IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 96

Suit No 695 of 2012

Between

QUEK YEN FEI KENNETH

… *Plaintiff*

And

YEO CHYE HUAT

… *Defendant*

GROUNDS OF DECISION

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

Quek Yen Fei Kenneth
v
Yeo Chye Huat

[2016] SGHC 96

High Court — Suit No 695 of 2012
Tay Yong Kwang J
16, 17, 18 February; 3 March; 27 April 2016

13 May 2016

Tay Yong Kwang J:

Introduction

1 On 11 August 2011, a taxi driven by Yeo Chye Huat ("the defendant") along Bencoolen Street in the direction of Fort Canning Road collided into Quek Yen Fei Kenneth ("the plaintiff") who was riding his motorcycle along the same road. On the date of the accident, the plaintiff was 20 years old and in National Service.

2 The plaintiff suffered serious injuries because of the accident. His right foot was severely mangled and his right leg had to be amputated below the knee. He also suffered from a fracture to his right collarbone.

3 The plaintiff subsequently brought an action in negligence against the defendant. The defendant did not deny that he was negligent. The only issue at

the liability hearing was the extent of the defendant's liability and the plaintiff's corresponding contributory negligence. At the liability hearing, I found the defendant to be the sole cause of the accident and gave judgment for the plaintiff with damages to be assessed at 100% liability on the part of the defendant. The reasons for my decision on liability are set out in *Quek Yen Fei Kenneth v Yeo Chye Huat* [2013] SGHC 132.

4 The defendant appealed to the Court of Appeal against my decision on 3 May 2013. However, he subsequently withdrew his appeal, filing the Consent to Withdrawal of Appeal on 2 April 2014.

5 The assessment of damages then took place before me. After hearing the parties' witnesses and the submissions, I gave my decision on the assessment of damages on 3 March 2016. With the consent of the parties, my decision was expressly stated to be subject to the possible revision of an item awarded for future medical expenses if an updated price list was submitted by one of the plaintiff's witnesses within two weeks of the decision (see below at [47]-[51]). As a result, the issues of costs and interest were adjourned until after the final decision was made on that item of damages. That item, together with the issues of costs and interest, was subsequently dealt with in a hearing in chambers before me on 27 April 2016.

6 However, in the meantime, both the plaintiff and the defendant appealed against the 3 March 2016 decision on the assessment of damages by filing their notices of appeal on 30 March 2016 and 1 April 2016 respectively. The question of whether these notices of appeal cover the subsequent decision on 27 April 2016 will be discussed later.

The plaintiff's claim

7 The plaintiff made the following heads of claim:

(a) General damages

(i) Pain and suffering;

(ii) Future medical expenses;

(iii) Future transport expenses;

(iv) Loss of future earnings; and

(v) Loss of earning capacity.

(b) Special damages

(i) Medical expenses;

(ii) Transport expenses;

(iii) Motorcycle repair cost;

(iv) Loss adjuster survey fees;

(v) Renovation expenses; and

(vi) Pre-trial loss of earnings.

The decision of the Court

8 Taking into consideration the relevant evidence adduced by both parties, I now set out my assessment of each head of claim.

Pain and suffering

9 The plaintiff sought damages for the pain and suffering caused by the following:

(a) Below-knee amputation of right leg;

(b) Fracture to right collarbone; and

(c) Multiple scarring.

10 Both parties took guidance from *Guidelines for the Assessment of General Damages in Personal Injury Cases* (Academy Publishing, 2010) ("the Guidelines"), which provided a range of damages awardable by the court in respect of various types of pain and suffering.

Below-knee amputation

11 In respect of the plaintiff's below-knee amputation, I awarded the plaintiff $80,000 in damages.

12 The Guidelines provided for an estimated range of $40,000 to $70,000 in damages for the pain and suffering caused by a below-knee amputation of one leg. The plaintiff sought damages of $90,000 and brought to my attention the case of *Ng Chee Wee v Tan Chin Seng* [2013] SGHC 54 ("*Ng Chee Wee*"), in which the same was awarded to a plaintiff who suffered from a severe degloving injury to his right foot, albeit without amputation. The plaintiff also raised the cases of *Pang Teck Kong v Chew Eng Hwa* [1992] SGHC 31, where $50,000 was awarded for the pain and suffering caused by the amputation of the victim's right leg, as well as *Mei Yue Lan Margaret v Raffles City (Pte) Ltd* [2005] 4 SLR(R) 740 ("*Mei Yue Lan Margaret*"), where $100,000 was

awarded to the victim who had developed Reflex Sympathetic Dystrophy after a severe injury to her right leg. On the other hand, the defendant submitted that an award ranging from $55,000 to $60,000 was sufficient. In particular, the defendant was of the view that the pain and suffering in the case of *Mei Yue Lan Margaret* was significantly more severe than that of the plaintiff in the present case. This was because the court in *Mei Yue Lan Margaret* held at [54] that with all things considered, "the pain and suffering she had to go through was more severe and for a longer period than an amputee's".

13 I awarded the plaintiff $80,000 as I was of the view that the plaintiff's circumstances justified a slight uplift from the range provided in the Guidelines.

14 The fact that the plaintiff had undergone a surgical attempt to salvage his leg was relevant. In *Ng Chee Wee*, the High Court awarded the plaintiff $90,000 in damages because of the extensive pain and suffering he had to endure from the multiple surgeries he underwent to salvage the degloved part of his foot. An award of $90,000 was made even though the plaintiff did not amputate his leg, thus showing the significance of such surgical attempts in an award for pain and suffering. It was true that the plaintiff did not undergo as many surgeries as the victim did in *Ng Chee Wee*. I took into consideration the pain and suffering which he must have experienced from the surgical attempt to salvage his leg in my assessment as I did not think the plaintiff's initial refusal to amputate his leg was unreasonable. Any young person in his circumstances would naturally want to cling on to the hope that the badly injured leg could somehow be salvaged and restored. After all, amputation is a momentous, life-changing decision and we should not look at the unfortunate situation the plaintiff found himself in from a purely clinical perspective.

15 Further, even though more than four years have passed since the accident, the plaintiff continues to experience phantom limb pain as well as pain from a neuroma that has formed at his amputation stump. The fact that such pain can exist was corroborated by Dr. Foo Siang Shen, Leon ("Dr. Foo"), who was the plaintiff's treating orthopaedic surgeon at the Singapore General Hospital in 2011. As I saw no reason to doubt the plaintiff's testimony that he was still experiencing such pain, I factored it into my assessment of damages.

16 Finally, I was of the view that allowance must be made for the suffering that comes from losing a leg at such a young age. The plaintiff was only 20 years old at the date of the accident. By contrast, the plaintiff in *Ng Chee Wee* was 35 years old.

17 Taking these factors into consideration, I awarded the plaintiff $80,000 in damages for the pain and suffering caused by his below-knee amputation.

Right collarbone fracture

18 In respect of the plaintiff's right collarbone fracture, I awarded $15,000 in damages.

19 The Guidelines provided for an estimated range of $8,000 to $17,000. The plaintiff sought an award of $25,000 whereas the defendant argued that an award of $13,000 was sufficient.

