

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 136

Suit No 787 of 2017
(Assessment of Damages No 15 of 2018)

Between

Soh Xia Kai Ronnie

... Plaintiff

And

Loke Chor Kay

... Defendant

GROUND S OF DECISION

[Damages] — [Assessment] — [Personal injuries cases]

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Soh Xia Kai Ronnie

v

Loke Chor Kay

[2019] SGHC 136

High Court — Suit No 787 of 2017 (Assessment of Damages No 15 of 2018)
Woo Bih Li J
5–7 September, 19 October 2018, 10 January 2019

28 May 2019

Woo Bih Li J:

Introduction

1 The plaintiff (“Soh”) was a motorcyclist who met with an accident on 23 November 2010 at about 6.56pm. Soh was hit by a car driven by the defendant (“Loke”) along Jalan Boon Lay at the junction with International Road. Soh’s date of birth is 31 August 1983. At the date of the accident, he was 27 years of age.

2 On 19 November 2013, Soh filed an action in the District Court claiming various injuries and loss of income or loss of earning capacity. On 1 April 2015, interlocutory judgment, by consent, was entered at 100% in favour of Soh. Damages and costs were reserved to the registrar. By an order of court on 14 July 2017, Soh’s action was transferred to the High Court and given the suit number HC/S 787/2017.

Background allegations

3 Soh suffered from a head injury and injuries mainly to his right leg. The head injury was fortunately resolved without any complication. The main residual injuries or disabilities pertained to his right leg, which was shortened initially by 5cm and eventually, after surgery, by 2cm,¹ and his right knee.

4 After his initial stay at National University Hospital (“NUH”), Soh consulted various specialists:

(a) Dr Chee Yu Han (“Dr Chee”) from NUH, who examined Soh on 19 April 2012 and issued a medical report dated 26 April 2012;²

(b) A/Prof Ganesan Naidu (“Prof Naidu”) from Tan Tock Seng Hospital (“TTSH”), who examined Soh on 7 April 2015 and issued a medical report dated 23 April 2015;³

(c) Adj Asst Prof Hitendra K Doshi (“Prof Doshi”) from TTSH, who examined Soh on 24 October 2016 and issued a medical report dated 26 October 2016;⁴ and

(d) Professor Tay Boon Keng (“Prof Tay”) from Singapore General Hospital (“SGH”), who examined Soh on 14 December 2016 and issued a medical report erroneously dated both 28 December 2016 and 5 January 2017.⁵ I will adopt the later date. Prof Tay also issued a

¹ Notes of Evidence (“NE”) 6/9/18 p 56.

² Agreed Bundle (“AB”) pp 14–15.

³ AB pp 16–18.

⁴ AB p 38.

⁵ AB pp 41–43.

clarification dated 26 March 2018.⁶ Prof Tay was Soh’s independent medical expert.

5 Loke’s independent medical expert was Dr Lee Soon Tai (“Dr Lee”). Dr Lee saw Soh on 10 March 2016 and he issued the following medical reports:

- (a) his first medical report dated 4 May 2016;⁷
- (b) his second medical report dated 18 January 2018;⁸
- (c) his third medical report dated 2 May 2018;⁹ and
- (d) his fourth medical report dated 10 May 2018 which elaborated on his third medical report.¹⁰

6 Loke also relied on a video recording of the movements of Soh on three days, these being 25, 26 and 29 October 2017. This was done by a private investigator who also included photographs from Soh’s Facebook account.

7 In Soh’s affidavit of evidence-in-chief (“AEIC”), he said that he experiences weaknesses in his knee, sore muscles, tingling nerve sensation, pain, and aches in his right leg when he stands or walks. He can no longer squat or kneel at all. He cannot bend his right knee in full or fold his right leg or sit cross-legged. He has problems using public toilets that do not have seats. He ~~also said that there is observable~~ difference in the size of his thighs and he has

⁶ AB 51.

⁷ AB pp 20–37.

⁸ AB pp 45–48.

⁹ AB pp 56–58.

¹⁰ AB pp 61–64.

various scars on his right leg and one scar on his left thigh due to skin taken out to graft onto his right thigh. The scars are prominent when he wears shorts that do not go past his knee. Therefore, he is hesitant to go swimming or to the beach or even sports gatherings.

