IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 46

Suit No 673 of 2011/Y

Between

Lee Mui Yeng

… Plaintiff

And

Ng Tong Yoo

… Defendant

JUDGMENT

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

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Lee Mui Yeng
v
Ng Tong Yoo

[2016] SGHC 46

High Court —Suit No 673 of 2011/Y
Kannan Ramesh JC
1–4 September, 2, 23 November 2015

29 March 2016 Judgment reserved.

Kannan Ramesh JC:

Introduction

1 An unfortunate accident which occurred during a happy family outing turned the Plaintiff's life on its head. This in a nutshell is the sad story behind this case.

2 The Plaintiff and the Defendant are husband and wife. On 11 October 2008, the Plaintiff, the Defendant and their son, took a car, a Ford Mondeo, for a test drive presumably contemplating the pleasant prospect of buying a new car. The Defendant drove the car, while the Plaintiff and their son were seated in the back. The salesman was seated in the front passenger seat. The visibility and the weather were good at that time. While travelling along Portsdown Road, the Defendant negligently veered into the next lane and into oncoming

traffic. The Defendant, the son and the salesman escaped unscathed from the resulting accident. Fortune, however, did not favour the Plaintiff. She suffered serious injuries that deleteriously changed her life henceforth. As at the date of the accident, she was 57 years of age. That liability for the accident fell fully on the shoulders of the Defendant was scarcely in doubt, and following the commencement of the action on 29 September 2011, interlocutory judgment was sensibly entered in the Plaintiff's favour on 24 November 2011. The action came before me for the assessment of damages.

3 The task that I faced was to ascertain which of the injuries that the Plaintiff had suffered were attributable to the accident, and assess the appropriate monetary compensation as general damages for pain and suffering that should be ascribed to them, as well as the special damages that the Plaintiff ought to be awarded arising from those injuries.

Background

4 The Plaintiff suffered several injuries at the time of the accident. She was diagnosed with whiplash injury and with a fracture of the C6 and C7 vertebrae and spinal stenosis (*ie*, damage to the spinal cord) as a result. The spinal stenosis was evidenced by myelomalacia (softening of the spinal cord) at the C6 vertebrae on the left, and C7 vertebrae on the right.

5 The Plaintiff was initially rushed to Alexandra Hospital ("AH") where CT scans and an MRI were undertaken that showed the fracture to the vertebrae and damage to the spinal cord. Other issues with her spine which were unrelated to the accident were also noted, namely, mild disc bulges at the C3 and C4, the C4 and C5, and the C5 and C6 vertebrae. She was transferred to the National University Hospital ("NUH") on 12 October 2008 for

specialist medical treatment. Medical notes were taken of her stay in AH, which were produced at trial.

6 The Plaintiff underwent emergency surgery at NUH on 12 October 2008 to address the fracture to the C6 and C7 vertebrae. That was done through an anterior cervical discectomy and fusion. The Plaintiff was hospitalised in NUH between 12 October 2008 and 18 October 2008. There were medical notes kept of her stay at NUH, which were again produced at trial.

7 The Plaintiff's spinal cord injuries caused her significant distress. It was a source of constant and debilitating pain. She suffered from neck pain that radiated down from her shoulders to her hands. She also had pain in her lower back and her knees. The Plaintiff suffered loss of strength and dexterity in her hands, particularly her right.

8 The constant pain caused the Plaintiff to seek medical assistance from various specialist-doctors. Initially, she turned to orthopaedic physicians. When their efforts proved ineffective, the Plaintiff was referred to a pain management specialist, Dr Effie Chew ("Dr Chew"), from NUH's Division of Neurology responsible for Rehabilitation Medicine. Dr Chew diagnosed the Plaintiff as suffering from chronic pain syndrome with possible regional pain syndrome type 2 resulting from the accident. The Plaintiff's condition was, in Dr Chew's view, possibly permanent.[1] Dr Chew also noted weakness in the Plaintiff's arms. Medication, occupational therapy and acupuncture were prescribed.

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[1] NE Day 2, page 104.

9 The Plaintiff's chronic pain unfortunately spawned a secondary condition. The Plaintiff developed a psychiatric condition known as Chronic Post-Traumatic Stress Disorder ("PTSD") which in turn resulted in the development of secondary symptoms of Severe Major Depressive Disorder ("MDD") without psychotic symptoms. She sought medical assistance from Dr Adrian Loh ("Dr Loh"), a consultant psychiatrist, to address this condition. Dr Loh worked closely with Dr Chew in this regard.

10 The chronic pain, and the PTSD and MDD wrought a significant and rapid downward spiral in the quality of the Plaintiff's life. Pre-accident, the Plaintiff had an active social life and a good relationship with the Defendant. There was a seismic change in this regard as a result of the issues that the accident caused. She suffered, for example, from significant sleep disruption, mood changes, loss of pleasure and appetite, depression, fatigue and a sense of worthlessness. Also, her relationship with the Defendant suffered, with the Plaintiff forming the view that he was refusing to take ownership for the consequences of the accident and that he was engaging in extra-marital dalliances.

11 On the work front, pre-accident, the Plaintiff was holding the position of Administrative Assistant with AsiaMalls Management Pte Ltd ("the Employer") at the White Sands Mall in Pasir Ris ("the Mall"), with some prospect, in her view, of promotion to the next rank notwithstanding her age. She had no difficulty coping with her responsibilities. Post-accident, she encountered difficulties coping with her work. This caused some issues with her superiors and not infrequent counselling. On 11 June 2013, the Employer proposed that she be transferred to the position of Customer Service Officer. This proposal was rejected by the Plaintiff, and she was thereafter required to retire from her employment. By then, the Plaintiff had reached the legal

retirement age of 62. The Plaintiff left the employment of the Employer sometime in July 2013. The reasons for the Employer's proposal and the Plaintiff's subsequent retirement are important as one of the key issues that I have to consider is whether the PTSD and MDD were the cause of the Plaintiff's loss of employment. The Plaintiff's case is that her PTSD and MDD as well as her residual disabilities from the accident directly contributed to her loss of employment. The Defendant took a contrary position.

12 At the time of the accident, the Plaintiff suffered from osteoarthritis in both her knees. She was receiving treatment for the condition at the time of the accident. An important issue that I have to consider is whether the accident aggravated the osteoarthritis in her knees. It is the Plaintiff's case that it did, and she sought damages for such aggravation. The Defendant denies that the Plaintiff's osteoarthritis was aggravated by the accident.

13 The osteoarthritis in her knees brought misfortune to the Plaintiff. On 4 April 2013, while descending the stairs at home, the Plaintiff's knees gave way, resulting in her falling headfirst down the stairs ("the Fall"). She suffered a Colles Fracture, concussion and haematoma to the head as a result. There was a second fall down the stairs on 5 May 2013. Fortunately, the Plaintiff suffered no injury that time. The Plaintiff attributes both falls to the aggravation of the osteoarthritis in her knees by the accident.

14 The Plaintiff was unemployed for a period of five months following termination of her employment with the Employer. Subsequently, with the assistance of a friend, she found alternative employment albeit at a lower salary of $100 less a month. She began work at her new employment in January 2014. A year later, in January 2015, while her monthly pay increased,

it was still $35 less than the amount she used to receive from the Employer.[2] This has relevance to the Plaintiff's claim for loss of future earnings.

The Plaintiff's claims and the issues arising therefrom

15 In light of the foregoing, the Plaintiff set out the following claims in her closing submissions:

(a) General damages for pain and suffering connected with:

(i) the injuries sustained to her spinal column and spinal cord;

(ii) her PTSD and MDD; and

(iii) her injuries arising from the Fall.

(b) General damages for loss of future earning and/or future earning capacity.

(c) General damages for cost of future medical treatment, transportation costs and part-time maid expenses.

(d) Special damages for hospital and medical fees, transportation expenses, part-time maid expenses incurred prior to the time of trial and pre-trial loss of earnings.

16 In the amended Statement of Claim dated 10 June 2015, the Plaintiff set out the following particulars as her damage:

(1) Hospital and medical fees $18,150.66

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[2] Plaintiff's Closing Submissions, para 109.

(2) Transport to and from National University Hospital for 78 trips at $45 per trip $3,510.00

(3) Future medication and treatment (to be assessed)

(4) Future transportation (to be assessed)

(5) (a) Loss of future earnings (to be assessed);

Or in the alternative

(b) Loss of earning capacity (to be assessed)

17 It should be noted at the outset that the Plaintiff did not plead the particulars of the Fall or the damages which she suffered from the Fall in her Statement of Claim. The issue of the accident aggravating the Plaintiff's osteoarthritis was also not highlighted in the Plaintiff's pleadings. This was even though the Statement of Claim was amended as late as 10 June 2015. The only information provided by the Plaintiff concerning her knees in her pleadings was a handwritten note by Dr Tho Kam San ("Dr Tho"), an orthopaedic surgeon from Singapore Orthopaedic Specialist Pte Ltd, which was annexed to the Statement of Claim. However, no objection was taken by the Defendant either during the course of the trial or in the closing submissions on a point of pleading. In fact, the Defendant led evidence from an expert witness, an orthopaedic surgeon, on the specific question of whether the osteoarthritis was aggravated by the accident, and counsel for the Defendant cross-examined the Plaintiff and her experts on this issue with some rigour. In these circumstances, I have proceeded to consider the issue of whether the osteoarthritis was in fact aggravated by the accident.

18 The Defendant accepts that the accident caused the Plaintiff's spinal injuries and psychiatric condition, but disputes that there is a causal link between the accident and the Fall. The Defendant also submits that there should be no award for loss of future earnings and loss of earning capacity.