20 The plaintiff cited various precedents in which the High Court awarded damages for collarbone injuries (examples include *Ong Zern Chern Philip v Wong Siang Meng* [2004] SGHC 256 and *Ting Heng Mee v Sin Sheng Fresh*

Fruits Pte Ltd [2004] SGHC 43). However, these precedents did not advance the plaintiff's case. The sums awarded by the High Court in those cases fell within the range provided by the Guidelines and significantly short of the plaintiff's submission of $25,000. As no justification was provided by the plaintiff to support his claim, I saw no reason to depart from the Guideline's range of estimated damages in respect of the injury to the collarbone.

21 In determining the appropriate quantum of damages, the Guidelines indicate that factors such as the need for future surgery, the extent of disability caused by the injury and whether any complications arose during recovery need to be considered. There were two medical opinions adduced on this injury.

22 In court, Dr. Foo testified that the plaintiff's right arm was able to function satisfactorily. During a medical review that was conducted on 21 December 2011, four months after the plaintiff's accident, Dr. Foo's diagnosis was that the plaintiff's right arm had no restriction in its rotation and was capable of a full range of motion. As there was no significant disability of his right arm, Dr. Foo further opined that that the plaintiff could leave the injury untreated.

23 Dr. Foo's testimony was supported by Dr. Chang Haw Chong ("Dr. Chang") from HC Chang Orthopaedic Surgery Pte Ltd, who reviewed the plaintiff twice (on 8 March 2012 and 23 August 2013). Dr. Chang was likewise of the opinion that the plaintiff's collarbone injury was a mild disability and could be left untreated.

24 While I acknowledge that the plaintiff's collarbone injury was mild in nature and could be left untreated, I took into account the fact that the plaintiff has yet to fully recover from the injury and continues to experience mild aching pains when he sleeps on his right side even though more than four years have passed since the accident. I therefore awarded him $15,000 in damages for the pain and suffering caused by the injury to his right collarbone, an amount that was within the range provided by the Guidelines but at the higher end.

Multiple scarring

25 As a result of the accident as well as his below-knee amputation, the plaintiff suffered from scarring on his amputation stump, right knee, and the back of his right shoulder. In respect of these scars, I awarded the plaintiff $7,000 in damages.

26 Where multiple scars were caused, the Guidelines provided for an estimated range of $5,000 to $15,000 in damages. The plaintiff sought an award of $10,000 and cited the cases of *Ng Hoon Chian Joseph v Vittorio Luigi Roveda & Ors* (Suit No 960 of 1996) and *Gay See Leong v Dalbir Singh* (Suit No 4454 of 1999) where damages of $18,000 and $10,000 were awarded respectively. On the other hand, the defendant submitted that an amount of $7,000 was sufficient, arguing that the scarring to the amputation stump would have been subsumed within the pain and suffering damages awarded for the plaintiff's below-knee amputation.

27 I gave the plaintiff an award of $7,000. I agree with the defendant that the scars were relatively mild in nature. Two of the scars were located on his right knee and right shoulder and both were short in length (3 cm). They were

unlike facial scars which tend to be prominent and unsightly. In *Seek Tiong Hock v Heng William (Wang William) and Another* [2005] SGDC 239, $7,500 was awarded for extensive facial scarring (including a 2cm open wound over the right cheek and right forehead). In the present case, the plaintiff's scars were clearly less severe. Although the plaintiff had an 18 cm surgical scar over his amputation stump, I agree with the defendant that this aspect of pain and suffering was accounted for in the award for pain and suffering for his below-knee amputation as the amputation would necessarily result in a surgical scar.

28 Therefore, in my view, an amount of $7,000 in damages for the plaintiff's multiple scars was reasonable.

Future medical expenses

29 As a result of his injuries, the plaintiff would have to incur future medical expenses. The plaintiff submitted a list of six items of expenses that would be incurred:

(a) The use and periodic replacement of a K3 prosthetic limb;

(b) One back-up K3 prosthetic limb;

(c) The use and periodic replacement of a K4 prosthetic limb;

(d) The use and periodic replacement of an aqua limb;

(e) Surgical excision of neuroma on right amputation stump; and

(f) Surgery for injury to right collarbone.

The multiplier

30 Before addressing each of the six items, I will discuss briefly the issue of the appropriate multiplier to be used to assess the damages awardable for the plaintiff's future medical expenses. In all cases, a multiplier is determined according to the circumstances prevailing at the date of trial. Although the plaintiff submitted that a multiplier of 24 years was warranted, in my view, the defendant's submission of a multiplier of 18 years was fair, taking into consideration the fact that the plaintiff was 24 years old at the date of trial, and was more in line with the decided cases.

31 In *TV Media Pte Ltd v De Cruz Andrea Heidi and another appeal* [2004] 3 SLR(R) 543 at [183], the Court of Appeal applied a multiplier of 17 years for a 27 year-old plaintiff. The court based its decision on several High Court cases in which multipliers of 15 to 18 were applied for plaintiffs between 18 to 29 years of age.

32 The plaintiff submitted that a higher multiplier of 24 years was warranted because advancements in medical care are likely to increase life expectancy in the future. While I do not discount that possibility, it is speculative to determine the extent to which medical advancements will increase an average male's life expectancy during the plaintiff's lifetime so as to justify an upward adjustment to 24 years. I therefore applied a multiplier of 18 years for the 24 year-old plaintiff.

Items (a) to (c): The use and replacement of the appropriate prostheses

33 In this segment, I will address the plaintiff's claims in respect of items (a) to (c) (see above at [29]). These items relate to the expenses to be incurred

by the plaintiff for the use and replacement of prostheses for his amputated right leg. Two main categories of expenses must be considered: First, the cost of the use and replacement of the appropriate type of prosthesis and second, the cost of regular medical consultations which are required because of the plaintiff's use of a prosthesis.

(1) The cost of the use and replacement of the appropriate prosthesis

34 The main contention was the type of prosthesis that should be used by the plaintiff. I held that the plaintiff should be entitled to the use of K3 prostheses and therefore awarded damages for the use and replacement of K3 prostheses over the period of the 18-year multiplier.

35 Different types of prostheses exist to support different intensities of activity. They range from levels K0 to K4, with K4 prostheses supporting the highest intensity of activity. A K4 prosthesis is equipped with a running blade. It gives users the ability or potential for ambulation that exceeds basic ambulation skills, allowing for high impact activities (e.g. sprinting) that are typical of the demands of an active adult or athlete. A K3 prosthesis, on the other hand, supports a lower intensity of activity. Nonetheless, it meets the demands of a typical community ambulator, allowing him to traverse most environmental barriers and engage in exercise. Dr. Euan Wilson ("Dr. Wilson") from Tan Tock Seng Hospital, the plaintiff's current prosthetist, testified that a K3 prosthesis is equipped for light jogging and would even allow the plaintiff to run for the bus. By contrast, a person fitted with a K2 prosthesis would not be able to do so as the prosthesis only allows for low-level activities such as traversing curbs, stairs, or uneven surfaces.

36 The plaintiff submitted that the cost of *both* K3 and K4 prostheses should be granted on the basis that he was a high activity user who has and would like to continue engaging in sprinting or running.

37 The defendant, however, submitted that a K4 prosthesis was unnecessary as there was insufficient proof that the plaintiff would indeed pursue such high intensity sports. Instead, the defendant argued that K3 prostheses would be sufficient for the plaintiff's purposes.

38 The defendant further submitted that K3 prostheses should only be granted for the first 11 years of the 18-year multiplier. For the remaining 7 years thereafter, it was argued that K2 prostheses would suffice given that a person's activity level would decline with age.

