

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

[2022] SGHC 102

Suit No 512 of 2020

Between

- (1) Wee Lai Soon (alias Hoi Lai Soon)
- (2) Yew Kwai Lin

... Plaintiffs

And

Ong Jian Min

... Defendant

JUDGMENT

[Damages — Measure of damages — Personal injuries cases]
[Damages — Assessment]

TABLE OF CONTENTS

INTRODUCTION.....	1
BACKGROUND FACTS	1
ISSUES.....	2
THE DECISION	4
DAMAGES SUFFERED BY MR WEE	4
<i>Pain and suffering.....</i>	4
(1) JOS Annex A Item 2 – injuries related to left biceps and shoulder.....	4
(2) JOS Annex A Item 3 – cervical and lumbar spondylosis	5
<i>Loss of earnings</i>	5
(1) JOS Annex A Item 7 – pre-trial loss of earnings.....	5
(2) JOS Annex A Item 8 – loss of future earnings	10
<i>JOS Annex A Items 4 to 6 - medical and related expenses</i>	10
DAMAGES SUFFERED BY MDM YEW	11
<i>Special damages.....</i>	11
(1) JOS Annex B Items 11, 13–16.....	11
(2) JOS Annex B Item 12 – incurred nursing and care expenses	11
(3) JOS Annex B Item 26 – pre-trial loss of earnings	12
<i>General damages</i>	14
(1) JOS Annex B Item 27 – loss of future earnings	14
<i>Pain and suffering.....</i>	17
(1) JOS Annex B Item 1 – major depressive disorder.....	17

(2) JOS Annex B Item 2 – complex pelvic fracture and left sciatic nerve palsy	21
(3) JOS Annex B Item 3 – injuries related to right knee	21
(4) JOS Annex B Item 4 – injuries related to left knee and leg.....	23
(5) JOS Annex B Item 5 – right pneumothorax	25
(6) JOS Annex B Items 6 and 7 – injuries related to the spinal fractures	26
(7) JOS Annex B Item 8 – right above-knee amputation complicated by right stump wound infection and neuropathic pain.....	28
(8) JOS Annex A Item 9 – paroxysmal/supraventricular tachycardia	31
(9) JOS Annex B Item 10 – numbness in left hand.....	32
<i>Future medical and other expenses</i>	<i>33</i>
(1) JOS Annex B Item 17 – complex total knee arthroplasty.....	33
(2) JOS Annex B Item 18 – physiotherapy	35
(3) JOS Annex B Item 19 – replacement and servicing of prosthesis	35
(4) JOS Annex B Item 20/21 – wheelchairs.....	37
(5) JOS Annex B Items 22 and 23 – medical consultation and pain medication.....	39
(6) JOS Annex B Item 24 – cost of future care	40
(7) JOS Annex B Item 25 – future transport expenses.....	40
CONCLUSION	40
INTEREST PAYABLE TO MR WEE	42
<i>Pain and suffering.....</i>	<i>42</i>
<i>Special damages.....</i>	<i>42</i>
INTEREST PAYABLE TO MDM YEW	42
<i>Pain and suffering.....</i>	<i>42</i>
<i>Special damages.....</i>	<i>42</i>

COSTS	43
-------------	----

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

**Wee Lai Soon (alias Hoi Lai Soon) and another
v
Ong Jian Min**

[2022] SGHC 102

General Division of the High Court — Suit No 512 of 2020

Andrew Ang SJ

15–17, 21, 22 September, 12 November 2021, 14 January, 14 February, 28
February 2022

5 May 2022

Judgment reserved.

Andrew Ang SJ:

Introduction

1 This was an action in negligence brought by the first and second plaintiffs against the defendant arising from an accident involving a motor vehicle driven by the defendant.

Background Facts

2 On 29 June 2017 at or about 11.28pm, the defendant was driving his vehicle, a Nissan Latio with Vehicle Registration Number SJN 8219S along the first lane on Seletar Expressway (Central Expressway) (“SLE”) when he collided into the first and second plaintiffs who were behind a stationary Hyundai taxi with Vehicle Registration Number SHB 2196A on the first lane at

the material time, causing the plaintiffs to sustain injuries (hereinafter referred to as “the Accident”).

3 Judgment in default of appearance was entered in the plaintiffs’ favour on 25 June 2020 with damages to be assessed and with interest and costs reserved to the Court hearing the Assessment of Damages.

4 For purposes of the assessment hearing, the parties prepared a Joint Opening Statement dated 8 September 2021 as later amended and tendered to the court on 16 September 2021 (the “Joint Opening Statement” or “JOS”) setting out the items of claim made by the first and second plaintiffs respectively in “Annex A” and “Annex B” together with the defendant’s responses thereto. A copy of the JOS is appended to this judgment for ease of reference.

5 The defendant has agreed to Items 4, 5, 6 in Annex A and Items 11, 13–16 and 25 in Annex B of the Joint Opening Statement.

Issues

6 The issues set out below with regard to the remaining items were outlined by the defendant.¹

(a) In relation to the first plaintiff – Mr Wee Lai Soon (“Mr Wee”), the issues for determination are as follows:

(i) whether the alleged injuries suffered by Mr Wee, in particular his right arm/shoulder injury, the cervical and lumbar spondylosis, and his knee pains and or osteoarthritis were directly caused by the Accident;

¹ Defendant’s Closing Submissions filed on 12 November 2021 (“DCS”) at para 5.

- (ii) what the award of damages for pain and suffering for Mr Wee's injuries should be;
 - (iii) whether Mr Wee is entitled to a claim for pre-trial loss of earnings and if so, what the quantum should be; and
 - (iv) whether Mr Wee is entitled to a claim for loss of future earnings and if so, what the quantum should be.
- (b) In relation to the second plaintiff – Mdm Yew Kwai Lin (“Mdm Yew”), the issues comprise:
- (i) whether the alleged injuries suffered by Mdm Yew, in particular the numbness in her left hand, were directly caused by the Accident;
 - (ii) what the award of damages for pain and suffering for Mdm Yew's injuries should be;
 - (iii) what the award for Mdm Yew's nursing and care expenses should be;
 - (iv) what the award for Mdm Yew's future medical expenses should be;
 - (v) what the award for Mdm Yew's costs of future medical nursing care should be;
 - (vi) whether Mdm Yew is entitled to a claim for pre-trial loss of earnings and if so, what the quantum should be; and
 - (vii) whether Mdm Yew is entitled to a claim for loss of future earnings and if so, what the quantum should be.

The decision

Damages suffered by Mr Wee

Pain and suffering

7 I will not deal with JOS Annex A Item 1, which includes injuries related to the right shoulder, as counsel for the plaintiffs has decided not to pursue the claim.²

(1) JOS Annex A Item 2 – injuries related to left biceps and shoulder

8 Mr Wee claims \$17,000 for the injuries related to his left biceps and shoulder, whereas the defendant submits that he is only entitled to \$10,000. I award \$15,000.

9 Mr Wee’s injuries were left subscapularis tendinopathy and a near full thickness tear of the anterior to mid fibres of the left supraspinatus tendon. Counsel for the plaintiffs drew a comparison with *Ting Heng Mee v Sin Shing Fresh Fruit Pte Ltd* [2004] SGHC 43 (“*Ting Heng Mee*”), where the claimant was awarded \$13,500 for a partial tear of the supraspinatus tendon with biceps tendinopathy on his left shoulder. He submitted that the extent of his injury was greater than that in *Ting Heng Mee*. I note that in the latter case it was observed that “by the time the [claimant] returned for review, the pain had resolved, and the shoulder movement was fairly good and painless.” (see *Ting Heng Mee* at [21]).

10 In comparison, according to the 30 July 2019 report of Dr Michael Yam (“Dr Yam”), Senior Resident in the Department of Orthopaedic Surgery of Tan

² Plaintiffs’ Closing Submissions (“PCS”) at para 5.

