IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 129

Suit No 122 of 2014

Between

Sun Delong

… *Plaintiff*

And

(1) Teo Poh Soon

(2) Simple Craft Interior Trading

… *Defendants*

JUDGMENT

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

Version No 1: 27 Oct 2020 (22:39 hrs)

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Sun Delong
v
Teo Poh Soon and another

[2016] SGHC 129

High Court — Suit No 112 of 2016
Choo Han Teck J
3–4 September 2015; 28–29 January, 2–3 February, 25 April 2016

7 July 2016 Judgment reserved.

Choo Han Teck J:

1 On 5 December 2012, the plaintiff, Sun Delong ("Sun"), was knocked down by a lorry when he was cycling across Woodlands Avenue 10. He suffered multiple injuries to his head, abdomen, lungs, pelvis and shoulders. A Chinese national, Sun was then 26 years old and working on a work permit in Singapore as a storekeeper and delivery driver at Choo Chiang Marketing Pte Ltd ("CCM"). The lorry driver, Teo Poh Soon ("the 1st defendant"), was driving the lorry in the course of his employment with Simple Craft Interior Trading (the 2nd defendant).

2 Interlocutory judgment was entered for Sun on 10 November 2014, with liability at 50 per cent against the 1st and/or 2nd defendants jointly and severally. In the present proceedings, the issue before me is to determine the quantum of damages due to Sun. Sun has returned to China since February

2014 and is helping his family to run a provision shop there. He is now 29 years old.

3 Sun's claim for general damages for pain and suffering covers head injuries, pelvic / lower limb and shoulder injuries, abdominal injuries, lung injuries, and lacerations and abrasions. His claim for special damages comprises hospital / medical expenses, nursing home charges, transport expenses, cost of caregiver (father's travel expenses), loss of belongings, and pre-trial loss of earnings. He also claims future loss in costs of future medication and treatment, future transport expenses, and loss of earning capacity / loss of future earnings.

General Damages

Head injuries

4 It is not disputed that Sun suffered the following head injuries as a result of the accident:

(a) A linear fracture extending from the squamous portion of the right temporal bone and right parietal bone;

(b) A subdural haematoma in the right fronto-parietal region, extending to the right temporal region;

(c) A subarachnoid haemorrhage in the underlying fronto-parieto-temporal sulci; and

(d) Multiple right temporo-parietal cortical haemorrhagic contusions.

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The parties also agree that because of the head injuries, Sun had to undergo a decompressive craniectomy and an evacuation of a blood clot on 5 December 2012 (*ie* on the same day of accident). The decompressive craniectomy caused a large defect on Sun's right skull and he underwent an elective cranioplasty operation to repair the defect on 30 May 2013.

5 Sun also claims that after the accident, he has been suffering from frequent headaches, giddiness, vertigo, difficulty in sleeping, and irritability. Further, his cognitive abilities have been affected, and he suffers from poor memory, decreased attention span, and lowered visiospatial/constructional ability. He also says that the accident caused him psychological trauma, such that he is now easily startled or frightened, fearful of riding a bicycle, and suffers from anxiety when crossing a road. In addition, he says that he has an increased risk of developing epilepsy and dementia due to the accident. The 1st and 2nd defendants (collectively "the Defendants") dispute these claims.

6 Sun's expert witness, Dr Chan Keen Loong (PW7) ("Dr Chan"), a senior consultant psychiatrist at Khoo Teck Puat Hospital, produced three medical reports dated 17 December 2013, 26 March 2014 and 11 November 2015, and also testified at trial. In his opinion, Sun suffered severe traumatic brain injury (TBI) as a result of the accident, and his symptoms of frequent headaches, sleep difficulty, giddiness/vertigo, poor attention and irritability are known long-term complications of TBI that may persist for years after the injury with no definitive treatment or cure. Dr Chan also finds that although Sun's cognitive ability prior to the accident was in the "low average range", this has deteriorated to the "extremely low range" after the accident. His reports further state that Sun's "attention is reduced and this may impact on jobs that may require him to have sustained mental focus", and that "his

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visuospatial/constructional ability is affected and this may impact on his ability to work at jobs that require him to read plans, construct models or navigate by map". He finds that Sun's symptoms of being easily startled or frightened and being anxious while crossing the road do not cause significant impairment and should improve with time, although he may require psychological therapy to overcome his fear of riding a bicycle. Dr Chan is also of the view that Sun has a long term risk of developing epilepsy and dementia as a result of his TBI. Occupational therapist Dr Chan Mei Leng (PW4) says that Sun's bouts of giddiness and blurred vision make him functionally unfit to drive or ride any motor vehicle, while Heidi Tan (PW5), who is also an occupational therapist, recommends that Sun should limit himself to work that has a light physical demand as his symptoms of frequent headaches and dizziness render him unsuitable for his previous job as a delivery driver. Physiotherapist Cindy Tan (PW6) made similar recommendations that Sun should not resume driving and should avoid lifting heavy loads that weigh more than 4.5kg, in view of Sun's complaints of giddiness and blurred vision.

7 The Defendants' expert witness, Dr Chong Piang Ngok (DW1) ("Dr Chong"), a neurologist in private practice, agrees with Dr Chan that the Plaintiff suffered TBI as a result of the accident. He also agrees that Sun's complaints of giddiness, headaches, lack of concentration and unsteadiness are all common conditions of a person suffering from TBI. However, he carried out a clinical examination of Sun and found no physical evidence of neurological deficits that would relate to Sun's complaints. This is consistent with the view of Sun's expert witness Dr Yang Weiren Eugene (PW3) ("Dr Yang"), who reported Sun as being "alert with no neurological deficits". Further, Dr Chong also found that Sun is not suffering from any cranial nerve deficit; he says that cranial nerve deficits are readily diagnosed as they have

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easily observable symptoms (e.g. slurred speech and crossed eyes) but Sun showed no such symptoms when he examined him. Sun did not complain of cognitive problems such as poor memory and short attention span when Dr Chong saw him. Although he did complain of persistent giddiness, Dr Chong found no evidence of unsteadiness when Sun got up to stand and walk during the examination. Sun told Dr Chong that he had daily headaches which felt like "electric" pain. Dr Chong likened this kind of "electric" pain to pain that a patient experiences when a dentist hits a nerve in a tooth; the patient will wince involuntarily. However, Sun neither appeared to be in pain nor showed any discomfort throughout the examination conducted by Dr Chong. As for the risk of Sun developing dementia and epilepsy, Dr Chong says that although he could not rule out any possibility that Sun may develop the conditions in future, the risks are low.