19 Besides determining the quantum of damages to be awarded for each head of damage claimed by the Plaintiff, the following matters therefore also arise for consideration:

(a) Did the accident aggravate the Plaintiff's existing osteoarthritis?

(b) Were the injuries suffered by the Plaintiff from the Fall attributable to the accident?

(c) Did the accident cause or contribute to the termination of the Plaintiff's employment?

Did the accident aggravate the Plaintiff's existing osteoarthritis?

20 The experts called by both parties were on common ground that for the Plaintiff's osteoarthritis to be aggravated by the accident there must have been trauma to the knees. In other words, the Plaintiff's knees must have suffered injury as a result of the accident for her osteoarthritis to have been aggravated. The Plaintiff's problem is that there was no record of any trauma to her knees in the medical notes of AH or NUH. In other words, no record was made of trauma to the Plaintiff's knees by the attending physicians and nursing support from the time of her admission to AH until her discharge from NUH.

21 The Plaintiff sought to fill this evidential lacuna primarily through the expert testimony of Dr Tan Chyn Hong ("Dr Tan"), a consultant orthopaedic surgeon from The Orthopaedic Centre in Mount Elizabeth Novena Specialist Centre Hospital. He opined that trauma must have occurred because the progression of the Plaintiff's osteoarthritis post-accident was at a faster rate than would normally be expected. His conclusion was predicated on the Plaintiff's pain score being at two before the accident and at eight after the

accident. This faster than usual rate of degradation suggested to him that the Plaintiff suffered trauma to her knees. The question is whether the rate of degradation of osteoarthritis can be legitimately and accurately measured by a pain score, a highly subjective measure, given that perception of pain would vary from patient to patient.

22 Unsurprisingly, Mr Tan's approach and view came under heavy criticism from the Defendant's expert, Dr Chang Wei Chun ("Dr Chang"), a consultant orthopaedic surgeon from Gleneagles Medical Centre. The pith of his criticism was that there is no proper medical foundation for the use of a pain score as a basis to assess the rate of degradation of osteoarthritis. There was, in his view, no universal and objective standard for assessing what was the normal rate of degeneration of osteoarthritis as it would vary from patient to patient. Also, the use of a pain score was flawed for three reasons. First, it was riddled with the patient's subjective perception of pain, which hardly provided an accurate measure of how severe the osteoarthritis was at any given point of time. In the Plaintiff's case, there was no medical correlation between eight on the pain score and the actual severity of the osteoarthritis. Second, using an increase of the pain score from two to eight as a measure of the pace of degeneration would require identification of when the readings for the scores of two and eight were taken. The time interval between the two might at least give some indication of how rapidly the degeneration was occurring. Dr Tan was, however, not able to provide reference dates for both. Third, an objective assessment of whether there was in fact trauma to the knees could be made from X-rays or MRI scans, in the absence of medical notes recording it. There was no need to resort to a subjective and ultimately inaccurate "pain score" approach. In this regard, it was observed that Dr Tan had in fact commissioned X-rays and an MRI of the Plaintiff's knees but did not use them to ascertain if there had been trauma to the Plaintiff's knees.

23 Under cross-examination, Dr Tan conceded that the use of a pain score was an inaccurate measure of the rate of deterioration of osteoarthritis and his conclusion that there was a faster rate of deterioration in the Plaintiff's case was therefore something that he was no longer able to stand by. These concessions meant the thrust of his opinion that there must have been trauma to the knees as a result of the accident is not sustainable. As noted by this court in *Mark Amaraganthan Selvaganthan v Cheung Man Wai* [2015] SGHC 253 at [45], there must be evidence of an accelerated rate of degeneration after the accident. In my view, cogent evidence would be required. Dr Tan's evidence unfortunately hardly qualified as cogent evidence.

24 However, putting aside the fragility of Dr Tan's conclusion, there are other aspects that lead me to the ineluctable conclusion that there was in fact no trauma to the Plaintiff's knees as a result of the accident.

25 In this regard, I accept Dr Chang's evidence that trauma to the knees would have manifested itself in radiographic or magnetic resonance tests. Dr Chang was of the view that there are three types of trauma to the knees that could aggravate pre-existing osteoarthritis:

(a) a fracture;

(b) a ligamentous or meniscus tear; and

(c) significant injury to the knee that damaged the articular surface, otherwise known as intra-articular damage.

It was common ground the first two were not suffered by the Plaintiff, leaving the third as the sole possibility.

26 In Dr Chang's view, a significant injury to the knees would have manifested itself in obvious swelling, localised pain and bleeding in the knee cavity. This would have taken between 10 to 14 days to resolve. In this respect, I point out again that there was no mention in the medical notes taken from the time of the Plaintiff's admission to AH until the time of her discharge from NUH of any of these symptoms. According to Dr Chang, damage to the articular surface would be discernible in an MRI scan. As noted earlier, an MRI scan was commissioned by Dr Tan on 23 May 2014. The results of that scan identified only osteoarthritis and noted no ligamentous tear. The scan made no mention of any intra-articular damage. Dr Chang referred to this scan and made the very same observation to fortify his conclusion.[3]

27 The MRI scan that Dr Tan had commissioned would therefore have been a much more effective indicator of whether there had been trauma to the Plaintiff's knees. That the MRI scan drew a blank in this regard suggests that there was in fact no trauma. The absence of any reference to trauma in the medical notes only underscores my conclusion. It is therefore surprising and perhaps unfortunate that Dr Tan resorted to a subjective, inexact and, as it turned out, unsubstantiated approach of a pain score when there was objective evidence readily available to him. His failure to even consider the MRI scan weakens the utility of his evidence.

28 Dr Chang was quite emphatic that the Plaintiff would have complained about pain in her knees if there had been trauma to her knees as a result of the accident. He testified that the Plaintiff would have complained about such pain between the time of admission to AH and her discharge about seven days later from NUH. Alternatively, she would have complained of such pain after her

[3] Dr Chang's AEIC dated 4 March 2015.

discharge from NUH when she went for follow-up consultation. However, the first time she raised any complaint about pain in her knees was some 18 months after the accident on 30 April 2010. This suggested to him that there was in fact no trauma to the Plaintiff's knees as a result of the accident.

29 The Plaintiff attempted to dilute the absence of a reference to a complaint in the medical notes. Her primary argument was that the more serious injury was her fractured dislocation of the C6 and C7 vertebrae and the consequent damage to the spinal cord resulting in myelomalacia. It was argued that two consequences flowed from this. First, the immediate focus and attention of the medical team would have been on stabilising the said fracture and damage to the spinal cord. The evidence of Associate Professor Hee Hwan Tak ("Dr Hee"), Deputy Head of NUH's Spinal Surgery division, to this effect was relied on. Second, the said injuries would have resulted in numbness of the Plaintiff's limbs which would have in turn masked any pain she would have felt in her knees as a result of any trauma. I had difficulty with the Plaintiff's arguments for several reasons.

30 First, according to Dr Chang, the usual protocol of a medical team treating an accident victim suspected of vertebrae or spinal cord injuries, such as the Plaintiff, would be to conduct an examination of all of the victim's limbs. He testified that it was "natural to check for movements of the knee" and "if there was pain and swelling, it would have been noted".[4] Apart from this being prudent medical practice, I also find this eminently logical and a matter of common sense. It stands to reason that such an assessment could indicate the existence of spinal injuries and their severity, as well as help to ascertain if others injuries had been suffered. The Plaintiff could very well

[4] NE Day 4, page 15.

have also suffered serious injury in her knees and it would not have been reasonable for the medical team to assume that the only medical issues were with the Plaintiff's spinal column. In this regard, I note that the Plaintiff's limbs were in fact examined as part of an overall examination during her stay at AH as evidenced by the reference to "Bilateral knee jerks" in the inpatient discharge summary records.[5] This being the case, it would be startling that such an examination would not have picked up significant swelling and bruising in the Plaintiff's knees if indeed there was trauma to her knees, even if the focus of the overall examination was to assess whether the Plaintiff had suffered damage to her spinal column. If bruising had been noted, it would be equally startling that an investigation was not done by questioning the Plaintiff on how the bruising had occurred, followed by the necessary medical tests. Even if allowance was made for the fact that the medical team was focussed on the Plaintiff's vertebrae and spinal cord issues at the time of admission, it would seem almost absurd for the Plaintiff to suggest that the doctors in attendance would not have re-focussed their attention on other parts of her anatomy after the immediacy of the situation had been addressed. After all, the Plaintiff had a battery of medical personnel attending to her, including Dr Hee. I note in this respect that the Plaintiff's spinal column injuries were addressed through surgical intervention on the day of her admission to NUH. It is difficult to believe that the medical team would not have examined and spotted any trauma to the knees such as swelling and bruising subsequently. The Plaintiff was hospitalised in NUH for six nights. There was therefore more than sufficient time for the issue to be picked up if it was there. Dr Chang's opinion is that significant trauma to the knees would take 10 to 14 days to resolve itself. If there was even the remotest suspicion that the Plaintiff had

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[5] Plaintiff's Bundle of Documents, Tab 4, page 4.

untreated issues with her knees as a result of the accident, I find it difficult to believe she would have been discharged without proper treatment first being administered. To suggest that the medical staff in attendance would have conducted themselves in such an indifferent manner is an unfair and churlish slur on their professionalism. That there is no record in the medical notes of any issue with the Plaintiff's knees strongly suggests that the medical team did not spot any. I note that no MRI or X-rays of the Plaintiff's knees were even commissioned.

31 Second, I accept that the numbness that the Plaintiff would have felt in her limbs could have masked or desensitised her to any pain in her knees at the time of the accident. However, it is difficult to understand how she would not have felt the pain after the immediate issue of the vertebrae and spinal cord injuries had been stabilised. Again, it must be recalled that the Plaintiff was hospitalised in NUH for six nights, and an injury of such significance to the knees would have taken longer than that period to heal.