Tock Seng Hospital, Mr Wee’s symptoms “had improved with physiotherapy” some nine months after the accident. I note that Dr Yam did not say that the symptoms had resolved.

(2) JOS Annex A Item 3 – cervical and lumbar spondylosis

11 In Dr Yam’s 30 July 2019 Medical Report, he identified “cervical & lumbar spondylosis” in his diagnosis of Mr Wee’s injuries (the “back injuries”). Mr Wee claims \$8,000 for these injuries. The defendant initially asserted that the back injuries were not attributable to the accident but were due to pre-existing degeneration. This was untenable given that the 30 July 2019 Medical Report noted “back contusion”, *ie*, bruising on the back.

12 During cross-examination, counsel for the defendant sought Dr Yam’s agreement that the accident did not cause but merely aggravated the allegedly pre-existing degeneration. Quite properly, Dr Yam declined for the reason that there was no evidence of pre-existing degeneration. He therefore concluded that the back injuries were wholly caused by the Accident.

13 I allow Mr Wee’s claim of \$8,000.

Loss of earnings

(1) JOS Annex A Item 7 – pre-trial loss of earnings

14 Mr Wee claims \$90,000 for pre-trial loss of earnings based on a monthly income of \$1,800 for 50 months from July 2017 to August 2021. He adduced evidence from bank statements showing a monthly cash deposit of \$1,473 on average. Whilst the monthly cash deposit fell short of \$1,800, the shortfall was accounted for by Mr Wee’s explanation that he did not bank in all his earnings but kept some cash on hand.

15 Mr Wee gave evidence that he would have continued operating the canteen stall with his wife if the Accident had not occurred. They had been in the hawker business for 40 years operating canteen stalls at various locations. He was 72 years old at the time of the accident and maintained that he would have continued working until he no longer had strength. Dr Yam, during cross-examination, opined that Mr Wee could have continued to work up to whatever age he desired. He maintained his position despite counsel for the defendant suggesting otherwise on account of Mr Wee's osteoarthritis of the knee, which was not caused by the Accident. Mr Wee agreed under cross-examination that the number of people patronising his stall during the COVID-19 pandemic would be fewer; but of course, there was no possibility of adducing any evidence as to the percentage decrease.

16 The defendant mounted several objections to Mr Wee's claim for loss of earnings.

17 First, counsel for the defendant argued that the real reason Mr Wee did not continue to work after the accident was that his wife, who was the main cook at the canteen stall that they ran together, was incapacitated as a result of the Accident. He submitted that such circumstance could not constitute the basis of Mr Wee's claim for pre-trial loss of earnings. It had to be shown that the injuries suffered by Mr Wee himself had resulted in his inability to work.

18 If Mr Wee himself had not suffered any injuries, the defendant's contention would be valid. The truth, however, is that Mr Wee was injured too. Although the extent of Mr Wee's injuries was not such as to render him physically unable to work altogether (even with the pre-existing knee problem), it made him practically unemployable. At his age and hampered by his inability to carry heavy things by reason of his left shoulder and back injuries as well as

his difficulty standing for long owing to his knee problem, it strains credibility that he would have been able to secure employment, for example, as a hawker assistant to someone else. While there is no evidence that Mr Wee had tried unsuccessfully to gain such employment, in the circumstances, I accept that he would more likely than not have failed.

19 The second objection to Mr Wee’s claim was that any inability to work might also have been contributed to by osteoarthritis of the left knee which, Dr Yam had confirmed, was a new complaint in 2018 and therefore not attributable to the accident. However, as Dr Yam opined under cross-examination, Mr Wee could have continued to work up to whatever age he desired in spite of the knee problem.

20 In theory, (but for the injuries he himself sustained in the accident) Mr Wee could have continued to work after his wife was incapacitated. It is a matter of conjecture what he would have been able to earn in that compromised physical condition, *ie*, with osteoarthritis of the knee. It is incapable of proof since we cannot turn the clock back to before the accident to obtain empirical evidence as to the amount of wages he could have earned. This is through no fault of his. For this reason, the defendant’s argument that the Mr Wee has not discharged the evidential burden of strict proof must be tempered by the special circumstances of the case where through no fault of his, proof is impossible.

21 In *Yap Boon Fong Yvonne v Wong Kok Mun Alvin and another and another appeal* [2019] I SLR 230 (“*Yap Boon Fong Yvonne*”) the Court of Appeal opined at [44]–[46]:

44 We do not think that an adherence to established principles will make it unduly onerous for plaintiffs who find themselves in exceptional circumstances which make it difficult to precisely prove and quantify loss of earnings. The courts do

not and will not rigidly or invariably demand the same type or amount of evidence in every claim for lost earnings, but will consider all the circumstances of each case in determining whether the evidence that is available satisfies the court that the loss can be proved on a balance of probabilities.

45 We illustrate this with an example. In *Zaiton Bee Bee bte Abdul Majeed v Chan Poh Teong* [2010] 3 SLR 697 (“*Zaiton Bee Bee*”), the plaintiff was a henna artist who met with a traffic accident and sustained injuries which affected her level of productivity and the number of hours she could put into teaching henna each day: a [57]. Judith Prakash J recognized the difficulties in quantifying the plaintiff’s pre-trial loss of earnings and the limitations in the plaintiff’s evidence, but nonetheless recognized that the plaintiff had incurred losses in the first two years after the accident during which she was unable to work. The AR below had awarded the plaintiff \$46,000 per year for pre-trial loss of earnings, with reference to the plaintiff’s income tax assessments, but Prakash J found that this figure was too low given the plaintiff’s enterprising spirit and the evidence of continuing business enquiries. However, it also would not have been fair to award the plaintiff \$92,000 per year, which represented the profits earned for a full year’s work, because the evidence indicated that the nature of her business was more casual in nature and not so sustained as to generate a full year’s profits. Prakash J found it appropriate to take the average between \$46,000 and \$92,000, which yielded a “mid-figure of \$69,000 a year [which] would not be unreasonable based on the available evidence”: at [65]. Hence, the plaintiff was awarded \$138,000 for pre-trial loss of earnings over the two years during which she was unable to work.

46 Despite the inherent difficulties in quantifying the loss incurred by the plaintiff prior to the date of trial, the court in *Zaiton Bee Bee* nonetheless found it possible to award the plaintiff special damages for pre-trial loss of earnings in a sum which it considered to be fair in all the circumstances and justified by the available evidence. This adequately met the requirement that special damages must be strictly proved: see *Wee Sia Tian* ([31] *supra*) at [15]-[16] and the State Court practitioner’s guide, *Damages: Personal Injuries and Fatal Accidents* (LexisNexis, 3rd Ed, 2017) (“the Practitioner’s Guide on Assessment of Damages”) at para 1-8.

22 The Court of Appeal in *Yap Boon Fong Yvonne* went on to clarify at [48]:

48 Accordingly, we are not concerned that the law will be too strict by compensating plaintiffs only for their pre-trial loss of earnings (and as a matter for special damages) and not diminished earning capacity. We further clarify that the requirement of strict proof for special damages does not mean that the plaintiff must meet a higher legal burden of proof than a balance of probabilities, only that the loss must be specially pleaded and proved: see *Rahman Lutfar v Scanpile Constructors Pte Ltd* [2016] SGHC 41 at [13]; O 18 r 12(1A) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed).

23 Happily in response to my request for further submissions, the parties have been able to agree on reference being made to the Ministry of Manpower’s Occupational Wage Tables, 30 June 2020 (the “Occupational Wage Tables”) as a helpful starting point in determining the measure of Mr Wee’s loss of earnings.

24 The parties also agree that the occupation of “Food/Drink stall assistant” and “Kitchen assistant” would be closest to that of Mr Wee as a canteen stall assistant. As between the two, the type of work that bears a closer resemblance to the work that Mr Wee was accustomed to would be that of a “Kitchen assistant”.

