Lim Yuen Li Eugene v Singapore Shuttle Bus Service Pte Ltd and Another [2005] SGHC 189

Case Number : Suit 1262/2002, RA 137/2005

Decision Date : 04 October 2005

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Daniel Poon (Daniel Poon and Co) for the plaintiff; Martin Lee (Goh Poh and Partners) for the defendants

Parties : Lim Yuen Li Eugene — Singapore Shuttle Bus Service Pte Ltd; Kupusamy s/o Batumalai

Damages – Assessment – Difference between "loss of earnings" and "loss of earning capacity" – Whether awarding of damages under "loss of earning capacity" justified – Whether expert evidence should be given due weight

4 October 2005

Tay Yong Kwang J:

1 On 12 April 2002, the plaintiff was riding his motorcycle along Thomson Road in the direction of Upper Thomson Road when a bus owned by the first defendant and driven by the second defendant made a right turn from the opposite side of Thomson Road towards Whitley Road and encroached into the plaintiff's path. The plaintiff had to apply emergency brakes and, in the process, he lost control of his motorcycle and was flung off the motorcycle onto the road.

2 He commenced legal action against both defendants. On 7 April 2003, interlocutory judgment for damages to be assessed was entered in the plaintiff's favour, with the defendants bearing 90% liability for the accident.

3 An assistant registrar assessed the damages and awarded the plaintiff the following:

(a)	left shoulder injury	$35,000	
(b)	left leg injury	$6,000	
(c)	post-traumatic stress disorder	$4,000	
(d)	loss of future earnings	nil	
(e)	loss of earning capacity	$60,000	
(f)	pre-trial loss of earnings	$11,200 ($1,600 X 7 months)	
(g)	future medical expenses	nil	

(h) special damages for:

(i) pre-action medical expenses	$8,294.58 (agreed)
(ii) post-action medical expenses	nil
(iii) transport	$500

The plaintiff was therefore awarded, on a 100% liability basis, a total of $105,000 in general damages and $19,994.58 in special damages, together with interest at 6% per annum on items (a), (b) and (c) above from date of the writ to the date of trial and at 3% per annum on the special damages from date of the accident to the date of trial. The assistant registrar also ordered the defendants to pay the costs of the action fixed by her at $19,000 on the district court scale, together with reasonable disbursements.

4 The plaintiff appealed against the assistant registrar's decision in respect of items (c), (d), (g) and (h)(ii) and asked that damages be increased or be awarded for those items as the court deemed reasonable.

5 After hearing the parties, I affirmed the decision of the assistant registrar in respect of item (c) (awarding $4,000 for post-traumatic stress disorder) and item (d) (making no award in respect of loss of future earnings). However, I increased the amount awarded for item (e) (loss of earning capacity) from $60,000 to $80,000 as the assistant registrar had awarded this item, which was not claimed by the plaintiff, in lieu of an award for item (d). I also awarded the plaintiff $5,000 for item (g) and $363.20 for item (h) (ii), the amounts claimed by him at the assessment before the assistant registrar. I further ordered the defendant to pay $2,500 plus reasonable disbursements to the plaintiff as costs of the appeal.

6 The plaintiff has now appealed to the Court of Appeal against my decision in respect of items (c) and (d). Alternatively, he claims that the award of $80,000 for item (e) is manifestly inadequate.

The plaintiff's evidence

7 The plaintiff was born on 5 June 1980. At the time of the accident in April 2002, the plaintiff was a student of Ngee Ann Polytechnic and was on an industrial attachment as a part-time worker maintaining servers, earning $500 a month. The accident occurred just before he received his final-year examination results. It caused no head injury or loss of consciousness but he sustained severe injuries to his left shoulder and his left knee. There were also multiple abrasions at his left shoulder. He was taken by ambulance to Tan Tock Seng Hospital where he was admitted from 12 to 18 April 2002. Emergency surgery was carried out to stabilise the left shoulder and he was prescribed an arm sling and physiotherapy. A plaster cast was applied to his left knee. He continued with rehabilitation treatment after his hospitalisation.

8 The plaintiff graduated from the polytechnic and was awarded a diploma in electronic and computer engineering in August 2002. It was his ambition to become a fighter pilot with the Republic of Singapore Air Force ("RSAF"). He had applied to the RSAF to be a trainee pilot and was invited to participate in the computerised pilot selection system test on 10 January 2002. Unfortunately, at that time, he had just started attending his final-year attachment programme and therefore could not take

the said test. However, his ambition remained. He knew he could apply again to the RSAF after obtaining his diploma.

