

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2026] SGHC 107

Magistrate's Appeal No 9161 of 2025/01

Between

Ling Zhao Bin

... Appellant

And

Public Prosecutor

... Respondent

FOUNDATIONS OF DECISION

[Criminal Law — Statutory offences — Road Traffic Act]

[Criminal Procedure and Sentencing — Sentencing — Appeals]

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Ling Zhao Bin
v
Public Prosecutor

[2026] SGHC 107

General Division of the High Court — Magistrate's Appeal No 9161 of
2025/01
Kannan Ramesh JAD
20 March 2026

18 May 2026

Kannan Ramesh JAD:

Introduction

1 The appellant, Ling Zhao Bin (“Appellant”), pleaded guilty to one charge of careless driving causing grievous hurt under s 65(1)(b) of the Road Traffic Act 1961 (2020 Rev Ed) (“RTA”), punishable under s 65(3)(a) read with s 65(6)(d) of the RTA. In *Public Prosecutor v Ling Zhao Bin* [2025] SGDC 282 (“GD”), the District Judge (“DJ”) imposed a sentence of two weeks’ imprisonment and a disqualification order from holding or obtaining all classes of driving licences for a period of five years with effect from the date of the Appellant’s release.

2 The Appellant pursued the present appeal against sentence only in relation to the two weeks’ imprisonment that was imposed. I dismissed the appeal on 20 March 2026 with brief oral grounds. These are my full grounds of

decision.

Facts

3 On 16 April 2024, at about 8.35am, the Appellant drove a motor car along Keppel Road towards West Coast near Traffic Light pole 5, Singapore. At a signalised junction, the Appellant stopped behind a stationary car in the second lane of a four-lane road. The first lane was for turning right while the second lane, which the Appellant was in, was either for turning right or going straight. The third and fourth lanes were entirely for going straight. The Appellant intended to go straight and suddenly changed lanes from the second lane to the third lane without keeping a proper lookout, resulting in a collision with the victim who was riding a motorcycle in the third lane.

4 The victim was conveyed to the Department of Emergency Medicine at the Singapore General Hospital (“SGH”) shortly after the accident. A medical report by Dr Arjun Thompson from the Department of Emergency Medicine, SGH dated 25 April 2024 and a further medical report by Dr Woo Yew Lok (“Dr Woo”) from the Department of Orthopaedic Surgery, SGH dated 8 July 2024 (“Second Medical Report”) both stated that the victim had suffered a mildly displaced left lateral tibial plateau fracture and multiple abrasion wounds on his upper limbs. The victim was treated conservatively and discharged the next day on 17 April 2024.

5 At a subsequent follow-up on or before 26 May 2024, the victim expressed that he was unable to move his left knee due to pain. According to the Second Medical Report, a left knee MRI scan performed on 26 May 2024 revealed that the victim suffered a complete tear of the anterior cruciate

ligament (“ACL”) in the left knee that was associated with the following injuries:

- (a) partial tear of the meniscocapsular ligament (ramp lesion);
- (b) high-grade partial tear of the medial collateral ligament near the femoral insertion;
- (c) complex tear of lateral meniscus body-posterior horn with a Wrisberg rip component;
- (d) posterolateral corner injury with lateral collateral ligament partial tear, popliteofibular ligament tear; and
- (e) extensive bony contusion of the tibial plateau, medial femoral condyle and fibular head, with small curvilinear fracture at the posterolateral tibial plateau cortex.

6 Dr Woo was of the opinion that without surgical intervention, the ACL tear was unlikely to heal. The victim, however, refused surgical intervention due to concerns over costs. He thereafter attended at least four sessions of physiotherapy. The victim was given a total of 131 days’ hospitalisation leave from 16 April 2024 to 24 August 2024 and was unable to work during this period. He resumed work in or around October 2024 and even then was placed only on light duty.

7 As a result of the collision, the victim’s motorcycle sustained scratches on the left side mirror, and front left and right portions. The Appellant’s car sustained scratches on the left portion.