39 In my view, it was reasonable to award the plaintiff damages for the use and replacement of K3 prostheses over the entire multiplier of 18 years. This is supported by Dr. Wilson's evidence that the plaintiff is classified as a K3 user and that a K3 prosthesis would be sufficient for the general day-to-day activities (including those referred to at [35] above) of an active young man like the plaintiff.

40 I disagree that the plaintiff requires K4 prostheses. Dr. Wilson testified in court that K4 prostheses are typically used by athletes or individuals who engage in sprinting as a hobby. Although the plaintiff has participated in sprinting trials in association with the Singapore Disability Council and the Amputee Sports Activity Passion Group, I find that these were merely temporary recreational interests. There is insufficient evidence to show that, more likely than not, the plaintiff will have a serious interest in such high-

impact sporting activities in the future, even as a recreational activity, especially since he did not have such an interest before the accident and has produced no evidence of a sustained new interest. Awarding him damages for the use of K4 prostheses in addition to K3 prostheses over the 18-year multiplier would amount to overcompensation.

41 Nonetheless, I accept that the plaintiff was entitled to explore his options while adjusting to his new situation by taking part in running events. Since he had purchased a K4 prosthesis for such a purpose, I awarded him damages for the cost of that one K4 prosthesis, which amounted to a total of $7276 (based on the invoice he tendered in court). As mentioned above, beyond the experimental participation, he has not shown any sustained interest in running or any other sports. His interest is in motorcycles as will be seen later.

42 I disagree with the defendant that the plaintiff should eventually be downgraded to a K2 prosthesis. Having spent the majority of his life using a K3 limb, it would be onerous for the plaintiff to suddenly have to adapt to the restricted range of activities that K2 prostheses allow.

43 I now turn to the quantification of the expenses that will arise from the use and replacement of K3 prostheses. As both parties agreed to adopt the cost estimates provided by Dr. Wilson, I used his estimates to quantify the plaintiff's future medical expenses. I also accepted Dr. Wilson's evidence that the plaintiff's prosthesis would have to be replaced once every three years.

44 The following is a breakdown of the cost of the use and replacement of K3 prostheses based on the price estimates provided by Dr. Wilson by way of his affidavit dated 23 March 2015:

Item Description	**Price (every three years)**	**Cost (per year)**
(a) Iceross socket and Iceross liner x 1	$2,200 ($2,354 w/ GST)	$733.33 ($784.67 w/ GST)
(b) Ossur Vari flex prosthetic foot with (evo) and Quick Align Adaptor x 1	$3521 ($3,767.47 w/ GST)	$1,173.67 ($1,255.82 w/ GST)
(c) Iceross liner x 1	$810 x 5 = $4050 ($4,333.50 w/ GST)	$1350 ($1,444.50 w/ GST)
Total	$9771 ($10,454.97 w/ GST)	$3,257 ($3,484.99 w/ GST)

45 According to Dr. Wilson, the K3 Iceross liner (item (c) in the table above) has to be replaced bi-annually and the cost of replacing the liner each time is $810 (exclusive of GST). Although that would suggest that six replacements need to be made over the course of three years, the cost of each replacement liner was multiplied by five (instead of six) to take into account the fact that at the third year interval, the plaintiff would receive a completely new replacement K3 prosthesis, which comes with the liner. The cost of an Iceross liner is therefore $1,444.50 per year (inclusive of GST).

46 Hence, based on the price estimates provided in Dr. Wilson's affidavit dated 23 March 2015, every three years, the plaintiff would incur a cost of $10,454.97 (inclusive of GST) for the use and replacement of a single K3 prosthesis. This amounts to a cost of $3,484.99 per year (inclusive of GST).

47 However, on 18 February 2016, Dr. Wilson testified in court that the price of the Ossur Vari flex prosthetic foot with (evo) and Quick Align Adaptor ("Ossur Vari flex and Quick Align Adaptor") had increased since the time he gave his initial estimates by way of affidavit dated 23 March 2015. The fact that there could be a revision of the price of the Ossur Vari flex and Quick Align Adaptor which would impact the outcome of the assessment of damages was accepted by the defendant. I set out the relevant portions of the exchange that took place in court on 18 February 2016:

Defendant:	I think there's only one question that I asked which witness said he will give us the information on the costing---
Dr. Wilson:	Sure.
Defendant:	---current costing for the Ossur Vari-Flex XC Foot, correct?
Dr. Wilson:	Yup.
Defendant:	Yes.
Court:	I think that---
Defendant:	That's the only information.
Court:	---can be easily done by email.
…	
Court:	So can you please identify exactly what you need, to Mr Wilson, so that he can then check it out? And email to, well, either one or both of you.
Plaintiff:	Yes, he can send it to me, I'll send it to you.
Court:	Yes.

Defendant:	Yes. I---
Court:	Okay.
Defendant:	Yes, as long as the---
Dr. Wilson:	So, the---the---the price of the Vari-Flex XC foot?
Defendant:	On---because you mentioned that in your report, that costing has changed now.
Dr. Wilson:	Yes, okay.
Defendant:	So only that costing---current costing that we need.
Dr. Wilson:	Sure.

48 After parties had made their closing submissions on 3 March 2016 and I had given my first decision, I directed the plaintiff to provide the defendant with the revised cost estimates from Dr. Wilson within two weeks from 3 March 2016. If the revised costs were not disputed by both parties, the award for the use and replacement of K3 prostheses would be revised accordingly. If the revised estimates were not served before the deadline, the original award was to stand.

49 By way of a letter dated 17 March 2016, the Plaintiff informed the court of the changes in the prices of the components of K3 prostheses. I set out below the new price estimates and the new cost of each component:

Item Description	**Price (every three years)**	**Cost (per year)**
(a) Iceross socket and Iceross liner x 1	$2,461 ($2,633.27 w/ GST)	$820.33 ($877.76 w/ GST)
(b) Ossur Vari flex prosthetic foot with (evo) and Quick Align	$3544.30 ($3,792.40 w/ GST)	$1,181.43 ($1,264.13 w/

Adaptor x 1		GST)
(c) Iceross liner x 1	$1,166.30 x 5 = $5,831.50 ($6,239.71 w/ GST)	$1,943.83 ($2,079.90 w/ GST)

50 Although the prices of all three components had increased, I allowed only the adoption of the price increase in respect of item (b), the Ossur Vari flex and Quick Align Adaptor. This is because the parties had agreed in court that any changes to the assessment of the Plaintiff's damages were restricted to changes in the price estimates of the Ossur Vari flex and Quick Align Adaptor (see above at [47]). I set out the final price estimates that were used in the assessment of damages:

Item Description	**Price (every three years)**	**Cost (per year)**
(a) Iceross socket and Iceross liner x 1	$2,200 ($2,354 w/ GST)	$733.33 ($784.67 w/ GST)
(b) Ossur Vari flex prosthetic foot with (evo) and Quick Align Adaptor x 1	$3544.30 ($3,792.40 w/ GST)	$1,181.43 ($1,264.13 w/ GST)
(c) Iceross liner x 1	$810 x 5 = $4050 ($4,333.50 w/ GST)	$1350 ($1,444.50 w/ GST)
Total	$9,794.30 ($10,479.90 w/ GST)	$3,264.77 ($3,493.30 w/ GST)

51 In total, taking into account the 18-year multiplier, the plaintiff would be entitled to damages of $3,493.30 x 18 = $62,879.40 for the use and replacement of K3 prostheses (inclusive of GST).