9 After the accident, the plaintiff still harboured the ambition of joining the RSAF and he therefore applied for positions as senior technician, aviation vehicle specialist and air operations systems specialist. He also applied to the Army and the Navy to be an electronics technician. However, all those jobs required him to undergo a physical examination and three months of basic military training. He did not have to undergo the basic military training as he had already done that during his national service stint between 1996 and 1998. The injuries suffered by him and the residual disabilities in his left arm made it impossible for him to undergo such training and he therefore could not secure any of those appointments.

10 The plaintiff also applied to the Singapore Civil Defence Force to be a fire and rescue specialist. He was accepted and offered a contract until he declared his injury and underwent a medical examination, which he failed. He was then rejected for the appointment. He was equally unsuccessful with his application to the Singapore Police Force.

11 He wanted a career with the uniformed organisations as he wanted a stable career with predictable advancement. For him, it was the most logical thing to do as he was an only child with a retired father and a mother who was working part-time. He wanted to be able to take care of his parents and his future family.

12 The loss of all his dreams and prospects plagued him and he became despondent and dejected. In desperation, he worked in various companies as a salesman without any success and had to leave those jobs. He attributed his lack of success to his lack of self-confidence. In turn, his lack of self-confidence was caused by his self-consciousness about his disabilities.

13 Despondent though he was, the plaintiff knew that he could not wallow in self-pity. He therefore registered with the Ministry of Education as a relief teacher and sought employment assistance from the Community Development Council.

14 The plaintiff said he became emotionally unstable and called his solicitor constantly to discuss his claim and often about trivial and irrelevant matters. He believed he did that because his solicitor was the only one who could tell him positive things. When his solicitor suggested discreetly that he consult a psychiatrist, he was initially quite reluctant to heed that advice. However, having realised he could have developed a psychiatric problem, he eventually took that advice and consulted Dr Tan Soo Teng.

15 The financial strain on the plaintiff's family and his inability to secure stable employment caused him "to reach breaking point emotionally". He felt like a bystander watching his peers earn $2,000 to $3,000 per month in their jobs. He used to be a very sporty person and would play beach volleyball with his male friends. He was now "relegated to being a spectator" with the girls. He used to be considered as one of the better looking men among his peers and was quite popular among the girls. After the accident, the girls would merely show sisterly concern for him which made him feel even worse as what he wanted was "admiration from girls and not sisterly concern which is nothing more than sympathy". He now felt like "a school nerd" and felt lost and depressed whenever he thought about his situation.

16 The plaintiff claimed he was on medical leave until December 2002. In January 2003, he applied for various jobs and even tried selling insurance. He also did some relief teaching work at schools whenever that was available, earning $55 per day, and did some work as a private tutor. He

also worked as a clerk, performing simple clerical duties. He then tried selling air-conditioners. Between March or April 2004 and 15 August 2004, he was employed as a salesman of construction equipment earning a monthly basic salary of $2,000 with an allowance of $800. At the time of assessment, he was a sales engineer doing sales of factory equipment and was paid a monthly basic salary of $2,500 with a variable travel allowance of $850 or so.

17 In his report of 19 August 2002, Dr P Thiagarajan, a consultant orthopaedic surgeon, who was not the surgeon who attended to the plaintiff while he was in hospital after the accident, opined that the plaintiff's condition was unlikely to improve any further as it was already five months after the accident when he saw the plaintiff for the purpose of preparing the specialist medical report. He stated that the most important issue with such a severe shoulder injury was the long-term disability brought on by stiffness and osteoarthritis of the joint and that salvage surgeries could only attempt to improve the plaintiff's function but would never restore his shoulder function fully. He opined, however, that the plaintiff may improve marginally in the near future where shoulder function was concerned. He recommended further surgery followed by intensive rehabilitation. In the meantime, the plaintiff would have severe disability with his left shoulder not only in the activities of daily living and recreation but also in his vocation as a computer specialist. Even though the plaintiff had a good range of motion in his left elbow and hand, his hand function was only 25% to 30% of the normal range and that was a significant disability in terms of function.