8 Soh has a job as a technician with an oil tank company. He said that his job is physically demanding. He has to be able to walk briskly, ride a bicycle around the tank farm areas or the jetty berths, climb ladders and stairs, walk on pipelines, navigate through tight and narrow areas, as well as climb over walls that are knee high.

9 He alleged that his superior, Chan Kong Fatt (“Mr Chan”), who has been promoted to senior operations manager, had informed Soh that if Soh were not an existing employee, Mr Chan would not consider employing Soh because of the physical demands of the job. Soh stated that he understood that it was by grace that he could still keep his job. If there were a downturn in the oil market and retrenchment, Soh believed that he would probably be one of the first to be retrenched given his disabilities. If he were to lose his job, it would not be possible for him to find another job in the same field. With a GCE ‘O’ level certificate and a diploma in culinary skills from the Singapore Hotel and Tourism Education Centre, he was not certain about finding another job easily in a different industry because even a cook has to stand and move around all the time.

10 I noted that Soh did not call Mr Chan or anyone else from his employer to give evidence for him.

11 Although Prof Tay had mentioned that Soh had a 2cm shortening of his right leg and had a painful limp, Dr Lee said that he did not notice any painful limp when he examined Soh. Dr Lee noted that Prof Doshi's report (dated 26 October 2016) mentioned that Soh was able to walk independently without aids. That said, Dr Lee observed, from the video recording of Soh, that there was a mild limp, Soh was not using any shoe raise and he was able to walk briskly with large strides.

12 Photos taken by Dr Lee of Soh, when Dr Lee examined Soh, showed that Soh can kneel with his body in an upright position. He can sit cross-legged but his legs cannot be pushed flat onto the ground. Dr Lee accepted that Soh cannot squat completely and has occasional pain in his right knee but noted that there was no mention (in other reports) of Soh having to consume analgesia to cope with the pain. Dr Lee was of the view that there was mild limitation in the range of motion of the right knee.

13 On Soh's job prospects, Loke submitted that notwithstanding the many number of days of medical leave that Soh had been on, Soh had been promoted twice. Soh's accident was in November 2010. However, he was promoted to Technician Grade B from 1 January 2012. He was subsequently promoted to Senior Technician I from 1 January 2017.

14 Loke referred to various job appraisals which commended Soh. A Year End Appraisal 2012 stated, "[a]fter his long medical due to motorcycle accident, [Soh] came back to work doing panel-man duties. This year he has start [*sic*] doing field work, he is able to cope and do the tank-farm and jetty duties quite well".¹¹

¹¹ Plaintiff's Bundle of Documents ("PBD") p 276.

15 A Year End Appraisal 2013 commented that, “[Soh] is a good technician. He always do his work well and quite accurate. He is able to handle some volume of work ...”.¹²

16 A Performance Review for 2017 described Soh as safety conscious, motivated, and a good team player. He was described as a positive role model for other trainee technicians. He was also an independent and reliable worker. He carried out his role with tenacity and consistency. He would make a valuable asset to his employer if his performance remained exemplary.¹³

17 Indeed, Soh admitted that there was no single statement in any assessment of him by his employer saying that he was handicapped in any way in his work.¹⁴

The assessment and appeal

18 The assessment of damages was heard by me from 5 to 7 September 2018. Written closing submissions were then submitted. On 10 January 2019, I rendered an oral judgment (attached herewith as an Annex for easy reference) which detailed Soh’s claims for various injuries and expenses, Loke’s submissions on quantum, and the court’s decision for each item.

19 Soh has filed an appeal in respect of certain aspects of my decision, *ie*:

1. The award of \$50,000.00 for the right upper leg injury;
2. The award of \$12,000.00 for the disabling knee injuries;

¹² PBD p 283.

¹³ PBD pp 306–307.

¹⁴ NE 6/9/2018 p 85.

3. The “nil” award or the disallowance of the claim for chronic back pain and increased tiredness;
4. The ‘nil’ award or the disallowance of the claim for loss of amenities;
5. The “nil” award or the disallowance of the claim for loss of earning capacity (post-trial);
6. The award of \$20,730.00 comprising \$15,730.00 for the first total knee replacement and \$5,000.00 for a second knee replacement with discount for accelerated payment and contingencies of life; and
7. All the costs orders, in particular the costs given in favour of the Defendant as costs on an indemnity basis fixed at \$20,000.00 plus reasonable disbursements incurred from 15 May 2018 up to the date of the Final Judgment given on 10 January 2019.