25 Given Mr Wee’s age, in my view he should be within the 25th percentile rather than the median or 75th percentile. The applicable basic wage per month is therefore \$1,300 according to Table 4.5 of the Occupational Wage Tables.

26 I agree with the defendant that further reduction should be made to take into account his knee problem (which was not caused by the accident). Unlike the defendant, however, I do not consider it reasonable to reduce the \$1,300 by half. That would leave Mr Wee with a paltry notional salary of \$650 per month which, in my view, is wholly unrealistic. I consider that a 10% reduction would

be more appropriate, leaving Mr Wee with a notional salary of \$1,170 per month.

27 I therefore award Mr Wee loss of pre-trial earnings for the period from July 2017 to August 2021 (a total of 50 months) in the amount of \$58,500.

(2) JOS Annex A Item 8 – loss of future earnings

28 To determine the appropriate multiplier, reference is made to *Actuarial Tables with Explanatory Notes for use in Personal Injury and Death Claims* (Singapore Academy of Law, 2021) (the “Actuarial Tables”).

29 Based on the Actuarial Tables, the multiplier is 4.66 years. The multiplicand should be the same as for the loss of pre-trial earnings. The defendant’s submissions on economic limitation affecting the earnings at the PSA canteen stall are not relevant since the multiplicand is not based on such earnings.

30 Accordingly, I award Mr Wee in respect of loss of future earnings the sum of \$65,426.40 (*ie*, $\$1,170 \times 4.66 \times 12$).

JOS Annex A Items 4 to 6 - medical and related expenses

31 These items totalling \$1324.74 (consisting of claims of \$584.74, \$90 and \$650) have been agreed between the parties. I accordingly award the sum of \$1324.74.

Damages suffered by Mdm Yew*Special damages*

(1) JOS Annex B Items 11, 13–16

32 The table below sets out the special damages items in the JOS at Annex B which have been agreed between the parties.

Item no.	Item description	Damages claimed
11	Hospitalisation bills, surgery, psychiatric counselling, physiotherapy, cost of prosthesis and transportation expenses	\$44,744.86
13	Cost of adaptation of home	\$1,398.30
14	Cost of medical reports	\$765.00
15	Cost of internet searches	\$94.00
16	Cost of retrieving bank statements	\$650.00
Total		\$47,652.16

33 Accordingly, I allow the sum of \$47,652.16.

(2) JOS Annex B Item 12 – incurred nursing and care expenses

34 Mdm Yew claims a total of \$63,561 made up of the following two components:

(a) \$60,000 being the domestic helper’s salary and daily expenses at \$1,200 per month from July 2017 to August 2021 (50 months); and

(b) \$3,561 being the total sum of expenditures evidenced in pages 208 to 215 of Mdm Yew’s affidavit of evidence-in-chief (“AEIC”).

35 The defendant wrongly attributes the \$3,561 as being for a “private/home nurse” and objects to such expense, relying on what he describes as “Dr Chua’s evidence in no uncertain terms” that Mdm Yew did not have any

need which required a nurse-trained caregiver. However, the payments to the Home Nursing Foundation on 29 September 2017 and 3 October 2017 were merely for wound dressing amounting to only \$17 on each occasion. There is no doubt that they ought to be allowed. There is no claim for a nurse-trained caregiver.

36 In fairness to the defendant, the confusion was initially caused by counsel for the plaintiffs’ characterisation of Item 12(a) of the JOS Annex B as including “Private/home nurse” when in large part the expenditure was in respect of fees paid to maid agencies for sourcing of the domestic helpers.

37 In any event, I note from the Plaintiff’s Closing Submissions filed on 11 November 2021 (“PCS”) at para 74 that the defendant’s only other objections are with respect to expenses incurred for the domestic helper’s three medical consultations totalling \$120 over a 14-month period. I agree with counsel for the plaintiffs that these expenses are clearly allowable.

38 Accordingly, the sum of \$3,561 is allowed.

(3) JOS Annex B Item 26 – pre-trial loss of earnings

39 Mdm Yew claims \$90,000 for pre-trial loss of earnings from the operation of her cooked food stall at the PSA canteen for the 50-month period from July 2017 to August 2021 based on an estimate of \$1,800 per month.

40 She kept no records of her earnings but produced bank statements showing cash deposits into her POSB Saving Account No. 109-92585-3 for 13 months preceding the accident, *ie*, from June 2016 to June 2017 (the “POSB statements of account”). The amounts deposited varied from \$1,000 for each of the months from June 2016 (except for October and December when there were

no deposits) to \$3,000 in January 2017, \$2,000 in February 2017, none in March, April and May and \$1,300 in June 2017.

41 Mdm Yew explained that she did not deposit all her earnings into the POSB account but kept some cash on hand.

42 The defendant did not suggest that the estimate of \$1,800 was excessive. Instead, he submitted that Mdm Yew had not discharged “the evidential burden of strict proof required of special damages”.³

43 As regards this, I have already referred to the opinion of the Court of Appeal in *Yap Boon Fong Yvonne* (see [22] above).

44 There is no doubt that Mdm Yew suffered pre-trial loss of earnings. While admittedly the evidence as to the estimate of monthly earnings is sparse, it would be unjust to insist that more has to be provided when no record of her daily takings exists. In light of the inherent difficulties in quantifying the loss, the Court has to do what it can to arrive at a sum which is fair taking account of the available evidence.

45 As a starting point, I do not consider \$1,800 a month excessive. Neither has the Defendant suggested that it is. Under cross-examination, Mdm Yew came across as a credible witness. Her explanation that she did not deposit all her takings is understandable. She had to retain some of the money for household and living expenses. The POSB statements of account do not show frequent withdrawals which one would expect to see if the entirety of the takings were deposited and only withdrawn when needed. In fact, withdrawals were few and far between.

³ DCS at para 98.

46 However, it is fair that the estimate has to be reduced to take account of the economic effects of the COVID-19 pandemic. It seems fair to assume that if Mdm Yew had continued to operate her stall during the pandemic, her takings would likely have been reduced. In the round, I will adopt a 20% discount for the period of 17 months from April 2020 to the end of the pre-trial period in August 2021.

47 Accordingly, the pre-trial loss of earnings is the aggregate of (\$1,800 x 33) and (\$1440 x 17), ie, \$83,880 and I award the same.

General damages

(1) JOS Annex B Item 27 – loss of future earnings

48 As set out in the JOS, Mdm Yew’s claim is premised on her working till the age of 82 years. Dr Tjan Soon Yin (“Dr Tjan”), Senior Consultant in the Department of Rehab Medicine and Pain Management Clinic at Tan Tock Seng Hospital, gave evidence under cross-examination that in his view, but for the Accident, Mdm Yew would have been able to work until 82 years of age.

49 However, Mdm Yew’s own evidence at trial became somewhat unclear under cross-examination.

50 Initially she confirmed that she was claiming for loss of income until age 82 years.

51 However, counsel for the defendant went on to ask as follows:

Q Would you agree with me that now that you are 70---
now that you are---

Court: 73 now, right?

Q ---73, you know, giving you another 6 more years to
work up to 79 years old would be realistic. Do you agree?

52 The Court then reminded counsel that the question should not be premised on her present physical condition but rather as she was before the accident. In other words, but for the accident, would she have intended to work only up to the age of 79 years?

53 Counsel rephrased his question thus:

Q If the accident had not happened, you know, do you agree that 70--- do you agree that 70---sorry. 70---I think, yes. Do you agree that 78 years old would be a fair age to retire? Noting especially the requirements of your job. Without the accident, we are talking about.

A Agree. Of course, if nothing happens to me, I will work till 78 or even beyond 78 years old, if I am able to continue working.