32 Third, the absence of any reference to pain in her knees in her subsequent consultations is telling. As noted earlier, the first time the Plaintiff appears to have complained about pain in her knees was on 30 April 2010, some 18 months after the accident. That was when she met Dr Tho, an orthopaedic doctor in private practice. Even then, there was no specific reference to any trauma to the knees that she had suffered as a result of the accident. Only a vague statement that the Plaintiff was "suffering from rupture and left knee pain after an accident in Oct 2008" was recorded.[6] It should be noted that this was in relation to only one knee. It is strange that there was no follow up with medical investigations ordered by Dr Tho to flesh out this

[6] Plaintiff's AEIC, page 237.

vague assertion. Subsequently, the Plaintiff began seeing Dr Tan in November 2011.[7] Dr Tan recorded in a report dated 19 September 2012 that the Plaintiff's osteoarthritic condition "was aggravated by the road traffic accident in 2008".[8] Again, no medical investigations appear to have been ordered to verify this. I find the Plaintiff's failure to complain for 18 months following the accident – which she alleged had caused trauma to her knees, thereby aggravating her osteoarthritis – troubling. The substantial passage of time between the accident and the first mention of aggravation to her knees as a result of the accident casts doubt on the Plaintiff's case.

33 Fourthly, apart from a general assertion that her knee injuries were "aggravated as a result of the road traffic accident" in her affidavit of evidence-in-chief ("AEIC") dated 28 June 2013 and 5 June 2015, there was no mention of trauma to her knees in any of the Plaintiff's AEICs. Crucially, no mention was made of any trauma to the knees in her first AEIC dated 18 August 2012. It was only when cross-examined that the Plaintiff offered a vivid account of how she sustained trauma to her knees during the accident. This is puzzling and raises the possibility that the trauma is more a figment of the Plaintiff's mind rather than a fact. Accordingly, I do have difficulty in accepting her testimony in this regard. I should hasten to add that I am not going so far as to say the Plaintiff was not being honest. But her evidence on this issue assessed against the backdrop of the medical evidence does lead me to conclude that her recollection is suspect and perhaps imagined. Given how unsettled the Plaintiff has been by the consequences of the accident, it would perhaps not be a surprise if she had convinced herself that she did indeed suffer trauma to her knees as result of the accident. I say no more.

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[7] NE Day 1, page 7.

[8] Dr Tan's AEIC, page 12.

34 I should point out that I do not accept Dr Chang's evidence in one respect – his reference to the Plaintiff's failure to complain about pain in her knees at the post-discharge medical consultations. He said he would have expected such complaints to have been made. I find that there is an inherent contradiction in Dr Chang's analysis. If, as Dr Chang says, the trauma to the knee would have taken 10 to 14 days to heal, it would be reasonable to assume that by the time the Plaintiff had these medical consultations, the trauma would have healed. What the Plaintiff would have been faced with would therefore be pain from osteoarthritis, albeit, on her case, accelerated because of the trauma. It is not a convincing argument to suggest that there would be pain which would be independently attributable to the trauma. Having said that, if the pain in her knees was more acute overall because of a more rapid degeneration of the osteoarthritis in her knees, it is not unreasonable to expect the Plaintiff to have mentioned the trauma to her knees during these consultations. The Plaintiff would have surely connected the increased pain to the trauma and therefore the accident. However, she did not do so until 18 months after the accident. This is the observation that I made earlier.

35 Finally, I am alive to the fact that Dr Chang stated in his report dated 9 April 2013 that there was a possibility that the Plaintiff might have strained her knees at the time of the accident even though there was no medical evidence or notes of this. He suggested that the aggravating factor ought not to be more than 10% to 15%. In the course of cross-examination, he clarified that there was in fact no medical underpinning for this conclusion and it was offered purely to address the very remote possibility that the Plaintiff's knees were strained as a result of the accident without in fact suffering a blow. In fact, Dr Chang appeared to offer this almost as a consolation prize. I am therefore unable to accept that there is any sound basis for accepting this concession, if it can even be described as one. If it is common ground that

there must be trauma, to accommodate a strain would be wholly illogical and therefore inappropriate. Accordingly, I do not place any weight on Dr Chang's concession.

36 In these circumstances, evaluating the evidence in its entirety, I see little basis to support the Plaintiff's submission that her knees suffered significant trauma as a result of the accident, which in turn aggravated her osteoarthritic condition. As an injury to the knees at the time of the accident is a necessary ingredient for aggravation of the Plaintiff's osteoarthritis to have occurred, the Plaintiff has failed to establish a causal link between the accident and the present state of her osteoarthritic condition. The legal burden of proving causation – that the accident aggravated her osteoarthritis – is on the Plaintiff. In my view, the Plaintiff has failed to discharge the same.

37 My finding would mean that the Plaintiff's claims, which are inextricably linked to her osteoarthritic condition, would consequently fall away. Therefore, any claim for damages that is connected to treatment for the osteoarthritis and associated expenses are dismissed. My finding will also have a deleterious effect on the claims that are tied to the Fall. I now turn to consider these claims.

Were the injuries suffered by the Plaintiff from the Fall attributable to the accident?

38 As noted earlier, the Plaintiff's misfortunes did not cease with the accident. The Fall resulted in a fracture of the third radius and ulnar (known as a Colles fracture), a concussion and haematoma to her head. The Plaintiff claims general and special damages as a result of these injuries. She had a second fall on 5 May 2013 when she landed on her knees. No claim is made as regards that fall.

39 It is clear that the Fall occurred when the Plaintiff was descending the stairs in her home. While descending, the Plaintiff felt weakness in her knees, which she described as her knees becoming like "jelly". Her knees gave way, causing the Plaintiff to fall headfirst down the stairs. The injuries suffered as a result are not in dispute. The Plaintiff blames the Fall on the aggravation of her osteoarthritis by the accident. The Defendant's counterargument is that while the Fall was caused by the Plaintiff's osteoarthritis, that condition was not caused or aggravated by the accident. It is obvious that the Plaintiff's case requires a causal connection to be established between the accident and the aggravation of her osteoarthritis. Given my finding at [36] above, the Plaintiff's claims resulting from the Fall must fail.

40 For completeness, I should address one aspect of the Plaintiff's evidence, though it was not pleaded nor asserted in her AEIC as having caused or contributed to the Fall. The Plaintiff testified that as she was holding on to the bannister with her right hand as descended the stairs. When her knees collapsed, she tried to steady herself. However, given the weakness in her right hand, which was caused by the accident, she was not able to prevent the Fall.[9]

41 There was controversy on whether the Plaintiff was in fact holding on to the bannister as she descended the stairs. In Dr Loh's report dated 13 January 2014, he records the Plaintiff as informing him that she was not holding on to the bannister while she descended the stairs.[10] While it was specifically mentioned in her AEIC that she was holding on to the bannister with her right hand when she fell on 5 May 2013, she did not make a similar

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[9] NE Day 3, page 30.

[10] Dr Loh's AEIC dated 27 January 2014, page 7.

statement as regards the Fall in her AEIC.[11] When this was drawn to her attention in cross-examination, the Plaintiff said "I was and I was not".[12] The Defendant submits that the Plaintiff was not being truthful. I believe this is too harsh an assessment of the Plaintiff's evidence. Given the fragility of her knees, it is not unreasonable to conclude that she would have used the bannister to aid her descent on the day of the Fall. That she had mixed recollection on this issue does not change the fact that reasonable behaviour on her part in such circumstances would be to use the bannister. Even if she was not holding on to the bannister when she descended, the moment she felt her knees go soft, natural instinct would have made her reach out to clutch at the bannister. In other words, she was not holding on to the bannister when descending but reached out to it when she felt weakness in her knees. This could perhaps explain her equivocal response in cross-examination and the absence in her AEIC of any reference to whether she was holding on to the bannister at the time of the Fall.

42 Concluding this way, however, does not assist the Plaintiff. I say this because the real cause of the Fall was the osteoarthritis in her knees. Whether she could have stopped the Fall if her right hand was at full strength is a speculative inquiry and does not, in my view, break the chain of causation. One does not know if there would be sufficient strength in one fully functional hand, to take the Plaintiff's full weight when falling, if the accident had not occurred. It must not be forgotten that at the time of the Fall, the Plaintiff was already 62 years old. Her strength would, in the natural course of aging, have diminished. In any event, I note that this is not the case that the Plaintiff has run.

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[11] Plaintiff's AEIC dated 28 June 2013, para 9.

[12] NE Day 3, page 75.

43 I therefore conclude that damages associated with the Fall are not attributable to the accident and they are therefore not recoverable.

Did the accident contribute to the termination of the Plaintiff's employment with the Employer?

44 It is common ground that the Plaintiff suffers from PTSD and MDD as a result of the accident. It is also common ground that the Plaintiff was asked by the Employer to retire from her position as Administrative Assistant at the Mall and that the Plaintiff retired sometime in July 2013. The Plaintiff's case is that her PTSD and MDD, and residual disabilities which arose from the accident were the cause of her forced retirement. I take each in turn.

45 The evidential fulcrum of the Plaintiff's case is the testimony of Dr Loh. Dr Loh expressed the opinion in his various affidavits that the Plaintiff suffered from PTSD and MDD and that these conditions were directly attributable to the accident. I accept that. In his first report dated 3 January 2011, he made reference to the fact that the Plaintiff's psychiatric condition caused her problems at work. I also accept that the PTSD and MDD would have had an impact on her performance levels at work. However, in his third AEIC dated 5 May 2015, Dr Loh went a step further, and perhaps a step too far. In response to a specific query from the Plaintiff's solicitors as to whether the Plaintiff's psychiatric condition was partially or solely responsible for the Plaintiff's loss of employment, he said as follows:

> Similarly, it is clear to me from the Plaintiff's *chronology of events* that her PTSD and MDD had *solely caused her loss of employment*.
>
> [emphasis added]

I am unable to accept his conclusion for two reasons.