8 Having considered the testimonies of the expert witnesses, I accept that Sun has suffered TBI as a result of the accident. I also accept that he may be suffering from occasional headaches, sleep difficulty, giddiness/vertigo, and some degree of poorer attention span and greater irritability since according to the expert witnesses, these are known long-term complications of TBI. However, the nature of such conditions is that they can be measured by few, if any, objective tests, and so their diagnosis is much dependent on subjective self-reporting by the patient. Sun had given inconsistent statements to the doctors. For instance, when Sun saw Dr Yang on 11 July 2013, he only complained of "occasional headaches", "occasional giddiness" and "difficulty in concentration". When he saw Dr Chan on 11 November 2013, his complaints became that of "frequent headaches" and "frequent dizziness". Two years later, when Dr Chan examined Sun again on 25 August and 10 September 2015, the headaches and dizziness became "constant",

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"persistent" and "daily". At trial, Sun told the court that he gets headaches two to three times a day and bouts of giddiness every two to three hours both in the morning and in the afternoon daily. Sun's complaints to various doctors on different occasions go against the evidence of his own expert witness, Dr Yang, who had earlier assessed that his condition is likely to stabilise and unlikely to deteriorate. I also take note of Dr Chong's evidence that he did not observe any signs of pain and discomfort from Sun during his clinical examination of him. I acknowledge that Dr Chong had only observed Sun for about half an hour, and it may be that Sun was coincidentally not experiencing discomfort during that period of time. Nonetheless, the totality of the evidence leads me to find, on a balance of probabilities, that Sun has exaggerated his symptoms. I therefore give less weight to the evidence of occupational therapists Dr Chan Mei Leng and Heidi Tan and physiotherapist Cindy Tan, as their assessment of Sun's condition were based mainly on Sun's self-reported, subjective complaints.

9 I am not persuaded that Sun's cognitive ability has deteriorated as a result of the accident. Although Dr Chan wrote in his report of 11 November 2015 that Sun's cognitive ability deteriorated from being in the "low average range" to the "extremely low range" after the accident, he observed, in the same report, that Sun's mood was "euthymic (normal)", that he was "cooperative and polite", "relevant, lucid and orientated", and that his speech was clear. The report also stated that Sun was "able to comprehend questions asked of him with no difficulty", give "prompt and appropriate" responses, and "provide information with an appropriate amount of detail". Dr Chan further noted that Sun was able to learn new skills, such as installing the sink at his home on his own. These observations are, in my view, inconsistent with Dr Chan's conclusion that Sun's cognitive ability was in the "extremely low

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range". There are other evidence that suggest that Sun's cognitive ability has not been impacted by the accident. It is not disputed that Sun is currently helping to run his family's provision shop in China. Private investigators engaged by the Defendants observed that the signboard of that provision shop displayed two mobile numbers, one of which was traced to Sun. This shows that Sun is one of the contact persons for the business and likely helps to attend to telephone enquiries in relation to the business. He admitted under cross-examination that he has the mental ability to run his own business together with his family.

10 As for Sun's claim that the accident caused him psychological trauma, there is no evidence to support his claim that he is now easily startled or frightened, is fearful of riding a bicycle, gets fearful when he sees motor vehicles, and suffers from anxiety when crossing a road. Photographs taken by private investigators engaged by the Defendants show that Sun walked along Orchard Road and crossed the road without any sign of anxiety. He was accompanied by a female companion and smiled and engaged her in conversation along the way. He was also photographed riding an electric motorbike in China. Although the private investigator, Tian Guiyang (DW3), admitted under cross-examination that the electric motorbike is not powered by petrol, has no peddling function, and could only go up to speeds of 20–30km/h, the photographs show that Sun was riding the electric motorbike when there were other vehicles on the road. This is inconsistent with his claims that he gets fearful when he sees motor vehicles. Some of the photographs show Sun cheerful and smiling while he was sitting on his electric motorbike. Sun also said under cross-examination that although he has not ridden a bicycle since the accident and does not have a bicycle at home, he

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thinks that he can ride on one if given the chance. He did not disclose the truth.

11 As for the risk of Sun developing dementia or epilepsy, I give greater weight to the evidence of Dr Chong to that of Dr Chan. Dr Chong is a neurologist while Dr Chan is a psychiatrist, and dementia and epilepsy are subject matters that fall within the area of specialisation of the neurologist more so than that of a psychiatrist. Dr Chong says that the risk of Sun developing dementia or epilepsy is low, although he cannot rule out the possibility completely. I think no doctor can ever rule out the possibility that an individual may ever develop dementia or epilepsy some time in his life. Dr Chong's evidence is also consistent with Sun's own expert witness Dr Yang. Dr Yang is a neurosurgeon and stated in his report that since Sun has not suffered any episode of seizure since his injury, it is unlikely that he will develop post-traumatic seizures, although he also stated that it is possible that a history of severe head injury such as that suffered by Sun will predispose the individual to dementia later in life. On the whole, I find that Sun fails to prove, on a balance of probabilities, that he has a higher risk of developing dementia or epilepsy as a result of the accident.