54 Further on, in response to counsel for the defendant's put question that she had not given positive evidence that she would be able to work up to 82 years of age, Mdm Yew replied:

A Yes. What I mean is that, if I'm strong enough, I would work up to the age of 82 years old.

55 After counsel for the plaintiffs had re-examined Mdm Yew, the Court sought her clarification as to the age at which she would have retired but for the accident. Surprisingly her reply was as follows, "I am not able to think. I am feeling painful in some....in different parts of my body. Then I do with 78."

56 She went on to say as follows:

Yes, I accept 78. I can't ask for more. I wish to go home earlier.
I am now in pain. My leg is numb.

57 Finally, under further re-examination with the Court's leave, this exchange took place:

Q ...So you think 80 years old is a fair age to retire if not for the accident?"

A 80 or 82 is a fair age.

58 In these circumstances, I think it would be fair to take 80 years, (*ie*, the mean between 78 and 82) as the age at which she would have retired but for the accident.

59 Based on Table 2-8 of the Actuarial Tables, the applicable multiplier is 6.68 years.

60 As for the multiplicand, as was done earlier, a discount has to be given in view of the ongoing COVID-19 pandemic. However, it is not possible to say for how long the pandemic will continue. Whilst it might seem improbable that the negative economic impact would last for the entire 6.68 years, it could very well continue for another 2 years. In the round, assuming this to be the case, a discount to the multiplicand of 20% for first 2 years would in my view be fair. The multiplicand for the remaining period of 4.68 years will remain at \$1,800 per month, and the loss of future earnings will therefore be $(\$1440 \times 2 \times 12) + (\$1800 \times 4.68 \times 12)$ yielding \$135,648 in the aggregate.

Pain and suffering

(1) JOS Annex B Item 1 – major depressive disorder

61 Madam Yew claims \$20,000 for her major depressive disorder. The defendant takes the position that she is entitled to only \$12,000. According to Charlene Chee *et al*, *Guidelines for the Assessment of General Damages in Personal Injury Cases* (Academy Publishing, 2010) (the “Guidelines”), the range of damages awarded for general psychiatric disorders under the “moderately severe” category is \$8,000 to \$25,000. The factors to be taken into account in assessing such claims include the following:⁴

- (a) the person’s ability to cope with life and work in general as compared to his or her pre-trauma state;
- (b) the effect on the person’s relationships with family, friends and those with whom he or she comes into contact;
- (c) whether the person is suicidal as a result of his or her psychiatric condition;
- (d) whether medical help has been sought;
- (e) the extent to which treatment would be successful;
- (f) the extent to which medication affects the person’s work and social life;
- (g) whether the person adheres faithfully to counselling sessions and takes his or her medication;
- (h) the risk of relapse in future; and

⁴ Charlene Chee *et al*, *Guidelines for the Assessment of General Damages in Personal Injury Cases* (Academy Publishing, 2010) (the “Guidelines”) at pp 25–26.

- (i) the chances of full recovery in the future.

62 The evidence as to Mdm Yew’s suffering is as follows:

(a) Mdm Yew had suicidal thoughts and often thought that things would have turned out better if she had died in the Accident.⁵ In the medical report dated 30 May 2019 of Adjunct Associate Professor Ang Lye Poh, Aaron, Senior Consultant at the Department of Psychological Medicine (“Dr Ang”), he stated that Mdm Yew had “*thoughts of life being meaningless and that she should have died in the [Accident].*” [emphasis added].⁶

(b) Mdm Yew faced difficulties in coping with life in general as she had poor sleep and countless sleepless nights.⁷

(c) She avoids leaving the house and attending extended-family gatherings as she is self-conscious of people staring at her amputated leg.⁸

(d) She is unable to recount the Accident without crying.⁹

63 Mdm Yew sought treatment at Tan Tock Seng Hospital under the care of Dr Ang who diagnosed her as suffering from Major Depressive Disorder. The following extract from Dr Ang’s medical report of 30 May 2019 is pertinent:¹⁰

⁵ Mdm Yew’s AEIC at para 16; BAEIC Vol 1 p 81 para 16.

⁶ BAEIC Vol 1 p 118.

⁷ Mdm Yew’s AEIC at para 17; BAEIC Vol 1 p 81 para 17

⁸ *Ibid.*

⁹ Mdm Yew’s AEIC at paras 16–17; BAEIC Vol 1 p 81 paras 16–17.

¹⁰ Medical report dated 30 May 2019 by Dr Ang Lye Poh, Aaron; BAEIC Vol 1 p 118.

... [s]he was first seen on 17 October 2017, where she presented with depressed mood, associated with tearfulness, poor sleep as well as thoughts of life being meaningless and that she should have died in the [Accident]. She was diagnosed as suffering from Major Depressive Disorder. She was initially not keen to start on antidepressants but agreed on Mirtazepine (14 November 2017) as her symptoms were not improving on subsequent follow-up appointments.

She was followed up regularly as an outpatient and was last reviewed on 7 May 2018. At that time, she [*sic*] although there was some improvement in her overall symptoms, she was still depressed with episodes of sadness and tearfulness (crying). ... At that time, she was on Mirtazepine 45 mg once a night. She was given a follow-up appointment in 16 weeks but did not return for that scheduled appointment.

64 The defendant seized upon Mdm Yew's failure to attend any follow-up appointment after 7 May 2018 or to seek further medical treatment thereafter and argued that by not continuing to take antidepressants, she had failed to mitigate the state of her psychological condition. Her reply was that she found her condition remained the same, despite the medication; she still could not sleep nor eat. Moreover, after taking the medication, she did not have any strength or energy.

65 In fairness, this was not a clear case of a patient refusing medical treatment. Mdm Yew had been treated since 14 November 2017 with regular follow-up until 7 May 2018 but then felt that there had been no improvement. She told the court that she felt she had been taking too much medication in spite of which she remained unable to sleep at night nor eat during the day. Although Dr Ang reported that there was some improvement in Mdm Yew's overall symptoms, it seems to me unlikely that she would have chosen to discontinue treatment if she thought her condition could improve with the medication.

66 As regards the quantum of damages, \$12,000 is clearly too low. The precedent relied upon by the defendant, *Law Kin Ying (administratrix of the*

estate of Lo Hon Man) and others v Lim Hong Hock [2015] SGHCR 14 bears no factual resemblance at all to the present case. In that case, the widow and son of the deceased were awarded \$10,000 and \$4,000 respectively for depression as a result of witnessing the deceased's accident. It should be noted, however, that they were also awarded damages for post-traumatic stress disorder arising from the same accident so that in total the widow was awarded \$28,000 while the son was awarded \$10,000. Moreover, the particulars of their psychological condition were nowhere near those suffered by Mdm Yew, whose serious physical injuries included those that resulted in the amputation of her right leg above the knee.

67 Counsel for the plaintiffs referred to two precedents. In *Ng Lay Peng v Gain City Engineering & Consultancy Pte Ltd (Ng Peng Boon, third party) (AXA Insurance Singapore Pte Ltd, intervener)* [2020] 3 SLR 271 ("*Ng Lay Peng*"), the claimant was awarded \$12,000 for a major depressive disorder which she suffered as a result of a low-speed, low impact collision between the motor vehicle she was in and another motor vehicle.

68 The other was *Ong Tean Hoe v Hong Keng Industrial Company Private Limited* [2001] SGHC 303 ("*Ong Tean Hoe*") where the plaintiff was awarded \$20,000 for post-traumatic depression arising from an industrial accident in which the injuries he sustained resulted in the amputation of both hands.

69 Broadly speaking, the facts in *Ong Tean Hoe* bear more resemblance to our instant case than *Ng Lay Peng*.

70 Despite some resemblance, the post-traumatic depression from the loss of both hands could be more severe than Mdm Yew's major depressive disorder. (We cannot be sure because the law report does not detail the extent of the

depression in *Ong Tean Hoe*.) On the other hand, the case was decided 20 years ago, and account must be taken of inflation in the intervening years. I would therefore allow \$20,000.