46 First, it is apparent from the extract quoted above that Dr Loh's assessment is based on the chronology of events narrated by the Plaintiff. In other words, it is based on an evaluation of facts. I am not convinced that is a matter of expert testimony. Whether the Employer was motivated to require the Plaintiff to step down from her employment because of physiological and behavioural manifestations of PTSD and MDD is a factual investigation that is for the court and not a matter expert opinion. How the Plaintiff's work performance was impacted by PTSD and MDD and what part that played in the Employer's request to the Plaintiff to retire are questions of fact for the court and not an expert. The best sources of evidence in this regard are the Plaintiff's testimony, the Plaintiff's appraisal reports, documents that relate to her cessation of employment, and perhaps most importantly, the testimony of the Employer. It is unfortunate that the Employer's testimony was not available to assist me. However, notwithstanding this, the Plaintiff's appraisal reports, the exchange of emails between the Employer and the Plaintiff concerning her re-assignment in June and July 2013 were before me. They shed important light on the Employer's motivations. It is a significant omission that none of these were brought to Dr Loh's attention. This brings me to the second reason why I could not accept Dr Loh's conclusion.

47 It seems to be that Dr Loh's conclusion is devalued by the fact that he was not shown the Plaintiff's appraisal reports and the said exchange of emails, prior to forming his views. These are important documents which in my view ought to have been shown to Dr Loh when he was instructed. When he was eventually shown the appraisal reports in cross-examination, he accepted that the PTSD and MDD were arguably not the sole cause of her loss of employment. He acknowledged that there could have been other contributing factors. In re-examination, Dr Loh reverted to his original views. However, he conceded the relevance of the appraisal reports and accepted that

they indicated that the Plaintiff was "meeting expectations".[13] This is a fair concession and one that undermines his conclusion that the PTSD and MDD had caused the Plaintiff's loss of employment.

48 Does the evidence show that the Plaintiff's psychiatric condition caused her loss of employment? There are several points that suggest that it did not.

49 First, the date on which the Plaintiff was forced to retire is relevant. The accident occurred on 11 October 2008. The Plaintiff took a total of 201 days of medical leave and annual leave between 11 October 2008 and 8 August 2012 to deal with the medical issues that arose as a result of the accident. She was diagnosed with PTSD and MDD when she was referred by Dr Chew to Dr Loh on 22 April 2010. Dr Loh noted in his report dated 3 January 2011 that the PTSD symptoms manifested themselves shortly after the accident.[14] Therefore, the effect of PTSD on the Plaintiff's work performance would have been felt soon after the accident. Despite that, the Plaintiff was only asked to retire sometime in July 2013. In other words, the Plaintiff continued to work for at least three years after being diagnosed with PTSD and MDD before the issue of termination of her employment came up. This hardly suggests to me that the Plaintiff's psychiatric condition was one of the reasons for her forced retirement.

50 Second, the Plaintiff's appraisal reports are significant. They shed light on the Employer's perception of the Plaintiff's performance. The tabulation

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[13] NE Day 4, page 116.

[14] Dr Loh's AEIC dated 3 July 2012, page 13.

below sets out the overall score and rating of the Plaintiff annually between 1 January 2006 and 31 December 2011:[15]

Period of Review	**Overall score (%)**	**Rating**
1 Jan 2006 to 31 Dec 2006	67	Average
1 Jan 2007 to 31 Dec 2007	71	Good
1 Jan 2008 to 31 Dec 2008	68.25	Average
1 Jan 2009 to 31 Dec 2009	66	Average
1 Jan 2010 to 31 Dec 2010	70.8	Meets expectations
1 Jan 2011 to 31 Dec 2011	74.4	Meets expectations

51 It can be seen that pre-accident (*ie*, in 2006 and 2007), the Plaintiff received scores of 67% and 71%, and ratings of "Average" and "Good" respectively. In 2008, the effective period of assessment was also pre-accident, that is from 1 January 2008 to 10 October 2008, as the Plaintiff was on medical leave for most of the rest of the year following the accident. Her score showed a dip to 68.25% and she was rated "Average". In fact, there was an upgrade in her score from an initial score of 67.25% to 68.25%. There was a noticeable decrease in the Plaintiff's score in 2009 to 66% – the first assessment after the accident – but the Plaintiff remained rated in the "Average" category. There was a change in the assessment criteria in 2010 and the Plaintiff's scores in fact went up for 2010 and 2011 to 70.8% and

[15] Plaintiff's AEIC, page (18 August 2012), pg 259-277.

74.4% respectively. Much is made of this by the Defendant who argues that this suggests that the Plaintiff was improving at work. However, this ignores the change in the assessment criteria and the rating band that the Plaintiff's score fell into. The Plaintiff's scores brought her within the lower to the middle range of the new band of "Meets Expectations", which is similar to an "Average" rating. This did not suggest to me any significant increase in performance levels. The indications are more that the Plaintiff's performance levels remained broadly the same.

52 What the scores and ratings suggest is that even after the accident, the Employer continued to broadly rate the Plaintiff as an "Average" performer. The Plaintiff's medical issues did not cause the Employer to take the view that her employment ought to be terminated. Indeed, in 2011, following the diagnosis of PTSD and MDD, her score rating actually went up to 74.4% from 70.8%. It seems to me that any work issues that were engendered by the PTSD and MDD did not cause the Plaintiff's forced retirement in 2013.

53 Third, the circumstances surrounding the termination of the Plaintiff's employment, in particular the exchange of emails referred to earlier, are important. Before I examine the emails, the context must be set for the exchange of these emails. It must be remembered that the Fall occurred on 4 April 2013. It happened because of the state of the Plaintiff's knees. There was a repeat episode on 5 May 2013. Before and after the Fall, Plaintiff encountered difficulties in discharging her day-to-day tasks. She had work related issues which were primarily connected with her hands. Some of the problems she testified she encountered were difficulties in counting vouchers, stapling and sifting paper. These delayed her work, causing tenants in the Mall to complain about her speed of processing reimbursement claims. Fairly frequent counselling by her superiors followed. To make up for this, the

Plaintiff worked longer hours. Also, the Plaintiff required assistance from her colleagues to open toilet doors and water bottles.

54 This was the context in which the Employer wrote to the Plaintiff on 11 June 2013.[16] The Employer informed the Plaintiff that a replacement was being sought for her for the following reasons:

(a) the Plaintiff's health condition as evidenced by the number of days of medical leave and annual leave she had taken;

(b) the Plaintiff's intention to take no pay leave of three months for the purpose of surgery to deal with her knees; and

(c) the frequent need for colleagues to cover for her in addition to discharging their own responsibilities.

The issues in sub-paragraphs (a) and (c) were not new. They existed for quite a while and yet did not result in the Plaintiff being asked to retire in 2012 when she reached the minimum retirement age of 62.[17] In my view, the sequence of events shows that the tipping point in the Plaintiff's relationship with the Employer was the two falls in April and May 2013, which exposed the fragility of her knees. This is evident from the Employer's response to Plaintiff's request for clarification on what the Employer planned to do with regard to her employment.

55 The Employer's responded in an email dated 1 July 2013 as follows:[18]

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[16] Plaintiff's AEIC dated 28 June 2013, page 21.

[17] NE Day 3, page 21–22.

[18] Plaintiff's AEIC dated 5 June 2015, page 40.

> Hi Jean
>
> We refer to our meeting with you on 11 and 26 June 2013.
>
> We explain to you that the mall would be going through an Asset Enhancement Works for the next 2 years, starting very soon. This means that major parts of the mall would be like a construction site and therefore not a safe environment for you *in view of your recent injury*. In addition to the current day-to-day work, the Administrative Assistant would also be required to go down to worksites to collect/receive documents, handle storage of documents which may be difficult for you to handle. Our main aim is to ensure your safety at work.
>
> We have proposed to you on the transfer to the position of Customer Service Officer as the position requires *less physical mobility and therefore [it is] more suitable for you*. You will come back to us on 5 July 2013 whether you wish to take up the position.
>
> [emphasis added]

56 From this email, it is apparent that the Employer's real reason for wanting to transfer the Plaintiff was a concern over the Plaintiff's ability to perform her responsibilities as an Administrative Assistant in light of her impaired mobility. The asset enhancement work at the Mall meant that Plaintiff would have to make trips to and from the worksites to collect documents and handle their storage. Her "recent injury", an obvious reference to the two falls, made it unsafe for her to do this. As a solution, the Plaintiff was offered the position of a "Customer Service Officer" which did not require as much mobility. The very fact that the Plaintiff was offered this position would suggest that the Employer did not see her psychiatric condition as an issue. Assessing the evidence holistically, the Employer's concern appeared to be the weakness of the Plaintiff's knees exemplified, certainly in the Employer's mind, by the two falls. The Plaintiff's refusal to accept the transfer prompted the Employer to request her retirement.

57 In connection with the above, the Plaintiff's alternative argument that her disabilities caused by the accident contributed to her loss of employment

must also fail. Despite the issues caused by the accident (which occurred in 2008), her job performance did not suffer greatly (as evidenced from the Plaintiff's appraisal reports). The issues with the dexterity and strength of her hands were there all along. They were not new. Rather, the turning point in her employment relationship came after she suffered the Fall in April 2013 and the second fall in May 2013. I have concluded that the injuries suffered by the Plaintiff from the Fall were not connected to the accident. That would also be true for the fall on 5 May 2013.