The court’s reasons

20 I set out below the court’s reasons for the items which are the subject of Soh’s appeal. The item numbers refer to the serial numbers in the Annex.

Item 2 – Right upper leg injury

21 Soh claimed \$60,000 to \$75,000 for this injury. Loke suggested \$30,000 which he then increased to \$32,000.

22 It seemed to me that the case which was closest to this injury was the case of *Yeo Chee Siong v Salpac (S) Pte Ltd and another* [2017] SGHC 304 (“*Yeo*”). There, the High Court awarded \$40,000. I reproduce [25] and [26] of the grounds of decision there:

25 The Plaintiff asked for \$40,000, submitting that the fractures were serious, resulted in serious disabilities and a complicated recovery process. The Defendant submitted that \$30,000 would be appropriate, submitting that while “the Plaintiff did suffer from 1 cm shortening of the left leg, he does not require further treatment as the fracture has healed well”.

26 It is clear to me that the Plaintiff suffered severe leg injuries in the Accident. The shortening of the Plaintiff's left leg resulted in a limping gait, an inability to squat and a pre-disposition to post-traumatic arthritis or osteoporosis. The leg injuries continued to cause him pains in his thigh even at the time of trial, where he sustained fractures of his left tibia and fibula. I also note that there was a femoral fracture that involve its distal articular surface which forms part of the knee joint. Taken together, these injuries have caused a painful and complicated recovery. Some of the consequences are permanent such as the inability to squat and a limping gait and some will continue to cause the Plaintiff pain on a daily basis. I am also satisfied that these injuries would affect his chances of finding employment, given that the scope of jobs that the Plaintiff pursued is physical in nature. As such, I took the view that a quantum on the higher end would be appropriate and awarded the Plaintiff \$40,000.

23 In the present case, Soh still had a 2cm shortening of his right leg while the plaintiff in *Yeo* had a 1cm shortening.

24 In *Yeo*, there was mention of a complicated recovery process but no elaboration. Here, Soh had been in and out of hospital at various times and undergone various surgical procedures.

25 For example, on 16 December 2013, he underwent a corrective closing wedge osteotomy of the right distal femur.

26 On 1 December 2014, he underwent:

- (a) a right femur proximal corticotomy; and
- (b) application of distracting external fixation.

These procedures were to increase the length of his right leg.

27 The initial period of medical leave for Soh was 147 days. This increased to 566 days as of August 2015, after each of the various procedures were done.¹⁵

28 Unlike in *Yeo*, Soh underwent osteotomy and distraction corticotomy. That said, Soh was still able to continue with his employment and, according to Loke's case, Soh was even promoted twice.

29 In the circumstances, I decided to award \$50,000 which was higher than the \$40,000 awarded in *Yeo*. I took into account the number of procedures Soh had to undergo and the lengthy medical leave he had to take, as well as some overlapping between items 3, 4, 5, 6 and 9 of the Annex. Because of overlapping, I did not allow any sum for items 6 and 9 and allowed a sum at the lower end for items 3 and 5 and an agreed sum for item 4. On this group of items, Soh's appeal pertains to items 3, 6 and 9.

Item 3 – Disabling knee injuries: torn medial meniscus, torn lateral meniscus and anterior cruciate ligament (“ACL”)

30 I awarded Soh \$12,000 for item 3. Soh alleged that he had suffered the above injuries while Loke suggested that the ACL was not torn. However, the latter suggestion was because Loke's expert witness, Dr Lee, said that there was a 25% to 35% tear only and since it was not a complete tear, the correct terminology was to call it “a sprain”. Whatever the correct terminology was, there was a 25% to 35% tear.

31 In *Tan Kok Hian v Tian Seow Liang* (DC Suit No 971/1998), an award of \$15,000 was given for 50% tear of the ACL and tear to the lateral meniscus. There was no torn meniscus. However, Soh asked for \$30,000 to \$37,000 because of inflation.

¹⁵ Plaintiff's supplementary AEIC pp 1 and 5.

32 In *Tan Boch v Lim Khoong Young* (DC Suit No 4908/2001), \$12,000 was awarded for torn medial collateral ligament and medial meniscus of the right knee. However, Soh pointed out that there was no tear of the ACL or lateral meniscus there.