8 The Appellant was arrested on 26 February 2025. He subsequently pleaded guilty to the offence of careless driving.

Decision below

9 The DJ applied the four-step sentencing framework set out in *Chen Song v Public Prosecutor* [2025] 3 SLR 509 (“*Chen Song*”). The framework is as follows (*Chen Song* at [134]):

(a) First, the court is to determine the number of offence-specific factors under the broad categories of “harm” and “culpability”.

(b) Second, based on the number of offence-specific factors, the court is to (i) determine whether the harm caused is “lesser harm” or “greater harm”; (ii) determine whether the culpability of the offender is “lower culpability” or “higher culpability”; and (iii) identify the sentencing band that the offence falls within. “Lesser harm” is caused, and the offender’s culpability is deemed as “lower culpability” where at most one harm or culpability factor applies. “Greater harm” and “higher culpability” is caused where there are two or more harm or culpability factors respectively.

Band	Circumstances	Indicative starting sentence
1	Lesser harm and lower culpability	Fine and/or up to 6 months’ imprisonment

2	Greater harm and lower culpability Or Lesser harm and higher culpability	6 months' to 1 year's imprisonment
3	Greater harm and higher culpability	1 to 2 years' imprisonment

(c) Third, the court should identify an indicative starting point sentence within the applicable sentencing range, taking into account: (i) all the primary harm and culpability factors identified; and (ii) the secondary harm factors.

(d) Lastly, the court is to make adjustments to the starting point to take into account the usual offender-specific aggravating and mitigating factors.

10 Harm factors are classified into primary harm factors (*ie*, factors which pertain directly to the bodily injury suffered by the victim) and secondary harm factors (*ie*, factors which are unrelated to the victim's physical injury, but which nonetheless go towards the extent of harm caused) (*Chen Song* at [124] and [125]).

11 The DJ found that the case fell within Band 1 of the *Chen Song* sentencing framework as there was "lower culpability" and "lesser harm" (GD at [76]). Specifically, he found as follows:

(a) There was "lower culpability" as there was no culpability factor present (GD at [65]).

(b) Two primary harm factors were engaged: (i) the nature and location of the injuries; and (ii) the impact of the injuries (GD at [73]). Nevertheless, as the two factors presented themselves to a limited degree, “lesser harm” was caused (GD at [75]).

(c) With regard to the nature and location of the injuries, the victim suffered serious injuries to a vulnerable location affecting his mobility, namely the displaced left lateral tibial plateau fracture and the ACL tear in the left knee (GD at [70]).

(d) The full 131 days of hospitalisation leave that the victim was given was taken into account. The Appellant’s submission that the duration of hospitalisation leave would have been shorter if the victim had opted for surgery as recommended by Dr Woo was rejected (GD at [66(d)]–[68]). The hospitalisation leave appeared to be accounted for under the primary harm factor of “impact of the injuries”, as I explain at [33] below.

12 The DJ found that the indicative starting point within Band 1 was a custodial sentence of about three to four weeks’ imprisonment. He calibrated the sentence downwards to two weeks’ imprisonment as he gave the Appellant due weight for cooperating with the authorities and a full 30% discount for pleading guilty at Stage 1 of the “Guidelines on Reduction in Sentence for Guilty Pleas” issued by the Sentencing Advisory Panel (GD at [76], [88], [90] and [92]–[93]).

13 The DJ rejected the Appellant’s reliance on *Alvan Erh Zhi Huang Alvan v Public Prosecutor* (“*Alvan Erh*”), one of the appeals that was heard in *Chen Song*, to seek a fine. The DJ observed, citing *Chen Song* at [120], that applying

the sentencing framework in *Chen Song* to the facts in *Alvan Erh*, which had been decided under the sentencing framework in *Sue Chang v Public Prosecutor* [2023] 3 SLR 440 (“*Sue Chang*”), would not result in a different sentencing outcome (GD at [109]). The DJ distinguished *Alvan Erh* on both harm and culpability on the following basis: (a) the victim in the present case was given a longer period of hospitalisation leave than the victim in *Alvan Erh*; and (b) the Appellant had stopped behind a stationary car and therefore had ample time and opportunity to check his blind spot before switching lanes, unlike the offender in *Alvan Erh* who had abruptly switched lanes to avoid a collision with the car in front (GD at [108]).

