed, and that, in turn, determines the chances of survival. Prof McCarthy and Prof Kirkham rely heavily on the statistics published in the 8th edition of the American Joint Committee on Cancer's Staging Manual ("AJCC"). Prof Chia is sceptical over some parts of the AJCC for its limitations, which were acknowledged in the AJCC, and some incongruity as to why the survival rate for stage T3a is higher than for stage T2b. Nonetheless, He is prepared to accept it generally, and maintains that even so, the correct staging for Peter Traynor should be 'T2b, N2a', whereas Prof McCarthy says it was just 'T2b'. The technical details revolve around disagreements as to how widespread Peter Traynor's cancer was in 2009, and that, as we have seen, left the experts at an impasse. The relevance and importance of the opposing views on staging is that on Prof McCarthy's staging, Peter Traynor had a 10-year survival of at least 68%, and closer to 80% had the melanoma been diagnosed in 2009. Prof Chia says that it was less than 50%.

13 Prof Chia holds his views, as confidently as Dr Kirkham and Prof McCarthy hold theirs. The difficulty here is that although only one view

may be right, there is no fail-proof way of determining which one that is. The reason is that it is possible for the cancer to have spread beyond the lymph nodes by 2009, just as it was possible for it to have spread after. We sometimes avoid considering the impact of the possibility of possibilities by creating a refuge that we confidently name 'probability', but that is a vulnerable hideout because probability, by definition, admits other possibilities. Nevertheless, it is the court's duty to evaluate competing possibilities and decide which is the most probable on the evidence before it.

14 The court is not at all qualified to determine which expert is more competent or which of them has greater expertise than the other. All it can do is to evaluate their evidence together with the rest of the evidence in the trial, and determine which seems more persuasive on the issues in question. Sometimes, one expert may have an advantage in some aspects that may be helpful, though that in itself does not make him the better of the two. In this case, for example, Prof McCarthy declares that in 2009 Peter Traynor was unlikely to have the five sentinel lymph nodes that he was found with in 2012. In his words, Prof McCarthy says, "So virtually nobody has five nodes. Nobody. I have never seen a patient come up with five sentinel nodes. Never. And that's hundreds of sentinel node biopsies [he has seen]". He thinks that in 2009 Peter Traynor probably had only one or two affected lymph nodes (known as 'sentinel lymph nodes'). Throughout his duel with Miss Kang when he was being cross-examined, Prof McCarthy constantly urged her not to digress into general data, and instead, focus on Peter Traynor because this case is about Peter Traynor.

15 Prof McCarthy is right, of course. This case is about Peter Traynor and no one else. But that statement is both a beacon and a shadow. We must specify

how far Peter Traynor's cancer had developed in 2009, and what were his chances of survival, yet all we have are general data, some that Prof Chia says are the applicable ones, and some that Prof McCarthy says are the relevant ones. However we decide, there is one thing that no one can ever know — whether Peter Traynor might have been among the minority in the data. In other words, no one can be sure that Peter Traynor was not the black swan of melanoma.

16 With that in mind, the court can only determine what might have been the probable outcome with the material it has. We know that Peter Traynor died at 49 years of age. If he did not have cancer, he might have gone on to live to be 85 (or he might not). If his cancer was treated in the way that Prof McCarthy suggested, he might have had a 68% chance of surviving at least 10 years. Although Miss Kang pressed a very strong case for the unlikelihood of Peter Traynor surviving that long, pointing to Prof McCarthy's vacillation from his report to the time he testified in court. I think that that can only be due to the nature of the case; it is a difficult one, and each time a fresh perspective is taken, views change. Miss Kang referred me to the case of *Gregg v Scott* ("*Gregg*") [2005] 2 AC 176 and pointed out how close the facts of that case resembled Peter Traynor's. In that case, Malcom Gregg found a lump under his armpit and his doctor told him it was just a lump of fat. Gregg died because his doctor negligently diagnosed non-Hodgkins lymphoma as fatty tissue. The majority in the House of Lords dismissed the plaintiff's claim on the ground that the doctor's negligence there only shortened the statistical claim of a ten-year survivorship. They dismissed the loss of a chance of survival as a legitimate loss that the law ought to recognise. The importance of *Gregg* lies not in the similarities it has with Peter Traynor's case but in the difference. The prognosis for non-Hodgkins lymphoma is not the same as melanoma. The prognosis and

course of the cancers are not the same; and, we must not forget, we are considering Peter Traynor, not Malcolm Gregg. And if this case should indeed turn on the law, I declare unequivocally that I agree with the dissenting voices of Lords Nicholls of Birkenhead and Hope of Craighead, and leave this point with the words of Lord Nicholls, at [25]:

> The law would rightly be open to reproach were it to provide a remedy if what is lost by a professional adviser's negligence is financial opportunity or chance but refuse a remedy where what is lost by a doctor's negligence is the chance of health or even life itself. Justice requires that the latter case as much as the former the loss of a chance should constitute actionable damage.