33 In my view, the injuries of Soh under this item were less severe than the right upper leg injury. Also, there were separate awards for osteoarthritis and scarring. I was of the view that \$12,000 for this item was fair and just.

Items 6 and 9 – Chronic back pain and increased tiredness and loss of amenities

34 As explained above, I had taken these items into account in awarding \$50,000 for the right upper leg injury.

35 Moreover, on the loss of amenities, Soh submitted that “[a] separate award is typically granted where there is a residual disability so severe as to greatly impact overall enjoyment of life”.¹⁶ Therefore, even based on his submissions, the question was whether his residual disabilities were so severe as to greatly impact his overall enjoyment of life.

36 Soh cited three cases in his submissions. The first was *Lai Wee Lian v Singapore Bus Service (1978) Ltd* [1981–1982] SLR(R) 525 (CA) and [1983–1984] SLR(R) 388 (PC). There, the plaintiff suffered from a great reduction of mental powers, change of personality, neurogenic bladder, inability to have sexual intercourse, and the loss of the prospect of a happy marriage. The plaintiff was awarded \$40,000 for loss of amenities.

¹⁶ Plaintiff’s closing submissions (“PCS”) para 149.

37 The second case was *Mohamed Repin v Lim Yu Kee* [1968–1970] SLR(R) 200 where the plaintiff was awarded \$60,000 for loss of amenities as he was rendered completely blind by the accident, having been already blind in one eye from childhood.

38 The third case was *Ang Siam Hua v Teo Cheng Hoe* [2004] SGHC 147. There, an assistant registrar awarded \$10,000 for loss of amenities to compensate the plaintiff for the combined effect of individual disabilities on the overall function of the body even though she had taken into account the loss of amenities associated with each particular injury when making an award for each individual injury.

39 In my view, Soh’s injuries were not so severe as to greatly impact his overall enjoyment of life even though he could not engage very actively in sports. His injuries were clearly less severe than in the first two cases cited.

40 As for the third case, I did not agree that there should be an additional award for loss of amenities over and above the individual awards when loss of amenities had already been taken into account in the individual award. There was also no suggestion there that the overall impact of the injuries was so severe as to greatly affect Soh’s overall enjoyment of life.

Item 11 – Loss of earning capacity (post-trial)

41 As can be seen from the Annex, Soh had claimed pre-trial and post-trial loss of earning capacity (“LEC”). I made a nil award for both items. He is not appealing for pre-trial LEC and is appealing only for post-trial LEC. The claim for this item was for the highest sum of the various sums he was claiming. As

his appeal is confined only to post-trial LEC, I will use the short form “LEC” to refer to this head of claim.

42 Loke submitted that a claim for LEC must be pleaded in view of O 18 rr 12(1A) and 12(1C) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). As this was not done by Soh, Loke submitted that Soh was precluded from claiming for LEC.

43 Order 18 r 12(1A) provides that a plaintiff in an action for personal injuries shall serve with his statement of claim:

- (a) a medical report; and
- (b) a statement of the special damages claimed.

44 Order 18 r 12(1C) defines “a statement of the special damages claimed” to mean “a statement giving full particulars of the special damages claimed for expenses and losses already incurred and an estimate of any future expenses and losses (including loss of earnings, loss of Central Provident Fund contributions and loss of pension rights)”.

45 As can be seen, Loke had misinterpreted the relevant provision. The phrase “loss of earnings” refers to loss of income and not LEC. Loke had conflated the two different heads of claim.

46 Even Loke’s reliance on the Privy Council decision in *Chan Wai Tong and another v Li Ping Sum* [1985] 2 WLR 396 did not take his argument much further. There, the court said, at p 404, “[i]t may be that it is not essential to plead this head of damages, but their Lordships consider that as a matter of good

practice it ought, as a general rule, to be pleaded in order to give fair notice to the defendant”. Hence, that case is not authority for the proposition that a claim for LEC must be pleaded failing which a plaintiff is precluded from claiming this. Furthermore, Loke did not suggest that he was caught by surprise by this claim.