Appellant’s Case

14 The Appellant’s case was that the custodial threshold had not been crossed and a fine was appropriate. He relied on *Alvan Erh* to argue for parity in sentencing as he contended that the harm suffered by the victim in the present case was objectively lower than, or at most comparable to, that in *Alvan Erh*.

15 The Appellant made the following arguments:

(a) The injuries suffered in *Alvan Erh* were at two locations and one of the injuries, the finger amputation, was permanent. This was unlike the present case, which involved no permanent structural loss and only one primary location (*ie*, the knee).

(b) Unlike the victim in *Alvan Erh*, who underwent a traumatic amputation resulting in permanent loss, ACL reconstruction surgery was “elective and restorative” rather than of “high-severity or requiring urgent intervention”.

(c) While the period of hospitalisation leave in *Alvan Erh* accurately reflected the recovery time that was needed by reason of the inherently more severe injuries, the length of hospitalisation leave in the present case was “materially inflated” due to external factors which I elaborate on at [31] below.

(d) The DJ failed to take into account the primary harm factor of the permanence of the injuries and the secondary harm factors in *Alvan Erh* which demonstrated that the harm in the present case was lower than that in *Alvan Erh*.

(e) The DJ erred in finding that the Appellant was more culpable than the offender in *Alvan Erh*.

Prosecution’s Case

16 The Prosecution relied on *Chen Song* at [137] to argue that fines would ordinarily be reserved for cases where one or no offence-specific harm and/or culpability factor was present. This was not such a case as the DJ had correctly found that two primary harm factors were engaged.

17 The Prosecution also argued that *Alvan Erh* could be distinguished from the present case on both harm and culpability.

Issues to be determined

18 The issues before the court were:

(a) What was the level of harm in the present case? This raised the following sub-issues:

- (i) Did the DJ err in finding that the knee was a vulnerable location?
 - (ii) Did the DJ err in taking into account the full 131 days of hospitalisation leave?
 - (iii) Which harm factors were engaged in the present case?
- (b) What was the level of culpability in the present case?
- (c) Did the DJ err in finding that the custodial threshold had been crossed? This required consideration of whether the DJ erred in finding that the present case was distinguishable from *Alvan Erh*.

My decision

The applicable law for appellate intervention

19 An appellate court will not ordinarily disturb the sentence imposed by the trial court except where it is satisfied that (*ADF v Public Prosecutor* [2010] 1 SLR 874 (“*ADF*”) at [17]–[18]):

- (a) the trial judge erred with respect to the proper factual basis for sentencing;
- (b) the trial judge failed to appreciate the materials placed before him;
- (c) the sentence was wrong in principle; or
- (d) the sentence was manifestly excessive or manifestly inadequate, *ie*, there was a need for a “substantial alteration” and not merely an “insignificant correction” to remedy the injustice.

20 While the Appellant did not explicitly identify which ground of appellate intervention he relied on, it appeared from his submissions that the third and fourth grounds were relevant. If the Appellant’s primary case at [14] above was right, the sentence of two weeks’ imprisonment would be wrong in principle and/or manifestly excessive given the need to ensure parity with the sentence in *Alvan Erh*.

21 For the reasons that follow, I was of the view that the DJ erred in finding that the knee was a vulnerable location and failing to take into account the secondary harm factors. Nevertheless, I was of the view that the sentence of two weeks’ imprisonment was not wrong in principle or manifestly excessive, and the present case could be meaningfully distinguished from *Alvan Erh*.

Issue 1: Level of Harm

22 In relation to harm, the inquiry is ultimately to determine the *severity of physical harm* caused to the victim. The three primary harm factors stated in *Chen Song* are “key determinants” that should be *holistically* considered in answering this inquiry, in order to ascertain whether “greater” or “lesser” harm was suffered (*Chen Song* at [127]). As stated in *Chen Song* at [127], the primary harm factors are: (a) the nature and location of the injuries; (b) degree of permanence; and (c) the impact of the injuries.