52 Further, I was of the view that the plaintiff should be entitled to the cost of one additional back-up K3 prosthetic limb which would serve as a replacement should his existing prosthesis become damaged. This would help the plaintiff avoid the waiting time needed for a replacement, which, according to Dr. Wilson, could amount to a few weeks. The defendant had no objections to such an award. I therefore awarded the plaintiff an additional lump sum of $6,146.40 for one replacement K3 prosthesis based on the final price estimates (inclusive of GST). This was calculated by adding the cost of items (a) and (b) (every three years).

(2) The cost of medical consultations

53 In addition to the cost of the K3 prostheses, the plaintiff would have to incur medical consultation fees, which are required for individuals that use prosthetic limbs. These medical consultations are necessary to ensure that his prosthesis has a good fit as well as to attend to any discomfort or pains he may experience from its use.

54 There are three types of consultations: concise, standard, and comprehensive consultations. These consultations cost $21.50, $43, and $86 respectively (before GST), with comprehensive consultations involving the most detailed assessment and therefore the highest cost. The plaintiff initially sought compensation for one standard consultation and one comprehensive consultation per year. On the other hand, the defendant submitted that the cost

of two standard consultations per year was sufficient. I agree with the defendant.

55 In court, Dr. Wilson was unable to give a definite answer as to whether the plaintiff would only require two standard consultations per year. He explained that this was because the type of consultations required depended on the patient's needs. Dr. Wilson suggested that comprehensive consultations may be necessary during the initial stages as more rigorous assessments would be required to ensure that the prosthesis had a good fit. He also estimated that the plaintiff may require standard consultations every six to eight months. He testified, however, that the plaintiff need not always incur the expense of a standard consultation. There may be times when only minor adjustments to the prosthesis are required. In such situations, a patient would only be charged the price of concise consultations (or possibly less).

56 Taking Dr. Wilson's opinion into consideration, I thought it fair to award the plaintiff the cost of two standard consultations per year as it represented a fair estimate of the average cost that he would have to incur for medical consultations each year. This amounted to a total cost of $92 per year (including GST).

(3) The total award for the use and replacement of K3 prostheses

57 The total award for the plaintiff's use and replacement of K3 prostheses over 18 years, and the cost of one K4 prosthesis and a back-up K3 limb is $77,957.87 and was calculated as follows:

Item Description	**Cost (per year)**	**Total cost (18 years)**
K3 prostheses [items (a) to (c) (above)]	$3,264.77 ($3,493.30 w/ GST)	$58,765.86 ($62,879.47 w/ GST)
Medical consultations	$92 w/ GST	$1,656 w/ GST
Additional costs (lump sum)		
One K4 prosthesis (bought by Plaintiff)	$7276	
One back-up K3 prosthesis	$5744.30 ($6,146.40 w/ GST)	
Total (18 years)	**$77,957.87 w/ GST**	

58 I therefore awarded the plaintiff a total of $77,957.87 (inclusive of GST) for the use and replacement of K3 prostheses over the course of 18 years.

Item (d): Aqua limb

59 I granted the plaintiff his claim in damages for the use of aqua limbs over the multiplier of 18 years.

60 The plaintiff argued that the aqua limb was required for the purposes of showering so that he would not need to stand on one leg. The defendant, however, argued that this was not necessary as the plaintiff had already renovated both the toilets in his house to suit his showering needs (see below at [93] for calculation of renovation expenses). Dr. Wilson agreed with the

defendant that the aqua limb was not a need but added that if the plaintiff wanted it, he would prescribe it.

61 Although the defendant resisted the claim, I found it reasonable to grant the award. Unlike a regular K3 prosthesis, an aqua limb is waterproof. It will therefore allow the plaintiff to shower standing up instead of sitting in the shower or standing on one leg in bathrooms or toilets that have not been modified to suit his needs. He would also be able to engage in activities on the beach, where contact with water is inevitable. The aqua limb would therefore allow the plaintiff to be restored to the position he was in before the accident as much as possible.

62 According to Dr. Wilson, an aqua limb has to be replaced once every three years at a cost of $2,130 per replacement (i.e. $710 per year) (inclusive of GST). I therefore awarded the plaintiff a sum of $12,780 (inclusive of GST) for the use and replacement of an aqua limb over 18 years.

Items (e) and (f): Surgical treatment of neuroma and right collarbone

63 I awarded the plaintiff provisional damages of $5,000 for the surgical excision of his neuroma and of $11,000 for the surgical treatment of his right collarbone. These will be payable by the defendant only if the plaintiff goes for the surgeries and tenders the bill within 3 years. The presence of a neuroma was documented by Dr. Chang during his review of the plaintiff in August 2013.

64 The plaintiff submitted that damages ranging from $5,000 to $10,000 should be awarded for the surgical removal of his neuroma as was suggested by Dr. Foo in court. The plaintiff also submitted that $11,000 should be

awarded for the surgical treatment of his right collarbone. This was based on Dr. Chang's report dated 11 March 2012, which stated that the cost of the surgery would amount to $8,000 and that an additional $3,000 would have to be incurred to remove the surgical implants approximately one and a half years later (based on B1 ward admission).

65 The defendant resisted the claim, arguing that these surgical treatments were not necessary for the plaintiff. This was because both Dr. Chang and Dr. Foo had testified in court that both the neuroma and the right collarbone injury could be left untreated.

66 In my view, the plaintiff should be granted damages for the surgical treatment of both the neuroma and his right collarbone. While I acknowledge the doctors' views that the neuroma could be left untreated, both doctors also expressed the view that the ultimate decision of whether surgery should be done lay with the plaintiff. If the pain caused by the neuroma hindered the normal functioning of his limb and affected his quality of life, surgery should be done. Further, in respect of the plaintiff's right collarbone injury, the plaintiff testified, and I accepted, that he continued to experience pain when sleeping on his right side.

67 I therefore granted the plaintiff provisional damages amounting to a total of $16,000. The plaintiff had the choice of going for either or both of the surgeries. The provisional damages for the surgical excision of his neuroma were assessed at $5,000, which was the minimum cost estimated by Dr. Foo at trial. The amount payable for the surgical treatment of his right collarbone was capped at $11,000. I accepted Dr. Chang's evidence that the cost of surgery will be approximately $8,000 (assuming a B1 ward admission). I also accepted

his evidence that an additional $3,000 will have to be incurred one and a half years later to remove the surgical implants (assuming a B1 ward admission).

68 The award of provisional damages will lapse after 3 years if the plaintiff chooses not to proceed with the surgeries.

Total damages awarded for future medical expenses

69 The following table is a breakdown of the damages that I awarded to the plaintiff for his future medical expenses:

Item Description	**Cost (per year) (w/ GST)**	**Total cost (18 years) (w/ GST)**
K3 prostheses [items (a) to (c)]	$3,493.30	$62,879.47
Medical consultations	$92	$1,656
Aqua limb	$710	$12,780
Additional costs (lump sum)		
One K4 prosthesis	$7276	
One back-up K3 prosthesis	$6,146.40	
Surgery: Neuroma (provisional)	$5,000	
Surgery: Right collarbone (provisional)	$11,000	
Total (18 years)	**$106,737.87**	

70 In total, I awarded a sum of $106,737.87 to the plaintiff for his future medical expenses, out of which $16,000 were provisional damages.

Future transport expenses

71 I awarded the plaintiff a lump sum of $1000 for his future transport expenses. Although the plaintiff had initially claimed $1,000 per year (which amounted to $18,000 over the 18 year multiplier), I was of the view that such an amount was excessive.