47 Nevertheless, that case is useful for the guidance it gives about the evidence that is required. At pp 404–405, the court said:

Counsel for the plaintiff submitted that she was entitled to at least a conventional award under this head, without any evidence being required. But that submission rests on a misconception. A claim for loss of future earning capacity usually arises where the claimant is in employment at the time when the claim falls to be evaluated. The claim is to cover the risk that, at some future date during the claimant’s working life, he will lose his employment and will then suffer financial loss because of his disadvantage in the labour market. The court has to evaluate the present value of that future risk: see *Moeliker v. A Reyrolle & Co. Ltd* [1977] 1 W.L.R. 132, 140 where Browne L.J. dealt fully with this matter. Evidence is therefore required in order to prove the extent, if any, of the risk that the claimant will at some future time during his working life lose his employment. If he is, and has been for many years, in secure employment with a public authority the risk may be negligible. In other cases, the degree of risk may vary almost infinitely, depending on inter alia the claimant’s age and the nature of his employment. Evidence will also be generally required in order to show how far the claimant’s earning capacity would be adversely affected by his disability. This will depend largely on the nature of his employment. Loss of an arm or a leg will have a much more serious effect upon the earning capacity of a labourer than on that of an accountant. In the present case there is no evidence at all on these matters. ...

48 Soh submitted that he must satisfy two limbs for his claim for LEC:

- (a) there must be a risk that he will lose the job he holds at the time of trial; and

(b) as a result of his injury, he will be at a disadvantage in getting another job or an equally well-paying job.

49 On the first limb, Soh submitted that his residual disabilities put him at a high risk of losing his present job as a technician with an oil tank company. I have set out above his allegation as to what the job entails. Soh said that he would eventually develop severe osteoarthritis of his right knee which would require a total knee replacement (“TKR”). He would also have to undergo multiple other surgical procedures such as a surgery to remove an internal fixator, arthroscopy for the meniscus tears and ACL reconstruction. He would have to take extensive medical leave and also take time off for consultation and physiotherapy. Therefore, there was a significant risk that his employer would eventually tire of having to accommodate him and let him go when the opportunity arises.¹⁷ Indeed, as mentioned above at [9], Soh also alleged that it was by grace that he could keep his job.

50 However, Soh had already taken extensive medical leave in the past after the accident. As mentioned above, he had to take 566 days of medical leave over various years. Yet, he kept his job. Apparently he was even promoted twice.

51 Soh also submitted that there was a significant risk that he would be retrenched in the event of an economic downturn or corporate restructuring especially since his employer is in the volatile oil and gas industry. If there was any retrenchment he would be the first to be retrenched in view of his residual disabilities.

¹⁷ PCS para 182.

52 I reiterate that Soh elected not to call any evidence from his employer about his job prospects with that employer even though he referred to what his superior Mr Chan had allegedly told him. There was also no medical evidence about any disadvantage or the extent of the disadvantage in securing a job should he in fact lose his job. Accordingly, there was no other evidence to support his allegations.

53 On the contrary, the appraisals or reviews of Soh, which Loke relied on, suggested that Soh's employer thought well of Soh's performance. This was to Soh's credit. However, he could not establish that it was by his employer's grace that he could keep his job or that if there was any downturn, he would be the first of the employees to be retrenched. Furthermore, it was difficult to say that he would be disadvantaged, because of his disabilities, in getting another job if he were in fact retrenched. It was also difficult to assess the extent of the disability in getting another job. In my view, Soh had made a sweeping statement "[g]iven the nature of his residual disabilities, he is unlikely to be able to find another blue-collar job".¹⁸

54 As for osteoarthritis eventually setting in, this could be resolved with a TKR (for which a separate award was made). There was no evidence to suggest that workers with such a condition, which could arise without any accident, would be at a disadvantage in retaining or getting a job and the extent of the disadvantage.

55 Accordingly, I gave a nil award for LEC.

¹⁸ PCS para 185.

Item 12 – Future surgical procedures and medical treatment expenses

56 For item 12, Soh claimed the following:

(a)	Removal of internal fixator	\$ 8,591
(b)	Arthroscopy	\$20,082
(c)	ACL reconstruction	\$31,863
(d)	First TKR	\$26,538
(e)	Second TKR	\$26,538
	Total	\$113,612

57 In addition, Soh claimed three consultations for each surgery at \$181.90 per consultation. For a total of 15 consultations, this would be \$2,728.50.

58 For each TKR, Soh claimed 12 sessions of physiotherapy at \$96.30 per session. For 24 sessions, the total would be \$2,311.20.