12 I am of the view that S$45,000 is an appropriate award for Sun's head injuries. Counsel for Sun submits that the appropriate award should be S$110,000 globally, with a breakdown of S$70,000 for physical injuries to the head, S$10,000 for psychological injury and S$30,000 for cognitive impairment. In support of the claim, he cites *Teo Ai Ling v Koh Chai Kwang* [2010] 2 SLR 1037 ("*Teo Ai Ling*"). I deny the claim for psychological injury and cognitive impairment in view of my findings above that no such injury or impairment has been proved in the present case. As for physical injuries to the

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head, I am of the view that the plaintiff in *Teo Ai Ling* suffered more severe injuries than Sun; she suffered a large extradural haematoma, scalp haematoma over the right occipital region, extensive fractures of the skull, cerebral oedema, and traumatic cranial nerve palsy which left her with left facial weakness. Her award of S$70,000 also covered a craniectomy scar and other scars, whereas in this case, Sun is claiming for scars that he had suffered as a result of the accident under a separate head of damage. On the other hand, the Defendants' counsel submits that only S$25,000 should be awarded for Sun's head injuries, as the injuries and consequent disabilities he suffered "mirror" that in *Eng Ah Wah v Cheng Kiem Sang* [2003] SGDC 263 ("*Eng Ah Wah*"). I am not so persuaded as the plaintiff in *Eng Ah Wah* only required conservative treatment for his head injuries, while Sun had to undergo emergency operations immediately after the accident. *Ang Siam Hua v Teo Cheng Hoe* [2004] SGHC 147 ("*Ang Siam Hua*") is, in my view a more appropriate reference. In that case, an amount of S$50,000 was awarded for the plaintiff's head injuries. However, unlike Sun, the plaintiff in *Ang Siam Hua* suffered an episode of post-traumatic epilepsy with a five to ten per cent chance of relapse. I take that, and the passage of 12 years from the decision in *Ang Siam Hua*, into account in finding that S$45,000 is an appropriate award for Sun's head injuries.

Pelvic / lower limb and shoulder injuries

13 The parties agree that as a result of the accident, Sun suffered a fracture in his left hemipelvis, a fracture of the left superior and inferior pubic rami, an undisplaced fracture of the left iliac bone, and an undisplaced fracture of the acetabulam. He also suffered right clavicle shoulder pain after the

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accident. The orthopaedic injuries were treated conservatively with no surgical intervention.

14 Sun seeks to rely on the evidence of physiotherapist Cindy Tan (PW6) and occupational therapist Heidi Tan (PW5), to justify his claim of S$20,000 for his pelvic / lower limb injury and a further S$5,000 for his shoulder injuries. In her report of 6 February 2014, PW6 noted that Sun was still suffering from "right shoulder impingement, associated with weak upper limb and poor grip strength", and "left hip pain associated with left lower limb weakness". She assessed that with those conditions, Sun is only fit for sedentary work and recommended that he should avoid driving or carrying loads of more than 4.5kg. PW5 made the same recommendation that Sun should not lift weights above 4.5kg in her report of 5 December 2012.

15 The Defendants' expert witness, Dr Sarbjit Singh (DW2), an orthopaedic surgeon in private practice, examined Sun on 19 August 2015 and found that the comment made by PW5 that Sun was suffering from "pain in the left anterior hip at the end range of flexion" cannot be supported by objective findings. He said, under cross-examination, that it is highly unlikely for a person with pain on flexion to be able to squat or sit cross-legged. Sun was able to walk, kneel, squat and sit cross-legged normally when Dr Singh examined him and the photographs are attached to Dr Singh's report. Sun did not show any sign of pain or discomfort. Dr Singh is thus of the view that Sun is "relatively asymptomatic" and is fit for "normal work", in so far as orthopaedic injury is concerned.

16 I accept Dr Singh's opinion to be consistent with that of orthopaedic surgeon Dr Lim Swee Lian, who treated Sun following the accident. She saw

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Sun on 7 November 2013 for the purpose of preparing a medical report in relation to the trial. In her report dated 18 November 2013, Dr Lim stated that Sun walked with normal gait, and was able to squat fully and run on the spot. She said that his pelvic fractures have healed. She noted that Sun felt pain and numbness in his left lower limb, but the pain was "slight", experienced only "occasionally" and likely to improve, although the mild weakness that Sun experienced in his left lower limb was likely to be permanent. In a subsequent report dated 29 October 2015, Dr Lim concluded that Sun has made "good recovery" in his orthopaedic injuries with "almost full function in his right shoulder and both lower limbs". Sun also told her that he could walk without pain for up to three kilometres, although he said that he was still unable to carry heavy objects.

17 I prefer the evidence of Dr Singh and Dr Lim, over that of PW5 and PW6 which was based on subjective self-reporting by Sun. As in the case of the head injuries, I am of the view that Sun has exaggerated his claim with respect to his orthopaedic injuries. Sun claims, on the authority of *Ravi Raj v Wang Yuen Chow* [1997] SGHC 294 ("*Ravi Raj*") and *Khek Ching Ching v SBS Transit Ltd* [2010] SGDC 220 ("*Khek Ching Ching*"), that he is entitled to an award of S$20,000 for his pelvic / lower limb injuries and S$5,000 for his shoulder injury respectively. But the plaintiff in *Ravi Raj* had suffered fractures to his right hip that did not set properly after the accident. He underwent surgery but even with that, he was left with a destroyed right hip, would eventually require a total hip replacement, and could be plagued by hip pain for the rest of his life. The injuries suffered by Sun are not as serious, and he has made good recovery. *Khek Ching Ching* is also not a good comparison for, unlike Sun, the plaintiff in that case not only suffered a shoulder injury but also experienced tenderness on her chest, wrists, and right ankle. I agree with

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the Defendants that an award of S$12,000 for Sun's pelvic / lower limb injuries, and S$1,500 for his shoulder injury, is appropriate.

Abdominal injuries

18 The parties do not dispute Sun's abdominal injuries, namely two lacerations over the inferior pole of the spleen with active bleeding from the superior branch of the splenic hilar vessels, liver, stomach and gallballer. This in turn resulted in moderate haemoperitoneum, mainly in the Morrison's pouch, perisplenic space and left paracolic gutter. There were also multiple splenic lacerations with active extravasation of contrast at the splenic hilum and adjacent to the anterior pole of the spleen. For the abdominal injuries, Sun underwent an exploratory laparotomy and a splenectomy. He is on life-long penicillin therapy as a result of the splenectomy.