18 In Dr P Thiagarajan's view, the plaintiff would not be able to ride a motorcycle in the future and would not be able to lift or carry any object more than a few pounds in weight. The left knee problem was unlikely to cause any major problems in the future but the plaintiff could experience intermittent aches and pains in that area.

19 In his report dated 6 January 2004, Dr Tan Soo Teng, a consultant psychiatrist, noted that during his three interviews (the first lasting about 45 minutes and the other two lasting about 20 to 30 minutes each) with the plaintiff, he appeared listless, lethargic and generally depressed, with a frown on his face. The plaintiff spoke too softly for a typical young man of his age. When he spoke, there was a distinct feeling of frustration and helplessness in the tone of his voice. He concluded as follows:

> [The plaintiff] was diagnosed to be suffering from a Major Depressive Disorder as a sequelae of the accident. In addition to the physical disabilities, he sustained marked emotional sufferings. The bright future awaiting him upon his graduation was irreversibly detoured. He was unable to hold on to a job. The nature of work offered to him was also way below what was expected had it not [*sic*] for the disabilities secondary to the accident. His social landscape was also similarly scarred. From the previous active young gregarious man, he was transformed to an insecure reticent helpless crump [*sic*], who could only watched [*sic*] from the sideline while other young contemporaries enjoyed themselves, say at a beach camp. He was still single and these disabilities were likely to impair his pursue [*sic*] for a suitable mate.
>
> As [the plaintiff] showed signs and symptoms of a major depressive disorder I started treating with antidepressant medication, Lexapro 20mg ON, from 27.9.2003. The medication was subsequently changed to fluoxetine 20mg ON and later to imipramine 10mg ON as there was no noticeable improvement. When last seen on 5.12.2003, he was still assessed to be depressed and he had just reported the loss of job as a salesman. Due to the poor performance he was unable to pass the probation period.

20 Dr Tan Soo Teng saw the plaintiff on three more occasions after 5 December 2003: on 26 January 2004, 27 March 2004 and 2 November 2004. There was a time lapse between the last two

sessions because the plaintiff did not turn up for an appointment fixed some nine weeks after 27 March 2004. Dr Tan explained in court that the medical term "major depressive disorder" meant that the plaintiff was a person suffering from a significant level of depression with associated incapacities, such as being unable to perform what he or she used to be able to perform, because of the level of depression. Asked whether there was a difference between "depressive disorder" and "major depressive disorder", he replied that they were essentially the same thing. He also explained that the various medications prescribed were not necessarily progressively stronger. The medications were slightly different because patients responded differently to various types of anti-depressant. On the fourth and fifth visits, medication was prescribed for the plaintiff but not for the final visit. His condition did not improve because, in his opinion, such medication tended to be more effective for patients whose depression arose from within rather than when the depression was caused by external factors such as an accident and the resulting disability. Whether the plaintiff would be able to lift himself out of the depression would depend a lot on circumstances like whether he was able to make headway in life by having a good and stable job and a happy family.

21 Dr Tan Soo Teng said that, out of the nine criteria in the American DSM-IV test, he found the plaintiff had loss of appetite, inability to sleep well, general apathy, depressed mood and work impairment.

22 Dr Yu Chun Sing, the orthopaedic surgeon who treated the plaintiff during his hospitalisation and thereafter, also testified for the plaintiff. His evidence addressed mainly the question of the plaintiff undergoing further medical procedures which is no longer in issue. He reviewed the plaintiff on 7 August 2003 to document the disabilities resulting from the injuries suffered. The disabilities were that the plaintiff:

(a) was unable to raise his left arm;

(b) had to depend on his right arm for almost all daily activities;

(c) could not participate in sports;

(d) could not dress himself in a normal manner;

(e) could not play the guitar;

(f) had severe deformity at his left shoulder due to muscle wasting;

(g) had left axillary nerve damage resulting in numbness over left deltoid and muscle wasting;

(h) had all movements completely limited at the left gleno humeral joint;

(i) had severe pain when applying pressure to or trying to exert his left arm; and

(j) had prominent surgical implants over the left clavicle and removal of the implants was not recommended. Osteoarthritis was likely but no further treatment was planned.

23 Dr Yu also said that when he was treating the plaintiff, the plaintiff did not specifically mention to him about having depression and he therefore did not advise him to see any psychiatrist. In his opinion, the plaintiff, a right-handed man, would not be able to do work that required physical exertion of both arms. The plaintiff's right arm was able to bear and lift weights but his left arm was

not able to do so. However, he would be able to work in any sedentary, office job or to teach. He would be able to type on a computer slowly with both hands.