72 The plaintiff submitted that his present condition has made it difficult for him to stand for prolonged periods of time. As a result, he would be more reliant on taxi services in the future.

73 It was revealed during cross examination of the plaintiff that approximately five months after he was fitted with the K3 prosthesis, he purchased two motorcycles and has since been using them for transport. It therefore appeared to me that the plaintiff was able to resume some degree of normalcy in life, travelling the same way he did before the accident. As I have mentioned earlier, his sustained interest was not in running but in motorcycles.

74 Additionally, the plaintiff has been awarded damages for the use of K3 prostheses (see above at [58]). Based on evidence given by Dr. Wilson (see above at [35]), I was of the view that a K3 prosthesis was equipped to help the plaintiff withstand the physical pressure of travelling in Singapore on trains and buses if he needed to do so, the same way he travelled before the accident. In any case, it was obvious that he would be travelling on motorcycles most of the time in the foreseeable future.

75 Given that the plaintiff has been awarded damages for the use of K3 prostheses and is physically capable of taking public transportation or even travel by motorcycle, I found it unnecessary to award the plaintiff damages for all of his transportation to be by taxi in the future. Nonetheless, the plaintiff should be awarded damages for the trips that he would have to make for medical consultations pertaining to the use of his prosthesis as these are additional transportation costs that he would need to incur because of the accident. An award of $1000 would be more than sufficient to support the transportation cost of at least two visits to the hospital per year over the course of 18 years.

Loss of future earnings and loss of earning capacity

76 The plaintiff sought damages for loss of earning capacity ("LEC") and loss of future earnings ("LFE"). I awarded the plaintiff damages for LEC but denied his claim for LFE.

The multiplier

77 The plaintiff submitted that a multiplier of 20 years be used in the assessment of LEC and LFE. He cited the case of *Teo Seng Kiat v Goh Hwa Teck* [2003] 1 SLR(R) 333 ("*Teo Seng Kiat*"), where a multiplier of 18 years was applied to a 28 year-old man. He also cited the cases of *Teo Ai Ling (by her next friend Chua Wee Bee) v Koh Chai Kwang* [2010] 2 SLR 1037, where a 20 year multiplier was applied to a 17-year old female plaintiff and *Choong Peng Kong v Koh Hong Son* [2003] 4 SLR(R) 225, where the court used a multiplier of 14 years for a 35 year-old plaintiff. The defendant, on the other hand, argued that a multiplier of 18 years was sufficient.

78 I applied a multiplier of 18 years in respect of the plaintiff's claims for LEC and LFE. In *Teo Seng Kiat*, where an 18-year multiplier was applied to a 28 year-old male plaintiff, the court opined that a multiplier of 18 years accorded with the current trend in relation to "healthy young men". I used the same multiplier in the present case although the plaintiff is 24 year-old.

Loss of future earnings

79 The plaintiff sought $480,000 in respect of LFE. The defendant, however, was against any LFE being awarded on the basis that the plaintiff was unable to provide sufficient evidence to justify such a claim. I agreed with the defendant.

80 In *Ong Ah Long v Dr S Underwood* [1983] 2 MLJ 324 (cited with approval by the Court of Appeal in *Teo Sing Keng and another v Sim Ban Kiat* [1994] 1 SLR(R) 340), the court said:

> There must be evidence on which the court can find that the plaintiff will suffer future loss of earnings, it cannot act on mere speculation. If there is no satisfactory evidence of future loss of earnings but the court is satisfied that the plaintiff has suffered a loss of earning capacity, it will award him damages for his loss of capacity as part of the general damages for disability and not as compensation for future loss of earnings.

(1) The multiplicand

81 The plaintiff claimed that $2,000 would be an appropriate multiplicand, being the reduction in his earnings as a result of his disability. He argued that prior to the accident, he could readily earn an average of $3,000 per month from manual or sales-related jobs. However, because of the accident, he argued that he would be able to earn only an average of $1,000 per month. The plaintiff's estimate of an income of $3,000 per month took

into account the possibility that his starting pay could be lower than $3,000 but was likely to rise to $4,000 at the later stages of his career.

82 In support of his estimate, the plaintiff testified that his father was a tipper truck driver who earned approximately $3,000 to $5,000 per month and that it was possible for the plaintiff to do the same. However, as the plaintiff did not call his father to the stand, this aspect of the plaintiff's testimony was at best hearsay evidence. In any case, it remained a remote possibility as he had not shown any inclination for such work at all.

83 The plaintiff also adduced salary benchmarks from the Singapore Workforce Development Agency as well as the Ministry of Manpower for technical and sales positions in a wide range of industries such as manufacturing, transportation and financial services. However, it was an onerous task trying to determine the type of industry and nature of work the plaintiff might eventually engage in. He dropped out of school in Secondary Three and since then he had a very sketchy employment history. The only clear evidence was that he had served National Service and has a keen interest in motorcycles.

84 For the avoidance of doubt, the mere fact that an individual has not embarked on a stable career is not an impediment to the grant of LFE. In *Lai Chi Kay and others v Lee Kuo Shin* [1981-1982] SLR(R) 71, the High Court awarded LFE to a fourth year medical student from Hong Kong who could not complete his medical course because of the injuries he sustained in an accident that took place in Singapore. He was awarded damages for LFE on the basis of the mean salaries earned in the Hong Kong Medical Service. The court saw no difficulty in making the award as the plaintiff was about to complete his

studies to enter the medical profession. He was therefore entitled to the salary level of doctors. Further, in *Koh Chai Kwang v Teo Ai Ling* [2011] 3 SLR 610, the Court of Appeal awarded LFE to a polytechnic student even though it found that there was a "broad range of career opportunities" available to the plaintiff and that it was "unclear which career path she would eventually take". The court also found that based on the plaintiff's intellectual capacity, she would have completed her education and obtained her Diploma if not for the accident. It therefore held that the civil service provided a reasonable career model and estimated salary range on which to base an award of LFE.

85 In those cases, there were sufficient objective facts for the court to make a reasonable assessment of LFE. However, the same could not be said for the present case. The plaintiff had dropped out of secondary school prior to the accident. His career path was uncertain and it would be inappropriate to peg his salary to the civil service's career model. The plaintiff also failed to show a consistent employment history that would point this court towards a particular career path and therefore an appropriate estimate of the income he would have earned if not for the accident. He was unable to secure a stable full-time job and shuttled between part-time jobs. He was also not able to show any particular aptitude or interest in any trade.

86 In early 2008, the plaintiff worked for T.C. Homeplus Pte Ltd ("T.C. Homeplus") as a sales promoter for bed linen. He estimated that he earned a monthly income of between $1,200 to $1,400. However, this could not be verified as he was unable to produce the relevant CPF income statements. His employment was terminated as a result of his tardiness in reporting for work. Thereafter and up till September 2010, he was employed by Craftmark (Singapore) Pte Ltd as a sales promoter, with an income that ranged from

$309.11 to $1,190.34 per month (as shown by the plaintiff's CPF statements). Thereafter, from September 2010 to the time he enlisted for National Service in March 2011, the plaintiff worked as a part-time assistant delivery driver. He was unable to provide an estimate of his earnings from this job as they were paid to him in cash.

87 As such, I was of the view that there was insufficient evidence to support a claim for LFE. I decided to award damages for LEC instead.