19 Counsel for Sun cites *He Xu v Yap Tain Chor* (DC Suit No 2050 of 2000) ("*He Xu*") and submits that an award of S$18,000 should be awarded for Sun's abdominal injuries. Counsel for the Defendants submits, on the authority of cases such as *Ang Siam Hua* and *Wu Liang Zhu v Chan Yue Ming* [2002] SGHC 91, that the appropriate award should be S$15,000 and in any event should not exceed S$16,000. The plaintiff in *He Xu* suffered from transient thrombocytopenia post-operatively, whereas there is no evidence of further complaints by Sun in relation to his abdominal injuries after the surgeries. In the circumstances, I am of the view that S$16,000 is an appropriate award to Sun for his abdominal injuries.

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Lung injuries

20 It is not disputed that as a result of the accident, Sun developed small bilateral lower lung contusions and minimal pneumomediastinum. In her report dated 6 February 2014, physiotherapist Cindy Tan (PW6) stated that Sun "complained of anterior chest pain and shortness of breath prior to assessment from walking less than 50m", and that the chest pain was "aggravated during the assessment" when Sun was asked to "lie down from sitting and vice versa". I give little weight to this evidence as it is based on subjective complaints by Sun, who I find has a tendency to exaggerate his symptoms. He did not make the same complaint to his doctors.

21 Counsel for Sun submits that a sum of S$8,000 ought to be awarded to Sun for his lung injuries, as in the case of *Thagavel Rajendran v Econ Piling Pte Ltd* (DC Suit No 51403 of 1998). However, the plaintiff in that case suffered haemothorax that required intercostal drainage and also needed mechanical ventilator support. There is no evidence that Sun's lung injuries were of the same severity. Counsel for the Defendants submits that S$3,000 is an appropriate amount of compensation for Sun's lung injuries; the plaintiff in *Tew Chee Yong v Yap Eng Kiat* (DC Suit No 3977 of 1999) ("*Tew Chee Yong*") suffered from lung contusion with pneumothorax and was awarded this amount. The plaintiff here was not diagnosed with pneumothorax but he was diagnosed with pneumomediastinum. Counsel for the Defendants submits that pneumomediastinum is a less serious condition that pneumothorax. I make no such finding in the absence of expert medical opinion. But neither has Sun produced any evidence for the contrary position that pneumomediastinum is a more severe condition that pneumothorax. In the circumstances, and taking into account the fact that the decision in *Tew Chee Yong* was made 17 years

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ago, I am of the view that a sum of S$5,000 will be appropriate compensation for Sun's lung injuries.

Lacerations and abrasions

22 In the medical report of Dr Lim Swee Lian dated 18 November 2013, she noted that there were three "1cm hyperpigmented scars" visible on Sun's left knee. Dr Sarbjit Singh noted, in his report of 19 August 2015, four "healed 1cm linear abrasions" over the front of Sun's left knee. Sun also has a visible craniotomy scar. The parties agree that Sun also suffered multiple abrasions on his chin, face and upper extremities, but there is no evidence that these abrasions have left permanent visible scars.

23 Counsel for Sun submits that an appropriate award to the plaintiff for his lacerations and scars, including his visible craniotomy scar, is S$10,000. He cites *Mohamed Azis bin Mohamed Zacharia @ Abdul Aza bin Zakaria v Athim bin Dahri* (DC Suit No. 6012 of 1998), where the plaintiff there was awarded, by consent, S$10,000 for pain and suffering for his multiple skin abrasions over his shoulders, hands and right forearm, and S$1,923.70 for his craniotomy scar which was inconspicuous. In my view, the award of S$10,000 in that case for the plaintiff's multiple skin abrasions may be too high. I accept the Defendants' submission that a sum of S$3,000 is appropriate for abrasions sustained by Sun. However, that amount does not take into account the craniotomy scar that Sun also sustained. I therefore award a global sum of S$6,000 for abrasions and scars (including the craniotomy scar) sustained by Sun. His craniotomy scar is visible.

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Special Damages

Hospital / medical expenses, and nursing home charges

24 Sun produced hospital bills and medical receipts totalling a sum of S$62,763.77. After his discharge from Khoo Teck Puat Hospital on 21 December 2012, he was immediately transferred to a nursing home for step-down care and he remained there for nearly eight months until 7 August 2013. He produced bills from the nursing home totalling an amount of S$22,190.87. His hospital / medical expenses and nursing home charges add up to S$84,954.64. Out of this amount, his employer, CCM, paid S$84,204.16 (being the whole sum of the nursing home charges as well as S$62,013.29 of the hospital / medical expenses), while Sun paid the remainder.

25 The Defendants contend that Sun should not be allowed to claim from them the amounts that were paid by CCM. Counsel for the Defendants submits that it is CCM's responsibility to pay the money under a statutory obligation imposed on them by the Employment of Foreign Manpower Act (Work Passes) Regulations 2012 (Cap 91A S 569/2012) ("the Regulations"). Condition 1 of Part III of the Fourth Schedule of the Regulations ("Condition 1") states as follows:

> **Upkeep, maintenance and well-being**
>
> 1. The employer shall be responsible for and bear the costs of the foreign employee's upkeep (excluding the provision of food) and maintenance in Singapore. This includes the provision of medical treatment, except that and subject to paragraphs 1A and 1B, the foreign employee may be made to bear part of any medical costs in excess of the minimum mandatory coverage if —
>
> > (*a*) the part of the medical costs to be paid by the foreign employee forms not more than 10% of the employee's fixed monthly salary per month;

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> (*b*) the period for which the foreign employee has to pay part of any medical costs must not exceed an aggregate of 6 months of his period of employment with the same employer; and
>
> (*c*) the foreign employee's agreement to pay part of any medical costs is stated explicitly in the foreign employee's employment contract or collective agreement.