58 Obviously, the Employer's evidence would have shed invaluable light on why the Plaintiff was requested to retire. However, the Plaintiff did not see fit to call a relevant representative from the Employer. The burden is on her to establish causation. In this regard, it seems strange that the Plaintiff resorted to expert testimony to show the reason for the termination of her employment when that was really a question of fact with the evidence readily available from the Employer. Nonetheless, there is sufficient documentary material available for me to take a considered view of the Employer's reason for terminating the Plaintiff's employment.

59 In these circumstances, it seems that on a balance of probabilities, the Plaintiff's loss of employment was not caused by the PTSD and MDD, or any residual disability resulting from the accident. In fact, the evidence suggests that the cause of the Plaintiff's loss of employment was the condition of her knees which, given the changed job description precipitated by the new work environment in the Mall and the Plaintiff's unwillingness to accept the offer of a new position as a Customer Service Officer, caused the Employer to require her to retire. The Plaintiff's claim for loss of earnings must fall away as it rests on establishing that the loss of employment was a result of the Defendant's negligence.

60 I now turn to consider the question of damages.

Quantification of damages

61 I begin with a comment concerning the distinction between general and special damages in personal injuries cases. Order 18 r 12 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules of Court") requires that every pleading must contain the necessary particulars of any claim. In particular, under O 18 r 12(1A) of the Rules of Court, a plaintiff in an action for personal injuries is required to serve with his statement of claim (a) a medical report, and (b) a statement of the special damages claimed.

62 In *The "Shravan"* [1999] 2 SLR(R) 713, Chao Hick Tin J (as he then was) citing from *Bullen & Leake on Precedents of Pleadings* (12th Ed, 1975) at p 60, distinguished special damages from general damages as follows (at [77]):

> General damage is such as the law will presume to be the natural or probable consequence of the defendants' act. It arises by inference of law, and need not, therefore, be proved by evidence and may be averred generally. Special damage, on the other hand, is such a loss as the law will not presume to be the consequence of the defendant's act, but such as depends in part, at least, on the special circumstances of the particular case. It must therefore be always explicitly claimed on the pleading, as otherwise the defendant would have no notice that such items of damage would be claimed from him at the trial.

63 In the context of personal injury cases, however, special damage is not confined to only "such a loss as the law will not presume to be the consequence of the defendant's act". It also includes "out-of-pocket expenses and loss of earnings which the plaintiff has incurred down to the date of trial, and is generally capable of substantially exact calculation" (see *British Transport Commission v Gourley* [1956] 1 AC 185 at 206). As Lord Donovon

pointed out in *Perestrello E Companhia Limitada v United Paint Co Ltd* [1969] 1 WLR 570 at 579:

> The obligation to particularise [such damages] arises not because the nature of the loss is necessarily unusual, but because a plaintiff who has the advantage of being able to base his claim upon a precise calculation must give the defendant access to the facts which make such calculation possible.

64 In *Ilkiw v Samuels and others* [1963] 1 WLR 991, a claimant in an action for personal injury had pleaded and particularised his loss of earnings at £77, which was based on four months' loss of earnings after the accident. The court held that the claimant was not entitled to recover for the continuing loss of wages over the next eight years prior to trial as these had not been pleaded as special damages.

65 The above cases are in line with what is set out in O 18 r 12(1C) of the Rules of Court, which provides that "statement of the special damages claimed" under O 18 r 12(1A) means:

> … a statement giving full particulars of the special damages claimed for *expenses and losses already incurred* and an estimate of any future expenses and losses (including loss of earnings, loss of Central Provident Fund contributions and loss of pension rights). [emphasis added]

66 Hence, in an action for personal injuries, a plaintiff is required to plead expenses or loss of earnings that he or she has already incurred where these can be quantified with near exactitude. The principle is in place to give the defendant *an opportunity to prepare his case as well as to consider settlement possibilities*. The failure to plead special damages will in the ordinary case disentitle the plaintiff to claim such damages from the defendant unless no prejudice has ensued (see *Ng Bee Lian v Fernandez and another* [1994] 2 SLR(R) 179 at [30]).

Damages for pain and suffering

The Plaintiff's spinal injuries

67 The Plaintiff submits that damages in the sum of $100,000 be awarded for her spinal injuries. Reference was made to the Guidelines for the Assessment of General Damages in Personal Injury Cases (Academy Publishing, 2010) ("the Guidelines").

68 The Defendant on the other hand submits that the award ought to be $35,000. Support for the submission is placed on the decisions of *Chin Swey Min a patient suing by his wife and next friend Lim Siew Lee v Nor Nizar bin Mohamed* [2004] SGHC 27 and *Cheng Chay Choo (Spinster) v Wong Meng Tuck and another* [1992] SGHC 133.

69 The approach taken by the court in an assessment of damages for personal injuries is to decide, having regard to precedents, what a fair and reasonable quantification for a particular injury or disability is. It is therefore important to understand the nature and extent of the injuries that the Plaintiff has suffered. In the present case, there are four aspects of the Plaintiff's injuries that need to be taken into consideration.

70 First, the Plaintiff suffered a fractured dislocation of the C6 and C7 vertebrae which was resolved by an anterior cervical discectomy and fusion of the vertebrae.

71 Second, the fracture of the C6 and C7 vertebrae caused permanent damage to the Plaintiff's spinal cord resulting in myelomalacia at the C6 vertebrae on the left and the C7 vertebrae on the right.

72 Third, the myelomalacia caused the Plaintiff impaired functional dexterity in both hands and difficulty in handling things, including paper. Her strength grade was four in both arms with five being the normal rating. Her right hand was particularly affected. She also had constant pain in her forearm, and sometimes shooting pain in the night which disrupted her sleep. The diagnosis by Dr Chew was that she suffered from chronic pain syndrome with a possibility of complex regional pain syndrome. In other words, the Plaintiff has to live with constant pain and weakness in her arms, with the pain being a major contributor to her psychiatric condition and the disruption of her life. Dr Chew's testimony in this regard was not challenged by the Defendant. Indeed, it is pertinent to note that Dr Chang agreed with Dr Chew's pain diagnosis. I accept Dr Chew's evidence in its entirety. I found her expert opinion to be measured in its assessment of the Plaintiff and her condition.

73 Fourth, the fusion of the C6 and C7 vertebrae would, in Dr Hee's view, increase the chances of aggravation of the pre-existing mild disc bulge in the C5 and C6 vertebrae by 25%.

74 In the round, it is apparent that the Plaintiff's condition is decidedly unfortunate and extremely uncomfortable. To some extent, I witnessed first-hand her discomfort when testifying. She could not stay seated for long in the witness box, requesting for frequent recesses to help her cope with her obvious discomfort. I am not persuaded by the authorities offered by the Defendant which are of some antiquity and which were dealt with on their specific facts that differ from those in the present case. I would prefer to use the Guidelines as a starting point as it sets out in general various categories of the severity of the injuries and an indicative range of a reasonable award of damages as regards each. In this regard, I am inclined to say that the Plaintiff's situation falls within the severe category in the Guidelines. The severe category is

broken down into four sub-categories, which I reproduce below (see the Guidelines at p 18-19):

> (i) Cases in this category include fractures and/or dislocation of the cervical spine affecting the spinal cord resulting in incomplete paraplegia, permanent spastic quadriparesis, little/no movement in the neck and severe headaches. There is also a risk of complete paralysis in the event of another trauma to the cervical spine. As the disabilities are debilitating, the person is unlikely to find employment and he also has difficulties coping with the activities of daily life and may be heavily dependent on a caregiver.
>
> (ii) Cases in this category fall short of the severity in … (i) above but there are significant disabilities in the long term, such as severely restricted movement of the neck, chronic pain radiating to the limbs, *etc*. The chances of finding employment are slim although the person is able to cope with the activities of daily life independently.
>
> (iii) Cases in this category involve severe neurological symptoms resulting in difficulty in movement, considerable pain in the cervical spine area as well as pain radiating to the limbs. There are significant disabilities where the neck movement is severely restricted despite physiotherapy and also an increased vulnerability to future trauma. However, the severity of the disabilities is less than … (i) or … (ii).
>
> (iv) Severe damage to soft tissues and/or ruptured tendons such that movement of the neck is affected. The person continues to suffer disabilities in the long run.

The range that is given in the Guidelines for each of the sub-categories is set out as such: (i) between $100,000 and $160,000; (ii) between $70,000 and $100,000; (iii) between $50,000 and $70,000; and, (iv) between $30,000 and $50,000, respectively.

75 In my view, as the Plaintiff had suffered a fractured dislocation of her spine and continues to suffer pain and disability from the injury that is not expected to improve (although thankfully no paralysis has ensued),[19] the

[19] Dr Chang's AEIC dated 24 April 2013, page 9.

Plaintiff's condition falls within the description of sub-category (ii). The prescribed range for that sub-category is between $70,000 and $100,000. I, however, am of the view that the damages in this instance ought to be set at the lower end of the range as the Plaintiff has generally been able to cope independently with her daily activities as evidenced by her return to employment. I therefore award a sum at the lower end of the range with slight upward adjustment for the prospect of aggravation of the mild bulge in the C5 and C6 vertebrae caused by the fusion of the C6 and C7 vertebrae. I therefore award the Plaintiff $80,000 as general damages for pain and suffering in relation to the injuries to her spinal column and spinal cord.