Loss of earning capacity

88 The plaintiff submitted a claim of LEC in the range of $100,000 (in addition to the claim for LFE). The defendant, on the other hand, was willing to pay a slightly higher amount of $110,000 on the basis that there would be no award for LFE. I was of the view that both amounts were insufficient compensation and awarded the plaintiff $162,000 in damages for LEC. To arrive at this sum, I applied a multiplicand of $750 per month over the 18-year multiplier.

89 It is clear that the plaintiff's injuries have significantly reduced his employability. The plaintiff's present level of education made it difficult for him to find a desk-bound or sedentary type of work. He is instead more likely to be employed for manual work. However, the accident has significantly limited his ability do manual work as he is unable to stand or walk for long hours. Further, based on Dr. Wilson's evidence in court, the plaintiff is now unable to carry loads of more than 20kg. Even if the plaintiff were employed, he is likely to receive a lower income than an able-bodied person doing the same job would. It was therefore clear that the injuries caused by the accident have reduced his earning capacity.

90 However, I also took into account the important fact that the plaintiff had previously fractured both his wrists as a result of a prior unrelated accident. He had another accident while riding a motorcycle on 18 June 2011, less than two months before the accident in question here. This injury, which had nothing whatsoever to do with the defendant's negligence, would further diminish the plaintiff's ability to perform manual tasks such as lifting and therefore his earning capacity. The defendant should not be made to compensate for any LEC as a result of this prior injury.

91 For these reasons, I found it that a multiplicand of $750 (per month) was a fair compensation to the plaintiff for the disadvantage that the accident has caused to his subsequent employability and income. Hence, I awarded the plaintiff awarded a sum of $162,000 for his claim of LEC.

Special damages

92 These damages represented the expenses that the plaintiff had already incurred as a result of the accident. The cost items are as follows:

(a) Renovation of two toilets;

(b) Pre-trial medical expenses;

(c) Pre-trial transport expenses;

(d) Motorcycle repair cost;

(e) Loss adjuster surveyor's fee; and

(f) Pre-trial loss of earnings.

Renovation cost

93 The plaintiff sought damages amounting to $10,670.40 for the expenses he incurred to renovate the toilets in his flat to better accommodate his disability. As the defendant did not dispute the sum of damages payable for renovation, I granted the plaintiff his claim of $10,670.40.

Pre-trial medical expenses

94 I awarded the plaintiff his claim of $33,052.87 in damages for the medical expenses he incurred up to date.

95 The plaintiff tendered medical receipts amounting to $57,938.77. Out of this sum, two payments were made under his insurance policy and by the Singapore Armed Forces. Thus, the plaintiff's claim for medical expenses against the defendant amounted to $33,052.87.

96 The only portion of the claim which the defendant disputed is an amount of $241, which was incurred in the plaintiff's visits to two general practitioners ("GPs") and a traditional Chinese medicine ("TCM") practitioner. The defendant argued that the plaintiff could not claim compensation for these visits as the purpose of these visits could not be proved. The plaintiff testified in court that he visited the GPs because his stump had become swollen. He also visited the TCM doctor because his backbone was aching. However, there were no medical reports documenting the reason for the visits and they were not recommended by any of the doctors who gave evidence at trial.

97 I found no reason to disbelieve the plaintiff's testimony. It is reasonable for the plaintiff, as a Chinese, to seek treatment for his backbone

from a TCM doctor. It is also understandable that the plaintiff would wish to consult GPs, which were more readily accessible, to treat the pains he experienced from time to time.

98 I therefore granted the plaintiff his claim of $33,052.87 for his medical expenses.

Pre-trial transport expenses

99 I awarded the plaintiff a lump sum of $3,000 for the transport expenses he had incurred.

100 The plaintiff submitted taxi receipts for his transport expenditure amounting to a total of $3,282.58. The defendant, however, argued that a claim of $2,000 was sufficient as all that was required was compensation for transportation expenses incurred for his medical consultations.

101 A lump sum of $3,000 was, in my view, a reasonable award. Although the plaintiff submitted several taxi receipts, the purposes of the trips were unclear as the receipts did not indicate the destination of the trip. However, I would not go so far to say that the plaintiff should only be compensated for the trips he made for medical consultations. I was of the opinion that a higher award was justified as it would be reasonable for the plaintiff to incur the additional cost of travelling to other places (other than the hospital) via taxi especially during the initial period of time after his below-knee amputation, which was when he was recovering from his surgery and waiting to be fitted with an appropriate prosthesis.

Motorcycle repair cost

102 The plaintiff claimed $1,350 for the cost of repairing his motorcycle which was damaged by the accident. The plaintiff arrived at the value of $1,350 based on vehicle appraisal reports issued by L H Teo Appraisal Services. However, I denied this claim as it was shown at trial that the plaintiff's motorcycle had been scrapped. There was no evidence that the motorcycle was sent for repair. As such, I denied the plaintiff's claim for the cost of repairing his motorcycle.

Loss adjuster surveyor's fee

103 Nonetheless, I granted the plaintiff's claim for $279, which represented the amount he paid to the loss adjuster surveyor for surveying his motorcycle. This was evidenced by a tax invoice from L H Teo Appraisal Services dated 21 November 2011. I found it reasonable to compensate the plaintiff for this cost as it was a fee that would be incurred to assess the value of vehicles after they are damaged.

Pre-trial loss of earnings.

104 In respect of the plaintiff's pre-trial loss of earnings, I granted him a sum of $14,500 in damages.

105 The plaintiff submitted that his pre-trial loss of earnings amounted to $139,091.10. He based his assessment on an income of $3,000 per month, less the amount of salary he earned doing part-time jobs, beginning from the date of accident in August 2011 to the end of the assessment of damages in February 2016. Given that the plaintiff had dropped out of school, it was unlikely that he would be able to earn as much as $3,000 per month over this

period. Insufficient evidence was given to show that the plaintiff did indeed earn such a level of income prior to the trial. In fact, the plaintiff's own testimony in court as well as his CPF statements revealed that the income he earned from the jobs he did prior to the accident ranged approximately between $300 and $1400 per month (see above at [85]).

106 The defendant submitted that the plaintiff's pre-trial loss of earnings amounted to $14,500. The defendant adopted a multiplicand of $500 per month and applied it across 29 months, from April 2013 to August 2015. This time frame represented the time after the plaintiff was discharged from National Service in March 2013 to the time he began working for Unique Motorsports Pte Ltd ("Unique Motorsports") in August 2015.

107 I accepted the defendant's assessment of the plaintiff's pre-trial loss of earnings.

108 I agreed with the time frame within which the multiplier was applied (April 2013 to August 2015). I saw no need to award the plaintiff damages for any loss of income from the time of the accident to the time he was discharged from National Service because he could not have been employed elsewhere while he was in National Service. Furthermore, he received salary monthly until he was formally exempted in March 2013. I also did not compensate the plaintiff for any loss of income after August 2015 when he became employed by Unique Motorsports. This was because he was given a salary of $1,400 per month, which was commensurate with that which he earned from part-time jobs prior to the accident (see above at [85]).

109 I agreed that an amount of $500 per month was a reasonable estimate of the income he lost during the relevant time frame. While I do not underestimate the difficulties the plaintiff must have faced in finding employment, I am unable to award him a full month's salary for the months in which he was unemployed as his disabilities did not completely impair his ability to work. The plaintiff has the duty to mitigate his losses by finding suitable employment and remaining employed as much as possible after he was discharged from National Service. However, throughout the 29 months since his discharge from National Service, the plaintiff was largely unemployed. He was employed for six months between May 2013 and October 2013 when he worked for Eco Biz International Pte Ltd ("Eco Biz") as a sales promoter where he earned a salary of $900 per month. The plaintiff testified that he subsequently chose to resign as he was not given over-time pay.