59 The three sums of \$113,612, \$2,728.50 and \$2,311.20 added up to \$118,651.70. Soh rounded it to \$118,652.

60 For the removal of an internal fixator, Loke submitted that the only doctor who stated that Soh would need to remove his implant was Prof Tay. Even then, Prof Tay did not give an estimate for the cost of removal. Soh's submissions referred to the Ministry of Health's ("MOH") published average hospital bills for each procedure in question.¹⁹ On that basis, Soh claimed \$8,591.

¹⁹ PCS para 203.

61 Dr Lee was of the view that it was optional to remove the fixation plating and screws since the fracture had consolidated. He estimated the cost of removal to be about \$3,410 (for a class B1 ward) if it was performed in a government restructured hospital. He was not challenged on the quantum. Loke submitted that if the court was minded to allow this item, it should be for \$3,410.

62 Since Loke did not appear to challenge this item in principle too vigorously, I was inclined to allow the claim in principle. On the question of cost, the information from MOH covered a wide range of costs depending on the hospital and the class of ward. It could be as low as \$576 for a low size bill to as high as about \$17,000 for a high size bill. There was no elaboration from Soh as to how he had derived the figure of \$8,591. In the circumstances, I was of the view that Dr Lee's estimate of \$3,410 was preferable.

63 I next address Soh's claim for arthroscopy (\$20,082) and ACL reconstruction (\$31,863).

64 In Prof Naidu's report dated 23 April 2015, he mentioned these two procedures but estimated the cost to be \$10,000.

65 Prof Tay's report dated 5 January 2017 mentioned the need to remove an implant (as discussed above). There was no mention of the need for arthroscopy and ACL reconstruction. However, in re-examination, he said that there was instability in the relevant knee even though it was a partial tear. He said that he would recommend an ACL reconstruction if Soh found the instability unacceptable and it affected his lifestyle. Therefore, the arthroscopy and ACL reconstruction were elective.

66 On the other hand, Dr Lee was of the view that these procedures were not necessary as a radiologist (who had done an MRI of Soh’s right knee in 2016) had reported the ACL as “grossly intact”. However, this did not mean that the ACL was completely intact because Dr Lee had also said that there was a partial tear of 25% to 35%.

67 There was some confusion in the evidence about the need for these two procedures. Loke did not dispute the report of Prof Naidu dated 23 April 2015 which was part of the Agreed Bundle. Loke also did not require Prof Naidu to be cross-examined. This therefore suggested that Loke was precluded from disputing the need for these procedures.

68 However, Soh had also appointed Prof Tay as his independent expert. Prof Tay’s report dated 5 January 2017 made no mention of the need for these procedures. Furthermore, in re-examination, Prof Tay said they were electives.²⁰

69 In such circumstances, I did not think that Loke was precluded from taking the point that these procedures were electives although he should not have agreed that cross-examination of Prof Naidu was not necessary since he was contesting these items.

70 So far, Soh had not decided to pursue these procedures. In his Supplementary AEIC of 23 September 2015, Soh said that due to his long medical leave and that he had exhausted all his medical leave for the year, he would put off these procedures for as long as possible.²¹ It seemed to me that he was waiting to see if he would be compensated for the expenses.

²⁰ NE 5/9/2018 p 105.

²¹ Plaintiff’s supplementary AEIC para 5.

71 As the procedures are not necessary, I decided that he was not entitled to claim for these items.

72 If I were wrong on the liability for those items, I would have allowed only \$10,000 for them. That was the figure estimated by Prof Naidu. Soh reiterated this figure in his Supplementary AEIC.²² However, in his submissions he sought to justify the higher figures claimed on the basis that his regular orthopaedic doctor was Prof Naidu who had since moved to Raffles Hospital.²³ Therefore, Soh should be entitled to make his claim based on private rates.

73 I would not have agreed to more than \$10,000 because Soh had been going to TTSH from April 2015 when he consulted Prof Naidu. In 2016, he consulted Prof Doshi at TTSH as well. There was no suggestion that the procedures were so complicated as to require Prof Naidu's attention. Furthermore, Soh was apparently again relying on MOH figures which had a wide range and were not helpful without elaboration.

74 I come now to the cost of TKR. Soh had claimed \$26,538 for each TKR. He was claiming for two TKRs. Prof Tay had estimated \$20,000 for one TKR.²⁴ Loke was prepared to agree to \$20,000 but had overlooked the point that the TKR would only be required in about 20 years' time. I will come back to this point later.