23 In addition to the primary harm factors, secondary harm factors such as potential harm and property damage may also be taken into account (*Chen Song* at [125]). Potential harm refers to harm that was likely to have been caused to other road users but which ultimately did not eventuate, and may be considered in the harm or culpability analysis (*Chen Song* at [129] and [130]). The court should only have regard to potential harm if there was a sufficient likelihood of

the harm arising. This should be assessed in light of the gravity of the harm risked, expressly drawing a link between the facts relied on and the potential harm that may result (*Chen Song* at [130], citing *Neo Ah Luan v Public Prosecutor* [2018] 5 SLR 1153 at [67]).

24 The Appellant submitted that in assessing harm, the DJ erred in: (a) treating the knee as a vulnerable location; and (b) taking into account the full 131 days of hospitalisation leave when the duration could have been shorter if not for external factors. I address these points in turn.

The DJ erred in finding that the knee was a vulnerable location

25 Where the injury is sustained to a vulnerable part of the body, that may be relevant to the primary harm factor of the nature and location of the injuries (*Chen Song* at [127]). I accepted the Appellant's submission that the knee, while functionally important, was not a vulnerable location. There is a distinction between vulnerability and functional mobility.

26 From my survey of case law (both involving the RTA and not involving the RTA), the courts have generally concluded that parts of the body such as the ribs, chest, liver, spine, brain, stomach region, face, eyes, neck and private parts are vulnerable. I set out these cases below:

(a) In *Public Prosecutor v Johnson Tan Wee Kiat* [2026] SGHC 59, the victim had sustained a mildly displaced fracture on the right second rib. The court acknowledged that the *rib was a vulnerable part of the body* (at [11(a)]).

(b) In *Public Prosecutor v Adri Satryawan Pratama* [2023] SGDC 102, the victim had suffered pancreatic and liver lacerations, right femur

fracture, left tibia and fibula fracture, left radial and ulnar fracture, left middle finger fracture, right metacarpal fracture, multiple rib and vertebral fractures and brain contusions. The District Court rejected the offender’s argument that the injuries involved were to less vulnerable parts of the body as *the liver, ribs, spine and brain were vulnerable parts of the body* (at [58]). This was implicitly affirmed by the High Court in *Adri Satryawan Pratama v Public Prosecutor* [2024] SGHC 258 which found that the District Judge had “rightly noted...the nature and location of [the victim’s] injuries, some of which were to vulnerable parts of the body” (at [5]).

(c) In *ADF*, the Court of Appeal observed that vulnerable parts of the body included “the head, eye, chest, stomach region and the private parts” (at [91(a)]).

(d) In *Ang Lilian v Public Prosecutor* [2017] 4 SLR 1072, the court held that the victim “had sustained visible injuries to her face and neck which are vulnerable parts of the body” (at [74]).

27 It seems to me that the parts of the body were regarded as vulnerable because the injuries were to, or in locations proximate to, vital organs. The common thread is that these locations are vulnerable because an injury suffered in any of these locations, may result in a risk to life or permanent or long-term loss of function that impairs the victim’s ability to live independently and without assistance (*eg* loss of cognitive ability or paralysis). Vulnerability is defined with the reference to the severity of the harm that could result from an injury in a location. Without being prescriptive and in any way comprehensive, this common thread could serve as a working definition of a vulnerable location. It is consistent with why an injury to a vulnerable location was identified in

Chen Song as relevant to the harm analysis under the “nature and location” factor, and the purpose of the central inquiry in the harm analysis (which is to ascertain the extent of physical harm that is suffered by the victim as a result of the injury in question as stated at [22] above).

28 The Prosecution relied on *Public Prosecutor v Hee Kwee Choy* [2024] SGDC 230 (“*Hee Kwee Choy*”) to argue that the knee was vulnerable. In *Hee Kwee Choy*, the victim had sustained right acetabular fractures and an undisplaced right inferior pubic ramus fracture as a result of the collision that the offender had caused. The court there found that the pelvic area (where the victim had sustained injuries) was a vulnerable part of the body because while “it [was] certainly not as vulnerable a part such as the head or chest, [it was] clearly a critical part of the body for overall movement” (at [36]). The reasoning in *Hee Kwee Choy* erroneously conflated the concepts of vulnerability and functionality. If the two were one and the same, it would mean that practically every joint in the body would be vulnerable. That would not be consistent with *Chen Song*. That is not to say that the conclusion reached in *Hee Kwee Choy* that the pelvic area is a vulnerable part of the body is incorrect as it may be said that critical organs may be found there. I express no conclusive view on this and leave it to be explored in suitable case.