At [31], Lord Nicholls urged courts to "leap an evidentiary gap when overall fairness plainly so requires".

17 Lord Nicholls in his dissent in *Gregg* agreed with Lord Diplock's decision in *Mallett v McMonagle* [1970] AC 166, at 176. They are important in reminding us that we only resort to findings of probabilities when we have to choose which is the more likely to be true from competing facts. Probabilities, as I had mentioned, have no meaning when we are dealing with possibilities of what might have been, and we ought not to fool ourselves in thinking that we can be psychics. I set out below the passage from Lord Diplock's decision that so greatly comforted Lord Nicholls:

> The role of the court in making an assessment of damages which depends upon its view as to what will be and what would have been is to be contrasted with its ordinary function in civil actions of determining what was. In determining what did happen in the past a court decides on the balance of probabilities. Anything that is more probable than not it treats as certain. But in assessing damages which depend upon its view as to what will happen in the future or would have happened in the future if something had not happened in the past, the court must make an estimate as to what the chances

> that a particular thing will or would have happened and reflect those chances, whether they are more or less than even, in the amount of damages it awards.

18 In this regard, I accept the logic of the majority that we can never determine what might have been, but that does not mean that no compensation should be allowed. The difficulty or even impossibility of finding an objective award should not prevent the court from assessing what value in monetary terms the loss should be given. The Australian High Court in *Tabet v Gett* ("*Tabet*") 240 CLR 537 had also held that the loss of chance is not compensable damage. Perhaps the description 'loss of chance' has been confused with loss of 'hope', perhaps they mean the same thing, but whether it is a loss of a chance or loss of hope, in this case it is still a loss. What the parties are disputing is how much longer Peter Traynor could have survived had his malignancy been diagnosed in 2009. Unlike *Tabet* and *Gregg*, the real problem in this case, therefore, lies in determining the value of that loss.

19 With that in mind, I will accept Prof McCarthy's assessment, but with some caution, and hold that Dr Tan's negligence had caused Peter Traynor to lose a fighting chance, and also probably caused him to die years earlier than he would have done. But I am not accepting that therefore Peter Traynor had a 68% chance of surviving 10 years. Percentages and data are less helpful when we consider the facts that we do know – that Peter Traynor survived almost four years even though he was misdiagnosed; that though it is possible for his cancer to be dormant, the evidence suggests more likely that it was not. It was growing and developing but only in the lymph nodes under the armpits. And I therefore leap where Lord Nicholls had leapt, and estimate that Peter Traynor might have lived twice that number had he been properly diagnosed. Eight years from 2009 are what I think is as fair an estimate as anyone can hope, given what we know,

and not plucking percentages from the myriad unnamed cases spewed from the data. Assertions such as '68% chance of survival for 10 years' are intended for doctors to advise their patients. When courts consider what compensation the dependants ought to be awarded, such statements can only help to give an indication of how many years the court will estimate how many years of compensation that Peter Traynor's dependants should be awarded. I should point out that, there is a stronger claim of a 'lost years' argument in this case than in *Gregg*; Malcom Gregg was still alive when his case was argued before the House of Lords some ten years after the negligent diagnosis. The lost years are represented by the years between Peter Traynor's death and the age he is estimated to live to had the malignancy been identified in 2009.

20 What compensation are Peter Traynor's dependants entitled to in law? The plaintiff's claim comprised of four heads. First, the benefits Peter Traynor's dependants would have received from him if not for Dr Tan's negligence ("the Dependency Claim"). Second, the sums Peter Traynor's dependants would have inherited from him if not for Dr Tan's negligence ("the Loss of Inheritance Claim"). Third, the loss of appreciation in value of the Traynor family's home due to Dr Tan's negligence ("the Loss of Appreciation Claim"). Fourth, medical expenses, funeral expenses, out of pocket expenses, grant of probate expenses, and damages for bereavement and pain and suffering ("the Claims by Peter Traynor's Estate").