75 On the cost for consultation, Soh proceeded on the basis of three consultations for each of the five procedures. Loke proceeded on the basis of

²² Plaintiff's supplementary AEIC para 5.

²³ PCS para 201.

²⁴ AB p 43.

two consultations for two procedures, *ie*, the removal of internal fixator and one TKR (instead of two).

76 Soh asked for \$181.90 per session but there was no evidence about this amount. Dr Lee estimated it to be \$70 per visit at a government restructured hospital.

77 In the absence of more evidence for Soh, I proceeded on the basis of \$70 per visit and two consultations per procedure making \$280 (*ie*, \$70 x 4).

78 For physiotherapy, Soh asked for 12 sessions after each TKR at \$96.30 per session. For 24 sessions for two TKR, the cost would be \$2,311.20. Loke suggested \$960 which worked out to \$80 x 12 sessions (since he did not agree to a second TKR). The \$80 was again Dr Lee's estimate at a government restructured hospital.²⁵

79 In the absence of more evidence for Soh, I applied \$80 per session. Therefore, the following would apply if I allowed costs for the removal of implants and for one TKR before any other adjustment:

(a)	Removal of implant	\$3,410
(b)	One TKR	\$20,000
(c)	Two consultations per surgery, <i>ie</i> , 4 x \$70	\$280
(d)	12 physiotherapy sessions after one TKR at \$80 per session	\$960
	Total	\$24,650

²⁵ AB p 28

80 However, in the joint opening statement, Loke had agreed to another \$720 for analgesic at \$30 x 24 months. This brought the total to \$25,370. I was of the view that Loke should be held to this figure and used this as a starting point before any adjustment. However, I notice that in my oral judgment, there was an inadvertent error as I used the figure of \$25,730 instead.

81 I also took into account the fact that the first TKR costing \$20,000 would not be required until about 20 years later (even assuming that this was 20 years from the date of the accident and not from the date of the assessment hearing). Hence, Soh was going to receive compensation ahead of time. After factoring a discount for accelerated payment and contingencies of life, I allowed \$10,000 (instead of \$20,000) for the first TKR. The total of the various claims which I was allowing under item 12 would therefore be \$25,730 less \$10,000 making a total of \$15,730 (which should have been \$15,370 if no error was made).

82 There was also some evidence from Prof Tay that a second TKR would eventually also be required²⁶ although Loke disputed the need for a second TKR. I was prepared to allow for a second TKR which was likely since a TKR would be effective for about 20 years and Soh was still young. However, this second TKR would be, say, 40 years later. Hence, adopting a similar approach as for the first TKR but taking into account that the second TKR would be much later, I allowed \$5,000 only.

Costs order

83 The costs order for Soh to pay Loke \$20,000, excluding disbursements, was based on an offer to settle (“OTS”) from Loke to Soh. The offer was on

²⁶ NE 5/9/2018 p 106.

terms more favourable than what Soh eventually received under my decision. I fixed the quantum of costs after taking into account standard costs for Soh before 15 May 2018, as that was the date the OTS was served on Soh's lawyers, and indemnity costs for Loke thereafter. Soh was entitled to disbursements up to 14 May 2018 and Loke was entitled to disbursements from 15 May 2018.

Woo Bih Li
Judge

Simon Yuen (Legal Clinic LLC) for the plaintiff;
Mahendra Prasad Rai and Dean Salleh (Cooma & Rai) for the
defendant.

Annex

Oral Judgment

A.1 I assess the plaintiff's damages to be \$128,155.32 as elaborated in the table below. The defendant is to pay this sum forthwith to the plaintiff. I also elaborate briefly below on the reasons for my decision in respect of some of the heads of damages.

A.2 For item 1, *ie*, head injury, I have allowed the sum of \$5,000 as claimed as the head injury appeared serious and the plaintiff underwent five CT scans on five different days for this injury. Fortunately, there was not more serious injury to his brain.

A.3 For item 2, right upper leg injury, I have allowed \$50,000 which is more than the \$40,000 allowed in *Yeo Chee Siong v Salpac (S) Pte Ltd and another* [2017] SGHC 304 ("*Yeo*") in view of the number of procedures which the plaintiff had to undergo over the years and the lengthy number of days of medical leave he was on. Such information was not clear in *Yeo*. There is also some overlapping between items 3, 4, 5, 6 and 9. Hence, I did not allow any sum for items 6 and 9.