29 Applying this approach, it is evident that it cannot be readily said that the left knee is a vulnerable location. While the left knee is undoubtedly important to one’s mobility, it is not a vulnerable part of the body as described above. I therefore was of the view that the DJ erred in concluding that it was.

30 However, this error was not material to the outcome of the present appeal. The location of the injury is only an aspect that the court may take into account in assessing harm. The overarching inquiry remains to determine the

extent of physical harm caused to the victim (see [22] above). To that end, the three primary harm factors, including the factor of the *nature and location of the injuries*, are to be *holistically* considered in answering that key inquiry (see *Chen Song* at [124] and [127]). The use of “*eg*” in the remark in *Chen Song* at [127], that “the location of the injury (*eg*, vulnerable location)” was to be considered under the nature and location of the injury, makes it clear that the vulnerability of the location is not the only factor to be considered in assessing the significance of the location where the injury was suffered. Thus, while the DJ erred in finding that the knee was a vulnerable part of the body, that did not necessarily mean that he was wrong in finding that the “nature and location” harm factor was made out. The knee was critical to mobility and movement, and the DJ was entitled to take that into account in concluding that the “nature and location” harm factor was engaged.

The DJ did not err in taking into account the full 131 days of hospitalisation leave

31 The Appellant argued that the length of hospitalisation leave should not be taken as an indication of the seriousness of the injuries. This was on the basis that the length of hospitalisation leave was materially increased due to factors unrelated to the seriousness of the injury, namely: (a) a delay in the diagnosis of the ACL tear (*ie*, the 42 days between the victim’s initial admission on 16 April 2024 and in the follow up on 26 May 2024 where the ACL tear was diagnosed following the MRI scan); and (b) the victim’s decision to refuse surgery to address the ACL tear.

32 The Appellant’s argument appeared to suggest that the period of hospitalisation leave was relevant to the “nature and location” of the injury factor. However, the DJ did not take that approach.

33 While the DJ did not explicitly identify whether he considered the duration of hospitalisation leave under the primary harm factor of the nature and location of the injuries or the impact of the injuries, it seems that he implicitly considered it only under the latter. He stated at [66(d)] of the GD:

For harm:

...

(d) The victim was given a total of 131 days' hospitalisation leave, [h]e was unable to work after the incident and returned to Malaysia during the recovery. During the period of hospitalisation leave, the victim suffered one month of unpaid leave. He resumed work on or around October 2024 with light duty.

The other factors that the DJ listed alongside the 131 days of hospitalisation leave, such as the fact that the victim was unable to work after the incident, were factors relevant in determining the impact of the injuries factor under the *Chen Song* framework.

34 I found that the DJ did not err in taking to account the full duration of hospitalisation leave in assessing the impact of the injuries on the victim's quality of life for the reasons below.

35 First, I agreed with the DJ that there was no evidence to prove that the duration of hospitalisation leave would have been shorter if the victim had agreed to undergo surgery (GD at [68(a)]). The Appellant argued that this could be inferred from Dr Woo's medical opinion that the ACL tear was unlikely to heal without surgery (see [6] above), which suggested that recovery would be faster with surgical intervention. This was a speculative argument. Dr Woo did not express an opinion on the *speed* of recovery with surgery.

36 Second, even if the duration of hospitalisation leave would have been shorter if the victim had undergone surgery, I was of the view that this should have no impact on the sentence to be imposed for the reasons that follow.