The Plaintiff's psychiatric injuries

76 I take the issue of awarding damages for psychiatric injury in two parts. First, I consider the extent of the Plaintiff's psychiatric injury and the impact that it has had on her life. Second, I consider the appropriate amount of damages to be awarded for them. This two-step approach is useful as the amount of damages to be awarded must correspond to the severity of the Plaintiff's injury and the impact it has had and will continue to have on her life. In this regard, a relevant factor would be whether there is any prospect of recovery in the long-term.

(1) The extent of the Plaintiff's psychiatric injury

77 In deciding on the extent and impact of the Plaintiff's psychiatric injury, I found it useful to again refer to the Guidelines. The Plaintiff suffers from PTSD which has resulted in the development of MDD (without psychotic symptoms). The Guidelines only address PTSD and do not provide an independent category for MDD. There is, however, an independent category for General Psychotic Disorders ("GPD"). The Guidelines set out

several factors with regard to the assessment of the impact of GPD (see the Guidelines at p 25-26). In my view, there is no convincing reason why these factors ought not to be equally applicable to the assessment of the severity of PTSD. After all, these factors are designed to measure the impact of a psychiatric condition on a plaintiff. The factors that are used to measure the impact of a psychiatric condition on an individual ought to be largely common to all psychiatric conditions regardless of the medical label that is used to define and categorise each of them. The factors in the Guidelines are:

(a) the person's ability to cope with life and work as compared to his pre-trauma state;

(b) the effect on the person's relationships with family, friends, and those with whom he or she comes into contact with;

(c) whether the person is suicidal as a result of the condition;

(d) whether medical help is sought;

(e) the extent to which treatment would be successful;

(f) the extent to which medication affects the person's life;

(g) whether the person adheres faithfully to counselling sessions and take his medication;

(h) the risk of relapse; and

(i) the chances of full recovery.

78 Besides these factors, the Guidelines also segregate both PTSD and GPD into four levels of severity: (a) severe; (b) moderately severe; (c)

moderate; and (d) minor. This again is helpful as these categories serve as a broad barometer of the severity of the impact of a psychiatric condition on an individual. I am therefore also of the view that the factors used to assess the severity of PTSD and GPD should broadly be the same. In a "severe" case of PTSD or GPD, the victim is unable to cope with daily life and unable to gain employment. The prognosis is poor and the symptoms are likely to persist in the long-term. In a "moderately severe" case, the victim has a better prognosis as compared to a "severe" case. However, the victim still suffers from significant disability and the chances of him being employed in his pre-trauma job are low. A victim that falls into the "moderate" category is one who has a good chance of recovery and able to cope with daily life, although he or she may require a less stressful job in order to manage the demands of employment. Finally, a victim with "minor" PTSD or GPD is one who achieves full recovery within a relatively short period of time.

79 I should add that in applying the factors sets out in [77] and assessing the categories in [78] above, it would be incorrect to take a granular approach to ascertaining the impact of psychiatric illness on a plaintiff. That would not be justifiable as a matter of principle. In my view, a more broad-brushed and holistic application of the factors and categories is appropriate with any attempt to pigeonhole studiously avoided. Assessing the impact of psychiatric illness on an individual cannot be measured with exactitude given the nature of the illness and the assessment that is being undertaken. The court is, in substance, assessing the impact of the manifestations of the illness on the life and relationships of an individual. The factors and categories in the Guidelines are merely tools that are deployed to facilitate the court's efforts to come to the right assessment and attempts to shoehorn a condition into a category should be assiduously avoided. While there is much medical science in that assessment process, ultimately it is a question of judgment and not science.

The cases are replete with statements to this effect, albeit in the context of assessment of the appropriate multiplier to be applied in calculating damages for loss of earnings or future medical expenses. The principle is equally applicable to the present exercise. It is a call to eschew granularity and espouse broad and considered judgment.

80 The extent of the PTSD and MDD is set out in Dr Loh's report dated 3 January 2011. The primary cause of the PTSD and the MDD is the chronic pain and numbness in her limbs. Her physical pain exacerbates her emotional pain. This has resulted in the Plaintiff feeling a sense of worthlessness, being easily angered, feeling frequently fatigued, suffering psychomotor retardation, having a low mood, loss of pleasure, poor and disrupted sleep and loss of appetite. Her relationship with the Defendant, who was the cause of the accident, has also suffered. As noted earlier, the Plaintiff is disenchanted with him because of a belief that he has engaged in extramarital indiscretions and a perceived failure on his part to take responsibility for the accident. Despite the passage of time, her symptoms have not diminished. There is absolutely no indication that she will improve. This is perhaps unsurprising given that the root cause of the PTSD and MDD is physiological – the constant and permanent pain. The poor long-term prognosis is an indicium that the impact is severe, under the Guidelines. It is unarguable that the PTSD and MDD have wrought a significant deterioration to the quality of the Plaintiff's life and relationships.

81 Applying the factors stated at [77] above to the present facts, I assess the Plaintiff as being severely impacted by PTSD and MDD. While the Plaintiff has no suicidal tendencies, her life pre-trauma was very different from that post-trauma. The Plaintiff testified that she used to be a very social person with a great zest for life. It is obvious that has changed significantly

with the accident. In this regard, the Defendant urges that I should take on board the fact that the Plaintiff has been re-employed, which, it is submitted, suggests that she is coping with life. While this is of relevance to the overall assessment, and indeed is one factor highlighted in the Guidelines, I would caution against placing too much weight on it. This factor is but one indicia used to assess how severely impacted the Plaintiff is by PTSD. The more accurate assessment must remain that of her attending physicians. In this regard, it is clear from Dr Loh's assessment that the PTSD and MDD had an acute impact on the Plaintiff's life. If the mere fact that the Plaintiff is working is a key factor, then a person who tries harder to cope with PTSD by returning to work would be unfairly disadvantaged simply because of the greater effort being made to regain some normality in his or her life. It is relevant to point out that the Plaintiff continued to work after the accident with great difficulty despite suffering terribly from PTSD and MDD. It is also relevant to point out that the Plaintiff was only able to find new employment with the assistance of her friend and able to manage a little better because of the less exacting demands of her new job. The Guidelines stipulate that it is not the person's ability to cope with life and work in *per se* that is important but rather the person's ability to cope with life and work *as compared to his pre-trauma state* which is pertinent. The two situations must be juxtaposed. I am therefore of the view that undue weight should not be placed on the fact that the Plaintiff is gainfully employed.

82 There is one further point I must address. The Defendant had called Dr Tian Cheong Sing ("Dr Tian"), a psychiatrist in private practice, as an expert witness. Dr Tian, who examined the Plaintiff only once on 14 February 2013 for about two hours, agreed with the diagnosis of Dr Loh. However, he concluded that the Plaintiff had not optimised her treatment and her treatment history ought to be reviewed. He also said that the Plaintiff had not engaged in

psychotherapeutic treatment. The suggestion was that the Plaintiff was not assiduous in taking her medication and attending counselling, thereby aggravating her psychiatric condition.

83 Under cross-examination, it became apparent that his conclusions were suspect. The primary basis for his conclusion that the Plaintiff had not optimised her treatment was that she could not recollect the medication she had been prescribed. He conceded that he did not explore with the Plaintiff the medication she was on nor did she tell him that she was not taking her medication conscientiously. In fact, Dr Tian noted that the Plaintiff was focussed on her physical symptoms which would suggest that she must have been taking medication for the same conscientiously. If so, there would have been no reason why she would not also have done the same as regards her psychiatric condition. This was not considered by Dr Tian at all.

84 Also, Dr Loh had in fact recommended that the Plaintiff receive psychotherapeutic treatment, and there was no evidence that she did not go for such treatment. Again, this was not taken on board by Dr Tian.

85 Finally, Dr Tian failed to take on board the Plaintiff's relationship with the Defendant. He conceded that this was relevant under cross-examination.

86 In the final analysis, I found Dr Tian's conclusions rather unsatisfactory and surprising given that he was offering expert testimony. I found that he was too ready to jump to conclusions that would support the Defendant's case without properly considering the facts. Perhaps confirmatory of my assessment of the quality of Dr Tian's evidence, the Defendant placed no reliance on his evidence in his closing submissions.

87 Accordingly, using the Guidelines as a reference, I would classify the extent of the Plaintiff's psychiatric condition as "severe".

(2) The appropriate amount of damages to be awarded

88 The Plaintiff submits that the award of damages in this regard ought to be $100,000. The Plaintiff has not explained the basis for her submission that she should be awarded $100,000. However, I surmise that the Plaintiff has taken the top of the range as provided in the Guidelines for PTSD and GPD, both approximately $50,000, and added the two to arrive at the figure of $100,000. Presumably, the Plaintiff's approach is that she should be awarded $50,000 for PTSD and $50,000 for MDD under GPD.

89 I cannot accept the Plaintiff's approach. In fact, the submission is decidedly unhelpful. It would be incorrect to compartmentalise the psychiatric conditions that the Plaintiff suffers from into convenient labels so that claims may be made in respect of each as if they are unconnected conditions. To do so would be to miss the forest for the trees as it would be to fail to recognise the real cause of the MDD. The Plaintiff's primary problem is PTSD. This spawned secondary symptoms of MDD. This is clear from Dr Loh's reports dated 3 January 2011 and 13 January 2014 respectively. It would therefore be more appropriate to regard the MDD as in substance a secondary symptom of PTSD. Seen this way, the impact of the MDD is to increase the severity of the PTSD.

90 The Defendant on the other hand submits that the award should be in the sum of $10,000. Reliance was placed on several authorities namely *Goh Eng Hong v Management Corporation of Textiles Centre and another* [2003] 1 SLR(R) 209 ("*Goh Eng Hong*"), *Pang Koi Fa v Lim Djoe Phing* [1993] 2 SLR(R) 366 ("*Pang Koi Fa*") and *Lim Yuen Li Eugene v Singapore Shuttle*

Bus Service Pte Ltd and another [2005] SGHC 189 ("*Eugene Lim*") where the awards ranged from $4,000 to $30,000.