According to counsel for the Defendants, pursuant to Condition 1, the employer of a foreign employee is obliged to pay for whatever medical treatment the employee undergoes while he is in its employment, even in cases where the medical treatment was necessitated by injury not suffered in the course of his employment but by the tortious conduct of a third party. I am not persuaded. It is clear from the wording of Condition 1 that it imposes an obligation for employers to provide for the "medical treatment" of their foreign employees but only to the extent that it is necessary for their "upkeep and maintenance". Employers must provide "medical treatment" to maintain the health and well-being of their foreign employees, but when their employees, like Sun, suffer serious injuries due to the tortious conduct of third parties, it cannot be the case that liability to pay for treatment for those injuries lies with the employers while the tortfeasor(s) are absolved from their responsibility to pay damages for the wrong that they have done. In such situations, the medical treatment required by the employee goes beyond that for his regular "upkeep and maintenance" and, accordingly, falls outside the scope of Condition 1.

26 Damages in tort are compensatory in nature. They are neither awarded to profit the plaintiff nor to punish the defendant. A plaintiff is therefore not entitled to make claims that enable him to a double recovery for the same

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item. The plaintiff is entitled to keep gifts made by a well-wisher, be he a relative, friend, or employer.

27 Counsel for Sun relies on the case of *Donnelly v Joyce* [1974] QB 454 ("*Donnelly*"). In that case, the infant plaintiff sustained injuries to his right leg in a road accident caused by the defendant's negligence. As a result of his injury, he needed special care and so his mother gave up her job to look after him. The court allowed the infant plaintiff to claim for his mother's loss of wages on the basis that that loss was not his mother's loss (which would not have been claimable by the plaintiff), but that:

> …The loss is the plaintiff's loss…The plaintiff's loss, to take this present case, is not the expenditure of money…to pay for the nursing attention. His loss is the existence of the need for those…nursing services the value of which for purposes of damages - for the purpose of the ascertainment of the amount of his loss - is the proper and reasonable cost of supplying those needs…So far as the defendant is concerned, the loss is not someone else's loss. It is the plaintiff's loss.
>
> Hence it does not matter, so far as the defendant's liability to the plaintiff is concerned, whether the needs have been supplied by the plaintiff out of his own pocket or by a charitable contribution to him from some other person whom we shall call the "provider"; it does not matter, for that purpose, whether the plaintiff has a legal liability, absolute or conditional, to repay to the provider what he has received, because of the general law or because of some private agreement between himself and the provider, it does not matter whether he has a moral obligation, however ascertained or defined, so to do. The question of legal liability to reimburse the provider may be very relevant to the question of the legal right of the provider to recover from the plaintiff. That may depend on the nature of the liability imposed by the general law or the particular agreement. But it is not a matter which affects the right of the plaintiff against the wrongdoer.

The above passage from *Donnelly* was cited by the Singapore Court of Appeal in *Ang Eng Lee v Lim Lye Soon* [1985–1986] SLR(R) 931 ("*Ang Eng Lee*") (at [10]). The Court of Appeal adopted (at [11]) the reasoning in *Donnelly*, set

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out in the first part of the quote above, that when a plaintiff needed certain services as a result of his injuries which were caused by the wrongdoing of the tortfeasor(s), and those needs have been paid for a third party provider (in this case, the plaintiff's father), the loss remains that of the plaintiff and not of the provider, such that accordingly, the provider has no cause of action against the tortfeasor(s). It cannot be disputed that the third party provider has no cause of action against the tortfeasor(s) since the tortfeasor(s) do not owe a duty of care towards him. But the English Court of Appeal in *Donnelly* characterised the plaintiff's loss not as the expenditure of money to pay for the nursing services but the existence of the need for those nursing services. With respect, this, in my view, is an awkward characterisation of the plaintiff's loss, especially in cases when the same plaintiff is also being compensated with general damages for pain and suffering and loss of amenity arising from his injury. In a 1978 report on Damages for Personal Injuries, Report on (1) Admissibility of Claims for Services (2) Admissible Deductions (Scot. Law Com. No. 51) (cited in the House of Lords decision of *Hunt v Severs* [1994] 2 AC 350 ("*Hunt*") at 362), the Scottish Law Commission criticised, at paragraph 22, the decision in *Donnelly* as being "wrong in principle" and "artificial" in considering an injured plaintiff as having suffered a net loss where services he needed as a result of his injury have been rendered gratuitously to him by another. I agree with the Scottish Law Commission that in such cases, the loss was in fact sustained by the person who rendered the services even though he has no cause of action of his own against the tortfeasor(s). Hence, on policy grounds the law allows a plaintiff to claim such losses so that he can reimburse the voluntary provider of service: *Hunt* at 358 and 362.

28 The Court of Appeal in *Ang Eng Lee* did not discuss or express any view on the second part of the quote from *Donnelly* and the broad proposition

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that when the needs of an injured plaintiff arising from the wrongdoing of the tortfeasor(s) is provided by any person other than the plaintiff himself, be it through the provision of money or services to be valued as money, that provision for those needs is never deductible when assessing the right measures of damages recoverable by the plaintiff from the tortfeasor(s), even if the plaintiff has neither legal nor moral obligation to repay the provider. It is the "never" that needs qualification. In England, this part of the decision in *Donnelly* was doubted in the subsequent case of *Hunt* (at 361), and the House of Lords in that case specifically overruled *Donnelly* to the extent that when the provider for the needs of the injured plaintiff was the tortfeasor defendant himself, the plaintiff cannot require that tortfeasor to pay damages in respect of what he had already provided. I am of the view that the proposition in *Donnelly* is too broad. In *Donnelly*, the provider for the needs of the plaintiff is a family member (mother) of the plaintiff. When the provider for the needs of the plaintiff is a family member or close relative, there may be good reasons to allow the plaintiff to retain his right to claim for the provision of those needs from the tortfeasor(s) even if he is unable to prove that he owes an obligation to repay the provider. In such cases, the provision for the plaintiff's needs is driven by kinship and affection, and the plaintiff and his provider would not have put their minds on creating obligations for the plaintiff to make repayments. Yet, the law considers it just to allow the provider to receive compensation, and so it allows the injured plaintiff to claim the losses from the tortfeasor(s) with the expectation that the plaintiff, out of affection and gratitude towards his kin who provided for his needs, would recompense his provider even if he is not obliged to do so. This seems to be the rationale in *Wattson v Port of London Authority* [1969] 1 Lloyd's Rep 95 (see 102), a case considered by the Court of Appeal in *Donnelly*. In all other cases that the court in *Donnelly* relied upon where the tortfeasor(s) remained liable to the plaintiff