37 The Appellant argued that the victim’s decision to refuse surgery broke the causal chain between the Appellant’s actions and the extended period of hospitalisation leave. In response, the Prosecution advanced several arguments to justify why the victim’s decision to decline ACL surgery did not break the chain of causation. I disagreed that this case should be viewed through the lens of causation. The Appellant did not contend that the causal chain between the Appellant’s actions and the ACL tear had been broken. In fact, it was accepted that the Appellant’s actions caused the ACL tear. Thus, causation was not the issue. Rather, the question was whether the victim’s refusal to take steps to ameliorate the harm he had suffered was relevant in calibrating the sentence to be imposed.

38 In this regard, a sentencing court may take into account the full extent of harm caused, even if the degree of harm suffered may be dependent on factors outside an offender’s control and contemplation. This is because the “outcome materiality principle” (*ie*, the principle that moral and legal assessments often depend on factors that are beyond the actor’s control) trumps the “control principle” (*ie*, the principle that no man should be held accountable for that which is beyond his control) (*Chen Song* at [117], citing *Public Prosecutor v Hue An Li* [2014] 4 SLR 661 at [68] and [71]–[74]). Along the same vein, in *Guay Seng Tiong Nickson v Public Prosecutor* [2016] 3 SLR 1079, the court held that the conduct of a victim or a third party that has no bearing on the culpability of the offender should not affect the sentence to be imposed even if the conduct has materially contributed to the outcome for which the offender is being charged (at [70]).

39 Thus, the question at [37] should be answered in the negative. Notwithstanding that the duration of hospitalisation leave might have been a result of the victim's decision to decline surgery, the DJ was correct to take into account the full 131 days of hospitalisation leave in assessing the impact of the injuries. The victim's conduct had no bearing on the culpability of the Appellant and should not therefore affect the sentence to be imposed.

40 That should be sufficient to dispose of the Appellant's argument. However, for completeness, I address the Appellant's argument that the "cost of surgery need not have been a barrier to treatment" as insurance coverage was available. This argument seems to suggest that the victim's decision was not reasonable. I note that in *R v Blaue* [1975] 3 All ER 446 ("*Blaue*"), a case cited by the Prosecution in the context of causation, the offender made a similar argument that the victim's decision to refuse blood transfusion was unreasonable. There, the offender attacked the victim with a knife. The victim was a Jehovah's Witness and refused to receive a blood transfusion due to her religious beliefs. The victim subsequently died. The English Court of Appeal rejected the offender's argument that the victim's refusal to have a blood transfusion broke the chain of causation between his stabbing and her death. The cause of death in that case was bleeding into the pleural cavity arising from the penetration of the lung which had been brought about by the stab wound. In response to the offender's argument that the jury should have been directed to consider if the victim's decision not to have a blood transfusion was *unreasonable* and thus broke the chain of causation, the court held that "[i]t does not lie in the mouth of the assailant to say that his victim's religious beliefs which inhibited him from accepting certain kinds of treatments were *unreasonable*" [emphasis added in italics] (at 450). The court reasoned that "[i]t

has long been the policy of the law that those who use violence on other people must take their victims as they find them” (at 450).

41 While causation is not relevant for the reasons explained at [37] above, and without going so far as to say that *Blaue* represents the law in Singapore, the analysis focussing on the reasonableness of a victim’s conduct is of some assistance. Here, there is no basis for the Appellant to argue that the victim’s refusal of surgical intervention was unreasonable. Certainly, the victim’s action did not exacerbate the ACL tear. While surgical intervention might have mitigated the impact of the ACL tear, the injury suffered remained the same. Further, the victim declined surgical intervention due to costs concerns which appeared legitimate. He was unable to work after the accident. As a Malaysian, he would have to pay an unsubsidised rate for surgery that would otherwise be available for Singaporeans. I agreed with the Prosecution that the Appellant’s argument that insurance coverage was available was speculative and not supported by evidence.

Which harm factors were engaged in the present case

42 I agreed with the DJ that two primary harm factors were engaged in this case:

- (a) The nature and location of the injuries: While the DJ erred in finding that the knee was a vulnerable location, there were still serious injuries (*ie*, a displaced left lateral tibial plateau fracture and a complete tear of the ACL at the left knee) to a part of the body that was critical for the victim’s mobility. As observed earlier, the DJ was entitled to consider the fact that the injuries were sustained to a body part that was critical for mobility (see [30] above), which required surgical intervention.