91 The Defendant submits that the claimants in *Pang Koi Fa* and *Goh Eng Hong* had more acute forms of PTSD than the Plaintiff. I am not sure I am able to agree. While it is arguable that the claimant in *Pang Koi Fa* might have been worse off, the difference is a matter of shades. Also, I cannot see a reasonable basis for distinguishing the severity of the claimant's psychiatric condition in *Goh Eng Hong* from the Plaintiff's condition. As noted earlier, an overly granular approach to assessment of the impact of psychiatric illness should be eschewed in favour of a more broad-brushed and holistic assessment. As regards *Eugene Lim*, the PTSD was not of the same degree as the Plaintiff's. Further, the court had doubts as to whether the claimant was overstating his symptoms, which seems to have played a part in the court's assessment of the appropriate award. Also, none of these cases concern claimants who manifested secondary symptoms of MDD. Finally, these are cases of some antiquity and the court must have regard to the fact that inflation in and of itself could arguably sustain an upward revision of the amount of damages from that arrived at in these cases.

92 In *Pang Koi Fa*, the claimant was diagnosed as suffering from PTSD, pathological grief and a mood disorder. She was on the verge of a breakdown and had almost committed suicide. In these circumstances, Amarjeet Singh JC awarded her $30,000 in general damages. However, it is not clear from the judgment how Singh JC arrived at the figure of $30,000. In *Goh Eng Hong*, Kan Ting Chiu J recognised that the claimant suffered from the same, if not less serious symptoms, of PTSD as compared to the claimant in *Pang Koi Fa*. However, despite the difference in symptoms, the same award of $30,000 was made in both cases. In the recent case of *Rahman Lutfar v Scanpile*

Constructors Pte Ltd and another [2016] SGHC 41 (*"Rahman Lutfar*"), Aedit Abdullah JC awarded a sum of $20,000 for a claimant who was found to suffer from moderate MDD.

93 An award of damages for pain and suffering is made to compensate the Plaintiff for the damage which she has suffered as a result of the accident. As the loss is non-pecuniary, the exercise of determining the appropriate quantum of damages to be awarded is inherently uncertain. I am in full agreement with the words of Lord Halsbury LC in *The Mediana* [1900] AC 113 at 116:

> How is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation establish what is the exact sum of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident. … But nevertheless the law recognises that as a topic upon which damages may be given.

94 However, this does not mean that an assessment of damages for non-pecuniary losses is an arbitrary exercise. The Guidelines set out an indicative range of $25,000 to $50,000 as damages for severe cases of PTSD, and a range of $10,000 to $25,000 for moderately severe cases of PTSD. *Rahman Lutfar* falls readily into the range for moderately severe cases and therefore is readily reconcilable with the Guidelines. As regards severe cases, however, the Guidelines refer to *Pang Koi Fa* and *Goh Eng Hong*. I find the range stated in the Guidelines somewhat out of sync with *Pang Koi Fa*, given that one would have expected the claimant in *Pang Koi Fa* to be an example of an extreme case of PTSD. If that is correct, one would then have expected the maximum award for a severe case of PTSD under the Guidelines to be at or not much more than the $30,000 awarded in *Pang Koi Fa* rather than the $50,000 which is spelt out therein as the top-end of the range. Indeed, it is not clear what methodology has been employed to arrive at an appropriate sum in

Pang Koi Fa and *Goh Eng Hong* or the range in the Guidelines. It is certainly arguable that psychiatric conditions are at least as debilitating as physical injury. It seems to me that the issue of attributing an appropriate quantum for psychiatric injury is one that deserves closer consideration and illumination in an appropriate case. However, on the present facts, I am not dissatisfied that *Pang Koi Fa* and *Goh Eng Hong* and the Guidelines provide an appropriate and reasonable indication of the damages to be awarded as compensation *for the Plaintiff's psychiatric condition*.

95 While the court is not bound to apply precedents slavishly, at the same time, to ensure a measure of certainty and predictability in the law, the award of damages should not be broadly out of sync with previous decisions. The importance of the precedential value of previous decisions is driven by the need to maintain consistency and equality of treatment. The comments of Lord Denning in *Ward v James* [1966] 1 QB 273 are apposite and have served to guide my approach. Although these comments were made in the specific context of an assessment of damages by a jury, they are of general application to the assessment of damages by a court as well (at 299–300):

> *Lessons of Recent Cases.* These recent cases show the desirability of three things: First, *assessability*: In cases of grave injury, where the body is wrecked or the brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases. Secondly, *uniformity:* There should be some measure of uniformity in awards so that similar decisions are given in similar cases; otherwise there will be great dissatisfaction in the community, and much criticism of the administration of justice. Thirdly, *predictability:* Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to court, a thing very much to the public good. …

> I would add this. The assessment of damages is almost as difficult as the sentencing of offenders. In each it is important that similar decisions should be given in similar cases. …
>
> [emphasis in original in italics]

These are salutary words.

96 I am therefore of the view that the awards in *Pang Koi Fa* and *Goh Eng Hong* of $30,000 ought to be the baselines from which I should assess the Plaintiff's damages, using the Guidelines as a reference. In this regard, I note that the Defendant, while referring to the factors that the Guidelines suggested were relevant, ultimately submits that the court should decline to follow the range that was provided therein. This is difficult to understand. In fact, the amount of $10,000 that the Defendant submits that I should award is a quite derisory given the Plaintiff's circumstances, the precedents, and the range stated in the Guidelines for PTSD. I find the Defendant's submission quite unhelpful.

97 I should reiterate that the Guidelines do not purport to be hard and fast rules. The ranges therein are general indicative figures, and the decision on the appropriate quantum must be made by taking into account all the relevant factors in a particular case and the impact that the psychiatric injury has had on the Plaintiff (*ie*, severe, moderately severe, moderate or minor). I have assessed that the Plaintiff's psychiatric injury falls in the severe range. However, while undue weight ought not to be given to the fact that the Plaintiff has returned to work, as I had indicated earlier, that is a relevant consideration nonetheless in determining where in the range she would fall. The top-end of the range in the Guidelines assumes that the relevant person is unable to find re-employment. The award of damages therefore ought not to be at the top-end of the range. Also, I note that while the claimant in *Pang Koi*

Fa arguably suffered from a more severe form of psychiatric injury, the award of damages of $30,000 in *Pang Koi Fa* was made more than 20 years ago. An adjustment must be given for inflation. Finally, regard must also be had to the Plaintiff's secondary symptoms of MDD, and the poor recovery prospects. For the foregoing reasons, I therefore award the Plaintiff general damages for pain and suffering for PTSD and MDD in the sum of $40,000, in the upper end of the range.

Damages for loss of earning capacity

98 The Plaintiff submits that she should be awarded a figure of $5,000. The Defendant submits that there should be no award but that if the court is minded to make an award, it should be no more than $2,000.

99 The basis for the award of loss of earning capacity is set out in the decision of the Court of Appeal in *Teo Sing Keng and another v Sim Ban Kiat* [1994] 1 SLR(R) 340. Loss of earning capacity is awarded, when at the time of the trial, the plaintiff, though presently employed and not suffering a loss of earnings, might lose his employment at some time in the future and be at a disadvantage in securing another equally well-paid job as a result of his injury (at [40]). The assessment of damages for loss of earning capacity has also been recognised to be a "rough and ready one". As was stated by Prakash J in *Clark Jonathan Michael v Lee Khee Chung* [2010] 1 SLR 209 at [91]:

> The assessment for damages for loss of earning capacity can be an exercise in speculation as often the court does not know the extent to which a plaintiff will be disadvantaged by his disabilities if he has to seek a new position. In the end, it is clear from the cases that the assessment is a rather rough and ready one which really reflects the amount that the particular court thinks is reasonable in the particular circumstances to compensate the particular plaintiff for the disadvantage he has been put into in the job market by his disabilities.

100 Notwithstanding that the Plaintiff has moved to a job that is more conducive to her condition, she remains at risk of losing her employment given her situation. If that were to happen, her ability to be re-employed will undoubtedly be affected by her limitations. There is therefore a justifiable basis for awarding damages for loss of earning capacity.

101 Does the fact that the Plaintiff is currently well past the legal retirement age disentitle her to an award? I do not think so. The Defendant has referred me to two authorities that recognise that crossing the legal retirement age is not a bar to an award of loss of earning capacity: *Ting Heng Mee v Sin Sheng Fresh Fruits Pte Ltd* [2004] SGHC 43 and *Tan Kim Lee v Mohd Yusof bin Hussain* DC Suit No 3084 of 2000 (reported in *Assessment of Damages: Personal Injuries and Fatal Accidents* (LexisNexis, 2nd Ed, 2005) ("*Tan Kim Lee*").

102 The key question is whether there is evidence that the Plaintiff would have continued to be in active employment notwithstanding that she had crossed the legal retirement age. If the Plaintiff intends to continue working, and a risk of not being able to do so is there because of the injuries she has suffered, there must be grounds for the award of loss of earning capacity. There is nothing to suggest that the Plaintiff will be stopping work. She has continued to strive notwithstanding her condition.