110 I used a multiplicand of $500 per month based on the assumption that he would have earned at least an average of $900 per month, which was the salary he earned at Eco Biz. Assuming that the plaintiff was accurate in stating that he had earned $1,400 per month while he was employed in T.C. Homeplus prior to the accident (see above at [85]), this would amount to a loss of $500 per month.

111 I was aware that the plaintiff's knee amputation would have made it difficult for him to find employment and might require him to settle for a job paying less than the $900 he earned at Eco Biz each month. It would therefore not be fair to expect him to earn at least $900 per month over the period of assessment. Indeed, his decision to leave Eco Biz was also attributable to the physical difficulties he faced at the job as a result of his disability. However, it

would be inappropriate to overstate the difficulties that the knee amputation had caused to his employment prospects. First, these difficulties were, in my view, attributable in part to the plaintiff's wrist injuries (see above at [90]). The plaintiff's decision to leave Eco Biz was not solely due to the disability caused by the defendant. He had testified in court that one of the difficulties of his job at Eco Biz was that he was required to lift heavy gears from machines that weighed approximately 15kg. Second, the plaintiff was capable of securing a job that paid significantly more than $900 per month even with his disability. This was seen from his subsequent employment with Unique Motorsports, which paid him $1,400 per month. Therefore, I was of the view that an estimated figure of $900 per month was workable and fair.

112 For these reasons, I applied a multiplicand of $500 across the 29-month period and awarded him a total of $14,500 in damages for his pre-trial loss of earnings.

Interest

113 Both parties agreed that the plaintiff should be awarded interest for both the general damages (for pain and suffering) and special damages that were awarded to him. They were also in agreement that the interest rates for general damages and special damages should be at 5.33% per annum and 2.67% per annum respectively. However, the parties disagreed on two matters, namely:

(a) The time from which the interest for general damages for pain and suffering should accrue; and

(b) Whether in the computation of interest, the interim payment of $50,000, which was paid by the defendant on 14 August 2013, should be deducted from the award of general damages or the award of special damages.

114 Citing the local case of *Ryan Tan v Lua Ming Feng Alvin and Allianz Global Corporate & Specialty AG Singapore Branch* (Suit No. 74 of 2010, unreported), the plaintiff asked that interest be awarded at the following rates, starting from the date of the accident (11 August 2011) to the date of judgment (3 March 2016):

(a) At 5.33% per annum for general damages for pain and suffering;

(b) At 2.67% per annum for all heads of special damages, with the exception of pre-trial loss of earnings, which should be calculated from April 2013 (being the time after the plaintiff was discharged from National Service) to the date of judgment.

115 The plaintiff also submitted that in the computation of interest, the interim payment of $50,000 paid on 14 August 2013 should be deducted from the sum awarded for special damages.

116 While the defendant did not dispute the applicable interest rates, he disagreed with the date from which interest for general damages for pain and suffering should accrue, arguing that it should begin from the date of the writ (21 August 2012) instead of the date of the accident (11 August 2011). Nonetheless, the defendant agreed that the interest for special damages should accrue from the date of the accident.

117 In respect of the interim payment, the defendant submitted that the interim payment should be deducted under the computation of interest for general damages for pain and suffering as that was the main component of damages that carries interest consistently from the date of writ to the date of judgment. It was argued that if the interim payment were deducted from the computation of interest for special damages, then the full benefit of the interim payment made would never accrue to the defendant.

118 With respect to the issue of when interest for general damages for pain and suffering should accrue, I agreed with the defendant that it should begin from the date of the writ instead of the date of the accident. This was the position adopted in *Jefford v Gee* [1970] 2 QB 130 ("*Jefford*"), a case that the plaintiff had himself referred to in his written submissions on interest. The relevant portion of *Jefford* (at p 147) was also reproduced in *Practitioners' Library – Assessment of Damages: Personal Injuries and Fatal Accidents* (LexisNexis, 2nd Ed, 2005) at pp 64-65:

> When the compensation payable to a plaintiff is not for actual pecuniary loss but for continuing intangible misfortune, such as pain and suffering and loss of amenities (which cannot be fairly measured in terms of money) then he should be awarded interest on the compensation payable. But *such interest should not run from the date of the accident*: for the simple reason that these misfortunes do not occur at that moment, but are spread indefinitely into the future; and they cannot possibly be quantified at the moment, but must of necessity be quantified later. It is not possible to split those misfortunes into two parts; those occurring before the trial and those after it. The court always awards compensation for them in one lump sum which is by its nature indivisible. Interest should be awarded on this lump sum as from the time when the defendant ought to have paid it, but did not: for it is only from that time that the plaintiff can be said to have been kept out of the money. This time might in some cases be taken to be the date of letter before action, but at the latest it should be the date when the writ was served. … From that time onwards it can properly be said that the plaintiff has been out of the

> whole sum and the defendant has had the benefit of it. Speaking generally, therefore, we think that interest on this item (pain and suffering and loss of amenities) should run from the date of service of the writ to the date of trial. This should stimulate the plaintiff's advisers to issue and serve the writ without delay - which is much to be desired. Delay only too often amounts to a denial of justice. [emphasis added]

119 I ordered that the interest of 5.33% per annum for general damages in respect of pain and suffering accrue from the date of the writ (21 August 2012) to the date of judgment (3 March 2016).

120 I also agreed with the defendant that the interim payment of $50,000 should be deducted under the computation of interest for general damages instead of special damages but for a different reason. This was because the interim payment was not specified to be provisionally made for particular special damages, such as for the purpose of the plaintiff's surgical attempts to salvage his foot. This fact was acknowledged by the plaintiff. The interim payment was a general form of payment and should therefore be deducted from the total amount of general damages from the time that it was paid, before the interest for general damages is calculated.

121 The total amount of interest awarded to the plaintiff was $19,269.17. The following table illustrates how interest was calculated, taking into account the deduction of the interim payment of $50,000 under general damages.

Type of interest	**Time period (number of days)**	**Total interest awarded**
General damages of $102,000 (pain and suffering)	Date of writ (21 August 2012) to date of interim payment (14 August 2013) (358 days)	[(5.33% x $102,000) /365] x 358 = $5,332.33
General damages of	Day after date of interim	[(5.33% x

$102,000 (pain and suffering)	payment (15 August 2013) to date of judgment (3 March 2016) (932 days)	$52,000) /365] x 932 = $7,077.07
Special damages of $47,002.27 (excluding pre-trial loss of earnings)	Date of accident (11 August 2011) to date of judgment (3 March 2016) (1,666 days)	[(2.67% x $47,002.27) /365] x 1,666 = $5,728.12
Special damages of $14,500.00 (pre-trial loss of earnings)	Date after plaintiff was discharged from National Service (1 April 2013) to date of judgment (3 March 2016) (1,067 days)	[(2.67% x $14,500) /365] x 1,067 = $1,131.75
Total		$19,269.27

122 The calculation of interest for special damages was divided into two parts, namely, interest for special damages that excluded pre-trial loss of earnings and interest for pre-trial loss of earnings. This was because the plaintiff only suffered pre-trial loss of earnings after he was discharged from National Service, which was when he stopped receiving his monthly allowance from the Singapore Armed Forces.