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even if the plaintiff's needs had already been provided for with no obligation on his part to repay the provider, the provider was a family member or close relative of the plaintiff. The Scottish Law Commission recommended a right for plaintiffs to claim from the tortfeasors reasonable remuneration for services rendered by third parties which were necessitated by the injuries caused by the tortfeasors, but only where the third parties are relatives of the plaintiff. This led to section 8 of Part II of the Administration of Justice Act 1982, quoted by the House of Lords at 362 in *Hunt*. Beyond the specific context where the provider is a family member or close relative of the plaintiff, I am of the view that the plaintiff should not be allowed to claim from the tortfeasor(s) for needs that have already been provided for by a third party, if he is under no obligation to repay the provider. In such cases, I see no reason to depart from the rule against double recovery.

29 In the present case, Sun says that his ex-employer, CCM, had paid his medical and nursing home bills for him out of goodwill because he was in no position, financially, to pay for those bills himself. At trial, Sun told the court that he would return the money to CCM after he successfully claims them from the Defendants. The General Manager of CCM, Foo Kwee Yew Wilson (PW2), also said during cross-examination that the company should "take back" the medical and nursing home charges that it had paid for Sun. I am satisfied that Sun is under an obligation to repay the money claimed to CCM once he has recovered the same from the Defendants, and that there will be no double recovery by him. I therefore allow Sun's claim against the Defendants for the entire sum of S$84,954.64 which he incurred as hospital / medical expenses and nursing home charges, on the condition that he will reimburse CCM. Sun's counsel is to inform CCM of the award and the basis on which it is made.

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30 There is another claim by Sun. He says that after he returned to China, he had gone to a hospital twice for check-ups as he was not feeling well, and incurred additional medical expenses amounting to ¥6000, or S$1,277.18. But he does not have any receipt to support the claim. He says that private clinics in China do not give receipts and although the hospitals in China sometimes do give out receipts, the receipts "were very small in size" and so he had decided to just throw them away. He claims that he did not preserve those receipts as "he was not clear about the law in Singapore". I am not convinced. By the time of his return to China, Sun knew of the pending lawsuit in Singapore. He would know that he needs to preserve the receipts to prove his claim; he has kept the receipts for medical expenses which he had incurred in Singapore. Special damages have to be strictly proved, or they are not recoverable. In this case, Sun has failed to prove that he had incurred additional medical expenses in China amounting to S$1,277.18 and I disallow this part of the claim.

Transport expenses

31 The Defendants agree to Sun's claim of S$156 for his transport costs to and from hospital, incurred between 22 August 2013 and 12 February 2014 in Singapore, and I award this amount to Sun.

32 Sun says that in August 2015, he incurred another S$280.75 in transport expenses to and from hospital / medical clinics. The Defendants rightly pointed out that as these expenses were incurred whilst Sun was attending various medical re-examinations for the purpose of the trial, they should be dealt with under disbursements and not form part of his claim for pre-trial transport expenses. I make no award to Sun for this sum of S$280.75.

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33 Counsel for Sun submits that a further S$60 ought to be awarded for Sun's transport expenses in China. Sun said in his Evidence-in-Chief that he had made two visits to a hospital in China since his return to China. But he has provided no evidence at all as to how he had travelled to and from that hospital, and the amount of the transport claim. I disallow this part of the transport claim that Sun has failed to prove.

Cost of caregiver (father's travel expenses)

34 Sun's father visited him in Singapore for 10 days from 30 May 2013 to 8 June 2013. Sun claims a sum of S$1,237.34, being expenses incurred for his father's airfare from China to Singapore and back, as well as for his father's transport via taxi in Singapore. The claim is supported by receipts and the Defendants do not dispute the amount. But Sun also claims an additional S$1,000 for the father's miscellaneous expenses for food, lodging, telephone calls and other transport in China and Singapore, which the Defendants take issue with as it is not support by any receipt or bill. I accept that the father must have incurred some miscellaneous expenses such as for food and lodging, and it may be the case that receipts were simply not issued for some of these expenses. I am of the view that S$1,000 for the father's miscellaneous expenses over 10 days in Singapore is reasonable. I therefore award a global sum of S$2,237.34 to Sun for the cost of his father's travel to and visit in Singapore as Sun's caregiver.

Loss of Belongings

35 Sun claims that his shoes, T-shirt, and pants were damaged in the accident and seeks to recover a sum of S$210 for them. I deny the claim as it is not supported by any evidence.

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Pre-Trial Loss of Earnings

36 Sun claims a total sum of S$55,499.90 for pre-trial loss of earnings. PW2 gave evidence that when Sun commenced employment with CCM on 27 February 2012, his salary was S$1,000 per month. This was increased to S$1,200 from May 2012. Sun was, according to PW2, also entitled to overtime pay as well as a three-month bonus each year (one month of Annual Wage Supplement, one month of lunar new year bonus, and one month of performance bonus); CCM usually pays the three-month bonus to all workers unless they perform badly, and Sun was a good worker.