(b) The impact of the injuries: The victim had a lengthy 131 days of hospitalisation leave. As he was unable to work during this recovery period, his ability to earn his livelihood was affected for a lengthy period of time. Even in October 2024 when he returned to work, he was only assigned *light* duties at work.

43 I also agreed with the DJ that even though two primary harm factors were engaged, there was “lesser harm” instead of “greater harm”. While the presence of two offence-specific primary harm factors is typically indicative of “greater harm”, the court’s ultimate inquiry is to assess whether the totality of harm suffered by the victim should be classified as “greater harm” or “lesser harm” (*Chen Song* at [123] and [127]). The injury was severe, even if not to a vulnerable part of the body. At the same time, there was no evidence of long-term impact on the victim’s daily tasks. Thus, I did not consider the totality of the harm suffered to be “greater harm”.

44 The DJ did not make a finding on whether the harm in the present case fell within the lower or upper end of “lesser harm” or whether the secondary harm factors of property damage and potential harm were engaged. Applying *Chen Song*, I had regard to the secondary harm factors in assessing where on the scale of “lesser harm” the present case fell, and the indicative starting sentence within Band 1 (see [9(c)] above).

45 The factor of property damage was not significantly engaged. The property damage was minimal since both the victim’s motorcycle and the Appellant’s car only sustained scratches (see [7] above).

46 However, in my view, the secondary harm factor of potential harm was engaged. It was undisputed that there was another motorcyclist travelling on the

victim's left on the same lane (the third lane) at the time of the accident. The Appellant argued that there was no potential harm as the second motorcyclist was on the outer end of the third lane (where the collision took place) and did not need to stop to avoid a collision. Having reviewed the video footage of the accident, the second motorcyclist was some distance away from the Appellant's car and there was no risk of collision with the Appellant's car itself. However, it was clear from the video footage that the victim and his motorcycle fell to the left upon colliding with the Appellant's car. As a result, the second motorcyclist had to swerve to avoid a collision with the victim and his motorcycle. This was not a situation where the harm to the second motorcyclist was hypothetical (see [23] above). There was a real possibility that the second motorcyclist would have been injured if not for his alertness in avoiding a collision with the victim and his motorcycle.

47 Considering the fact that two primary harm factors were engaged and the presence of potential harm, the present case was placed in the upper end of the lesser harm continuum.

Issue 2: Level of culpability

48 I agreed with the DJ's analysis that there was "lower culpability". No culpability factors were engaged as the Appellant's failure to keep a lookout when changing lanes was merely a manifestation of the basic elements of a careless driving offence (see *Chen Song* at [132]).

49 The Appellant argued that the fact that he had ample time to check "d[id] not elevate [the Appellant's] culpability" above the "lower" category. I agreed with the Prosecution that this argument was misconceived as the DJ nonetheless found that the Appellant's culpability was "lower culpability". The DJ relied on

the fact that the Appellant had ample time to check to justify why the Appellant was more culpable than the offender in *Alvan Erh*.

Issue 3: Was the custodial threshold crossed

50 In my view, the DJ was not wrong in principle and did not err in finding that the custodial threshold had been crossed.

51 As stated in *Chen Song* at [137], “fines would ordinarily be reserved for cases where one or no offence-specific harm and/or culpability factor is present” [emphasis in original]. While this rule is not absolute, there must be exceptional circumstances for the court to impose a fine even though two harm and/or culpability factors are present.

52 This was not an exceptional case. While the culpability was on the lower end of the “lesser culpability” scale, the harm caused fell within the *upper* end of the “lesser harm” continuum (see [47] and [48] above). Given the range of sentences in Band 1, the DJ did not err in finding that an indicative starting point should be three to four weeks’ imprisonment.