(2) JOS Annex B Item 2 – complex pelvic fracture and left sciatic nerve palsy

71 Dr Ivan Chua (“Dr Chua”), a consultant in the Department of Orthopaedic Surgery, Tan Tock Seng Hospital noted in his report of 30 July 2019 that Mdm Yew sustained, amongst other injuries, a complex pelvic fracture. He also noted left sciatic nerve palsy.¹¹

72 Owing to the paucity of information regarding the severity of the above two injuries, it is difficult to determine precisely which category they fall under in the Guidelines.

73 Counsel for the plaintiffs submits that the pelvic fracture falls under the “Severe” category (a)(ii) of “Pelvis and hip” injuries in the Guidelines whereas counsel for the defendant places the pelvic fracture under the “Moderate” category (b). As best I can tell, counsel for the defendant is probably right. I would allow \$18,000, taking into account the sciatic nerve palsy.

(3) JOS Annex B Item 3 – injuries related to right knee

74 Dr Chua’s medical report of 30 July 2019 recorded that Mdm Yew sustained a right knee open fracture (distal femur and proximal tibia) with vascular occlusion of popliteal artery, and nerve injury as a result of the Accident.

¹¹ Medical report dated 30 July 2019 by Dr Ivan Chua; BAEIC Vol 1 p 123.

75 Both parties have classified the injuries as falling within the “Severe” category (a)(ii) of “Knee” injuries under the Guidelines for which the range of damages previously awarded is from \$15,000 to \$25,000. Whereas Mdm Yew claims \$20,000 for these injuries, the defendant submits that \$15,000 is fair, citing: (i) *Ley Hock Guan v Low Tong Seng* (DC Suit No. 2111 of 2000) where the claimant was awarded \$15,000 for fracture of the left tibia at \$15,000; and (ii) *Ang Lian Lock v Mohd Shafar bin Salih and Anor* (HC Suit No. 711 of 2012) where \$25,000 was awarded.

76 Counsel for the defendant made no attempt to compare and contrast the severity of Mdm Yew’s injuries with those in the precedent cases. Even a cursory look at *Ley Hock Guan* would reveal that the injury was a fracture of the left tibia and less severe than Mdm Yew’s.

77 On behalf of Mdm Yew, counsel for the plaintiffs cited the following precedent cases:

(a) *Goh Eng Hong v Management Corporation of Textile Centre and another* [2003] 1 SLR(R) 209 (“*Goh Eng Hong*”), where the High Court awarded the plaintiff damages of \$40,000 for an open compound fracture of the left tibia and fibula, and a closed fracture medial malleolus of the left ankle. The plaintiff in *Goh Eng Hong* also had to undergo a posterolateral bone grafting.

(b) *Lai Sin Wah v Ng Soo Ngoh* digested at [1999] Mallal’s Digest (4th ed) 1224 (“*Lai Sin Wah*”), where the plaintiff was awarded \$25,000 for comminuted fractures of the tibia and fibula. The plaintiff’s right leg became infected, malunited and shortened, and he experienced chronic pain over the fractured right leg.

78 Counsel for the plaintiffs conceded that the injuries in the cases she cited were more severe than Mdm Yew's. As such, she submitted that Mdm Yew's damages should be \$20,000 (the midpoint of the range), rather than \$15,000. I agree that the appropriate quantum is \$20,000 and accordingly award the same.

(4) JOS Annex B Item 4 – injuries related to left knee and leg

79 Counsel for the plaintiffs listed the above injuries as follows:

- (a) left knee open fracture (distal femur and proximal tibia);
- (b) chronic pain in left leg; and
- (c) osteoarthritis in left leg.

80 He omitted (I believe through inadvertence) a related item of injury which Dr Chua recorded in his medical report of 30 July 2019 as “Left tibia fibula segment open fracture” in addition to the injury listed in [79(a)] above.¹² Dr Chua in his report of 1 February 2021¹³ also recorded that based on X-rays of her left knee taken on 15 June 2020, there were already early signs of osteoarthritis. He further noted that because her left leg is the only remaining leg which will certainly be over-used, the degree of arthritis may progress more rapidly than that in the general population. He added that if she develops disabling symptoms from the knee osteoarthritis, it is likely that she will require a complex total knee arthroplasty (*ie*, replacement).

81 As regards chronic pain in the left leg listed at [79(b)] above, the report of Dr Tjan dated 7 May 2021 refers to “pain sensitization of [Mdm Yew's] left

¹² Medical report dated 1 February 2021 by Dr Ivan Chua at para 1; BAEIC Vol 1 p 132 para 1.

¹³ Medical report dated 1 February 2021 by Dr Ivan Chua at para 4; BAEIC Vol 1 p 135 para 4.

thigh following pelvic fracture and lower limb fractures even though she has received surgical corrections...”.¹⁴ He noted that the pain (together with the “phantom pain of her right leg after the above-knee amputation”) had been present since 2017 and that from December 2020, Mdm Yew had reported worsening of the pain despite medication titrations to the degree that her sleep and mood were severely affected. Dr Tjan was of the opinion that “[d]ue to the chronicity of her pain post injury, how it has affected her function and mood; and her need for continuous analgesic management thus far ... Mdm Yew’s pain is most unlikely to remit without maintenance medications, and that she will need long term follow up for pain management”.¹⁵

82 Counsel for the plaintiffs treated the injuries as falling under “Knee”, “Severe” category (a)(i) of the Guidelines and claims \$63,000, which is at the top of the range awarded.¹⁶ Counsel for the defendant, on the other hand, submits without argumentation that an award of \$20,000 would be eminently fair.¹⁷

83 I cannot see how that would be fair. On the one hand, I would not regard her injuries as being at the top end of the range, there being no mention in the reports of “ligamentous damage” or “significant loss of knee function” as described in the Guidelines. On the other hand, there is not only a “risk of osteoarthritis” as described in the Guidelines, there being early signs of osteoarthritis and the prospect that it would develop more rapidly for the reasons mentioned by Dr Chua as noted above (see [80]). In addition, Dr Tjan’s report

¹⁴ Medical report dated 7 May 2021 by Dr Tjan Soon Yin at para 2; BAEIC Vol 1 p 170 para 2.

¹⁵ Medical report dated 7 May 2021 by Dr Tjan Soon Yin at para 4; BAEIC Vol 1 p 170 para 4.

¹⁶ PCS at para 45.

¹⁷ DCS at para 67.

of unremitting pain that requires maintenance medication and long term follow-up for pain management should be noted (see [81]).

84 All in, I would allow damages at \$45,000.

(5) JOS Annex B Item 5 – right pneumothorax

85 As noted in Dr Chua’s medical report of 30 July 2019, Mdm Yew suffered a right pneumothorax which required insertion of a tube into her affected lung.

86 Mdm Yew claims \$16,000 whilst the defendant asserts that Mdm Yew should only be awarded \$4,000.

87 Counsel for the plaintiffs referred to *Zhang Limin v Wan Ee Teck* (DC Suit No. 1388 of 2009) where the parties agreed on damages of \$14,000 for left pneumothorax. He also referred to *Wang Qinfu v Tiong Woon Crane Pte Ltd* (HC Suit No. 732 of 2009) (“*Wang Qinfu*”) where the claimant was awarded \$30,000 as a global sum for the multiple ribs fracture and left pneumothorax.

88 Counsel for the defendant contended that Mdm Yew should only be awarded \$4,000, citing two precedents in each of which the claimant was awarded \$3,000 in damages.