37 After the accident, Sun was on medical leave for the whole of 2013 and for January and February 2014, except for 34 days in 2013 when he reported for work and assumed light duties. Nonetheless, CCM paid to Sun his full basic monthly salary with a three-month bonus in 2013, and also his full monthly salary in January 2014. There is evidence in the form of pay slips issued by CCM to Sun, and Sun conceded this fact. *Prima facie*, Sun has therefore suffered no loss in pre-trial earnings for 2013 and January 2014. When the employer of an injured plaintiff is under no legal obligation (whether contractual or otherwise) to pay to the plaintiff his salary during his period of disability, but does so as a loan to the plaintiff for him to meet his expenses, the plaintiff is entitled to recover the same amount from the tortfeasor(s): *Lim Hin Hock v Ong Jin Choon* [1991] 1 SLR(R) 381. The injured plaintiff who is under an obligation to repay his employer will not be overcompensated. On the other hand, where a plaintiff receives his salary from his employer and is not obliged to return them, he cannot claim the same amount from the tortfeasor(s) otherwise that would amount to double recovery: see, e.g. *Au Yeong Wing Loong v Chew Hai Ban* [1993] 2 SLR(R)

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290. In this case, CCM was not under any legal obligation to pay Sun his salary when he was not working or providing any service for the company, but Sun has not proved that the payments to him by the company were loans with the expectation of repayment. Sun stated in affidavit that CCM had advanced the money as a loan to him and that he has been "advised that (he) is liable to return the balance overpayment" to CCM. That is his mere assertion, uncorroborated by evidence. PW2 did not state in his affidavit that CCM had paid full salary to Sun as a loan. When PW2 testified in court, he merely said that CCM expected repayment of the pre-trial medical and nursing home expenses, but mentioned nothing about CCM expecting repayment of salaries it paid to Sun. In the circumstances, Sun fails to prove that he had suffered any pre-trial loss of earnings for 2013 and January 2014, and I dismiss this part of the claim accordingly.

38 For February 2014, Sun was also on medical leave but CCM did not pay him any salary for the month. In February 2014, Sun's work permit expired and he returned to China towards the end of the month. I award to Sun S$1,362.65 for lost earnings for February 2014. This figure is the sum of S$1,200 (basic monthly salary) and S$162.65 (average monthly overtime pay) that Sun would have received in the month of February 2014 but for the accident.

39 Counsel for Sun submits that the Defendants should also compensate Sun for loss of pre-trial earnings for the period from when he returned to China to the commencement of this trial in August 2015. I accept PW2's evidence that CCM would have renewed Sun's work permit for two more years had Sun not suffered the accident. CCM did not renew Sun's work permit because they were under the impression that he had not recovered from

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his injuries and was still suffering symptoms that did not allow him to continue working as a storekeeper and delivery driver. Sun might not have been able to work as a storekeeper and delivery driver following the accident till the end of February 2014; he suffered serious injuries from the accident and was given medical leave that largely covered him till 1 March 2014. However, there is insufficient evidence to suggest that he remained unfit to work as a storekeeper and delivery driver after this period. At trial, Sun said that he has not been able to resume work as a driver because his "memory is very bad" and his "body gets easily tired". I have made my findings above that although Sun may still be suffering from occasional headaches and giddiness, he has exaggerated his symptoms. He has also made good recovery from his orthopaedic injuries, such that he is now, according to Dr Singh, fit for "normal" work. All his other injuries have healed. When counsel for the Defendants asked him during cross-examination whether his pelvic and shoulder injuries were still giving him problems that prevented him from returning to work as a delivery driver, Sun's reply was that "sometimes", he "feel(s) some pain in (his) chest". But Sun had never made a complaint of chest pain to his doctors and only mentioned it to physiotherapist Cindy Tan (PW6). I do not find Sun to be a credible witness. Sun has therefore failed to prove that as a result of the injuries he suffered, he was incapable of working as a storekeeper and delivery driver from March 2014 to August 2015. Furthermore, he has not provided sufficient evidence of his earnings in China during this period that would allow the court to quantify his loss of earnings; he says that he has been helping his family to run a provision shop in China since his return, but did not provide the court with any figure of how much he earned from the business. At trial, he admitted that the business is profitable, but maintained that he did not know how much the business makes, and that his father keeps the proceeds. He says that his father does not give him a fixed

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salary, but that when he needs money, he can take it from the shop. During re-examination, he told the court that his allowance for working at the shop is about ¥1,000 a month. I am not convinced that Sun has made a full or accurate disclosure of his income in China for me to be able to quantify any loss of earnings. In the circumstances, I deny his claim for pre-trial loss of earnings from March 2014 to August 2015.

Future Loss

Costs of future medication and treatment

40 Sun's claim for the costs of future medication and treatment covers penicillin therapy at ¥120 (or S$24) per month; pain relief medication at ¥150 (or S$30) per month; medication for controlling dementia at ¥1,000 (or S$200) per month; treatment for dementia at ¥1,500 (or S$300) per month; consultation for dementia at ¥2,500 (or S$500) per year; medication for controlling epilepsy at ¥1,000 (or S$200) per month; hospitalisation for epileptic seizure at ¥10,000 (or S$2,000) per year; and annual physical examination at ¥5,000 (or S$1,000) per year, for a multiplier of 17 years. In addition, he also claims ¥20,000.00 (or S$4,000) for the costs of 15 sessions of psychological treatment for overcoming his fear of riding bicycle. The figures for the various cost items were obtained from a medical report by Dr Xu Yingda of the First People's Hospital of Lianyungang in China.

41 Given my findings in [10] and [11] above that Sun has failed to prove that the accident has caused him psychological trauma such that he is now fearful of riding a bicycle, or that the accident has resulted in him having a higher risk of developing dementia and epilepsy, I dismiss Sun's claim for costs of future medication and treatment relating to these conditions. I allow

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the claim for penicillin therapy since it is not disputed that Sun has to be on life-long penicillin as a result of his splenectomy. As for pain relief medication, I find that Sun has exaggerated the frequency and intensity of his headaches, but I accept that he may suffer from some degree of headaches occasionally (see [8] above). I allow the claim for pain relief medication but adjust the figure from ¥150 (or S$30) per month to ¥50 (or S$10) per month, as the earlier figure is based on Sun requiring pain relief medication on a daily basis. As for the claim for annual physical examination at ¥5,000 (or S$1,000) per year, it is not clear to me from the documentary evidence what the purpose of the physical examination was for. It is the evidence of the doctors who treated Sun in Singapore that he does not require further medical consultation in respect of his orthopaedic and abdominal (spleen) injury. Counsel for the Defendants submits that the award for costs of annual physical examination should not exceed S$100. I consider S$300 per year to be the appropriate award. With respect to the multiplier, the Court of Appeal in *Poh Huat Heng Corp Pte Ltd v Hafizul Islam Kofil Uddin* [2012] 3 SLR 1003 ("*Poh Huat Heng Corp Pte Ltd*") stated at [76] that the determination of the appropriate multiplier for future medical expenses is neither a science nor something that can be reflected in a mathematical formula, and depending on the age of the plaintiff at the time of the assessment of damages, there can be a range as to the appropriate multiplier. Sun was 26 years old at the time of the accident and presently 29 years old. His counsel proposed that 17 years is the appropriate multiplier while counsel for the Defendants proposed 15 years. The precedents show that both 15 and 17 years fall within the range of appropriate multipliers. I consider it fair to fix the multiplier in this case at 16 years.