21 Notably, some of the arguments put forth by counsel for the plaintiff and counsel for the defendants were made on the assumption that if not for Dr Tan's negligence, Peter Traynor would have lived until the age of 82, or at least until after the year of the trial. However, I have found that Dr Tan's negligence

caused Peter Traynor to lose four years of his life (see [19]). In light of my finding, some of the arguments have become irrelevant, and some of the claims have had to be adjusted, as will be indicated below.

22 All parties agreed that the Dependency Claim and the Loss of Inheritance Claim should be calculated using the multiplier-multiplicand approach, in which a multiplicand (the total benefits Peter Traynor's dependants would have received from him in a year, and Peter Traynor's total savings per year, for the Dependency Claim and the Loss of Inheritance Claim, respectively) is multiplied by the multiplier (the number of years Peter Traynor's dependants would have received the benefits, and the number of years Peter Traynor would have been employed, for the Dependency Claim and the Loss of Inheritance Claim, respectively). Counsel for the plaintiff and the defendants differed as to how the discount (included to account for accelerated payment and vicissitudes of life) should be applied to the multiplier-multiplicand approach. This dispute turned out to be irrelevant. Since I found that Dr Tan's negligence caused Peter Traynor to lose four years of his life, there is no need for a discount rate to be applied, since four years from 2013 would bring us to the year of the trial.

23 A central contention between counsel for the plaintiff and counsel for the defendants was whether the Dependency Claim and the Loss of Inheritance Claim should be computed separately, as submitted by counsel for the plaintiff, or collectively, as submitted by counsel for the defendants. Counsel for the plaintiff submitted that the two claims should be computed separately as they have different bases. The Dependency Claim accounts for payments Peter Traynor's dependants would have received regularly during Peter Traynor's life, if not for Dr Tan's negligence. On the other hand, the Loss of Inheritance

Claim compensates Peter Traynor's dependants for inheritance they would have received as a lump sum at the end of Peter Traynor's life, if not for Dr Tan's negligence. Counsel for the plaintiff referred me to the case of *Zhu Xiu Chun (alias Myint Myint Kyi) v Rockwills Trustee Ltd (administrators of the estate of and on behalf of the dependants of Heng Ang Tee Franklin, deceased) and other appeals* ("*Rockwills*") [2016] 5 SLR 412 where the Court of Appeal applied different discount rates for the claims for dependency and loss of inheritance, due to the difference in accelerated receipt. Counsel for the defendants submitted that the two claims should be computed collectively as the claims are inversely related; the less Peter Traynor incurred expenses (including expenses for the benefit of his dependants), the more wealth Peter Traynor would accumulate (which would ultimately be inherited by his dependants). Counsel for the plaintiff's submission is therefore consistent with *Rockwills.*

Dependency Claim

24 On the Dependency Claim, the plaintiff claimed that the losses for the four years lost due to Dr Tan's negligence amounted to $1,154,057.01. Counsel for the defendants disputed the sum of $1,154,057.01 claimed on multiple bases. I will first address the only argument I accepted, before addressing the other arguments put forth by counsel for the defendants.

25 The dispute between counsel turned on whether the Dependency Claim should be calculated using the traditional method (where the total value of benefits received by the dependants from the deceased is computed) or the percentage deduction method (where a percentage from the deceased's net salary is deducted, to account for the deceased's personal expenditure. The law establishes that where there are two children, as in the present case, the

percentage which represents the deceased's personal expenditure would amount to 33.33%, leaving 33.33% for the deceased's spouse, and 20.83% for each child). Counsel for the plaintiff submitted that the traditional method should be used. Counsel for the plaintiff thus computed the value of the benefits received by Peter Traynor's dependants from him. For his two daughters, this comprised school fees, mathematics coaching, and their portion of the annual expenses of the Traynor family. For his wife, this comprised household maintenance and her portion of the annual expenses of the Traynor family. Counsel for the plaintiff ran into difficulties when calculating the respective portions of the annual expenses, and conceded that an exact apportionment of the expenses between the members of the Traynor family was unavailable. Counsel for the plaintiff thus relied upon the conventional percentage laid down in the precedents: 20.83% for each of the daughters, and 33.33% for the wife.