24 The plaintiff also adduced evidence from two of his friends on the issue of loss of future earnings. Chua Choon Huat ("Chua") obtained the same diploma as the plaintiff's in 2000. After completing his national service, he took up a two-year degree course at the University of Newcastle upon Tyne and was conferred a Bachelor of Engineering with first class honours in electrical and electronic engineering in July 2004. Chua was about to start his employment with Motorola Electronics Pte Ltd. Through an Economic Development Board ("EDB") attachment scheme, he would be attached to Motorola USA where he would be paid a salary of $2,000 a month for 12 months as an engineer. After three years or so, Chua would stand the chance of being promoted to the position of senior engineer with a monthly salary of $3,500 to $4,500 per month. His next promotion would be to that of principal engineer earning at least $6,000 per month. After a decade or so, he could be promoted to be chief technical officer earning some $20,000 per month.

25 Chai Yew Kin ("Chai") graduated from the same polytechnic with a diploma in electronic and telecommunication engineering in 2000. After completing his national service, he went on to do a two-year course at the University of Sheffield, obtaining a Bachelor of Engineering with class two, division one honours in electronic engineering (communications) in June 2004. He was about to start his employment with Hewlett-Packard Singapore (Pte) Ltd through an EDB attachment programme which would last 12 months. During that period, he would be appointed engineer and be paid $2,000 per month by the EDB. In addition, he would be paid $700 per month by his employers. He figured his future prospects would be similar to those of Chua.

26 Evidence was also adduced about the average salaries of polytechnic graduates for the material period.

The defendant's evidence

27 Dr Chang Wei Chun, a consultant orthopaedic and trauma surgeon, was of the opinion that the plaintiff would be able to work in any office-based job which did not involve manual work. That meant any work which would not require his left hand to lift heavy things or "move it in extremes". The plaintiff would be fit for any office work which was computer based and essentially any white-collar work, including managerial and administrative desk jobs.

28 It was possible that the plaintiff would be at a disadvantage since he had no previous working experience and had such disabilities in his left shoulder. On the other hand, it was also possible that the plaintiff would be able to rise above his situation and develop his career using his academic training.

The decision of the court

Post-traumatic stress disorder

29 In making her decision on the item of post-traumatic stress disorder, the assistant registrar said:

> I am not persuaded by Dr Tan Soo Teng's evidence that plaintiff suffers from major depressive disorder. Nevertheless, I accept that plaintiff would have suffered some degree of mental distress as a result of his continuing disabilities, and hence I will award $4,000 under this head.

30 The plaintiff submitted that unless there was some clear reason to doubt the expert's opinion, the assistant registrar ought to have accepted that opinion and that the award, having been given on the basis that the plaintiff was not suffering from a major depressive disorder, was therefore clearly inadequate and the amount of $40,000 asked for should have been given. The disabilities were permanent and being only 24 years old at the time of assessment (he is now 25), it could be foreseen that the plaintiff's condition would worsen in time.

31 The defendant argued that the assistant registrar had ample opportunity to assess the plaintiff during the course of the hearing and was entitled to come to the conclusion that she did. The plaintiff did not complain to the doctor treating him that he was having depression problems and the doctor saw no reason to recommend psychiatric treatment. The psychiatrist did not liaise with any of the orthopaedic surgeons nor speak to the plaintiff's family or friends to find out what he was like before the accident. The diagnosis was based merely on what the plaintiff said over three sessions lasting about 45 minutes for the first and 20 to 30 minutes each for the other two.

32 I accept that expert evidence should be given due weight, especially if it is not contradicted by other expert evidence and is not inherently unacceptable. I do not think the assistant registrar rejected or totally disregarded the psychiatrist's evidence. What the assistant registrar probably meant was that the plaintiff was suffering from some depression but it was not as bad as it was made out to be. The diagnosis was based on matters narrated by the plaintiff and which were not verified independently. Some value judgment had to be made on what was narrated and on the observations made at the interviews, keeping in mind the possibility of exaggeration for the purpose of enhancing damages. The assistant registrar had the opportunity to observe the plaintiff testifying before her. She was therefore able to form an opinion too on the state of the plaintiff's mental well-being, bearing in mind and giving due weight to the experienced eyes and mind of the psychiatrist.