89 It should be noted that in *Tew Chee Yong v Yap Eng Kiat* (DC Suit No. 3977 of 1999) cited by the defendant, in addition to the \$3,000 awarded for pneumothorax, the claimant was awarded \$15,000 for multiple ribs fracture. Comparing this precedent with *Wang Qinfu*, where a global sum of \$30,000 was awarded for pneumothorax and multiple ribs fracture, if in the latter case \$15,000 was similarly attributed to the multiple ribs fracture, the remainder

(\$30,000 less \$15,000) would be attributable to the pneumothorax. Therefore, one might say that the range for pneumothorax is \$3,000 to \$15,000.

90 I note also that Mdm Yew had a tube inserted into her affected lung which remained from 30 June 2017 to 5 July 2017.

91 I therefore allow \$10,000 in damages for this item.

(6) JOS Annex B Items 6 and 7 – injuries related to the spinal fractures

92 Based on the JOS, the parties appear to have agreed on \$19,000 in damages for JOS Annex B Item 7, which is for Mdm Yew’s orthopaedic consequences related to the spinal fractures. However, in the Defendant’s Closing Submissions (“DCS”) at para 69, counsel for the defendant contends that there ought to be no distinction between JOS Annex B Items 6 and 7 which respectively correspond to the neurological and orthopaedic injuries related to the spinal fractures sustained by Mdm Yew. I therefore deal with both Items 6 and 7 in this section.

93 In Dr Tjan’s medical report dated 5 July 2019, he identified Mdm Yew as having suffered spinal fractures – “[u]ndisplaced *fracture of the right and left Lumbar 5th vertebra transverse processes, as well as fracture at the anterior cortex of Sacral 3rd vertebra*”.¹⁸ Mdm Yew claims \$80,000 for the neurological consequences of these injuries and \$19,000 for the orthopaedic consequences of these injuries, whereas the defendant takes the position that Mdm Yew is only entitled to \$40,000 in total.

¹⁸ Medical report dated 5 July 2019 of Dr Tjan Soon Yin; BAEIC Vol 1 p 121 para 4.

94 Mdm Yew’s claim of \$80,000 places the injuries within the “Severe” category (a)(i) of “Back injuries” under the Guidelines which reads as follows:

19

Partial or no paralysis involved but the person suffers from very unusual and serious consequences, eg. impotence or double incontinence as a result of the lumbar injury. An award in the higher range is appropriate where the unusual disabilities affect the person’s daily life and/or affect the person’s sexual capability and causes great inconvenience (as in cases of double incontinence).

95 Despite the attempt to draw a distinction between the neurological and orthopaedic consequences of the spinal fractures, counsel for the plaintiffs did not point to any diagnosis of neurological consequences in the medical reports. In his report of 5 July 2019, Dr Tjan only mentioned that the said spinal fractures were “conservatively managed”.

96 However, Mdm Yew gave evidence in her AEIC of the following:

- (a) She would sometimes experience cramps in her left leg when she straightens or bends.²⁰
- (b) She is unable to carry out simple tasks using her left leg, such as wearing socks or shoes and is completely reliant on her helper.²¹
- (c) She has experienced a numbing sensation in her hands.²²

¹⁹ The Guidelines at p 22.

²⁰ Affidavit of evidence-in-chief (“AEIC”) of Mdm Yew at para 20.

²¹ AEIC of Mdm Yew at para 20.

²² AEIC of Mdm Yew at para 35.

- (d) She is also recorded in Dr Chua’s medical report of 30 July 2019 as having mentioned that she “experienced persistent numbness in her left foot especially when ambulating”.²³

97 Mdm Yew’s difficulty is that without the evidence of the doctors who attended to her, it is not possible to attribute her complaints to the spinal fractures.

98 Even if they could be thus attributed, they do not appear to fall within “Back injuries” category (a)(i) of the Guidelines. In my view, category (a)(ii) would be more appropriate, and I would allow damages at \$45,000 (midpoint of the range of \$30,000–\$60,000).

- (7) JOS Annex B Item 8 – right above-knee amputation complicated by right stump wound infection and neuropathic pain

99 Mdm Yew claims \$115,000 for the above injuries. The defendant takes the position that an award of \$100,000 would be eminently fair.

100 The Guidelines show a range of \$42,000 to \$80,000 for above-knee amputation of one leg. In *Tan Hun Boon v Rui Feng Travel Pte Ltd and Anor* [2008] 3 SLR 244 which was a case involving an above-knee amputation and subsequent phantom limb pain, Pang Kang Chau JC (as he then was) opined at [23] that:

The correct approach is to use the award of \$80,000 in *Rahman Lutfar* ... [a case concerning above-knee amputation] as the starting point and add another \$20,000 to \$35,000 to account for the severe phantom limb pain suffered by the Plaintiff. In other words, the appropriate award for pain and suffering for

²³ Medical report dated 30 July 2019 of Dr Ivan Chua; BAEIC Vol 1 p 124.

the left lower limb injury should range from \$100,000 to \$115,000.

101 Counsel for the plaintiffs referred to the 25 June 2019 medical report²⁴ of Dr Vincent Yeo (“Dr Yeo”), Senior Consultant in the Department of Anaesthesia, Intensive Care & Pain Medicine at the Tan Tock Seng Hospital where Dr Yeo noted as follows:

Mdm Yew experienced severe pain which was difficult to control and required a referral to the Acute Pain Service. Multi-Modal Analgesia was started which included:

1. Patient Controlled Intravenous Fentanyl Analgesia 1 to 5 August 2017.
2. Anti-neuropathic analgesia which included Nortriptyline (started for depression) with the later addition of Gabapentin 300mg at 8am, 2pm and 600mg at 10pm.

102 However, in the same report, Dr Yeo recorded as follows:

Mdm Yew’s pain control improved and she was discharged on 26 Aug 2017 with:

1. Fentanyl Patch 12 mcg/hr
2. Gabapentin 300mg at 8am, 2pm and 600mg at 10pm.
3. Paracetamol 1g 8hrly
4. Oxycodone 5mg once a day as needed (for example before wound dressing or mobilisation)

103 Mdm Yew was re-admitted from 8 to 22 September 2017 for “Right AKA [*ie*, Above Knee Amputation] stump infection” during which, according to Dr Yeo’s report “her pain was controlled on the above regime with the addition of subcutaneous fentanyl injections when needed, for any increase in pain due to the wound infection or treatments.”

²⁴ BAEIC Vol 1 p 119–120.

104 What is significant is the penultimate paragraph of Dr. Yeo’s report where he recorded as follows:²⁵

Following her discharge from hospital, Mdm. Yew was reviewed at the Pain Management Clinic on the 6 October 2017 and 10 April 2018. During both consultations, Mdm Yew reported that she was experiencing minimal pain despite having weaned off her analgesia listed above. However, she reported symptoms suggestive of depression with suicidal ideation. A referral was made to Psychiatry to manage her Major Depression and Rehabilitation Medicine Pain Clinic to manage pain which may develop during her Rehabilitation, listed above.

105 Thus, although Mdm Yew did experience severe pain, she later reported only minimal pain during review on 6 October 2017 and 10 April 2018.

106 Counsel for the plaintiffs did not differentiate between (i) the pain described above at [101]–[103] (which were caused by the multiple injuries she had sustained in the accident and also by the numerous surgeries she had to undergo as a result); and (ii) the phantom limb pain following the right above-knee amputation.

107 Whilst item (i) would appear to have been largely resolved, except for “pain sensitization of her left thigh” which I refer to below, the phantom pain in item (ii) was not.

108 As late as 7 May 2021, Dr Tjan in his report of that date noted the “phantom pain of her right leg after the above knee amputation” which together with “pain sensitization of her left thigh had been present since 2017”. He further opined, as noted earlier, that her pain was “most unlikely to remit

²⁵ Medical Report of 25 June 2019 by Dr Vincent Yeo (“Dr Yeo”), Senior Consultant in the Department of Anaesthesia, Intensive Care & Pain Medicine at the Tan Tock Seng Hospital at p 2: BAEIC Vol 1, p 120.

without maintenance medications, and that she will need long term follow up for pain management”.