26 Counsel for the defendants submitted that counsel for the plaintiff's use of the conventional percentage for the traditional method was improper, and that the percentage deduction method should be used instead. Counsel for the 2nd defendant referred me to the case of *Sulastri bte Achmad v Tan Hee Hang and another* [2017] SGHC 7 where the court stated that "[w]here the traditional method of assessment is employed, the claimant must prove the value of the benefits received by him or her from the deceased". I thus find that the plaintiff has not discharged her burden in showing that the daughters and the wife benefited in the proportions of 20.83% and 33.33%, respectively, of the Traynor family's annual expenses. The benefits relating to the proportions of the Traynor family's annual expenses must thus be removed from the plaintiff's quantification of the Dependency Claim. This gives rise to a sum of $346,677.

27 For completeness, I shall briefly address the reason why I did not adopt the percentage deduction method put forth by the defendants. Mr Kronenburg, Mr Lek, and Ms Kang have referred me to the case of *Hanson Ingrid Christina and others v Tan Puey Tze and another appeal* [2008] 1 SLR(R) 409, which stated that "[t]he percentage deduction method is, however, not suitable in all cases… it is a good guide when a stable pattern has been established in a marriage and virtually all net earnings are spent on living expenses". Not all of Peter Traynor's net earnings were spent on living expenses. Even on the defendants' case, Peter Traynor's income amounted to $308,386 per annum, far from the living expenses of $243,000 per annum submitted by counsel for the plaintiff (and which I accepted, see [37]).

28 I now turn to the arguments of counsel for the defendants, which are rejected or which have become irrelevant. Counsel for the 1st defendant disputed the amount claimed for the Dependency Claim on the following bases. First, that the plaintiff's quantification of the Traynor family's annual expenses for the purposes of the Dependency Claim wrongly utilised Peter Traynor's expenses for the Loss of Inheritance Claim. In particular, counsel for the 1st defendant argued that Peter Traynor's expenses for the Loss of Inheritance Claim were his own personal expenses, and not the expenses of the Traynor family as a whole. Second, that there was insufficient explanation given for how the plaintiff's expert, Mr Abuthahir Abdul Gafoor, determined which transactions were investments and thus not included in computing the Traynor family's annual expenses. Third, that the plaintiff's quantification of $3,500 per annum for mathematics coaching provided by Peter Traynor to each of his two daughters was excessive.

29 Counsel for the 2nd defendant disputed the amount claimed on the Dependency Claim following bases. First, that the plaintiff double counted certain benefits such as school supplies and school bus services – they were included when calculating both the education fees of Peter Traynor's daughters, and in the Traynor family's annual expenses. Second, that a discount rate should be applied to certain benefits such as school supplies and school bus services as they are of a recurring nature. Third, that the amount claimed for mathematics coaching from Peter Traynor is unsubstantiated and overly enriching since Peter Traynor's daughters were already attending mathematics tuition. Fourth, similar to counsel for the 1st defendant's first argument, that the plaintiff's quantification of the Traynor family's annual expenses for the purposes of the Dependency Claim wrongly utilised Peter Traynor's personal expenses.

30 I do not accept counsel for the 1st defendant's first argument. In order to compute Peter Traynor's savings for the purposes of the Loss of Inheritance Claim, one would have to subtract Peter Traynor's total expenses from his income, and not merely his own personal expenses. I further find that this was indeed what Mr Gafoor did. For example, Mr Gafoor's report stated that he excluded payments for school fees for Peter Traynor's two daughters, as they were included separately in other expense calculations. If Mr Gafoor was only computing Peter Traynor's personal expenses, there would be no reason to consider the school fees in the first place. I also do not accept counsel for the 1st defendant's second argument. Mr Gafoor's report states which transactions were investments, and the nature of such investments. Counsel for the 1st defendant has not given me reason to suspect that the details stated in Mr Gafoor's report are false. I further reject counsel for the 1st defendant's third argument. The plaintiff has adduced evidence showing that the maths tuition

attended by Peter Traynor's daughters (on top of the mathematics coaching provided by Peter Traynor) came up to about $60 per hour. Assuming Peter Traynor's coaching was similarly worth $60 per hour, the $3,500 claimed by the plaintiff would come up to about an hour of coaching per week. I do not find this excessive, especially since Peter Traynor's daughters attended math tuition classes only about three times a month, on average.

31 Counsel for the 2nd defendant's first and second arguments are no longer relevant in light of my findings, as stated above in [26] and [22], respectively. I do not accept counsel for the 2nd defendant's third and fourth argument, for the same reasons I do not accept counsel for the 1st defendant's first and third argument (see [30]).