33 When the plaintiff affirmed his affidavit of evidence-in-chief in June 2004, to his credit, he had the presence of mind and was sensible enough to state: "Though I was despondent, I knew that I could not wallow in self-pity." This bolstered the view formed by the assistant registrar. Again to his credit, the plaintiff was actively seeking out employment opportunities, although he seemed to be looking in the wrong places.

34 Much as I sympathise with the plaintiff, even if the assistant registrar was wrong in deciding the way she did, I do not think her award was far off what would be considered reasonable compensation for the depressive state the plaintiff was said to be in, according to the reckoning of the psychiatrist. This was not a case where the plaintiff became suicidal or totally incapable of functioning normally. His complaints about not being able to hold down a job were largely about his physical limitations brought about by the accident rather than his mental infirmities. I therefore affirmed the amount awarded for this item.

Loss of future earnings

35 For this item, amount of damages asked for at the assessment was computed at $3,000 per month multiplied by 16 years, giving a sum of $576,000. Regarding this submission, the assistant registrar had this to say:

> I am of the view that plaintiff's counsel's submission of $3,000 per month for post-trial loss of earnings is far too excessive. To begin with, it is premised on comparison with his friends, Chai Yew Kin and Chua Choon Huat are earning, when these two persons are not appropriate for comparison with the plaintiff. Apart from the fact that they have university degrees while the plaintiff has a polytechnic diploma, both persons also have good degrees which in all likelihood

account for their ability to secure well-paying jobs. Neither am I inclined to accept the argument that but for the accident, the plaintiff too could have gone to university and obtained a good degree. It is far too speculative to posit this when the plaintiff did not even have concrete plans to go to university. Chai's and Chua's evidence was also sketchy as to the type and amount of increments they expect over the years. Finally, I am not prepared to accept that plaintiff's future earnings should be calculated as if he would have become a pilot in the Air Force. There is simply no concrete evidence to show that he would have been accepted even if he attended the first interview.

At the same time, the following has to be considered: defence counsel's calculation of how much plaintiff was earning based on his CPF contributions, *ie* approximately $2,000 per month, which exceeds the basic monthly starting pay of $1,828 for post-[national service] polytechnic graduates.

In the premises, I am not persuaded that plaintiff has shown that his injury has caused him to actually lose income. At the same time, it is clear that an award should be made as it is clear from plaintiff's evidence that his injury has prevented him from keeping jobs and it also affects his employability. In the premises, an award for loss of earning capacity is appropriate, and I am of the view that $60,000 is fair in view of the severity of the injury and plaintiff's relative youth.

36 For the sake of completeness, I will also set out the assistant registrar's decision on the item of pre-trial loss of earnings. She accepted that the starting point for determining the multiplicand should be $2,000 and, after deducting $400 as costs of earning such income, awarded $1,600 per month for seven months.

37 The plaintiff argued that the assistant registrar had proceeded on the wrong premise that the plaintiff was comparing himself with his two friends when his submissions were based on his polytechnic qualification only. The two friends, it was submitted, were called to show that, if given a chance, the plaintiff could have achieved what his two friends did and "to show the kind of environmental influence the plaintiff would have been surrounded with" and that, but for the accident, he "would have settled for nothing less than what his qualification could command in the job market". It was further argued that although the plaintiff's average pre-trial earnings were above the national average, he was unfortunately unable to hold on to those jobs due to his disabilities. The Singapore Civil Defence Force had given evidence that the plaintiff would have been offered a job with a starting salary of $2,045 per month if he had not failed his medical examination.

38 The plaintiff further submitted that the defence expert had conceded that the plaintiff could, at best, be a clerk performing clerical work. His polytechnic qualification would therefore be immaterial and he would have to compete with other able-bodied "O" level certificate holders. He would also be the victim of the "last in, first out" policy. It was argued that the plaintiff would have been able to earn $3,500 to $4,500 per month within three years as post-national service polytechnic graduates specialising in micro-electronics could expect a starting salary of $2,516, according to the Straits Times Recruit Career Guide 2005. Temporary clerical jobs would probably pay the plaintiff only about $720 per month. The loss, it was said, should therefore not be less than $2,000 per month over 18 years in view of his age. However, since clerical jobs would not be commensurate with the plaintiff's qualification, it was submitted that $3,000 should be used as the multiplicand.