109 Taking the above into account and the wound infection of the right knee stump on account of which she had to endure further surgeries (see para 3 of Dr Yeo’s report of 25 June 2019), I am of the view that \$115,000 would be a fair quantum of damages. I therefore award \$115,000.

(8) JOS Annex A Item 9 – paroxysmal/supraventricular tachycardia

110 Based on Dr Chua’s medical report dated 30 July 2019, Mdm Yew suffered a paroxysmal atrial fibrillation/supraventricular tachycardia (trauma induced). Mdm Yew claims \$12,000 for this injury, whereas the defendant takes the position that Mdm Yew is only entitled to \$8,000.

111 There is nothing directly on point in the Guidelines. Counsel for the plaintiffs’ reference to page 40 of the Guidelines is of no assistance.

112 Counsel for the plaintiffs sought to infer, from a comparison of two cases covered in the *Practitioners’ Library – Assessment of Damages: Personal Injury and Fatal Accidents* (LexisNexis, 3rd ed, 2017), that an appropriate award would be \$12,000.

113 In *Apuada Marilyn Rondolo v Shaik Moktar bin Mohamad Aki & Anor* (DC Suit No. 124 of 2010) (“*Apuada*”), the plaintiff was awarded \$42,000 for (a) post-traumatic tachycardia and haemothorax of the right chest with complications, (b) pleural effusion, empyema and collapse of the right lung, (c) fractures of the left 1st to 5th ribs and (d) fractures of the right 6th and 7th ribs.

114 In *Wang Qinfu* (see [87] above), the claimant was awarded \$30,000 for multiple ribs fractures and left pneumothorax, both of which injuries were amongst the injuries the claimant in *Apuada* suffered. Counsel for the plaintiffs submitted, assuming the same sum of \$30,000 would have been awarded in *Apuada* for the similar injuries, that the difference (\$42,000 less \$30,000) could then be imputed to the injuries similar to those suffered by Mdm Yew.

115 However, a closer study of *Apuada* would show that counsel for the plaintiffs has not accounted for other injuries suffered by the claimant in that case. In other words, the difference of \$12,000 covered more injuries than those suffered by Mdm Yew.

116 In the absence of any other guidance, I would take the mean between the respective figures proposed by the parties, *ie*, \$10,000 and award the same.

(9) JOS Annex B Item 10 – numbness in left hand

117 Mdm Yew claims \$10,000 for pain and suffering on account of numbness in her left hand. The defendant disputes that the injury was directly caused by the Accident. The defendant submits that it was an aggravation of a pre-existing degenerative condition for which damages of \$2,000 would be fair.

118 Under cross-examination, the evidence of Dr Chua was that the numbness was not directly caused by the Accident as it was not detected or documented during Mdm Yew's admission to hospital and was later deduced to be due to carpal tunnel syndrome. He described it as a degenerative condition which could be asymptomatic until the patient is injured or if there are other aggravating factors. In response to questions by the Court, Dr Chua was inclined to the view that because of overuse of her arms from getting around, the

numbness from the existing carpal tunnel syndrome might have been precipitated.

119 Dr Chua confirmed the correctness of the Court’s understanding that it could have been a pre-existing condition which might have been exacerbated by Mdm Yew being obliged to use her arms more as a result of the accident.²⁶

120 Counsel for the plaintiffs argued that but for the accident, Mdm Yew would not have become over-reliant on her hands and accordingly “the numbness would not have exacerbated”.²⁷ He therefore contended that the numbness was attributable to the Accident. I do not see how one could say with any degree of confidence that but for the accident, the numbness would not have presented itself.

121 In reliance upon Dr Chua’s evidence, I would prefer the defendant’s submission that the numbness was not directly caused by the accident but rather was an aggravation of a pre-existing degenerative condition. I would therefore allow damages of \$3,000.

Future medical and other expenses

(1) JOS Annex B Item 17 – complex total knee arthroplasty

122 Mdm Yew claims \$40,000 for this item. However, the defendant disputes her claim.

²⁶ NE 22 September 2021 14:1-7.

²⁷ PCS at para 68.

123 In Dr Chua’s medical report dated 1 February 2021,²⁸ he opined that “it is likely that [Mdm Yew] will require a complex total knee arthroplasty” in the event “she develops disabling symptoms from the knee osteoarthritis”. Dr Chua also stated that “the degree of osteoarthritis may progress more rapidly” given that Mdm Yew’s “left leg is the only remaining leg which will certainly be overused”.

124 Dr Chua was repeatedly asked by counsel for the defendant if he could provide a percentage likelihood that Mdm Yew would require or undergo the surgery. He candidly stated that he could not. Dr Chua explained that a variety of factors would have to be taken into consideration before he decided that arthroplasty would likely benefit her. These included her state of health and her mental condition.

125 Finally, in response to the Court’s question whether it was possible for him to say whether it was more likely than not that Mdm Yew would or would not go for the surgery, Dr Chua replied as follows:²⁹

Your Honour, I totally understand where this dilemma is coming from. I have known this patient for the past 3 years to 4 years. Based on my understanding of her personality and her wishes, I would put this scenario: If currently, she is able to walk with her prosthesis with walking aid, perhaps in 2 years’ time, she develops a severe knee pain in the remaining left knee, assuming her.... mental health remains similar – the same, not overly depressive but still coping with the trauma, I would think that she would want a knee replacement done. That is based

²⁸ BAEIC Vol 1 p 159.

²⁹ NE 22 September 2021 12:28–13:11.

.... purely based on my understanding of this patient for the past 4 years.

...

And if her health is in good condition, granted she has some underlying medical conditions –

...

---I---I would perform this surgery for her.

126 I would therefore allow damages for the future medical expense of complex total knee arthroplasty fixed at \$35,000 which, is the mean within Dr Chua's estimate of \$30,000 to \$40,000.

(2) JOS Annex B Item 18 – physiotherapy

127 Mdm Yew claims \$6,500 for physiotherapy training sessions.

128 Whilst there is no doubt that she attended physiotherapy sessions from 2017, it appears those were in relation to pre-prosthesis training and subsequently, training to ambulate using the prosthesis.

129 I agree with the defendant that there appears no recommendation by any doctor for such continued physiotherapy.

130 I disallow this claim.

(3) JOS Annex B Item 19 – replacement and servicing of prosthesis

131 Mdm Yew claims a total of \$25,921.74 for the replacement and servicing of her prosthesis. The Defendant, on the other hand, submits that the damages should be \$19,052, *ie*, \$4,763 before GST (the undisputed costs of one replacement) multiplied by 4 (*ie*, one change every 3 years until the age of 85 years).

132 The difference between the parties’ figures lies mainly in the number of replacements. In his report of 8 March 2021,³⁰ Dr Tjan had stated, “[t]he expected lifespan of her prosthetic system is 3 years. Taking [the] average life expectancy of 85 years in Singapore, Mdm Yew will need another 4 cycles of prosthetic changes.” The defendant relies upon his evidence.

133 Counsel for the plaintiffs relies on Table 2-10 of the Actuarial Tables to derive a multiplier of 15.03 years and therefore submits that there ought to be five changes.

134 The question is whether the Court should follow the Actuarial Tables or the evidence of Dr Tjan. In my view, Dr Tjan’s reference to 75 years as the average life expectancy was a mere assumption rather than a considered opinion.

135 I would prefer to rely on the Actuarial Table. Accordingly, I would allow five cycles of prosthetic changes.

136 The remaining difference between the parties’ respective figures is that Mdm Yew includes an annual sum of \$137 for follow-up appointments and servicing. This was indicated in Dr Tjan’s report of 8 March 2021 and ought to be allowed.

137 In the result, I would allow \$25,870 (*ie*, $(\$4,763 \times 5) + (\$137 \times 15)$).

³⁰ BAEIC Vol 1 pp 160–161.