A.4 For item 12, future procedures and treatment, I have allowed \$10,000 for a total knee replacement, as compared with the estimated cost of \$20,000, to take into account the contingencies of life and accelerated payment as the replacement is likely to be done perhaps 20 years later. This reduced the overall amount of \$25,730, which the defendant was initially prepared to agree to for future surgical procedures and medical expenses, to \$15,730.

A.5 In addition, I allow \$5,000 for a second total knee replacement thereafter after taking into account the contingencies of life and accelerated payment as the second knee replacement is another 20 years later.

A.6 The claim for item 10, *ie*, loss of earning capacity (pre-trial) is not allowed. First, the plaintiff's statement of claim did not plead such a head of damage and pre-trial loss must be pleaded and proved as a matter of special damage, see *Yap Boon Fong Yvonne v Wong Kok Mun Alvin and another and another appeal* [2018] SGCA 80 ("*Yvonne Yap*") at [41], [43] and [48]. Secondly, pre-trial loss of earning capacity is not recognised in Singapore (see *Yvonne Yap* at [31] and [42]–[43]). Thirdly, there was no evidence to establish such a claim. A suggestion that the plaintiff had to use some of his leave to recuperate as he did not have enough medical leave is not evidence of a loss of earning capacity.

A.7 The claim for item 11, *ie*, loss of earning capacity (post-trial) is not allowed as there was insufficient evidence to establish this head of damage. No one from the plaintiff's employer gave evidence as to whether there was a substantial or real risk that the plaintiff could lose his present job. Also, no medical expert explained with sufficient elaboration the extent to which the plaintiff might be disadvantaged if he were to lose his current employment.

A.8 The claim for an additional \$290.61 under item 14 regarding pre-trial medical expenses is not allowed because such expenses arose from the plaintiff's consultation with his medical expert for the litigation and not for treatment as such. It is a separate matter whether it will be allowed as part of his costs and/or disbursements in the litigation.

A.9 The claim for item 15 being \$650 for damage or destruction of personal items is not allowed for lack of evidence.

A.10 I will hear parties on interest and costs.

S/N	Injury/Expense	Plaintiff	Defendant	Court
1	Head injury	\$ 5,000.00	\$ 2,000.00	\$ 5,000.00
2	Right upper leg injury	\$60,000.00– \$75,000.00	\$30,000.00 (increased to \$32,000 in closing submissions)	\$50,000.00
3	Disabling knee injuries: • torn medial meniscus • torn lateral meniscus • anterior cruciate ligament (“ACL”) ACL is disputed.	\$30,000.00– \$37,000.00	\$12,000.00 (reduced to \$0 in closing submissions)	\$12,000.00
4	Osteoarthritis of the right knee	\$ 8,000.00	\$ 8,000.00	\$ 8,000.00
5	Scarring	\$20,000.00	\$10,000.00 (reduced to \$500 in closing submissions)	\$10,000.00
6	Chronic back pain and increased tiredness	\$ 4,000.00	Nil	Nil
7	Multiple abrasions on: (a) the right hand (b) both lower limbs	\$ 3,000.00	\$ 500.00	\$ 1,000.00
8	Tenderness of left knee and thigh	\$ 1,200.00	Nil	\$ 500.00

S/N	Injury/Expense	Plaintiff	Defendant	Court
9	Loss of amenities	\$ 40,000.00	Nil	Nil
10	Loss of earning capacity (pre-trial)	\$ 36,777.96	Nil	Nil
11	Loss of earning capacity (post-trial) \$1,300 × 12 months x 18 years	\$280,800.00 (increased to \$328,536 in closing submissions)	Nil	Nil
12	Future surgical procedures and medical treatment expenses	\$118,652.00	\$25,730.00 (reduced to \$24,650 in closing submissions)	\$15,730.00 + \$5,000.00 for a second knee replacement with discount for accelerated payment and contingencies of life.
13	Future transport expenses	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00
14	Pre-trial medical and transport expenses (Plaintiff intends to add \$290.61. See para 44 of Plaintiff's closing submissions)	\$19,425.32 + \$ 290.61	\$19,425.32	\$19,425.32
15	Additional claim for damage/destruction of personal items	\$ 650.00	Nil	Nil
Total:				\$128,155.32

Note: Figures from parties are from their Joint Opening Statement.