39 I found the plaintiff's submissions rather confusing. In order to achieve what his two friends did, surely the plaintiff would have to upgrade his academic qualifications like they did after their polytechnic studies. There was no evidence suggesting that the plaintiff wanted to go to university or that he could not progress to university because of his physical disabilities. In any event, his two

friends' starting salaries were also $2,000 per month. I agree with the assistant registrar's view that the comparison with the plaintiff's two friends' career paths was not appropriate in the circumstances.

40 The defence expert did not concede that the plaintiff could, at best, be a clerk performing clerical work. I have already summarised his evidence at [27] above. The plaintiff would be fit for any office work which was computer-based and essentially any white-collar work, including managerial and administrative desk jobs. It seems to me that the plaintiff is amply qualified because he possesses a diploma in electronic and computer engineering. There are many jobs today which are computer-based and which pay quite decently.

41 I mentioned earlier at [33] that the plaintiff appeared to be looking in the wrong places for employment. Although he applied to the RSAF before the accident, he did not even turn up for the first appointment. Although he claimed it was because he had just started his attachment programme and did not wish to be absent from work, there was no evidence to show any follow-up in the next three months and certainly nothing to show that he even telephoned the RSAF for an appointment at a more suitable time. In respect of the other uniformed organisations, his applications were made after the accident and in respect of positions which were obviously not suitable for a person with the kind of injuries that he had. He did not appear to have asked about more sedentary, administrative positions in those organisations. I therefore agree with the assistant registrar that the plaintiff has not shown that the injury caused him to lose income.

42 In *Teo Seng Kiat v Goh Hwa Teck* [2003] 1 SLR 333, G P Selvam J said at [9] to [11]:

> 9 The expressions "loss of earnings" and "loss of earning capacity" are often confused. Sometimes they are used tautologically. In this sense, they encompass past and future loss of ascertainable earnings. The loss may be total or partial. In either case, the loss is attributable to loss or reduction in earning ability. A claim for damages under this head is relatively easy to assess because the numbers that work the established formula are readily available.
>
> 10 There is another sense to the expression "loss of earning capacity". This arises when the claimant returns to work without any immediate loss of earning. There is, however, the risk that in the future, he may be at a disadvantage, due to a lingering disability by reason of the injury, in getting another job if he loses the present job. Alternatively, he may suffer a pay-cut in the future on account of his disability. This is sometimes referred to as "handicap" in the labour market. In this sense, the expression is a term of art. To justify an award under this head, there must be a substantial or real risk that the plaintiff would lose his present employment during his working life. If there was such a risk, the assessment of damages would depend on the degree of the risk, the time when the loss of employment might occur and the factors affecting the plaintiff's chances of obtaining other employment: see *Moeliker v A Reyrolle & Co Ltd* [1977] 1 WLR 132, *Low Swee Tong v Liew Machinery (Pte) Ltd* [1993] 3 SLR 89 and *Teo Sing Keng v Sim Ban Kiat* [1994] 1 SLR 634. A claim under this head is hugely speculative and difficult to assess. Except when clear evidence is adduced, a large amount will not be given under this category. In any event, a claim under this head cannot arise where the injured was working before the accident and suffered a permanent total or partial loss of earnings.
>
> 11 The two heads are alternative and not cumulative. In the case before me, as the loss of earnings was in respect of past and prospective earnings, there can be no additional claim for loss of earning capacity in the second sense of the term. …

43 The assistant registrar could not be faulted in principle for deciding to make an award for loss of earning capacity in the second sense as defined in the above case. Although the plaintiff should be

able to find employment commensurate with his technical qualification now, he would be at a disadvantage should current administrative or desk-bound jobs require greater physical input in the future. He could lose his job or lose the opportunity for advancement. In this fast-pace world where conditions seem to keep evolving, and the plaintiff has a long working lifespan ahead of him, this is a real risk. As he is only 25 years old, I think a slightly more generous award should be made and I therefore increased the amount from $60,000 to $80,000.

44 I indicated to counsel for the plaintiff that I was rather surprised no appeal was made in respect of item (a) of the assistant registrar's award where only $35,000 was awarded for pain and suffering and loss of amenities for the left shoulder injury. The plaintiff had asked for $70,000 at the assessment. Considering the extent of that injury and the age of the plaintiff, I would have been rather more generous in making an award for that item. However, as it was not in issue at the appeal, I did not interfere with the assistant registrar's award.