(4) JOS Annex B Item 20/21 – wheelchairs

138 According to Dr Tjan’s medical report dated 8 March 2021,³¹ Mdm Yew is expected to incur the following expenses for her manual wheelchair:

- (a) \$400 for a durable, lightweight detachable manual wheelchair which should last 3 years with regular use.
- (b) Mdm Yew will require at least another 4 wheelchair changes.

139 Based on the Actuarial Tables, the appropriate multiplier is 15.03 years. Therefore, Mdm Yew should be allowed five wheelchair changes.

140 As to Mdm Yew’s claim of \$7,800 for the cost of two electric wheelchairs, Dr Tjan was of the opinion that they were not necessary. He testified, “in almost all of her consult with me [*sic*], she came to the consultation in a manual wheelchair. Mdm Yew has been taught fully on the use of manual wheelchair. Her helper is also proven to be competent in assisting her to use the manual wheelchair. She has proven the ability to use manual wheelchair to commute from her residence to the hospital. Therefore, I feel the use of a manual wheelchair should be able to perform the functions of helping her to move about both in the community and in the neighbourhood. However, if Mdm Yew should wish to commute for further distances in the absence of someone that is able to push or assist her for the manual wheelchair, a motorized wheelchair can be an asset.”³²

141 Mdm Yew deposed in para 34 of her AEIC as follows:

³¹ Medical report dated 8 March 2021 of Dr Tjan Soon Yin at para 6; BAEIC Vol 1 pp 160–161.

³² NE 21 September 2021 5:22-31.

I am not confident of using the electric wheelchair alone and I would need my helper to still be around when I travel out of the house on my electric wheelchair. I am afraid that the electric wheelchair may topple over or may stall. If it happens, there would at least be someone around to help me.

142 Therefore, based on Dr Tjan’s final remarks quoted above the claim for the electric wheelchairs cannot be supported.

143 However, in para 33 of her AEIC, Mdm Yew also deposed as follows:

144 “I am currently using a manual wheelchair. However, I intend to purchase an electric wheelchair to use when I go to the market to buy food. At present, when I visit the market, I am not able to buy everything that I want to buy, as my helper cannot carry so many things and at the same time [push] my manual wheelchair. If I am able to purchase an electric wheelchair, I can move around while my helper carries the groceries.”

145 Counsel for the defendant asked Dr Tjan whether, in light of paras 33–34 of Mdm Yew’s AEIC, he would maintain his position. He replied in the affirmative. During re-examination, counsel for the plaintiffs asked Dr Tjan whether it was “reasonable”, as distinct from “necessary”, for Mdm Yew to use an electric wheelchair. He replied that it was a reasonable option in the specific circumstances set out in para 33 of Mdm Yew’s AEIC.

146 Later in response to questions by the Court, Dr Tjan expressed the opinion that a motorised scooter was not the safest thing to use in the cramped conditions in a wet market. He preferred a smaller sized motorised wheelchair.³³

³³ NE 21 September 2021 13:2–5.

147 The cost of a motorised wheelchair is between \$600 to \$700. Allowing for five changes, the total cost would be up to \$3,500.

148 In addition, the battery packs would require change every 2 years. Based on a multiplier of 15.03 years, there would be 7 changes at \$200 each, totaling \$1,400.

149 In the aggregate, I would allow \$4,900 for the motorised wheelchairs and battery pack changes.

(5) JOS Annex B Items 22 and 23 – medical consultation and pain medication

150 The parties are in agreement as regards the respective multiplicands in respect of these two items but disagree on the multiplier.

151 Whereas the counsel for the plaintiff has adopted a multiplier of 15.03 years (based on Table 2-10 of the Actuarial Tables) that being the number of years from her present age (73 years) till death, counsel for the defendant has argued that the appropriate multiplier is 10.63 years. Counsel for the defendant arrived at this figure apparently on the assumption that the average life expectancy of a female in Singapore is 85 years and using Table 2-9 of the Actuarial Tables.

152 As between the two tables, Table 2-10 is the appropriate one as it provides the multiplier for the period from start of payment until death. Example 5 in the Actuarial Tables supports the use of Table 2-10. Table 2-9 is used where the cessation of payments is at a pre-determined age, *eg*, upon retirement at 65 years. I see no compelling reason why we should eschew reference to Table 2-10 in favour of an assumption that Mdm Yew's life will end at 85 years.

153 Accordingly, adopting a multiplier of 15.03 years, I would allow \$48,081.72 comprising the following:

- (a) $\$144 \times 15.03 = \$2,164.32$ for medical consultation; and
- (b) $\$3,055.05 \times 15.03 = \$45,917.40$ for pain medication.

(6) JOS Annex B Item 24 – cost of future care

154 Having considered the evidence at the hearing, defendant concedes that the multiplicand should be \$1,200 per month. However, the defendant maintains that the multiplier should be 10.63.

155 As I have already decided that the appropriate multiplier is 15.03 (see [152] above), the quantum of damages for this item is allowed at \$216,432.

(7) JOS Annex B Item 25 – future transport expenses

156 The parties have agreed on \$1,500 for future transport expenses. I therefore allow \$1,500 for this item.

Conclusion

157 In the result, the damages awarded to the plaintiffs are as set out in the tables below.

158 In respect of Mr Wee, the following items in JOS Annex A are awarded:

Item no.	Item category	Damages awarded
2–3	Pain and suffering	\$23,000.00
7	Pre-trial loss of earnings	\$58,500.00
4–6	Agreed medical expenses	\$1,324.74
8	Loss of future earnings	\$65,426.40

159 In respect of Mdm Yew, the following items in JOS Annex B are awarded:

Item no.	Item category / description		Damages awarded	
1–10	Pain and suffering		\$286,000.00	
26	Pre-trial loss of earnings		\$83,880.00	
11, 13–16, 25	Agreed items of expenditure		\$49,152.16	
12	Expenses incurred in relation to domestic helper		\$63,561.00	
27	Loss of future earnings		\$135,648.00	
17	Future medical and other expenses comprising:	Complex total knee arthroplasty	\$35,000.00	\$330,283.72
19		Prosthesis replacement and servicing	\$25,870.00	
20/21		Motorised wheelchairs	\$4,900.00	
22		Medical consultation	\$2,164.32	
23		Medication	\$45,917.40	
24		Cost of future care	\$216,432.00	

Interest payable to Mr Wee

Pain and suffering

160 I would allow interest on the general damages of \$15,000 and \$8,000 awarded for pain and suffering at the rate of 5.33% per annum for the period from date of service of writ to the date of judgment.

Special damages

161 For special damages comprising pre-trial loss of earnings in the amount of \$58,500 and agreed medical expenses in the sum of \$1,324.74, I allow interest at $\frac{1}{2}$ of 5.33% per annum from the date of the Accident to the date of judgment.

Interest payable to Mdm Yew

Pain and suffering

162 The total damages awarded to Mdm Yew for pain and suffering (comprising JOS Annex B Items 1 to 10) is \$281,000. I allow interest thereon at the rate of 5.33% per annum for the period from the date of service of the writ to the date of judgment.

Special damages

163 I allow interest thereon at half of 5.33% from the date of the Accident to the date of judgment in respect of special damages comprising:

- (a) pre-trial loss of earnings in the sum of \$83,880;
- (b) agreed items of expenditure under JOS Annex B items 11, 13–16 in the sum of \$47,652.16; and

- (c) expenses incurred in relation to domestic helper in the amount of \$63,561.

Costs

164 I will hear parties on costs.

Andrew Ang
Senior Judge

Khelvin Xu Cunhan and Lim Yuan Jing (Rajah & Tann Singapore
LLP) for the plaintiffs;
Goh Choon Wah and Lee Swee Loong, Johnston (Characterist LLC)
for the defendant.