42 I therefore award a global sum of S$11,328 for the costs of Sun's future medication and treatment.

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Future transport expenses

43 Sun claims a sum of S$5,000 for the cost of future transport expenses for trips to and from the hospital for his 15 sessions of psychological treatment and annual consultations. I have denied his claim for costs for psychological treatment, but I accept that he would incur some transport expenses for his annual physical examinations. I award S$800 to Sun for his future transport expenses (S$50 per year for transport expenses to and from the hospital for his annual physical examinations, for 16 years).

Loss of earning capacity / loss of future earnings

44 Sun claims in excess of S$0.5 million for the loss of future earnings, and a further S$100,000 for the loss of earning capacity. Counsel for Sun submits that a multiplier of 27 years, split three ways as follows, should be applied in calculating the loss of future earnings:

(a) 9 years for Sun, who is now 29 years old, for not being able to work in Singapore till the age of 44 as he would have liked. The multiplicand should be S$2,500 per month being the average salary of a S-Pass worker and an Employment Pass worker in Singapore, although Sun was here on a work permit and his last drawn monthly salary was S$1,200 with additional overtime pay averaging S$162.65 per month;

(b) 9 years for Sun for not being able to work full time as a delivery driver and storekeeper in China, from when he turns 45 till he is 63 years old. The multiplicand should be S$1,000 per month; and

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(c) 9 years for Sun for not being able to work as a farmer after he turns 64 to when he is 82 years old. But for the accident, Sun will be able to work as a farmer until he is 82 years old, because he was healthy like his parents and grandfather and his grandfather passed away at 82 years old and had worked as a farmer till his death. The multiplicand should be S$800 per month.

Counsel for Sun further submits that if the court should reduce Sun's claim for loss of future earnings, then his claim for loss of earning capacity should be increased as Sun's present claim of S$100,000 for loss of earning capacity "is on the low side".

45 An award for loss of future earnings is made on the basis that as a result of the injury suffered, the plaintiff will be unable to carry on earning the same income because he would be incapable of performing the job he did. It compensates for the difference between the plaintiff's pre- and post-accident income. Loss of future earnings must be "real assessable loss proved by evidence": *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587 ("*Samuel Chai*"), quoting Lord Denning MR in *Fairley v John Thompson (Design and Contracting Division) Ltd* [1973] 2 Lloyd's Rep 40 at 42. If a plaintiff has not proven on a balance of probabilities that as a result of the accident he suffers from a disability that renders him incapable of performing the same job he did, or if he does not provide sufficient evidence for calculating his loss in future wages, then his claim must be dismissed: see, e.g. *Wang Jianbin v Hong De Development Pte Ltd* [2015] SGHC 242. At [39] above I denied Sun's claim for the loss of pre-trial earnings for the period from when he returned to China to the commencement of this trial in August 2015, on the basis that he has not produced sufficient evidence to prove that he

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remained unfit to work as a storekeeper and delivery driver during this period and also because he has not made a full or accurate disclosure of his income in China for me to be able to quantify any loss of earnings. For the same reasons, I reject his claim for loss of future earnings. Even if I am minded to allow the claim (which I am not) the appropriate multiplier for the present case would have been about 16 years, with six years in Singapore and 10 years in China. Counsel for Sun has no evidence or authority, and I know of no case in which a court has allowed an injured plaintiff the benefit of an extended multiplier based on the longevity of his forefathers. That basis is simply too speculative. There are also problems with the multiplicands which I need not address here.

46 As for counsel's submission that Sun's claim for loss of earning capacity should be increased if the court should reduce (or deny) Sun's claim for loss of future earnings, this has no basis in law. In *Samuel Chai*, the Court of Appeal stated that a lack of sufficient evidence to prove the loss of future earnings cannot, by itself, convert a claim for loss of future earnings into a claim for loss of earning capacity. The two heads of damages are not alternatives to each other. They compensate for different losses. Loss of earning capacity compensates for the risk or disadvantage that the plaintiff would suffer as a result of his disability, in the event that he should lose the job that he currently holds, in securing an equivalent job in the open employment market. No award for loss of earning capacity can be granted if there is no risk of the plaintiff's post-accident employment being terminated, or if he could suffer no disadvantage in competing for a job in the open employment market because the accident left him with no lasting disability. Sun is presently helping to run his family business, and he has produced no evidence that he is at risk of being terminated from that employment. I have also found that he has suffered no lasting disability from the accident that may

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prevent him from securing a job as a storekeeper and delivery driver. His claim for loss of earning capacity must therefore be dismissed.

Conclusion

47 For the reasons above, the total amount of the award is S$186,338.63. The plaintiff is entitled to 50 per cent of this amount, which is S$93,169.32. As the Defendants had already made an interim payment of S$30,000 to Sun on 19 May 2015, the balance amount due to Sun is S$63,169.32. I had hoped to be as charitable as I can to the injured plaintiff, but charity should not come at the cost to the defendant. That would be a poor form of justice no matter how we conceive justice to be. Where I can add a little more from the residual power of discretion, I have done so. The plaintiff's overall claim of $1.16m is unjustiable by a long way. Claimants ought to have a more realistic expectation not only of the chances of success of their action but also the quantum that they can expect to be awarded.

48 I will hear the parties on costs and other consequential orders that may be required.

- Sgd -
Choo Han Teck
Judge

Daljit Singh Sidhu (KSCGP Juris LLP) for the plaintiff;
N K Rajarh (Straits Law Practice LLC) for the 1st and 2nd defendants.

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