123 The following table sets out the total amount of damages awarded to the plaintiff, including interest:

(a) General damages

(i)	Pain and suffering	$102,000.00
(ii)	Future medical expenses	$106,737.87
(iii)	Future transport expenses	$ 1000.00

	(iv)	Loss of earning capacity	$162,000.00
(b)	Special damages		
	(i)	Renovation fee	$ 10,670.40
	(ii)	Medical expenses	$ 33,052.87
	(iii)	Transport expenses	$ 3000.00
	(iv)	Loss adjuster surveyor's fees	$ 279.00
	(v)	Pre-trial loss of earnings	$ 14,500.00
(c)	Interest		$ 19,269.27
	Total:		$452,509.41

Costs

124 On the issue of costs, the parties brought to my attention two offers to settle that were made before the assessment of damages commenced on 16 February 2016. The first offer to settle ("OTS") was dated 28 January 2016, offering the plaintiff a total of $480,000. This OTS remained open for 14 days thereafter, until 11 February 2016, but it was not accepted by the plaintiff. After a PTC conducted by me on 11 February 2016, the defendant made a second OTS dated 15 February 2016 for a total of $550,000. The second OTS remained open for acceptance for the next 14 days, up till 29 February 2016. The second OTS also included a clause that specifically withdrew the first OTS. However, the plaintiff refused to accept the second OTS as well. Both offers were higher than the total of $452,509.41 in damages that I awarded on 3 March 2016 and 27 April 2016.

125 The defendant objected to the second OTS being adduced in the plaintiff's written submissions on costs because he was of the opinion that the second OTS had not "kicked in" as the total award of damages (including interest) was less than the offer made in the first OTS. I overruled the defendant's objection. The second OTS had to be considered by the court in order to give the court a complete picture of the events that transpired before the issue of costs was decided. This was especially so since the second OTS expressly withdrew the first OTS. This fact was accepted by the defendant. Nonetheless, I was of the view that the defendant's decision to increase its offer in the second OTS revealed that the defendant's solicitors' conduct of the case had been very reasonable. Unfortunately, it was the plaintiff who refused to reach a settlement.

126 The plaintiff submitted that either of the following three orders on costs could be made:

(a) That the defendant shall pay costs of the action to the plaintiff till final judgment (i.e. 3 March 2016).

(b) Alternatively, that the defendant pay costs to the plaintiff till the service of the first OTS and the plaintiff shall bear his own costs thereafter.

(c) Alternatively, that the defendant pay costs till the service of the first OTS and the plaintiff shall pay nominal costs to the defendant from the first OTS to the date of final judgment with disbursements to be borne by the defendant.

127 The plaintiff acknowledged that O 22A r 9 of the Rules of Court (Cap 332, R 5, 2004 Rev Ed) ("ROC") guided the court on the manner in which costs should be awarded when an OTS is made by a defendant and the plaintiff obtains judgment not more favourable than the terms of the OTS. In particular, following O 22A r 9(3), the plaintiff should only be entitled to costs on the standard basis to the date the first offer was served (i.e. 28 January 2016, being the date of the first OTS) and the defendant should be entitled to costs on the indemnity basis from that date, unless the court otherwise orders.

128 Nonetheless, the plaintiff highlighted that O 22A r 9(5) of the ROC gave the court the full discretion to determine the question of costs. In support of this, the plaintiff cited *CCM Industrial Pte Ltd v Uniquetech Pte Ltd* [2009] 2 SLR(R) 20. The plaintiff urged the court to exercise its discretion to award the plaintiff a more favourable cost order in view of the following factors:

(a) The delay by the defendant in making the offers rendered it substantially lacking in inducement or facilitation towards settlement. The first OTS was offered on 28 January 2016, 18 days before the assessment of damages began.

(b) The plaintiff had good reason for not accepting the two offers. The accident had left him severely handicapped as his right leg was amputated below the knee. He was also not highly educated and has had trouble finding employment. In addition, one of his expert witnesses, Ms Lucy Bradbury, was unable to come for the hearing. For these reasons, he was not in a position to accept readily the amounts stated in both OTS.

The plaintiff therefore urged the court to exercise its overriding discretion to grant any of the three alternative cost orders that he had proposed (see above at [126]).

129 The defendant, however, submitted that the court should follow O 22A r 9(3) and award the plaintiff costs on a standard basis up to the date of the first OTS as the defendant should not be made liable for the plaintiff's refusal to accept both offers. The defendant added that his conduct had been reasonable as seen from his willingness to accept the revised estimates provided by Dr. Wilson and the subsequent offer of a higher settlement amount in the second OTS. Instead, the plaintiff's conduct had been unreasonable as he had "refused to budge" even after a second OTS with a higher settlement amount was made. As such, the plaintiff had made the defendant go through the assessment hearing. The plaintiff could and should have accepted the first or even the second OTS but he was stubborn and chose not to do so.

130 At the hearing in chambers on 27 April 2016, I reiterated that my decision on costs for the trial on liability was to stand (i.e. that the costs of the trial on liability would be awarded to the plaintiff). I also exercised my discretion and ordered that these costs be awarded to the plaintiff up to 15 February 2016, the day before the assessment of damages hearing, instead of the earlier date of 28 January 2016, which was the date of the first OTS. In respect of the costs of the assessment of damages hearing, I ordered each party to bear its own costs. My decision was made out of sympathy for the plaintiff's injuries, particularly the amputation. Given his unfortunate situation at a young age and the fact that he has to bear his own costs for the assessment of damages hearing, ordering him to pay costs to the defendant (whether on

the standard or the indemnity basis) for the assessment of damages hearing would exact too high a financial toll on him.

131 When asked whether the parties wished to have the costs fixed by the court, the defendant asked that costs be agreed or that the parties write to the court if they could not agree on the costs, so that the court could fix costs subsequently. Counsel for the plaintiff asked for costs to be agreed or taxed. He was unable to agree that costs be fixed by the court as the plaintiff intends to change solicitors for the conduct of his appeal to the Court of Appeal. I ordered that the parties try to agree on the amount of costs and that if no agreement was reached, the parties should write to the court with their submissions on the quantum of costs and the court would then decide the amount of costs for the proceedings accordingly.

Notices of Appeal

132 At the hearing conducted in chambers on 27 April 2016, I also clarified with the parties on their position regarding their notices of appeal. The plaintiff filed his Notice of Appeal on 30 March 2016 and the defendant filed his Notice of Appeal on 1 April 2016. Both notices were therefore filed before I finalised my decision on the amount of future medical expenses and made my decision on interest and costs on 27 April 2016.

133 Both parties agreed that the two notices of appeal would cover all issues in the proceedings, including the orders made at the chambers hearing on 27 April 2016. It was agreed that no party would take issue with the fact that the respective notices of appeal were filed before that chambers hearing.

Conclusion

134 In conclusion, I awarded the Plaintiff $452,509.41 in damages, inclusive of interest. I also reiterated that costs for the trial on liability be awarded to the plaintiff and ordered that those costs be payable up to 15 February 2016. Each party would bear its own costs for the assessment of damages hearing. The usual consequential orders with respect to the Public Trustee would apply.

Tay Yong Kwang
Judge

N Srinivasan (Hoh Law Corporation) for the plaintiff;
Renuka Chettiar (Karuppan Chettiar & Partners) for the defendant.