Loss of Inheritance Claim

32 On the Loss of Inheritance Claim, the plaintiff claimed that the losses for the four years lost due to Dr Tan's negligence amounted to $894,657. In light of my finding at [19], the only relevant disputes concerned the quantification of Peter Traynor's annual employment income, annual income increment, and his annual expenditure.

33 The plaintiff claimed that Peter Traynor's annual employment income was $450,000. Counsel for the plaintiff derived this figure using Peter Traynor's employment income in 2011, as Peter Traynor's income in 2012 and 2013 would not be reliable since his work performance would have been impeded by his medical condition. The sum of $450,000 included an estimated bonus of five months' salary, commission and car allowance. The quantifications of the latter two were taken from Peter Traynor's income tax form for the year of 2013.

34 The defendants claimed that Peter Traynor's annual employment income (after tax) was $308,386. Counsel for the defendants derived this figure using Peter Traynor's employment income in 2012 and 2013. The sum of $308,386 included an estimated bonus of 1.1 months' salary, which was the bonus Peter Traynor received in 2013.

35 I accept the figure of $450,000 given by counsel for the plaintiff. I agree that Peter Traynor's income in 2012 and 2013 would not be reliable in light of his medical condition at that time. In particular, I accept the plaintiff's evidence that Peter Traynor's income was based on his work performance, which was severely affected by his medical condition at the time.

36 The plaintiff claimed that Peter Traynor's annual salary increment would be 5%. This was derived using his previous annual increments, which ranged from 3.5% to 87.4%. The defendants did not factor any salary increases as they were of the opinion that there was no evidence that Peter Traynor's salary increment would have outweighed inflation. I find that the evidence of Peter Traynor's previous annual increments leads to the reasonable conclusion that his annual salary increment would be about 5%.

37 The plaintiff claimed that the Traynor family's annual expenses amounted to $243,000. This was derived from the average expenses of the Traynor family from 2011 to 2013, with adjustments for investments, and for items such as Peter Traynor's medical expenses. The defendants' calculations assumed that the Traynor family's annual expenses would have amounted to Peter Traynor's earnings, thus leaving them with no savings. I note that the defendants' assumption appears to be a result of calculating the Dependency Claim and the Loss of Inheritance Claim collectively. As stated above, see [23],

I do not accept that the Dependency Claim and the Loss of Inheritance Claim should be calculated together. Counsel for the 1st defendant further relied on the fact that the Traynor family did not amass any savings in 2012 and 2013 to justify the assumption. However, as counsel for the plaintiff pointed out, 2012 and 2013 were exceptional years as the Traynor family purchased a house and Peter Traynor was undergoing medical treatment. Even if, as submitted by counsel for the 1st defendant, Peter Traynor's insurance covered his medical expenses, this does not address the fact that the Traynor family purchased a house, and that Peter Traynor's employment income was substantially reduced due to his medical condition.

38 I thus accept the plaintiff's Loss of Inheritance Claim of $894,657.

Loss of Appreciation Claim

39 The plaintiff claimed $1.5m as loss of appreciation in value of the Traynor family's home. This claim was made on the assumption that if not for Dr Tan's negligence, Peter Traynor would have lived until he was 82, which I do not accept (see [19]). I thus reject the claim of $1.5m.

Claims by Peter Traynor's Estate

40 The plaintiff claimed $681,399.53 as medical expenses, funeral, expenses, out of pocket expenses, grant of probate, bereavement, and pain and suffering. This claim was also made on the assumption that if not for Dr Tan's negligence, Peter Traynor would have lived until he was 82, which I do not accept (see [19]). I thus reject the claim of $681,399.53.

41 In conclusion, I award the plaintiff $1,241,334 in damages. This sum comprises:

(a) $346,677 for the Dependency Claim; and

(b) $894,657 for the Loss of Inheritance Claim.

I will hear submissions on costs at a later date.

- Sgd -
Choo Han Teck
Judge

Edmund Kronenburg (instructed), Benavon Lee (instructed) and Christopher Goh Seng Leong (Goh Phai Cheng LLC) for the plaintiff;
Lek Siang Pheng, Mar Seow Hwei and Priscilla Wee Jia Ling (Dentons Rodyk & Davidson LLP) for the first defendant;
Kang Yixian, Emily Su Xianhui and Sarah Nair (Donaldson & Burkinshaw LLP) for the second defendant