Whether the DJ erred in distinguishing the present case from Alvan Erh

53 I rejected the Appellant’s argument that a fine would be appropriate to preserve parity with *Alvan Erh*. I summarise the decision in *Alvan Erh*. The offender in *Alvan Erh* pleaded guilty to one charge of careless driving under s 65(1)(b) of the RTA. There, the offender had been travelling on an expressway when the car in front braked and came to a stop due to heavy traffic. To avoid colliding into the car in front, the offender suddenly changed lanes without keeping a lookout, resulting in a collision with a motorcyclist. The court in *Chen Song* allowed the appeal and substituted a sentence of ten weeks’ imprisonment

with a fine of \$4,000. The court applied the sentencing framework in *Sue Chang* where an offender's harm and culpability was classified as low, moderate or serious (*Sue Chang* at [98]). The court assessed the harm in *Alvan Erh* to be at the *higher* end of the "low" category because: (a) the victim suffered a permanent, traumatic amputation of the right little finger and a right-sided clavicle fracture; (b) the victim's motorcycle sustained damage; and (c) there was potential harm arising from the offender's abrupt lane-change on an expressway during peak hour (*Chen Song* at [165]). The court found the culpability of the offender to be low as his offending conduct was simply a "manifestation of the basic elements of the careless driving offence" (*Chen Song* at [166]).

54 In my view, *Alvan Erh* was distinguishable for three reasons.

(a) First, while there was permanent loss in *Alvan Erh*, the impact of the injuries was not to the same extent as in this case. In *Alvan Erh*, the victim was given 57 days of hospitalisation leave, there was no evidence that the victim would suffer from any permanent disability because of his injuries and the victim was assessed as likely to be able to return to work (*Chen Song* at [165]). To be clear, this was in no way meant to downplay the significance of a permanent loss of a finger. The point that is being made is the impact of the injury that was suffered. The victim in the present case was given more than double the length of hospitalisation leave (*ie*, 131 days) and was unable to work during this lengthy period, and even after that was placed on light duty in October 2024 (some five to six months after the incident).

(b) Second, again without in any way suggesting that the loss of a finger is not impactful, the injuries here appeared more serious. The

victim suffered a serious injury to a part of the body that was more critical to mobility. The Appellant's contention that the present case involved only one primary injury site (*ie*, left knee) while *Alvan Erh* involved two medically significant injuries was not persuasive. It is not a matter of the number of the locations where injuries were suffered. Rather, it is about the gravity of the injury that was suffered in each instance. There were *multiple* injuries to the single primary injury site in the form of a complete ACL tear (which was associated with the other injuries suffered at [5] above) and a displaced tibial plateau fracture, while the only other injury that was suffered by the victim in *Alvan Erh* was to the right clavicle. I also agreed with the Prosecution that the Appellant's submission that ACL reconstruction surgery is "elective and restorative" was not supported by medical evidence.

(c) Third, I was of the view there was a meaningful distinction between a considered decision resulting in an accident, as was the case here, and a decision taken on the spur of the moment. While this is a situation-specific inquiry and no general proposition should be derived as a result, the latter seemed less culpable (even if not significantly so). Here, the Appellant stopped behind a stationary car and made the considered decision to switch lanes without keeping a proper lookout. In my view, he was more culpable than the offender in *Alvan Erh* who made a split-second decision to change lanes to avoid a collision with the vehicle in front of him.

55 On the third reason, the Appellant submitted that the offender in *Alvan Erh* had to change lanes not because of an "unavoidable emergency", but because of his own failure to keep a proper lookout when the car in front of him began to slow down. While that may be correct, the fact remained that the

Appellant's decision was not taken under the pressure of time or in a rapidly evolving environment. The question was not whether the offender in *Alvan Erh* was culpable – he was – but whether his culpability was at the same level as the Appellant.

56 I accepted that the secondary harm factors were engaged more heavily in the case of *Alvan Erh* as that case involved both property damage and potential harm being an accident on an expressway. However, given the impact and the nature of the injuries, I was of the view that the DJ did not err in concluding that the totality of the harm in the present case was more severe.

Conclusion

57 For the reasons above, I dismissed the appeal. There was no basis for appellate intervention.

Kannan Ramesh
Judge of the Appellate Division

Tan Cheng Kiong (CK Tan Law Corporation) for the appellant;
Lim Ying Min and Valerie Lim An Qi (Attorney-General's
Chambers) for the respondent.