103 However, in assessing the quantum to be awarded, the Plaintiff's age and the salary of the job at risk would be relevant considerations. It would also be relevant to assess the re-employability of the Plaintiff based on her skills and qualifications. The Plaintiff has, however, adduced precious little evidence of her present salary, and the risk of job loss in these proceedings. Nonetheless, I am cognisant that a risk is there. I have referred to *Tan Kim*

Lee, where the District Court made an award of $1,800 for a 67 year old excavator driver who was earning $1,200 a month. The Plaintiff is younger and it appears that she is currently earning $1,965 per month,[20] which is a higher salary than the excavator driver in *Tan Kim Lee*. Bearing in mind the Plaintiff's age and her educational qualification of GCE A' levels, I award the Plaintiff the sum of $2,000 for loss of earning capacity. This is also the sum that the Defendant submitted I should award if I am minded to award damages under this head of claim.

Damages for future expenses for medical treatment, transportation costs and part-time maid expenses

104 The Plaintiff has submitted a claim for future medical treatment. This has not been addressed by the Defendant at all in his submissions. The Plaintiff's chronic pain, PTSD and MDD are long-term conditions that require follow-up care. There are two challenges here. First, how many years should be applied as a multiplier in awarding damages for future expenses? Second, how does one quantify the cost of such expenses (*ie*, the multiplicand)?

105 On the first issue, the best proxy would be the legitimate life expectancy of women in Singapore, which is 85.1 years.[21] At the close of evidence, the Plaintiff was 64 years old. A direct subtraction of the two numbers would give a period of 21 years. However, a discount should be given since the Plaintiff is after all receiving money upfront. In the recent case of *AOD (a minor suing by his litigation representative) v AOE* [2016] 1 SLR 217, George Wei J reviewed the authorities and observed that courts have generally awarded a multiplier that is roughly half of the plaintiff's expected

[20] Plaintiff's Closing Submissions, para 109.

[21] Plaintiff's Closing Submissions, para 124

life expectancy, but that the determination of a multiplier is an exercise of discretion that "inevitably involves a broad-brushed exercise of judgment" (see [36]–[38]). In *Poh Huat Heng Corp Pte Ltd and others v Hafizul Islam Kofil Uddin* [2012] 3 SLR 1003 at [76], the Court of Appeal, after examining the authorities, stated:

> All said, the determination of the appropriate multiplier for future transport and care expenses (and, for that matter, the appropriate multiplier for future medical expenses) *is not a science. It is not something that can be reflected in a mathematical formula.* In a worst-case scenario where the plaintiff will require lifelong medical and/or nursing care, precedents show that there is a range as to the appropriate multiplier, depending on the age of the plaintiff at the time of the assessment of damages. In the present case, a multiplier of 18 years in respect of a plaintiff aged 29 at the time of the assessment of damages cannot be said to be excessive.
>
> [emphasis added]

106 In general, the precedents have applied a multiplier that is largely half of the plaintiff's life expectancy though it may be lower if the plaintiff is old. In the present case, many of the Plaintiff's conditions are long-term conditions which require periodic and lifelong follow-up care. While the Plaintiff is not young, I am cognisant of the fact that no evidence was led on whether the Plaintiff's injuries from the accident would decrease her life expectancy. However, her age must be a factor in assessing the multiplier. But for her age, I would have been inclined to award the Plaintiff a multiplier that is higher than half her anticipated life expectancy. However, her age constrains me to apply the general approach adopted by the precedents. I am therefore of the view that a multiplier of 10.5 years would be appropriate.

107 It would seem that the Plaintiff would require treatment for the chronic pain, PTSD and MDD and spinal injuries. As regards treatment for the pain, Dr Chew has recommended occupational therapy. The monthly average of

such sessions was $22.22. It would seem reasonable to award this sum on a monthly basis for 10.5 years, which amounts to a total of $2,799.72. As regards treatment for PTSD and MDD, the attending physician was Dr Loh. On average, the Plaintiff visited Dr Loh once every four months. The Plaintiff submits that the average monthly cost of each consultation was $8.95. I accept that. It would therefore be reasonable to award this sum on a monthly basis for 10.5 years, totalling $1,127.70. Finally, the Plaintiff also claims for future medical expenses in connection with her spinal injuries. Dr Hee stated in a report dated 19 November 2013 that the medical expenses for her spinal injuries was expected to be approximately $500 per month. I accept this and award the sum of $500 on a monthly basis for 10.5 years, totalling $63,000. In summary, the total award for future medical expenses is $66,927.42.

108 I do not allow the Plaintiff's claim for transport for taxi rides and for prospective expenses to be incurred in employing a part-time helper. As regards taxi fare, I am unable to accept that Plaintiff will need to use a taxi for every trip she makes. I note that in her Statement of Claim, the Plaintiff pleaded only 78 claims for taxi fare. In this period, she would have travelled multiple times to work and to seek medical treatment. That only 78 claims were made suggests that travel by taxi was not a matter of necessity for the Plaintiff then. I do not see why it should be any different moving forward. As regards the claim for a part-time help, there is no credible evidence before me that the Plaintiff requires part-time help for personal use. It would seem to me that if she is able to manage the exertions of going to work, she would be able to care for herself as well.

Special damages

109 Finally, I consider special damages. Unfortunately, the Plaintiff did not take the trouble to segregate her claim for special damages into the different treatments she received for her different ailments. This is neither particularly satisfactory nor helpful given the issues I have considered and the conclusions I have arrived at. I should mention that the Plaintiff was agreeable to withdrawing her claims for expenses incurred at Dayspring Medical Clinic (Pasir Ris) Pte Ltd and Horizon Medical Pte Ltd.[22] I have assessed the special damages by excluding claims associated with the Plaintiff's osteoarthritic condition. There are two further rules that I have been guided by. First, as mentioned above, I generally have not allowed special damages that were not pleaded per O 18 r 12(1A) of the Rules of Court. In this regard, the Plaintiff has pleaded in her amended Statement of Claim dated 10 June 2015 that she incurred hospital and medical fees of $18,150.66 and transportation fees of $3,510. No further leave to amend was applied for although in the Plaintiff's AEIC dated 5 June 2015, she deposed to a claim for the following special damages:

(a) hospital and medical fees of $47,295.28;

(b) transportation expenses of $12,180;

(c) part-time maid expenses as of 26 April 2015 of $36,324; and

(d) pre-trial loss of earnings of $5,375.

Second, I have also allowed expenses which are for treatments which have been recommended, recognised or accepted by the doctors that the Plaintiff

[22] Plaintiff's closing submissions, para 103 and 105.

has consulted although these might not have been pleaded. I have not allowed claims for treatments that were not recognised or recommended by the Plaintiff's doctors. The Plaintiff could always have adduced evidence on the medical utility of these treatments from these experts. After all, these treatments must have a medical foundation for a claim for damages for them to be allowed.

110 In the circumstances, I allow the following claims:

(a) all expenses incurred at the Limbs & Service Pte Ltd;

(b) all expenses at AH;

(c) all expenses at Changi General Hospital save for the expenses associated with the Fall and the subsequent fall on 5 May 2013, using 3 April 2013 as a cut-off date;

(d) all expenses incurred at the Chinese Medical Centre;

(e) all expenses incurred at the Institute of Mental Health;

(f) all expenses incurred at Ko & Ko Specialists Pte Ltd, excluding the costs of preparing the report for the court;

(g) all expenses incurred at NUH save for those associated with the Plaintiff's diabetes, blood pressure, the testing of urine, and orthopaedic issues on the radius ulna and the wrist;

(h) all expenses incurred at Parkway Shenton;

(i) all expenses incurred at Pinnacle Spine & Scoliosis Centre Pte Ltd; and

(j) all expenses at Singapore Family Clinic, Singapore Orthopaedic and Singapore Paincare Centre.

While the Plaintiff only pleaded a sum of $18,150.66 as hospital and medical expenses, I should mention that the Defendant consented to the above claims. The total amount of these claims is $36,879.12.

111 For completeness, the following claims are not allowed:

(a) expenses incurred at the Singapore General Hospital;

(b) expenses incurred at Refresh Bodyworks; and

(c) expenses incurred at Horizon Medical Pte Ltd.

112 The Plaintiff has also claimed transport expenses under two heads:

(a) travel to hospital and to medical centres; and

(b) transport to work because she is unable to take public transport.

I allow the claim as regards sub-paragraph (a) as per the Plaintiff's pleaded case. That is, 78 trips at $45 per trip, which equates to $3,510. I do not allow the rest of the Plaintiff's claims as they were not pleaded. In fact, claims for sub-paragraph (b) were not particularised even in the Plaintiff's AEIC dated 5 June 2015. Allowing these claims would prejudice the Defendant as he was not given sufficient opportunity to respond to the Plaintiff's case.

113 The Plaintiff submits that she has incurred a sum of $36,324 as part-time maid expenses as of 26 April 2015. This was not pleaded. Having scrutinised the supporting evidence for the Plaintiff's claim in this regard, I am doubtful that these sums were in fact incurred. It would have been a simple

matter to call the issuer of the receipt, Chen Dehua, to file a supporting affidavit, but this was not done. As the documentary evidence was equivocal and this was not pleaded as special damages, I therefore disallow this claim.

Conclusion

114 In light of the foregoing, I award the following sums as damages:

(a) damages for pain and suffering in relation to and in connection with the injuries sustained at the C6 and C7 vertebrae and the spinal cord in the sum of $80,000;

(b) damages for PTSD and severe MDD in the sum of $40,000;

(c) damages for loss of earning capacity in the sum of $2,000;

(d) damages for future cost of medical treatment in the sum of $66,927.42;

(e) special damages for medical expenses in the sum of $36,879.12; and

(f) special damages for taxi fares in the sum of $3,510.

115 I will hear parties on costs and any other consequential orders that may be required.

Kannan Ramesh
Judicial Commissioner

Oei Ai Hoea Anna and Twang Mei Shan (Tan, Oei & Oei LLC) for the plaintiff;
Willy Tay Boon Chong (Ari, Goh & Partners) for the defendant.
